FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA
FAYETTEVILLE CITY COUNCIL
AUGUST 17, 1999

A meeting of the Fayetteville City Council will be held on August 17, 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 will be discussed:

A. CONSENT AGENDA

1. **APPROVAL OF MINUTES:** Approval of the minutes from the August 3, 1999 City Council meeting.

2. **MT. OLIVE WATER ASSOCIATION:** A resolution authorizing the City to grant a water line permanent and temporary construction easement (0.455 acres) to Mt. Olive Water Association for the construction and operation of a water line along the East boundary of Lake Wilson.

3. **DETENTION CENTER:** A resolution authorizing the Mayor and City Clerk to convey 186 square feet of City property to Washington County, Arkansas as outlined by the footprint of Washington County Detention Center on City owned property west of Mill Avenue.

4. **FAMILY VIOLENCE SHELTER:** A resolution approving a contract with Foster Witsell Evans and Rasco for architectural services in conjunction with construction of a Shelter and offices for the Project for Victims of Family Violence. Compensation for architectural services and engineering costs is $51,900 with a project contingency of $5,190 (10%), for a total cost of $57,090.

5. **SEWER REHABILITATION:** A resolution approving change orders to the sewer rehabilitation construction contracts for a net reduction of $27,623.44. Cost changes include:
   a. Insituform, TexArk, for an increase of $69,370.50
   b. Jones Brothers, Inc, for a reduction of $75,495.30
   c. T-G Excavating, for a reduction of $21,498.64.

113 WEST MOUNTAIN 72701 501 521-7700
FAX 501 575-8257

6. **HIGHWAY 265 UTILITY RELOCATION:** A resolution approving the Highway-Utility Construction / Relocation Agreement with the Arkansas State Highway and Transportation Department for water and sewer relocations and adjustments on Highway 265 (between Highways 45 and 16). Per the agreement, $1,465,759.34 (51.44%) of the actual cost of the eligible portions will be reimbursable to the City by the Highway Department.

B. OLD BUSINESS

C. NEW BUSINESS

1. **RZ 99-16.10:** An ordinance approving rezoning request RZ 99-16.10 submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-O, Residential Office, and contains approximately 5.2 acres. The request is to rezone the property to C-1, Neighborhood Commercial.

2. **RZ 99-17:** An ordinance approving rezoning request RZ 99-17 submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-2, Medium Density Residential, and contains approximately 4.77 acres. The request is to rezone the property to R-O, Residential Office.

3. **AMBER DRIVE:** A resolution approving the changing of the name of Hackberry Street to Amber Drive, to make Amber the continuous street name running east and west through the Charleston Place P.U.D.

4. **DICKSON STREET WATER & SEWER RELOCATIONS:** A resolution approving the award of a contract to relocate certain water and sewer lines on Dickson Street, and to construct a new 12-inch water line for additional fire protection and general improvement of the water system. Information on the amount of the bid and the low bidder will be available August 16th.

5. **CELL TOWER ORDINANCE:** An ordinance establishing criteria to assess and reduce visual and land use impacts associated with the development of wireless communications facilities in the City of Fayetteville, Arkansas.

CITY COUNCIL AUGUST 17, 1999

	ROLL				
DANIEL	✓				
SANTOS	✓				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	Absent				
MAYOR HANNA	✓				

	HP RA. CONSENT				
DANIEL	✓				
SANTOS	✓				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	—				
MAYOR HANNA					

	7-0 RA. RZ 2ND RZ 99-16.10	BD 3RD. KS			
DANIEL	✓	N			
SANTOS	✓	✓			
YOUNG	ABSTAIN	A			
RUSSELL	✓	N			
REYNOLDS	✓	✓			
AUSTIN	✓	✓			
DAVIS	✓	✓			
TRUMBO	—				
MAYOR HANNA					
	6-0-1	4-2-1			

left on 2ND.

CITY COUNCIL AUGUST 17, 1999

	KR 2ND KR RZ 99-17	KS 3RD BD	passed		
DANIEL	✓	✓	✓		
SANTOS	✓	✓	✓		
YOUNG	A	A	A		
RUSSELL	✓	✓	✓		
REYNOLDS	✓	✓	✓		
AUSTIN	✓	✓	✓		
DAVIS	✓	✓	✓		
TRUMBO	—				
MAYOR HANNA					
	6-0-1 KS KR	6-0-1 move HD CY to change name	6-0-1 - KR wait.		

	AMBER	DRIVE			
DANIEL	✓	✓			
SANTOS	✓	N.			
YOUNG	✓	✓			
RUSSELL	✓	✓			
REYNOLDS	N	N			
AUSTIN	N	N			
DAVIS	N	N			
TRUMBO					
MAYOR HANNA	N				
	4-3-0 CY BD.	3-4-0			

	DICKSON	STREET	W/S	RELOCATION	
DANIEL	✓				
SANTOS	✓				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	—				
MAYOR HANNA					
	7-0				

CITY COUNCIL AUGUST 17, 1999

	KR SUB. WORDING. CY. CELL TOWER	9.B. RA 2ND KR.	Lifton Second special meeting before agenda session.		
DANIEL	✓	✓			
SANTOS	✓	✓			
YOUNG	✓	✓			
RUSSELL	✓	✓			
REYNOLDS	✓	✓			
AUSTIN	✓	✓			
DAVIS	✓	✓			
TRUMBO	—				
MAYOR HANNA					
	7-0-0.	7-0-0.			

Hunter Stewart 2nd Ext.

DANIEL					
SANTOS					
YOUNG					
RUSSELL					
REYNOLDS					
AUSTIN					
DAVIS					
TRUMBO					
MAYOR HANNA					

DANIEL					
SANTOS					
YOUNG					
RUSSELL					
REYNOLDS					
AUSTIN					
DAVIS					
TRUMBO					
MAYOR HANNA					

Special agenda / Special meeting before agenda Session.

MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
AUGUST 3, 1999

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PRESENT: Mayor Fred Hanna; Aldermen Robert Reynolds, Ron Austin, Bob Davis, Trent Trumbo, Heather Daniel, Kevin Santos, Cyrus Young, and Kyle Russell; City Attorney Jerry Rose; Deputy City Clerk Theresa Johnson; Public Works Director Charles Venable; City Planner Tim Conklin; Administrative Services Director Kevin Crosson; Staff; Press; Audience.

ABSENT: City Clerk Heather Woodruff

ITEMS	**ACTION TAKEN**	
Approval of the Minutes	Approved	
Wastewater Treatment Plant Study	Approved	Res. 100-99
Dickson Street Property Surveys	Approved	Res. 101-99
Hardin Property Settlement	Approved	Res. 102-99
RZ 98-22: 1798 East Huntsville Road	Approved	Ord. 4175
Fayetteville Town Center Construction Contract	Approved	Res. 103-99
VA 99-8.00: Fletcher Avenue	Withdrawn	
RZA 99-1: 3686 Wilson Hollow Road	Approved	Ord. 4176
Arkansas Highway & Transportation Dept. Reimbursement	Approved	Res. 104-99

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ABSENT: City Clerk Heather Woodruff

All rose to recite the Pledge of Allegiance. The Mayor announced that the first item under New Business had been withdrawn at the request of the petitioner.

CONSENT AGENDA

APPROVAL OF THE MINUTES
Approval of the minutes from the July 20, 1999 City Council meeting.

WASTEWATER TREATMENT PLANT STUDY
A resolution authorizing the Mayor and City Clerk to execute a contract with Burns & McDonnell for a Plant Capacity Study to be done at the Noland Wastewater Treatment Plant for a not to exceed figure of $32,472.00.

RESOLUTION 100-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

DICKSON STREET PROPERTY SURVEYS
A resolution approving a contract amendment with the Benham Group for property surveys along either side of Dickson Street from College Avenue to Arkansas Avenue, for the purpose of establishing the right of way, in the amount of $31,950; and abstract work for $10,000; for a total contract amendment of $41,950.

RESOLUTION 101-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

HARDIN PROPERTY SETTLEMENT
A resolution approving settlement of City v. Hardin, CIV. 99-561, and payment of just compensation for the taking of real property in the amount of $52,396.50.

RESOLUTION 102-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Cyrus Young moved to approve the Consent Agenda. Bob Davis seconded the motion. Upon roll call, the motion carried unanimously.

OLD BUSINESS:

RZ 98-22
An ordinance approving rezoning request RZ 98-22 submitted by Richard Osborne on behalf of Littlefield Investment Company for property located at 1798 East Huntsville Road. The property is zoned C-1, Neighborhood Commercial, and contains approximately 0.788 acres. The request is to rezone the property to C-2, Thoroughfare Commercial, for the purpose of installing a used car lot. Item was left on second reading at the July 20, 1999 City Council meeting.

City Attorney Jerry Rose read the ordinance for the third time.

Alderman Daniel commented that she had driven by there today and was not in favor of the rezoning because it is next to a residential area, and although it has been vacant for a while she would like to wait for something more attractive than a used car lot to be there.

Alderman Trumbo mentioned that the building there now is dilapidated and run down. His dilemma was whether to keep it as is and wait for someone else to come in who would return it to a pump station and car repair, or to rezone it to C-2 whereby it could be cleaned up for a used car dealership and have a viable, tax-paying business.

Alderman Davis said that, with its present zoning, there were plenty of other commercial uses that could go into a C-1 zoning other than a gas station.

Alderman Reynolds and Alderman Austin both stated that, being aldermen for Ward 1, they had not received any phone calls on this rezoning.

Alderman Santos asked if this rezoning would comply with the City's 2020 Plan.

Tim Conklin, City Planner, replied that the C-2 zoning is not consistent with the 2020 Plan, where it was currently designated as Community Commercial. The Planning Department staff had recommended denial of this petition.

The attorney for the petitioner, Richard Osborne, mentioned that he had looked after this property for four years and had had five inquiries for potential businesses, the only reasonable usage for the site being a used car lot. The others had included: a flea market (which he didn't think would be very attractive for an entry street into Fayetteville), and an appliance repair service (for which they hadn't been able to reach an agreement). He thought this part of town was improving. The proposal the man had made for the used car lot includes upgrading the building and grounds.

Alderman Trumbo asked whether a gas station at that location just hadn't worked, given that they had had Fina come in and clean up the location and put in a nice sign.

Richard Osborne stated that it hadn't worked. Now they have children throwing rocks through the windows and other standard vacant building activities.

Alderman Davis asked how many years the Fina station had been gone.

Richard Osborne replied that it has been between eight and ten years since Fina was there, and over five years since it has been vacant.

Mayor Fred Hanna stated that he thought the last business in there had been a used tire business. He also stated that he had understood that Mr. Littlefield had bought the site with the purpose of putting a convenience store in that location. He wondered if he was keeping the property with the notion of putting a convenience store there one day.

Richard Osborne explained that Mr. Littlefield, who died two years ago, predates convenience stores, that he had started business during World War II, at which time there were no such stores, to Mr. Osborne's knowledge. It was a gas station at the time. Littlefield's company had since decided that a convenience store would not work in that location.

Alderman Davis asked if this put the City in a "watchdog" position that would be difficult to maintain.

Tim Conklin stated that the Bill of Assurance contained wording which clarified that the property would be used for the purpose of a used car lot or other uses allowed in a C-1 zoning, and otherwise would revert back to a C-1 zoning. He had spoken with the City Attorney, who had informed him that it would take a city ordinance to cause such a reversion. Therefore, it would be up to City staff to monitor the location to ensure that it was being used as a car lot; and if at any time, for a period of one year it was not used for that purpose, the City Council would need to pass an ordinance to reenact the C-1 zoning.

Richard Osborne mentioned that they would honor that, and that they were merely trying to put something in that location, anything being an improvement over what they've had in the past five years.

Alderman Austin mentioned that he thought we should honor the work of the staff on the 2020 plan. But, on the other hand, he felt it was okay to make a change in the process, similar to a builder making a change to a blueprint. He was in favor of granting the request.

Richard Osborne stated that the Planning Commission had approved the rezoning on the condition that the Bill of Assurance be approved also.

Alderman Trumbo reiterated that he was also in favor of granting the request based on the fact that we currently have a vacant, run-down eyesore building there when we could have an ongoing business tax-paying enterprise.

Alderman Russell asked for clarification from the City Attorney, that if we pass this rezoning and another owner buys the property, the conditions would be passed on to the new property owner.

Jerry Rose answered yes.

Alderman Russell asked further, if it was true that there would be no "automatic reverter" back to C-1 if the new property owner wished to use the location for a C-2 usage other than a car lot.

Jerry Rose answered that there would be nothing automatic and that it would have to come back to City Council for an ordinance to be passed to rezone the property back to C-1. However, he mentioned, it would be helpful to have the wording contained in the Bill of Assurance to help pass that ordinance. Also, the documents related to this rezoning would be recorded in the County Clerk's office; therefore, any future property owner would be alerted to the restrictions in usage put upon the property.

Alderman Santos stated that car lots are one of the businesses that benefits from economies of conglomeration, and from being close together, which he thinks is a good thing. Neighborhood commercial zoning is intended to create pockets of commercial opportunities for residents of the neighborhood, to reduce traffic on the other streets. A used car lot is intended to draw traffic from the entire region into this neighborhood. Therefore, the Council would be preventing what the Master Plan had in mind for this area if they rezone this property.

Alderman Trumbo stated that those were all good points, but reminded the Council that there had been a number of complaints about the property as it is.

Richard Osborne concurred that the property is a mess, and he would hate to see what goes on there at night.

Alderman Russell stated that he agreed with Alderman Santos. Although he also agrees that the property is in vast, dire need of help, he does not think that the City government should do spot rezoning for a business to accommodate the most reasonable offer they had gotten. He hoped that they would eventually get a reasonable offer to fix up the property, but he didn't think that they needed a rezoning to accomplish that.

Alderman Austin asked whether there was a car lot on the south side of Huntsville Road, about one mile further east, down by Bob's Market that was also C-2 zoning. Tim Conklin replied yes.

Jerry Rose stated that they were on the third and final reading.

Upon roll call, the vote on the motion was tied: Davis, Daniel, Santos, and Russell voting nay. City Attorney Jerry Rose alerted the Mayor that he could vote as the tie-breaker. The Mayor voted for the motion, stating that the property would be better used as a used car lot than remaining vacant. The motion carried by a vote of 5-4-0.

ORDINANCE 4175 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

FAYETTEVILLE TOWN CENTER

A resolution approving a construction contract for the Fayetteville Town Center with Nabholz Construction Co. for a negotiated bid amount of $7,346,408; contingency amount of $150,000; and approval of Change Order #1 in the amount of $970,162; plus approval of a budget adjustment.

Mayor Fred Hanna mentioned that they had requested the opinion of the Attorney General on this matter and it had been received, and that the City Attorney was satisfied that the Attorney General's opinion allows the Council to do what they had been asking to do, and was probably even more lenient, showing that the City had exercised an overabundance of caution. The vote on $7,346,408 was due tonight to meet the contract deadline with Nabholz Construction. They should then vote on the items that had been put back in.

Alderman Trumbo did not think that approving the contract itself was controversial, as it had been presented to the voters with the sufficient bond postings that were certified. **Alderman Trumbo made a motion to approve the resolution to approve the contract, and then get into the more controversial parts of it. Bob Davis seconded the motion.**

Alderman Russell questioned if they approved the contract, then voted down the extra money, then would the town center be built without those add-ons. Mayor Hanna said yes. Alderman Russell said that he would like to discuss the extra money before approving the contract.

Alderman Daniel complimented the architect, Richard Alderman, who had been very patient and helpful; and the staff, who had really worked hard to make this happen. She also wanted to clarify that at the last A&P Commission, Curtis Shipley in his enthusiasm and optimism had assumed that she would vote for the project, and had not asked for her vote, although he had not intended to cut her out. She then brought out her campaign brochure from the last election, which showed two of her three goals: responsible economic growth and downtown renewal. But, she explained that she had a few problems with this project. Some people had problems with the name "Town Center," although she didn't see it as a problem, because there might not be a word in our vocabulary to describe the structure adequately. The vote for the Town Center bonds occurred on August 5, 1997, almost two years ago. It passed by only 10.86% of the registered voters (30,000+ voters in the City of Fayetteville), and was a very close vote. She reiterated there had been a low voter turnout. She mentioned that we had gotten legal opinion, and Jerry Rose had concurred that we could put City money into it. She would even put much more City money into it ($2-3 million) to make it a really quality building. She had been listening to many people in town, and she was concerned about the following things. She had spoken to a well known chef in the City of Fayetteville, and asked if, in serving a banquet of 1,000 people, with a hot three or four course meal, what he would need. He had answered that he would need a real kitchen: convection ovens (stacked), ranges, steam tables, and so on. He had said it could be a profit-making event if we had real chefs there. The parking, too, is inadequate even though parking downtown is critical. Also, she took a survey using drawings of the back of the town center, asking people from outside of Fayetteville what they thought the building was. They answered: a factory, a school, an incinerator. Another citizen told her that the view to the South and the mountains would be blocked by the building to the people up on the Square. Another major concern she had heard was how the building would be used. It looks like the civic groups who would want to meet there would be on standby behind the top-dollar groups that would want to meet there. If the town center is built, she said that she would be ecstatic, but that it would need to be a high quality building in order to draw in the kind of events we would want.

Alderman Trumbo stated that those were valid points. Historically, he noted, people don't turn out as much for special elections. He felt that Richard Alderman had been doing a high quality job on this building. What it boils down to was the fact that we didn't have enough money to build it; therefore, did we take $600,000 in money from the City's off-street parking account, and put in an extra $600,000 in City money to put all of the amenities back into the project. Personally, he didn't think the town center would cash flow from conventions and exhibits. But he thought the worst case scenario would be that we would have a nice building on the Square where civic groups could meet; we would be gaining additional parking for the downtown area; we would be using HMR tax money that had been specified either for advertising or for such a purpose and had already accrued $1.1 million that could be used on this project. Hadn't we paid $600,000 for the road to the Genesis building?

Charles Venable answered that he thought it had been less than that, about $400,000.

Alderman Trumbo said that his point was that we spend a lot of money on roads, so percentage-wise for the overall project, he thought we could forego a road or reallocate money that we do have to build a quality project.

Alderman Davis stated that if the town center could do for the downtown area what the Walton Arts Center did for Dickson Street, seeing the investment that had gone into Dickson Street, then this is definitely something that they need to take a look at. His concern was taking money out of the City's General Fund. He wondered if they could legally loan the money to the A&P Commission, paid back without interest.

City Attorney Rose didn't think that would be possible.

Mayor Hanna reminded people that the A&P Commission had worked long and hard for several years on this project, to continue doing the projects they had been doing and still fund the town center, and they had discussed what they would need to do as far as sponsoring ball tournaments, the Air Museum, special events. They had cut down to the bare bone and still felt they could do what they had done in the past. He wanted to answer some questions about the parking. We have 80-90 spaces there now; after putting the parking back in they would have 220 additional spaces in that location. The parking that is there now, you have to park in the sun or rain and walk up the hill to get to the Square. After the construction, you would be able to park in covered parking, walk to an elevator to get to Square level. As for the view, he felt the building would become part of downtown Fayetteville and would be an extension of the Square. He didn't care whether it would be called a town center, exhibit hall, convention hall - the name wouldn't make much difference, the use would. There would be public restrooms on the downtown Square. You would be able to walk around a landscaped area with benches. They would make it easy to get from the old part of the Square gardens to the new part to see the new view to the East. We would let the building be used by civic groups on an as-available basis. He wondered which clubs were wanting to use it.

Alderman Daniel stated that had been a major concern of citizens although she had never asked specifically which clubs they had in mind.

Mayor Hanna reiterated that he wanted to know who they are and how many people they have at their meetings. If they can meet in a living room now, they might not need a big room at a town hall. He mentioned that there were several places for meeting in Fayetteville now: (1) the Clarion Inn – same rates for profit and non-profit groups, rooms at no charge with meals, for $50-125 for room only; (2) the Hilton – same rates for profit and non-profit groups, rooms at no charge with meals; (3) the Ramada Inn - no charge with meals for commercial groups, non-profit groups charged a nominal fee; (4) the Yvonne Richardson Center – no charge; (5) Continuing Education Center – university/community rate for non-profit groups covers only the cost, for-profit groups pay commercial rates; (6) Fayetteville Youth Center / Holcombe School /

Vandergriff School – $35/hour + staff (for cleaning and utilities); (7) Asbell School – $20/hour + staff; (8) University Baptist Church Student Ministries – non-profit groups only, no charge or $10 for clean-up; (9) Central United Methodist Church – non-profit groups, policy is discretionary according to the group; (10) Mount Sequoyah Conference Center – non-profit, mostly larger groups; (11) Public Library – free to all groups during library hours, $10/hour after hours, room capacity 75 people; (12) Ozarks Electric Cooperative – non-profit only, family and community events, $20/use, limited to 3 meetings / year. He wondered who didn't have a place to meet, unless it was Friends For Fayetteville, but he thought there were places for them and there would be a place for them with the building of the Town Center. The building is being paid for by A&P funds for the use of the A&P to attract people from outside of Fayetteville to spend money, pay taxes, patronize our restaurants and other businesses and help pay for it.

Alderman Austin commented that what he felt about Alderman Daniels' survey was something like taking a picture to someone and saying, "You don't like that, do you?" He also felt that when looking at the architectural model (displayed on the floor), the back side of that building was as attractive as any building down there, with the exception of the Old Post Office building. He thought it was an attractive building and functional in its appearance. He thought they should attempt to fulfill the original intent of the public vote of 1997.

Alderman Young asked Kevin Crosson about the $450,000 from the General Fund, and whether any projects would be deleted or postponed because of taking that money.

Kevin Crosson, Administrative Services Director, explained that the money would be coming from the General Fund - Fund Balance. The Fund Balance had accumulated over a number of years.

Alderman Russell said that the Library Board would be asking for money soon, and there was a Senior Center planned. He understood that the A&P Commission had cut their budget to the bare bones, and he did not want to see the City end up in the same position, not being able to fund the projects that they normally did each year, such as Community Access Television.

Kevin Crosson explained that each year when the Council adopts a budget, the expenditure policy of the City states: "...The City will adopt a balanced budget by fund for all funds maintained by the City, in which total anticipated revenues must equal or exceed budgeted expenditures for each fund." Each year when they get into a budget debate, when one group or department doesn't receive as much of an allocation as another, it is because they try to balance the budget on an annual basis against the revenues received each year. This does not include the reserve that has built over a number of years due to the healthy economy of Fayetteville. Another policy the Council adopts is: "Existing reserves shall be used to provide for non-recurring expenditures or emergency expenditures," such as the money needed for the Town Center.

Alderman Trumbo stated that it was similar to the money in the Parking balance which was money accumulated over time to fix up parking lots, but would be used to allocate to the parking of this project, still leaving ample funds to maintain and repair other parking lots.

Alderman Austin stated that the resolution on the floor was to certify the budget on the project in the amount of $7,346,408, which does not include the Off-Street Parking or General Fund money.

Alderman Santos stated that they should vote on the whole package, and throw in the city money and parking money.

Mayor Hanna asked Jerry Rose if they should vote on the other motion first.

Jerry Rose answered that they could make it contingent upon adopting the contract, or make it all into one resolution.

Alderman Reynolds asked Richard Alderman, the project architect, if the building was back to 100% as proposed, or if there were still cuts in it.

Richard Alderman answered that they had put back in all items except those that involved using more land or changes that wouldn't affect the building in any way. There had been a lot of discussion about the quality of the building, even with all of the cuts that had been taken out. It would be mostly made of brick, had an all-tile lobby, with high quality materials and finishes. The back elevation has concrete with brick on it, brick on the stairway and sides. It has a tremendous amount of landscaping, almost doubling the amount of landscaping on the Square. They put a park on the front of the building instead of pushing the building up to the street. Some of the people who criticize the design effort were not in support of the project. They had asked for computer technology in the building, which they had done. There are 14,000 square feet of dividable meeting space, plus three other small meeting areas. The other issue the Council might want to focus on was that there had not been a major construction project in the State of Arkansas or surrounding states that hasn't suffered because the price of construction had gone up. He felt that working with the City had offered a reasonable way to put back in the quality items that everyone wanted.

Several aldermen asked if the elevators, the railing, the automatic doors, the tower on the front and the type of brick wanted had been put back in.

Richard Alderman answered yes.

Alderman Davis asked about the waterproof requirements from Sections 3.1 to 3.5.

Richard Alderman answered that the contractor had suggested using types that they normally use which would result in cheaper costs, but with different brand names or different applications. These resulted in $200,000-300,000 in cost reductions.

Alderman Austin asked if a large and a small conference could be held simultaneously.

Richard Alderman explained that the partitions had been added back into the contract, including up to 3 different sized conferences at the same time, not including the small conference room. The break out room and the break room for the administration could be used for small conferences, allowing 5-6 different things to be going on at once. He said that the convention centers they had done in Hot Springs and Little Rock had used their lobbies as conference areas. Also, the park area out front could also be used as a conference area. The building would have the capabilities of having a small, 5-person meeting to 1,000 person capacity.

Alderman Daniel asked about the leveler.

Richard Alderman answered that it was put back in, as loading dock equipment.

Alderman Santos stated that with the put-backs, we would have a fine civic building. He would like to see this "vertical infrastructure." Historically, before World War II, all over America we built a lot of grand civic structures: court houses, city halls, post offices and schools. Since then, all civic expenditures have been on "horizontal infrastructure": roads, sewer lines, water lines. He would like to see us get back to vertical infrastructure. It would be the kind of public expenditure that would encourage private investment, and ensure that the downtown stays vital. It is using mostly A&P funds for their express purpose. He thought we should vote on it tonight and get started building it.

Alderman Russell asked of the City Attorney or the A&P whether the rental rates will be worked out at a later time.

Jerry Rose stated that the lease with the A&P Commission specifically says that "We recognize that non-profit groups located in the City are to be given a reduced rate, fee or charge for the use of the building. The rates, fees and charges shall be approved by the Fayetteville City Council. Said approval shall not be reasonably withheld."

Alderman Russell said that if we were going to kick-in money from the General Fund, then non-profit groups should be able to use the rooms in the building for a nominal fee, such as $1, because it is a building paid for with public money.

Alderman Davis said that Section 502 of the lease agreement between the A&P and the City talks about that very thing.

Richard Alderman explained that the City Council would be able work on the lease with the A&P, how it is run and how it is set. The fees have not been set yet, but when the construction is finished, then those things will be put together and brought to the Council for approval.

Alderman Trumbo said that there has been a lot of planning on this project by Jim Foster's and David Glasser's groups and others, involving the downtown, Dickson Street and the university.

Alderman Austin asked if they should amend the motion to include the new money.

Jerry Rose answered that they could have two parts to the resolution: Section 1) to adopt the construction contract with Nabholz Construction for $7,346,408 and Section 2) to approve a contingency amount of $150,000; and change order for $970,162; a budget adjustment for improvements listed.

Alderman Santos made a motion to approve such a resolution. Alderman Davis seconded the motion.

Alderman Austin commented that he thought it was a good idea given the insurance by Kevin Crosson that this wouldn't put any items, departments or projects into any kind of jeopardy.

Mayor Hanna asked if they needed to vote on the first motion.

Jerry Rose asked if they wanted to vote on the first motion or withdraw it and vote on the second one.

Alderman Trumbo withdrew his first motion. Alderman Austin withdrew his second to the motion.

Jerry Rose read the resolution again for clarification.

Alderman Santos made a motion to approve the resolution. Alderman Davis seconded the motion.

Alderman Russell explained that the budget adjustment means taking $386,600 from the Off-Street Parking Fund and roughly $450,000 from the General Fund - Fund Balance.

Mayor Hanna opened the discussion up to the public.

Joe Fennel, A&P Commission, assured the Council that the money they were spending on this project would be the best money they would spend as aldermen. He had been working on this project for four years now. They had given the people of Fayetteville ample opportunity to speak up about this project. Before public input, this was not the building or even the location of the original project. They considered this to be money well spent. The $7.3 million figure the A&P Commission had decided upon was because they knew they could afford that amount. They didn't want to cut off many of the projects they consistently fund. They, as A&P Commissioners, ask that the City Council get behind them on this project. They had left some of the wording vague because they didn't know what it would cost to run this building. He asked for their vote of "yes."

Alderman Trumbo clarified that with the bond repayment over 18 years, and with the money from the HMR tax that the A&P collects, that they would still be able to fund the baseball and basketball tournaments, First Night, and other projects.

Joe Fennel answered by asking which projects in the City that they *didn't* fund. He mentioned that there was a lot of money out there to help people. He wanted to put his tax money into a building that would return revenues rather than take money.

Jeff Erf, area resident, stated for the record that he wasn't opposed to this project. What he was concerned about was the process and the funding, not the concept. He asked what the net number of parking spaces we would get out of this project.

Mayor Hanna answered 130 extra.

Alderman Trumbo explained that the other 90 would still be available at nighttime.

Alderman Russell explained that 220 would be made, but only 130 would be available in the daytime.

Jeff Erf asked how much money the City had put into the project up until this date. He had calculated $150,000 for the site; $120,000 for the lease; $20,000 for the trolley.

Mayor Hanna said that the only money that they had put in so far is the money to buy the additional part of the parking lot. The lease on the land hadn't started yet, so no money had been spent on that yet.

Jeff Erf asked if there was anything else on the town center that would require more City money.

Kevin Crosson replied the landscaping was the one thing they thought would be more effective with their in-house crew, and incorporate the design with what was already on the Square.

Richard Alderman added that all the planters, dirt and everything was in there.

Jeff Erf asked if the town center would have a liquor license.

Alderman Santos asked if people would be able to serve alcohol in the town center.

Mr. Rose replied it was a general rule that civic centers did not serve any alcohol. However, with weddings and receptions there would be cash bars. It had been allowed with the Walton Arts Center and the University of Arkansas, because of special temporary licences obtained from the ABC to serve alcohol for specific events. He assured that there would not be a permanent bar at the town center and the City would not have a liquor licence, but private individuals may obtain a special ABC license for a particular event and time.

Mr. Jim Bemis, an area resident, mentioned that he had sent a packet of information to the City Council. In response to questions asked by the mayor on who would be using the facility, he stated that the people that would be using the facility were the same people, who for 50-75% of the time the Council was expecting the money, and were the same people that used the facilities in Springdale, at the family center. The town center could be used for the neighborhood preparedness meetings and for government meetings. He asked that the Council look at what the City would get for the money they put into it.

Mr. Fred Vorsanger, a former Fayetteville mayor, spoke of having served 6 years on the Council and 3 years on the A&P Commission. He stated this was what the City needs now. He wanted to congratulate the Council on how nice the building was going to be, that it was a dream come true for all of them. He asked each of the aldermen to vote for what was best for the City, not what was best for each individual alderman.

Mr. Kent Hirsch, a Springdale attorney, stated that he had no emotional attachment to the town center one way or another. The problem was with finding money to build it. One example of a similar situation was a lawsuit against the City of Rector, Arkansas, following World War II. Rector was a town which wanted electricity and had voted for a $65,000 bond issue, but it wasn't enough to build the electrical facilities needed. So the City of Rector decided to put in additional City money to fund the electricity. Someone sued the City and it was then taken to the Arkansas Supreme Court, which ruled that they could not spend more money than had been specified on the ballot; money couldn't be taken from other sources. He had read the ballot for the town center, which designated $6.95 million for the town center with parking. The problem was that at this point it was very difficult to construct a town center with the amount of money listed on the ballot, after the $500,000 cost for issuing the bonds. He felt it was a good project and thought there were two options for proceeding. One, to build it for the amount of money that had been voted on. The other was to resubmit the project to the voters again for the amount that was needed, but with some options to spend City or A&P money. The way the ballot was written stated that the town center would be built for $6.95 million. He said it had been ten years since he had come down here and suggested that the City not pass an incinerator tax. He was not opposed to the project. The problem was the funding and the language on the ballot.

Alderman Davis asked whom he represented.

Kent Hirsch stated that he was with an affiliation of lawyers, including Bob Brandon, Dale Evans, and perhaps Lamar Pettus. There were three parties that had approached them whose names he was not able to give at this point. He thought it was likely this would be challenged in court. He did not have the benefit of the Attorney General's opinion, although it was not binding, but felt that the Rector case was right on its point.

Alderman Trumbo replied these were all good, valid points and felt that he, personally, had confidence in Mr. Rose's legal ability to represent them. He thought they had gone through the proper procedures and they had relied on their legal counsel and opinions that had been rendered.

Alderman Santos asked which year was the Rector case.

Kent Hirsch answered 1949.

Alderman Daniel stated she had heard of this concern today and stated she would like to see it go back to the voters to get more money to beef up the project, and extra money in case the town center did not make money for a while. She did not feel right making a decision herself.

Alderman Santos thought they should take their City Attorney's advice and back-up opinion of the Attorney General.

Mr. Rose stated they had asked the Attorney General a specific question on whether or not the City Council could legally appropriate funds to the town center project. He quoted: "If the appropriation is made following negotiations with the apparent responsible low bidder (which was exactly what they had done), then he believed the additional funding would, as a general matter, be authorized." He did not know how to insulate the City from litigation. It was a tedious, divisive and unhealthy thing for this city. He tried very hard to avoid it. The city had asked their Bond Counsel, Ann Parker, whether or not it could be done. She stated the election was held to authorize the pledging of the hotel and restaurant tax to repay the bonds and to authorize the funds for the project. The ballot title did not address the issue of a source of any funds to be used to supplement the hotel and restaurant tax. There was nothing in the ballot title to limit the use of additional funds for the project. The use of City general funds for community meeting rooms, for instance, does not result in any illegal pledging of general revenue for bond debt. They were not supplementing bond or bond money. They were buying very specific things. It was his opinion that the City general fund money could be used for any purpose for which city funds may be used, for any public purpose. He thought that the town center could be built, but at some future time the Council could revise it. He thought they were making it as legal as he could make it. He would be pleased to sit down with Mr. Hirsch or any attorney in town to go over the Rector case. His surmise was that we probably would not be able to reach agreement except through litigation.

Mr. Lamar Pettus, an area attorney, stated that the Rector case had been cited in a 1998 Supreme Court decision. He stated the citizens had the right to redress a remedy, and they had a right to be represented. He wanted to address the accumulation of over one million dollars in the A&P Commission budget. He thought they could have spent that money toward reducing the debt on the Continuing Education Center. They had extended those bonds. In fact, this program being adopted would force us to pay interest only until 2004, whereas the City's taxpayers would pay off the Continuing Education Center, which was the first convention hall / town center built. They still own the parking garage over there. There is a city report stating that two or three years ago there was $400,000 that was needed for repairs to the parking garage at the CEC, which still had not been done. However, he had voted against this project; he had not mounted a campaign against the town center; he had not paid his money to advertise to get the people to say no, although he wished he had, seeing that the vote was as close as it was. The citizens said to spend $6.95 million on this project, the A&P Commission said they would kick in another $1 million. He had asked at a previous Council meeting what would happen if it ran over budget. Some of the Councilmen had said that they would resubmit it for a vote of the citizens. If the Councilmen would do that, he would not waste his time and energy in mounting a campaign against this. If only 10% of the people voted to spend our money this way and the other 90% sat at home, that was fine with him. But the citizens wanted the City to do exactly what they had voted for them to do. He submitted to Jerry Rose that even though they had had all kinds of bond counsels' opinions and Attorney General's opinions on the subject of the incinerator, and all kind of attorneys' opinions and Attorney General's opinions before the contract with the Fayetteville School District to build public schools. He felt that the Council needed to do more than hide behind the opinions of the City Attorney and Attorney General; perhaps they needed to wait two weeks and decide that issue. The City of Fayetteville ten years ago had rushed in and signed that contract and committed the City to build the incinerator, resulting in a lawsuit. Also, we have $1.1 million from the A&P Commission held in our checking account earning 2-3% interest, to then be paying 8-9% interest on the bonds for the Continuing Education Center, we will have paid through the HMR tax for 20+ years on the CEC building and not have paid it off yet. When we have paid it off in 2004 we will give it to the University of Arkansas and not keep it for the citizens of Fayetteville. Don't tell the citizens that we have accumulated all of these funds from out-of-towners when it has been paid by the citizens who eat at local restaurants. Now the Council want to take $400-600,000 out of our coffers for the land, etc. The Off-Street Parking Commission did take the position that they didn't want any parking deleted in this project. The project had been represented at every civic organization in town as having 250 parking spaces, and now will have only a net of 100 spaces, 130 at night. If lawyers decide to represent citizens, don't condemn the lawyers, because citizens have the right to go to court and question the Council's judgment. The citizens have on two straight challenges to the City proven the City

Council incorrect, with all of the City's bond counsels and Attorney General's opinions. Perhaps we need to slow down and reassess the project. Perhaps it will cost us $200,000 more, but it will solve some legal issues and problems for the City. Perhaps we will go in with a declaratory adjustment action before we vote and see if the judge will tell us what we can do.

Alderman Austin asked if it was Mr. Pettus's contention that we could not add funds to the project to enhance it during the process, at what point could the City make additions, renovations, and adjustments.

Lamar Pettus stated it would be at the point at which it was built and completed and have done what the citizens said could be done. He did not know whether the Council could spend $6.95 or $7.95 million. He thought it was clear that they could spend $6.95 million plus the $1.1 million that the A&P was willing to pay.

Bruce Gunn, area resident, stated that he appreciated all the hard work that had gone into this project. Two years ago, he had helped lead a successful ballot initiative campaign for this project. He admired the City for having taken a stand for investment in the community. Although roads were important for the community, this project could bring money back into the community. The horse had been beat dead on the benefits of the town center. But having put two years into this project, they had not rushed into it. He did not think it good of the City to bow down to challenges made to the City. He hoped they would vote yes on this project with all of the additions to make it a quality project.

Mayor Hanna pointed out that they had been very careful in getting to this project. If they had rushed into it, the bids would have come in considerably lower. He wanted to do things right, and didn't feel personally that they were breaking any laws. The opinions they had gotten were valid, even though they might have to be reconciled in court.

Alderman Daniel stated that they had worked for two years on this project, but it had only been a few months since they had gotten the bids on it. This was the critical issue, how to pay for it.

Alderman Young and Alderman Russell clarified that the bid would expire if they did not vote on the project tonight.

Richard Alderman clarified that the bids were good for only 90 days. In the climate of everyone having plenty of work to do, he thought it would be difficult to ask Nabholz to extend their bid longer than 90 days.

Alderman Davis asked if they should reword the motion in order to protect the City.

Alderman Young asked if it was $6.95 or $7.95 million, and how they could reword the resolution to clarify that.

Jerry Rose said it was impossible to be clever, so what had been done was to enter into a base contract of $7.350 million to build a town center. That figure takes the amount of money the City had certified for the project (agreed upon by Kevin Crosson). Cash and investments from the bonds total $6,475,570; cash and investments from the A&P total $1.1 million. Investment earnings or interest money are $125,000. This all comes to $7,600,000, precisely what the Council had told the public they would be spending on the town center. In addition to that, in Section 2 of the resolution, the Council would add additional parking and other items. In his mind that would be additions to a facility that they had contracted for. The Attorney General and Bond Counsel had agreed with that, although Lamar Pettus and Kent Hirsch had disagreed. Short of a declaratory judgment he didn't know what else to do other than what they had already done.

Alderman Trumbo didn't know what more due diligence they could exercise, saying that they had done all they could do as City officials, given that some people liked to sue.

Alderman Davis reiterated that they could be sued no matter what position they took.

Alderman Young stated that in the beginning he had asked for real cost estimates to try to avoid a lawsuit. He felt that part of the problem was trying to fit the project to a certain amount of money, the amount of income from the bonds. He hadn't said a whole lot because it had been an A&P project, but there would be more bond issues, such as for the sewer plant, which could have significant cost overruns, into the millions of dollars, if the real cost estimates weren't made properly. **Alderman Young moved to amend the motion to pull the transfer of Off-Street Parking funds and transfer of General Fund funds out of the previous motion, to return to their original motion, and bring the amount back to what had been on the ballot issue. The motion died for lack of a second.**

Alderman Davis asked Jerry Rose what was the best way of doing this.

Jerry Rose described again the motion that had been put on the floor. He didn't think it was wise to pass two separate motions, because legally you would end up at the same point.

Alderman Young stated that he had wanted do away with the additional change orders altogether.

Jerry Rose answered that they could certainly do that as well, and build a quality town center for $7.350 million.

Richard Alderman suggested that they keep the contract they have, plus add some things back in there, to make it $7.650 million, so that they have the additional items in there.

Alderman Young said that his motion was based on taking out the two transfers, which would bring the amount back to $7.650 million.

Richard Alderman stated that if you take those out it would bring the figure to $7.35 million, but he would suggest making it $7.65 million in this motion.

Kevin Crosson stated that Lamar Pettus had suggested that the ballot issue had designated $6.95 million.

Alderman Davis stated Mr. Pettus had also remarked that the A&P would put forth $1.1 million.

Alderman Reynolds said that he was not in favor of building a big box on the Square, and that they had been working on this project for four to five years. If anyone wanted to sue, then let them get after it.

Alderman Russell stated that there was a line between what was acceptable and unacceptable. He wished they could build a $15 million town center and have it all brick. Perhaps they could not afford that, even though it was not the architect's or the A&P's fault. His own line of acceptability laid within the $950,000 they had been talking about. He would be happy to have this building downtown with the additions. But he was not comfortable with taking the money out and with the resulting building they would have. He agreed with Alderman Reynolds on taking our chances in court.

Alderman Santos asked that they clearly state that the additional money would be for additions to the already-built town center.

Kevin Crosson reiterated that these changes were not add-ons, but would be built at the same time as the rest of the construction contract, and that would be the difference.

Alderman Austin stated that the motion included the add-ons.

Jerry Rose reiterated that they were making a motion to enter a base contract of $7,350,408 and a contingency amount of $450,000. That base contract will build us a town center. In addition, we are approving change orders in the amount of $970,162 and a budget adjustment for additions to the town center as attached as Exhibit B to this document.

Upon roll call, the motion passed with a vote of 6-2, Daniel and Young voting nay.

RESOLUTION 103-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS:

VA 99-8.00

An ordinance approving vacation request VA 99-8.00 submitted by Laura Kelly of Rob Sharp Architect on behalf of East Avenue Investment Group, LLC for property located between blocks 4 and 5 of Harrison's Addition. The property is zoned R-2, Medium Density Residential. The request is to vacate an unconstructed section of Fletcher Avenue between Center Street and the point where Fletcher Avenue's asphalt surface curves east from the platted right of way.

ITEM WITHDRAWN FROM AGENDA AT THE REQUEST OF THE PETITIONER.

RZA 99-1

An ordinance approving annexation request RZA 99-1 submitted by John Burrow on behalf of Karen Hanna for property located at 3686 Wilson Hollow Road. The property is in the planning growth area and contains approximately 4.54 acres. The request is to annex the subject property into the City of Fayetteville.

Jerry Rose read the ordinance for the first time.

John Burrow stated that there was no intended change in usage. They simply wanted to move the city limit boundary line 300 feet to the East so that she can access city water and solid waste services. The city limit boundary line currently runs through her property. Her property is zoned A-1.

Alderman Davis stated that the Planning Commission and Planning Department both recommended that this annexation be done.

Tim Conklin stated that this annexation would bring 2.36 acres directly to the north of the boundary line into the city limits.

Alderman Davis moved to suspend the rules and go to the second reading. The motion was seconded by Alderman Reynolds. Upon roll call, the motion passed unanimously.

Jerry Rose read the ordinance for the second time.

Alderman Davis moved to suspend the rules and go to the second reading. The motion was seconded by Alderman Trumbo. Upon roll call, the motion passed unanimously.

Jerry Rose read the ordinance for the third time.

Mayor Hanna asked for any further comments, then asked for the roll call. **Upon roll call, the motion passed unanimously.**

ORDINANCE 4176 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ARKANSAS HIGHWAY & TRANSPORTATION DEPARTMENT REIMBURSEMENT
A resolution approving the repayment of the Arkansas State Highway and Transportation Department federal aid enhancement funds reimbursed for the design of the St. Paul Rail Trail and Errol Street Trail since the St. Paul Trail will not be constructed and the Errol Street Trail has been changed. Also approval of a budget adjustment to fund this request.

Alderman Reynolds stated that at the agenda session he had asked for a letter from the railroad to find out when they were planning to put the railroad back. He thought they were going to miss out on having a good trail.

Alderman Santos suggested that they wait until they heard from Chuck Rutherford, Sidewalk and Trails Coordinator, to see if all the money had been accounted for and if they could do any better.

Charles Venable stated that there probably wasn't any hurry, but they didn't have any choice about giving the money back. He had authorized the money to be put up in 1993. AHTD had written them a letter in 1997 explaining that if we didn't spend the money, they would have to take it back. There had been a lot of meetings and had had a lot of opposition to the trail. They would still have the right-of-ways that had been determined. If the rail goes in, the right-of-ways could still be used for a trail.

Alderman Santos asked whether $88,000 was the total they had paid the Melburger Firm for all the design work they did.

Charles Venable stated they had paid $109,000 for all of the trail work; none of that has gone into any contract using federal money. The only money that has been authorized has been for the abandoned rail and some bicycle trails. They ended the contract after they had paid him $109,000.

Alderman Santos asked if this amount had been paid for their designs.

Charles Venable remarked that some of this money had gone to the firm that did appraisals. The $87,000 represents 80% of the money they had already spent on these projects. We were in the process of hiring a negotiator when the decision was made that the rail would probably go back in.

Alderman Austin stated that this was a good faith response to having gotten the money in the beginning, and that we had followed the contract they had set out, and we would keep approximately $525,000.

Charles Venable stated that hopefully they will let us keep the money which was from the 1991 Federal Aid Highway Act. They had written us in 1997 and informed us that if we didn't use the money within a year they would take it back. We started giving monthly reports and they allowed us to keep the money as we began to make progress. We had asked if we could use the money on other projects and it appeared that they would allow us to do that on the trails in the northern and eastern parts of the city, such as the extension along Joyce Avenue, the trail along CMN Business Park, and the extension of the Gulley Park Trail. Most of those we have the right-of-ways for.

Alderman Santos said we should go ahead and spend that money.

Charles Venable said that we would, but first we had to pay this money back.

Alderman Reynolds asked where the mistake was made on the project. Had we decided that we would put a trail on someone else's property and hadn't asked the railroad if they were going to put the rail back in.

Mayor Hanna stated that was wrong. When it all started, Burlington Railroad had abandoned that rail line and pulled it up out to the Business Park because nobody was using it at the time. They've come up with an idea called the Intermodal Transportation Area, encompassing Bentonville, Springdale, Rogers and Fayetteville, for which we can get Fayetteville funds and put the railroad back in. Other areas have that and we don't. There's more involved to it because we had been having trouble with people buying some of the land back and getting complaints about that particular trail, for the use it would get in that area of town. If we don't reimburse AHTD for the funds we have spent for design, then we wouldn't be able to spend the remaining money for other trails.

Alderman Austin asked if they could use the money for existing sidewalks and trails.

Alderman Santos said they had to use the money for exactly what they had requested of the Highway Department, which included bicycle trails and lanes.

Charles Venable said that they would not provide funding for the stripings and the signs. The City had applied for that before.

Alderman Austin thought that they should do this because it was the right thing to do and would help us to use more money for other projects.

Charles Venable stated that we had received notice today that in October there will be some more requests for enhancement projects. They turned our last one down because we hadn't done this one.

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

Alderman Daniel stated that she was the Chair of the Sidewalk and Trails Committee, and she has gotten upset a few times. She would really like to see everyone work together to get something accomplished. She wanted to work with the Planning Commission and make them aware of the proposed trail system. We had passed a resolution to rename a street connected to this Raven Trail (Errol Street Trail) and the name of the street, Farr Lane, would go back to its initial name, Errol Street, if the trail did not go in. She would like a report from Dave Jurgens, Water and Sewer Superintendent, who was supposed to get in there and move the water lines to the other side of the trail, which had been what had fouled up this trail.

Charles Venable stated that they were working on that but he didn't know where they were on it. The money could be spent on the trail but not on the plan. They still hadn't received the right-of-way on the Raven Trail.

Alderman Russell asked whether the plan was still to build the trail.

Charles Venable stated that they were still going to build the trail, only on the opposite side of the street, shifting to the south side.

Alderman Daniel asked whether the City would have to pay for that trail.

Charles Venable answered that they would be able to use federal aid, but would have to pay for the consulting work on it. He hoped that we would get the right-of-way and get the trail going.

Alderman Daniel thought that the rain had kept them from getting work done on this.

Alderman Davis commented on the high grass in the area, and the snakes, and mentioned that it was Mr. Keenan's responsibility to have it mowed.

Alderman Russell thought we should press on with the trail, and asked if it was a sure thing that the railroad was going back in.

Mayor Hanna said there was a committee working on it. The Arkansas-Missouri Railroad couldn't afford to put it back in themselves, so they would be receiving federal help on it.

Alderman Young asked if the Industrial Park people were wanting the railroad.

Mayor Hanna stated there were at least three manufacturers there that would like to have it.

Alderman Santos stated that he would hate to lose the Raven Trail because he had seen it as a public investment that would encourage private investment. He suggested making a bicycle trail on Razorback Road from Sixth Street to Hwy. 540 Bypass, keeping the investment in the same area and attract more students to live in that area.

Charles Venable said part of that could be incorporated when they widen that part of the road from 15th Street to Sixth Street, or when they put in sidewalks along South Street.

Alderman Austin asked if they were going to do this with money from the item tonight.

Alderman Santos said this was just a matter of putting back in money on the south side because they were reimbursing with money from the south side.

Mayor Hanna stated that all they were paying back were the plans because they were not able to construct it, but there was a possibility of putting a trail along the railroad. But they would still need to pay AHTD the money back first.

Alderman Austin moved to approve the resolution. Alderman Davis seconded the motion. Upon roll call, the motion passed with a vote of 8-0-0.

RESOLUTION 104-99 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Meeting adjourned at 9:00 p.m.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA
FAYETTEVILLE CITY COUNCIL
AUGUST 17, 1999

A meeting of the Fayetteville City Council will be held on August 17, 1999 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PROCLAMATION. -

The following items will be discussed:

approved A. **CONSENT AGENDA**

1. ✓**APPROVAL OF MINUTES:** Approval of the minutes from the August 3, 1999 City Council meeting.

2. ✓ **MT. OLIVE WATER ASSOCIATION:** A resolution authorizing the City to grant a water line permanent and temporary construction easement (0.455 acres) to Mt. Olive Water Association for the construction and operation of a water line along the East boundary of Lake Wilson.

105-99

3. ✓ **DETENTION CENTER:** A resolution authorizing the Mayor and City Clerk to convey 186 square feet of City property to Washington County, Arkansas as outlined by the footprint of Washington County Detention Center on City owned property west of Mill Avenue.

106-99

4. ✓ **FAMILY VIOLENCE SHELTER:** A resolution approving a contract with Foster Witsell Evans and Rasco for architectural services in conjunction with construction of a Shelter and offices for the Project for Victims of Family Violence. Compensation for architectural services and engineering costs is $51,900 with a project contingency of $5,190 (10%), for a total cost of $57,090.

107-99

5. ✓ **SEWER REHABILITATION:** A resolution approving change orders to the sewer rehabilitation construction contracts for a net reduction of $27,623.44. Cost changes include:
   a. Insituform, TexArk, for an increase of $69,370.50
   b. Jones Brothers, Inc, for a reduction of $75,495.30
   c. T-G Excavating, for a reduction of $21,498.64.

108-99

6. √**HIGHWAY 265 UTILITY RELOCATION:** A resolution approving the Highway-Utility Construction / Relocation Agreement with the Arkansas State Highway and Transportation Department for water and sewer relocations and adjustments on Highway 265 (between Highways 45 and 16). Per the agreement, $1,465,759.34 (51.44%) of the actual cost of the eligible portions will be reimbursable to the City by the Highway Department.

109-99

B. OLD BUSINESS

C. NEW BUSINESS

1. √ **RZ 99-16.10:** An ordinance approving rezoning request RZ 99-16.10 submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-O, Residential Office, and contains approximately 5.2 acres. The request is to rezone the property to C-1, Neighborhood Commercial.

left on 2ND

2. √ **RZ 99-17:** An ordinance approving rezoning request RZ 99-17 submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-2, Medium Density Residential, and contains approximately 4.77 acres. The request is to rezone the property to R-O, Residential Office.

4177 PASSED

3. **AMBER DRIVE:** A resolution approving the changing of the name of Hackberry Street to Amber Drive, to make Amber the continuous street name running east and west through the Charleston Place P.U.D.

failed

4. **DICKSON STREET WATER & SEWER RELOCATIONS:** A resolution approving the award of a contract to relocate certain water and sewer lines on Dickson Street, and to construct a new 12-inch water line for additional fire protection and general improvement of the water system. Information on the amount of the bid and the low bidder will be available August 16th.

110-99 approved

5. **CELL TOWER ORDINANCE:** An ordinance establishing criteria to assess and reduce visual and land use impacts associated with the development of wireless communications facilities in the City of Fayetteville, Arkansas.

left on Second for Special meeting before agenda Session.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TENTATIVE AGENDA
FAYETTEVILLE CITY COUNCIL
AUGUST 17, 1999

A meeting of the Fayetteville City Council will be held on August 17, 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 will be discussed:

A. CONSENT AGENDA

1. **APPROVAL OF MINUTES:** Approval of the minutes from the August 3, 1999 City Council meeting.

2. **MT. OLIVE WATER ASSOCIATION:** A resolution authorizing the City to grant a water line permanent and temporary construction easement (0.455 acres) to Mt. Olive Water Association for the construction and operation of a water line along the East boundary of Lake Wilson.

3. **DETENTION CENTER:** A resolution authorizing the Mayor and City Clerk to convey 186 square feet of City property to Washington County, Arkansas as outlined by the footprint of Washington County Detention Center on City owned property west of Mill Avenue.

4. **FAMILY VIOLENCE SHELTER:** A resolution approving a contract with Foster Witsell Evans and Rasco for architectural services in conjunction with construction of a Shelter and offices for the Project for Victims of Family Violence. Compensation for architectural services and engineering costs is $51,900 with a project contingency of $5,190 (10%), for a total cost of $57,090.

5. **SEWER REHABILITATION:** A resolution approving change orders to the sewer rehabilitation construction contracts for a net reduction of $27,623.44. Cost changes include:
   a. Insituform, TexArk, for an increase of $69,370.50
   b. Jones Brothers, Inc, for a reduction of $75,495.30
   c. T-G Excavating, for a reduction of $21,498.64.

B. OLD BUSINESS

C. NEW BUSINESS

1. **RZ 99-16.10:** An ordinance approving rezoning request RZ 99-16.10 submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem road. The property is zoned R-O, Residential Office, and contains approximately 5.2 acres. The request is to rezone the property to C-1, Neighborhood Commercial.

2. **RZ 99-17:** An ordinance approving rezoning request RZ 99-17 submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-2, Medium Density Residential, and contains approximately 4.77 acres. The request is to rezone the property to R-O, Residential Office.

3. **AMBER DRIVE:** A resolution approving the changing of the name of Hackberry Street to Amber Drive, to make Amber the continuous street name running east and west through the Charleston Place P.U.D.

STAFF REVIEW FORM

RECEIVED
JUL 27 1999
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

X AGENDA REQUEST
___ CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council meeting of August 17, 1999

FROM:

Ed Connell — Name
Engineering — Division
Public Works — Department

ACTION REQUIRED: Approval of a resolution authorizing the City to grant a water line permanent and temporary construction easement (0.455 acre) to Mt. Olive Water Association for the construction and operation of a water line along the East boundary of Lake Wilson Park (321 acres) in the SE¼ of Section 2, Township 15 North, Range 30 West.

COST TO CITY:

$ None Cost of this Request	$ Category/Project Budget	Category/Project Name
NA 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:

Marilyn Gramer — Accounting Manager — Date 7-23-99
City Attorney — Date 7-26-99
P Vice — Purchasing Officer — Date 7-23-99

GRANTING AGENCY: ______________

Internal Auditor — Date
ADA Coordinator — Date

STAFF RECOMMENDATION: Staff recommends granting of permanent and temporary easements. The City water system does not service this area.

Jim Beavers — Division Head — Date 23 July 99
Department Director — Date 7-26-99
Administrative Services Director — Date 27 Jul 99
Mayor — Date 7/27/99

Cross Reference

New Item: Yes ___ No ___

Prev Ord/Res #: ______________

Orig Contract Date: ______________

Mt. Olive Water
A.2 page 2

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

DATE: July 22, 1999

TO: Fayetteville City Council
Fred Hanna, Mayor

THRU: Charles Venable, Public Works Director
Jim Beavers, City Engineer

FROM: Ed Connell, Land Agent

RE: Mt. Olive Water Association
Water Line Easement
Lake Wilson Park Property

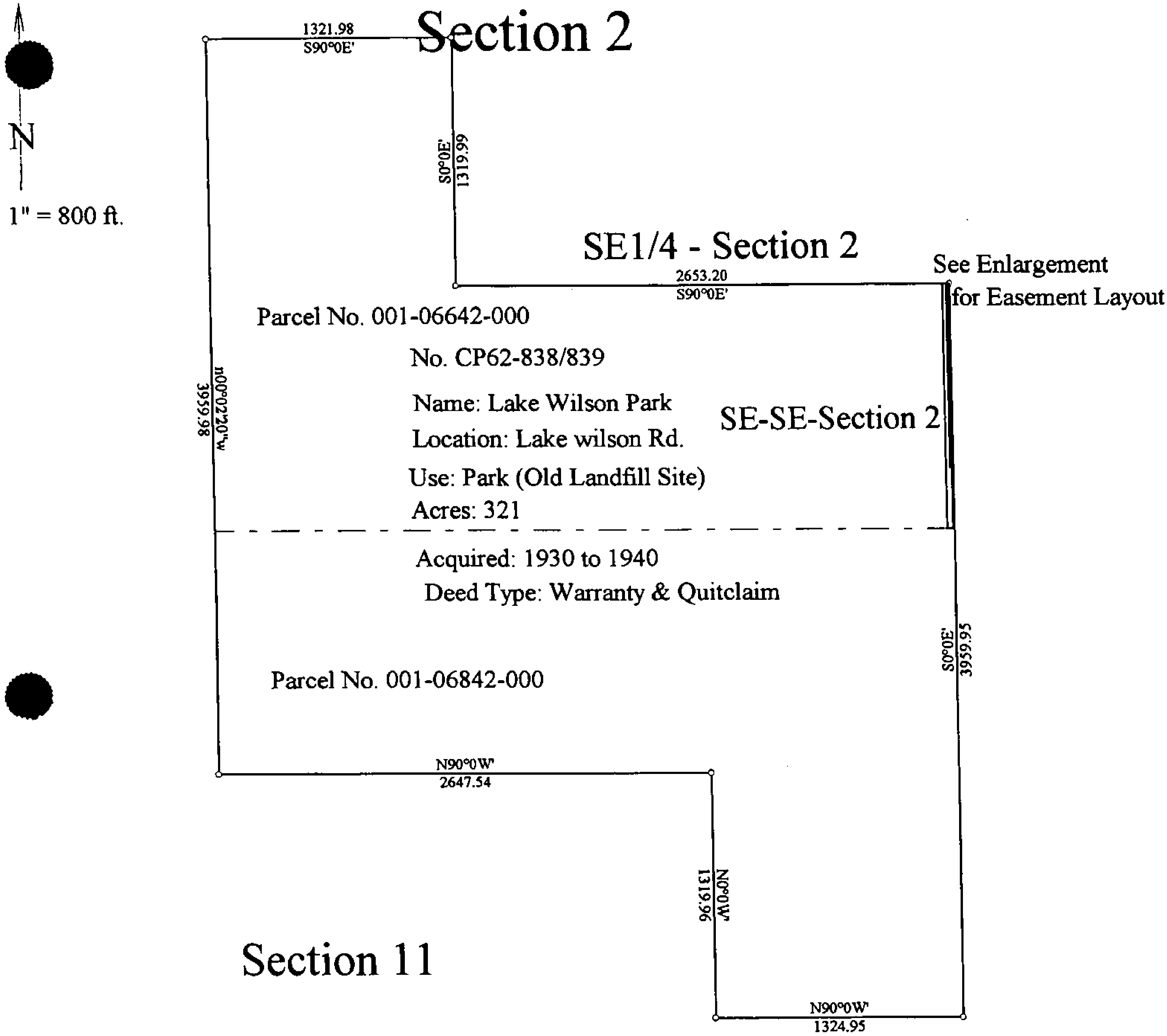
The City of Fayetteville has been requested by Mrs. Gloria Pianalto to convey a 20 ft. wide water line easement to Mt. Olive Water Association which would allow Mt. Olive to supply water to them on property they recently purchased that is north of and adjacent to LAKE Wilson ~~Park~~ land.

This easement would be in the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) of Section 2, Township 15 North, Range 30 West or on the far east boundary of Wilson Park. The area is totally wooded except for a 30 ft. Ozarks Electric easement, the East line of which lies 9 feet West of the east property boundary line. The included diagrams illustrate the existing Ozarks easement and the proposed Mt. Olive water easement areas.

It is proposed that the 20 ft. wide water line easement begin at the NE corner of the SE¼-SE¼ 2-15-30 and run South along the east property line a distance of 990 feet, more or less, to the point that Mt. Olive Water Association wants to bring in their water line from the East. This permanent easement would have an area of 19,800 square feet or 0.45 acres. The water line easement will overlap the Ozarks easement by about 11 feet on the East side.

It is noted that the City of Fayetteville water system does not service this area (which is in the county). City staff does not propose to charge for this easement.

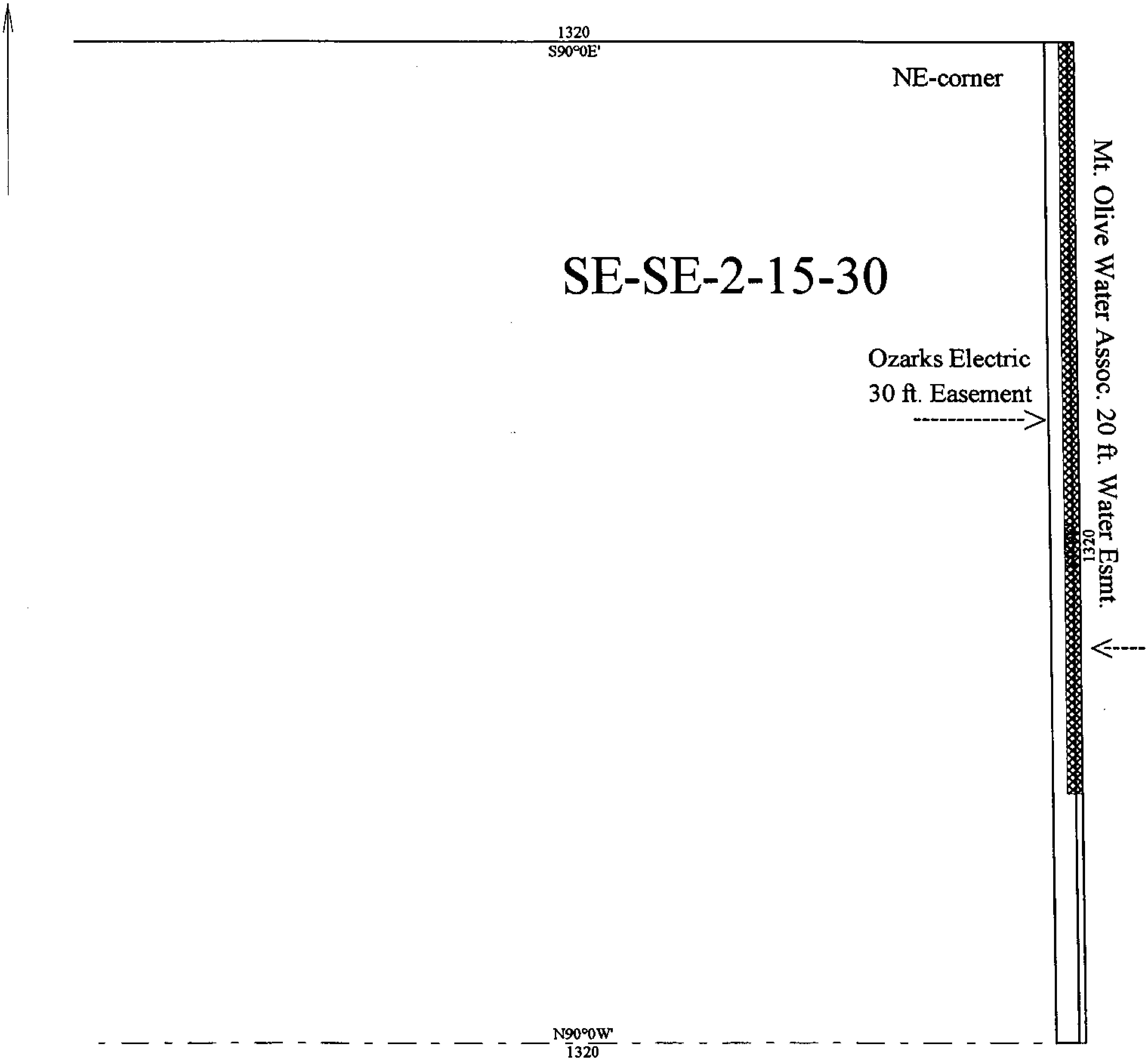
Please find attached a proposed easement for this purpose. Your passage of a resolution authorizing the City to enter into this easement is recommended.



Title: Lake Wilson Pk.: Mt. Olive Water Assoc. Water Easement	Date: 07-22-1999
Scale: 1 inch = 800 feet	File: LK-WILSN.DES

Tract 1: 321.005 Acres: 1299061.2 Sq Meters: No significant closure error. : Perimeter = 18508 feet
Tract 2: 0.000 Acres: 0 Sq Feet: 0.0 Sq Meters: Closure = n71.3707e 4185.97 feet: Precision =1/ 1: Perimeter = 5292 feet
Tract 3: 0.909 Acres: 39600 Sq Feet: 3679.0 Sq Meters: No significant closure error. : Perimeter = 2700 feet
Tract 4: 0.455 Acres: 19800 Sq Feet: 1839.5 Sq Meters: No significant closure error. : Perimeter = 2020 feet

001=S0.0E 1319.99	009=@3	017=n00.0000w 1320.00
002=S90.0E 2653.20	010=S0.0E 1320	018=s90.0000w 15.00
003=S0.0E 3959.95	011=N90.0W 3972.40	019=@3 Mt. Olive Water Esmt.
004=N90.0W 1324.95	012=@3 Ozarks 30 ft. Esmt.	020=s90.0000w 20.00
005=N0.0W 1319.96	013=/N90.0W 24	021=s00.0000e 990.00
006=N90.0W 2647.54	014=s90.0000w 15.00	022=n90.0000e 20.00
007=n00.0220w 3959.98	015=s00.0000e 1320.00	023=n00.0000w 990.00
008=S90.0E 1321.98	016=n90.0000e 30.00	



Title: Mt. Olive Water Assoc. Esmt; Lake Wilson Property, Atlas 839	Date: 07-22-1999
Scale: 1 inch = 200 feet	File: LK-WILES.DES

Tract 1: 0.000 Acres: 0 Sq Feet: 0.0 Sq Meters: Closure = n45.0000w 1866.76 feet: Precision =1/ 1: Perimeter = 2640 feet
Tract 2: 0.000 Acres: 0 Sq Feet: 0.0 Sq Meters: Closure = n45.0000e 1866.76 feet: Precision =1/ 1: Perimeter = 2640 feet
Tract 3: 0.909 Acres: 39600 Sq Feet: 3679.0 Sq Meters: No significant closure error. : Perimeter = 2700 feet
Tract 4: 0.455 Acres: 19800 Sq Feet: 1839.5 Sq Meters: No significant closure error. : Perimeter = 2020 feet

001=S90.0E 1320	007=/N90.0W 24	013=@2
002=S0.0E 1320	008=s90.0000w 15.00	014=s90.0000w 20.00
003=@2	009=s00.0000e 1320.00	015=s00.0000e 990.00
004=**S0.0E 1320	010=n90.0000e 30.00	016=n90.0000e 20.00
005=N90.0W 1320	011=n00.0000w 1320.00	017=N0.0W 990
006=@2	012=s90.0000w 15.00	

Project: Gloria Pianalto W/L
Parcel No. 001-06642-000
Lake Wilson Property

WATER LINE EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT the **City of Fayetteville, Arkansas**, a municipal corporation, 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, does hereby GRANT, SELL and CONVEY unto the **Mt. Olive Water Association**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement and a temporary construction easement to construct, lay, remove, relay, inspect, enlarge and/or operate a water pipe 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:

The South-half (S½) of the Southeast Quarter (SE¼) of Section Two (2) in Township Fifteen (15) North, Range Thirty (30) West of the 5th Principal Meridian, containing eighty (80) acres, more or less.

PERMANENT EASEMENT DESCRIPTION:

A 20 foot wide permanent water line easement, being parallel with and adjacent to the East line of said Section 2, being more particularly described as follows, to-wit: Beginning at the Northeast corner of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) and running South 990 feet to the end of said easement, containing 0.455 acre, more or less.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A 10 foot wide temporary construction easement, being West of, parallel with and contiguous to the permanent water line easement described hereinabove, containing 0.228 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 Grantee or his contractor, but in no event shall such termination date extend beyond one year from the date of this easement.

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

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, so long as such pipe line or lines, 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, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and to pay any damages which may arise to growing crops or fences from the 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.

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 upon the above described 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.

CITY OF FAYETTEVILLE, ARKANSAS
a municipal corporation

BY: ______________________________
Fred Hanna, Mayor

ATTEST:

____
Heather Woodruff, City Clerk

(Seal)

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 **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 ________ day of ____________________, 1999.

____
Notary Public

MY COMMISSION EXPIRES:

____

Detention Center
A.3 page 1

STAFF REVIEW FORM

RECEIVED
JUL 27 1999
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

X AGENDA REQUEST
___ CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council meeting of ~~August 17, 1999~~

FROM:

Ed Connell	Engineering	Public Works
Name	Division	Department

ACTION REQUIRED: Approval of a ~~ordinance~~ Resolution* authorizing Mayor and City Clerk to convey 186 square feet of City property to Washington County Arkansas as outlined by the footprint of Washington County Detention Center on City owned property West of Mill Ave.

*per J. Rose

COST TO CITY:

$ NONE	$	
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:** ___

Marilyn J. Bremer	7-23-99		
Accounting Manager	Date	Internal Auditor	Date
	7-26-99		
City Attorney	Date	ADA Coordinator	Date
P Vice	7-23-99		
Purchasing Officer	Date		

STAFF RECOMMENDATION: A part of Washington County Detention Center was built over a small portion (186 ft²) of City property on Mill Ave. Staff recommends City to convey the building footprint by Quit Claim Deed to clear any cloud on the land title to the Detention Center. A second option would be to sell (at $1.00/ft²) the 4,708 ft² of excess land , West of Mill Ave. ROW, to the county.

Division Head	23 July 99 Date	Cross Reference
Department Director	7-26-99 Date	New Item: Yes ___ No ___
Administrative Services Director	27JUL99 Date	Prev Ord/Res #: ___
Mayor	7/27/99 Date	Orig Contract Date: ___

EVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

DATE: July 22, 1999

TO: Fred Hanna, Mayor
Jerry Rose, City Attorney

THRU: Charles Venable, Public Works Director
Jim Beavers, City Engineer

FROM: Ed Connell, Land Agent

RE: Washington County Detention Center
Overlap onto City Property
Quit Claim Deed Resolution

A letter from George Butler, dated June 30, 1999, indicated that the Detention Center footprint had infringed upon property owned by the City. The subject property was purchased by the City as right of way for the extension of Mill Avenue from Center Street to Spring Street. It is the desire of the County to rectify the infringement by asking the city to Quit Claim the area of infringement to the county.

We have looked into the situation with the help of Sam Hampton of Milholland Engineering Co. Milholland has indicated by survey that the Detention Center overlap is an area of approximately 186 square feet (~7.10'X 26.23') located in the northwest corner of a tract of land (67.5' X 150') acquired by the City in 1983 from the Estate of Harry Smith. The city paid $10,000 for an area of 10,125 square feet (0.232 acre) in 1983.

When the City built Mill Avenue from Center to Spring, only the East 34.5-37.5 feet of this property was used for roadway right of way. The remainder, as shown on the attached diagram, is open roadside area, not used for any particular purpose. As noted, approximately 4,708 sq. ft. of this property is outside the road right of way , all on the West side.

The City's option is two fold, namely: (1) convey the 186 $ft.^2$ to the county either by Warranty Deed or Quit Claim or (2) convey the unused road portion (4,708 ft^2) to the County either by Warranty Deed or Quit Claim. If the latter approach is to be utilized, the City should retain a utility easement across the area for water or sewer. The next question is does the city require payment for the lands in either case? The value of $1.00/$ft^2$ is still a reasonable price, even though the land cannot be used for anything else. It is the author's opinion that the City convey (via Quit Claim Deed) the building footprint that is infringing (186 sq. ft.) without payment requirement.

If there are any questions regarding this situation, please give me a call at 444-3415 or just 415.

Detention Center
A.3 page 3

JUL 02 1999

WASHINGTON COUNTY
STATE OF ARKANSAS
4252 Frontage Road
Fayetteville, AR 72703
Telephone 444-1789

GEORGE E. BUTLER, JR.
County Attorney

June 30, 1999

Mr. Jerry Rose
City Attorney
113 W. Mountain
Fayetteville, AR 72701

RE: Juvenile Detention Center Encroachment; Mill Street

Dear Jerry:

In regards to the above matter, we have been doing some surveying behind the Sheriff's office.

As you may recall, the City put in Mill Street, which runs behind the Sheriff's Office and the Juvenile Detention Center.

Our surveyor has discovered that there is still a strip of land, I believe outside the City's right-of-way, that is encroached upon by the Juvenile Detention Center.

It has been suggested that we get a quit claim deed from the City for this property to clear this up for future reference.

Enclosed you will find a copy of the survey.

Please feel free to call me or Mel Milholland or Sam Hampton.

Sincerely,

George E. Butler, Jr.

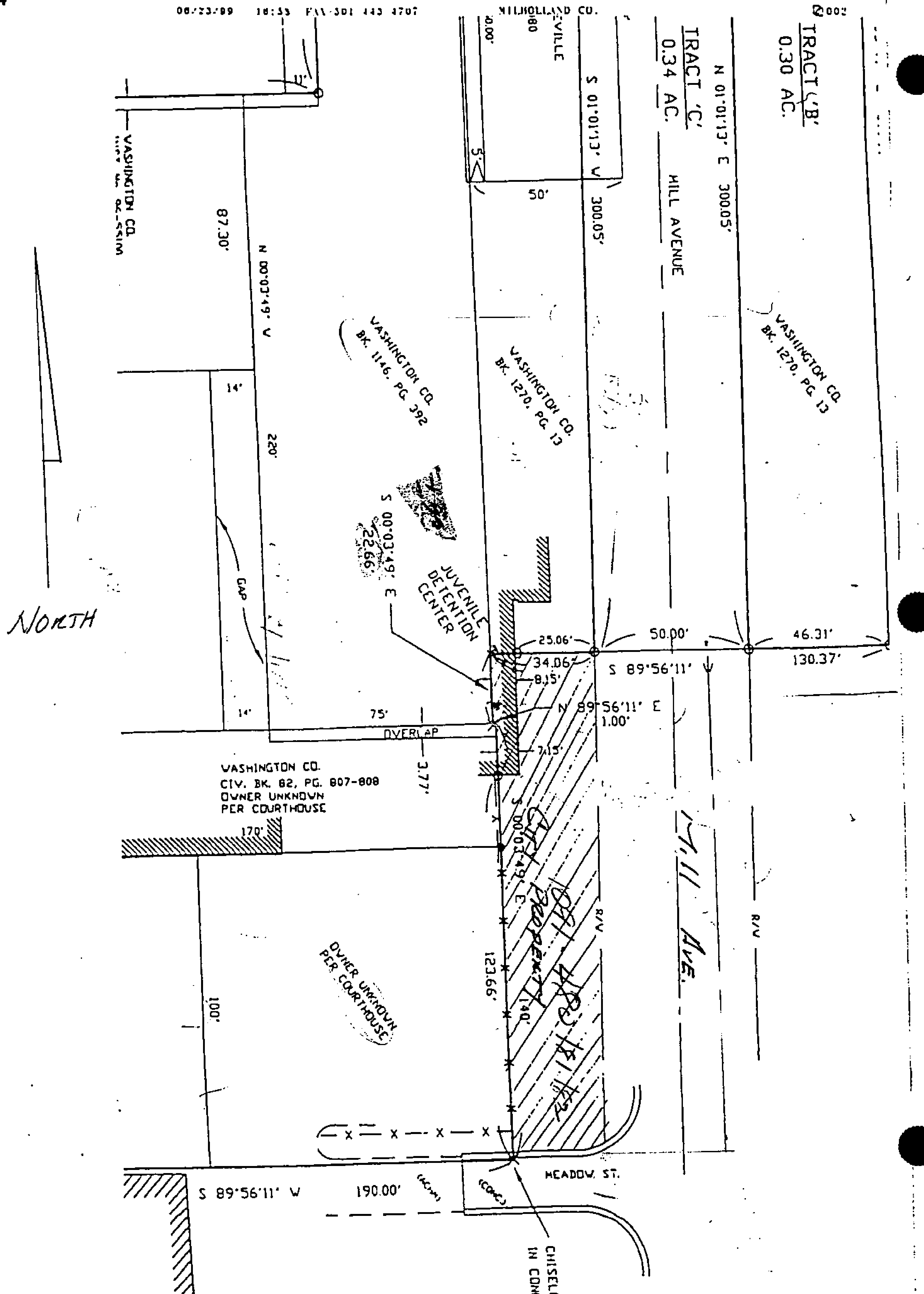
Encl: as stated

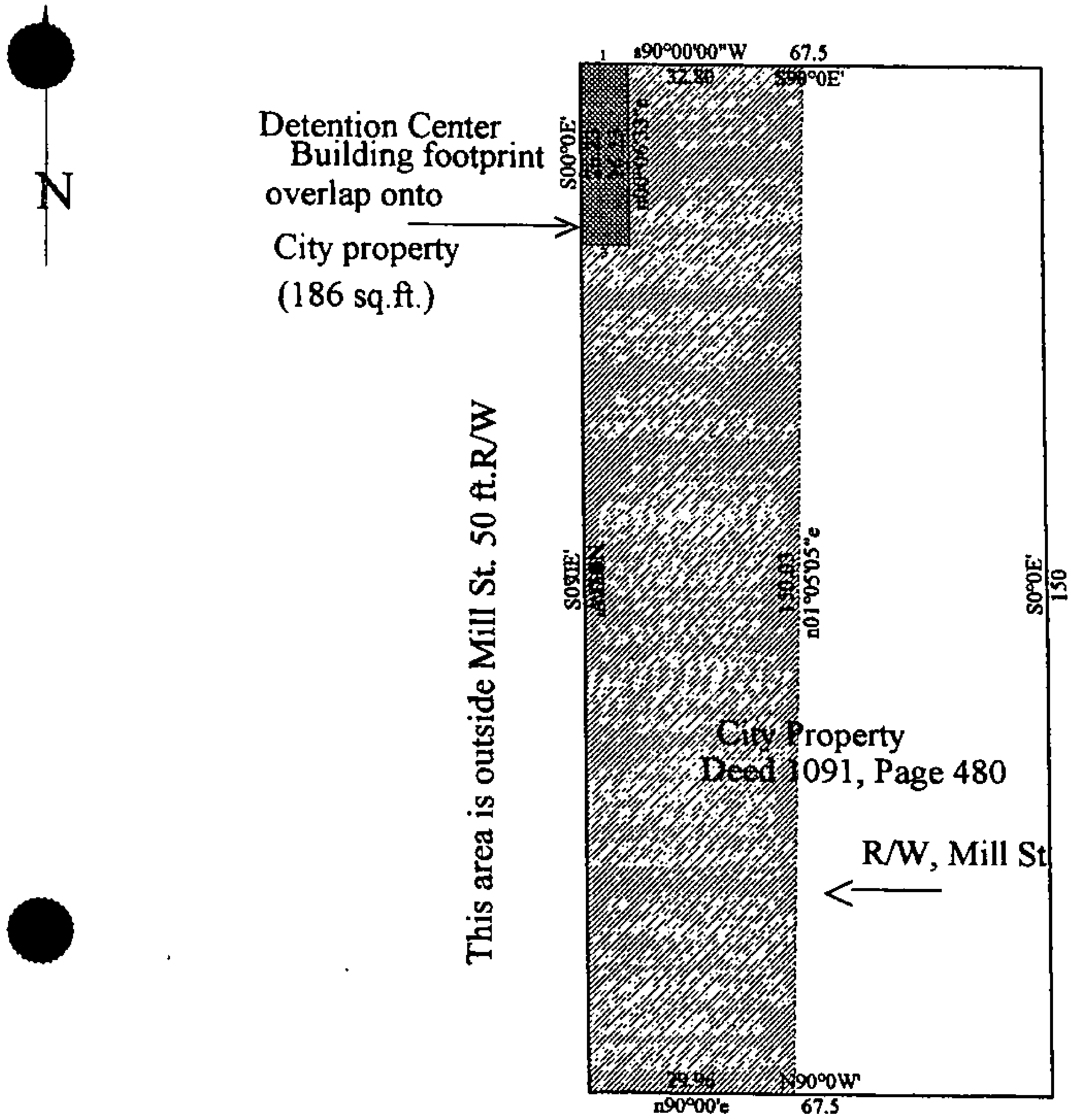
cc: Jerry Hunton, County Judge
Milholland Company

GEB:ja

RECEIVED
JUL 02 1999
CITY OF FAYETTEVILLE
MAYOR'S OFFICE

Detention Center
A.3 page 4





Title:	Date: 07-12-1999
Scale: 1 inch = 30 feet	File: DET-OVLP.DES

Tract 1: 0.232 Acres: 10125 Sq Feet: 940.6 Sq Meters: No significant closure error. : Perimeter = 435 feet
Tract 2: 0.108 Acres: 4707 Sq Feet: 437.3 Sq Meters: No significant closure error. : Perimeter = 363 feet
Tract 3: 0.004 Acres: 186 Sq Feet: 17.2 Sq Meters: No significant closure error. : Perimeter = 67 feet

001=N0.0W 150
002=S90.0E 67.5
003=S0.0E 150
004=N90.0W 67.5
005=@2
006=/n90.0000E 32.80
007=s90.0000W 32.80
008=S0.0E 150
009=n90.00e 29.96
010=n01.0505e 150.03
011=@2 Detention Center Bldg.
012=/n90.0e 7.10
013=s90.0W 7.10
014=S00.0E 26.23
015=n90.0e 7.05
016=n00.0633e 26.23

Detention Center Building Footprint Overlap onto City Property:

Overlap Description:

Beginning at a point which is 340.0 feet East and 374.07 feet North of the Southwest corner of the Northwest Quarter of Section Fifteen (15), Township Sixteen (16) North, Range Thirty (30) West of the Fifth Principal Meridian; thence South 26.23 feet; thence East 7.05 feet; thence North 00° 06' 33" East 26.23 feet; thence West 7.10 feet to the Point of Beginning and containing 186 square feet, more or less.

Property Description of City Property West of Mill St. ROW:

Beginning at a point which is three hundred forty (340.0) feet East and two hundred twenty-four and 7/100 (224.07) feet North of the Southwest corner of the Northwest Quarter (NW1/4) of Section Fifteen (15), Township Sixteen (16), Range Thirty (30) West: thence North 150.0 feet; thence East 32.80 feet; thence South 1° 05' 05" West 150.03 feet; thence West 29.96 feet to the Point of Beginning and containing 4,707 square feet (0.108 acre), more or less.

Family Shelter
A.4 page 1

STAFF REVIEW FORM

X Agenda Request
Contract Review
Grant Review

For the City Council Meeting of August 17, 1999

From:

Jan Simco	Community Development	Admin Services
Name	Division	Department

ACTION REQUESTED:
Consideration of a contract with Foster Witsell Evans & Rasco for architectural services in conjunction with construction of a Shelter and offices for the Project for Victims of Family Violence.

COST TO THE CITY:

$57,090	$336,604	Domestic Violence Shelter
Cost of this request	Project Budget	Category/Project Name
2180-4960-5390.27	$2,000	Public Facilities /Improvements
Account Number	Funds spent to date	Program Name
99068	$334,604	Community Development
Project Number	Remaining Budget	Fund

BUDGET REVIEW:

X Budgeted Item ______ Budget Adjustment Attached

Budget Coordinator — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: Grantor Agency:

Accounting Manager — Date: out of town
Internal Auditor — Yolanda Fields — Date: 8-2-99
City Attorney — Date: 8-3-99
ADA Coordinator — Date
Purchasing Manager — Date: 8-4-99

STAFF RECOMMENDATION:
Staff requests approval of the Contract

Division Head — Date
Admin Svcs Director — Date: 4 AUG 99
Department Director — Date
Mayor — Date: 8/4/99

[EVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Fayetteville City Council

FROM: Kevin Crosson, Administrative Services Director

DATE: July 29, 1999

SUBJECT: Contract for Architectural Services - Family Violence Shelter

Project Description

The 1999 Community Development Budget includes an allocation for construction of a residential shelter and offices for the Project for Victims of Family Violence. This building will replace the existing facility that is inadequate to meet current and future needs. The project includes construction of a building approximately 5,000 square feet in size and will be located on City-owned land.

The Professional Services Selection Committee selected Foster•Witsell Evans, & Rasco as architect for the project. James Foster, principal architect for the project, provided a Contract for Architectural Services and a copy is submitted for your consideration.

BASIS FOR COMPENSATION

Compensation for architectural services and engineering costs is $51,900 with a 10 percent contingency of $5,190. The contingency will cover compensation services for which costs cannot be calculated at this time. The unknown costs are for observation of water and sewer work (see paragraph 11.3.1) and reimbursable expenses (printing contract documents, state health department and plumbing review fees, and other miscellaneous expenses).

Compensation for architectural services is based upon 8 percent of the construction budget of $400,000. These services include Schematic Design, Design Development, Construction Documents, Bidding/Negotiations and Construction Observation. Costs are detailed below:

Architectural Services	$32,000
Civil Engineering	9,700
Survey	1,200
Lot Split, Large Scale Development	9,000
Total	$51,900

BUDGET CONSIDERATIONS

The 1999 Community Development Budget contains $375,000 for this project. The Project for Victims for Family Violence is seeking additional funding from state, federal, and private sources and Community Development Block Grant funds will be allocated in the 2000 Budget if needed to complete construction.

STAFF RECOMMENDATION

Foster•Witsell Evans, & Rasco has completed several successful projects in Fayetteville including the University of Arkansas Campus Master Plan and the Ozark Building located on North College (north of the Old County Courthouse). The Selection Committee was particularly interested in Mr. Foster's work in conjunction with the renovation of the Chi Omega Sorority House due to the residential nature of the City's proposed project. This firm is familiar with federal grant requirements and has demonstrated it's ability to meet budget goals in a responsible and efficient manner. Staff requests favorable consideration of this request and approval of the Contract.

Please call me or Jan Simco, Community Development Coordinator, if you have questions or need additional information.

Attachments: Contract for Architectural Services (copy)

1997 EDITION

AIA DOCUMENT B151-1997

Abbreviated Standard Form of Agreement Between Owner and Architect

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AGREEMENT made as of the ________ day of AUGUST
in the year NINETEEN HUNDRED NINETY NINE
(In words, indicate day, month and year)

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)

CITY OF FAYETTEVILLE
113 WEST MOUNTAIN ST.
FAYETTEVILLE, AR 72701

and the Architect:
(Name, address and other information)

FOSTER • WITSELL EVANS & RASCO
P.O. BOX 1602
21 W. MOUNTAIN, SUITE 122
FAYETTEVILLE, AR 72702-1602

For the following Project:
(Include detailed description of Project)

VICTIMS OF FAMILY VIOLENCE SHELTER / OFFICES CONSISTING OF NEW CONSTRUCTION OF A RESIDENTIAL HOMELESS SHELTER AND ADMINISTRATIVE OFFICES APPROXIMATELY 5,000 SQUARE FEET IN SIZE.

©1997 AIA®
AIA DOCUMENT B151-1997
ABBREVIATED OWNER-ARCHITECT AGREEMENT

The American Institute of Architects
1735 New York Avenue, N.W.
Washington, D.C. 20006-5292

The Owner and Architect agree as follows.

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

1.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Articles 2, 3 and 12.

1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

1.3 The Architect shall designate a representative authorized to act on behalf of the Architect with respect to the Project.

1.4 The services covered by this Agreement are subject to the time limitations contained in Subparagraph 11.5.1.

ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

2.2.5 The Architect shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or similar conceptual estimating techniques.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

2.3.2 The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

2.4.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

2.4.3 The Architect shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

2.4.4 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

2.5 BIDDING OR NEGOTIATION PHASE

The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

2.6 CONSTRUCTION PHASE–ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work.

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, unless otherwise provided in this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

2.6.3 Duties, responsibilities and limitations of authority of the Architect under this Paragraph 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld.

2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner during the administration of the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

2.6.5 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 12, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

2.6.6 The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

2.6.7 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.8 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

2.6.9 CERTIFICATES FOR PAYMENT

2.6.9.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts.

2.6.9.2 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

2.6.9.3 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

2.6.10 The Architect shall have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

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2.6.11 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.6.12 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in Subparagraphs 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

2.6.14 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

2.6.15 The Architect shall interpret and decide matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

2.6.16 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

2.6.17 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

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2.6.18 The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in Subparagraph 2.6.17, shall be subject to mediation and arbitration as provided in this Agreement and in the Contract Documents.

ARTICLE 3 ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Paragraph 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If more extensive representation at the site than is described in Subparagraph 2.6.5 is required, the Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

3.2.2 Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed by the Owner and Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise agreed.

3.2.3 Through the presence at the site of such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Making revisions in drawings, specifications or other documents when such revisions are:

.1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;

.2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or

.3 due to changes required as a result of the Owner's failure to render decisions in a timely manner.

3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5.

3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives.

3.3.4 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

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3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

3.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

3.3.7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.

3.3.8 Providing services in connection with a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto.

3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

3.4 OPTIONAL ADDITIONAL SERVICES

3.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project.

3.4.2 Providing financial feasibility or other special studies.

3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.

3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

3.4.5 Providing services relative to future facilities, systems and equipment.

3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.

3.4.8 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

3.4.9 Providing services in connection with the work of a construction manager or separate consultants retained by the Owner.

3.4.10 Providing detailed estimates of Construction Cost.

3.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor.

3.4.12 Providing analyses of owning and operating costs.

3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

3.4.14 Providing services for planning tenant or rental spaces.

3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

3.4.16 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

3.4.18 Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.

3.4.19 Providing services of consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.

3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. The Owner shall furnish to the Architect, within 15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

4.2 The Owner shall establish and periodically update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

4.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such designated representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

4.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

4.5 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

4.6 The Owner shall furnish the services of consultants other than those designated in Paragraph 4.5 when such services are requested by the Architect and are reasonably required by the scope of the Project.

4.7 The Owner shall furnish structural, mechanical, and chemical tests; tests for air and water pollution; tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

4.8 The Owner shall furnish all legal, accounting and insurance services that may be necessary at any time for the Project to meet the Owner's needs and interests. Such services shall include auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

4.9 The services, information, surveys and reports required by Paragraphs 4.4 through 4.8 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

4.10 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

ARTICLE 5 CONSTRUCTION COST

5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

5.1.3 Construction Cost does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner as provided in Article 4.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 Evaluations of the Owner's Project budget, the preliminary estimate of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.

5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry.

5.2.4 If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Paragraph 8.5; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

5.2.5 If the Owner chooses to proceed under Clause 5.2.4.4, the Architect, without additional compensation, shall modify the documents for which the Architect is responsible under this Agreement as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of such documents without cost to the Owner shall be the limit of the Architect's responsibility under this Subparagraph 5.2.5. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

ARTICLE 6 USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

6.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

6.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

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6.3 Except for the licenses granted in Paragraph 6.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Paragraph 6.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

6.4 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

ARTICLE 7 DISPUTE RESOLUTION

7.1 MEDIATION

7.1.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

7.1.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

7.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

7.2 ARBITRATION

7.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Paragraph 7.1.

7.2.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

7.2.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

7.2.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

7.2.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

7.3 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequencial damages due to either party's termination in accordance with Article 8.

ARTICLE 8 TERMINATION OR SUSPENSION

8.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 8.7.

8.7 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated, ~~plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~

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ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Article 12.

9.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

9.4 To the extent damages are covered by property insurance during construction, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

9.6 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

9.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

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9.8 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

9.9 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

9.10 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

ARTICLE 10 PAYMENTS TO THE ARCHITECT

10.1 DIRECT PERSONNEL EXPENSE

Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

10.2 REIMBURSABLE EXPENSES

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- .1 ~~transportation in connection with the Project~~, authorized out-of-town travel and subsistence, and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5 renderings, models and mock-ups requested by the Owner;
- .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .7 reimbursable expenses as designated in Article 12;
- .8 other similar direct Project-related expenditures.

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

10.3.1 An initial payment as set forth in Paragraph 11.1 is the minimum payment under this Agreement.

10.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 11.2.2.

10.3.3 If and to the extent that the time initially established in Subparagraph 11.5.1 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Subparagraph 11.3.2.

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10.3.4 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Subparagraph 11.2.2, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES
Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

10.5 PAYMENTS WITHHELD
No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

10.6 ARCHITECT'S ACCOUNTING RECORDS
Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 11 BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

11.1 An Initial Payment of ZERO Dollars ($ 0.00) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

11.2 BASIC COMPENSATION
11.2.1 For Basic Services, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:
(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)

COMPENSATION SHALL BE EIGHT PERCENT (8%) OF CONSTRUCTION COST AS DEFINED IN PARAGRAPH 5.1.

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11.2.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:
(Insert additional phases as appropriate.)

Schematic Design Phase:	FIFTEEN	percent (15%)
Design Development Phase:	TWENTY	percent (20%)
Construction Documents Phase:	FORTY	percent (40%)
Bidding or Negotiation Phase:	FIVE	percent (5%)
Construction Phase:	TWENTY	percent (20%)
Total Basic Compensation:		one hundred percent (100%)

11.3 COMPENSATION FOR ADDITIONAL SERVICES

11.3.1 For Project Representation Beyond Basic Services, as described in Paragraph 3.2, compensation shall be computed as follows:

FOR FULL TIME OBSERVATION OF WATER AND SEWER WORK COMPENSATION SHALL BE A MULTIPLE OF ONE POINT TEN (1.10) TIMES THE AMOUNT BILLED BY CIVIL ENGINEER TO ARCHITECT FOR SUCH SERVICES.

11.3.2 For Additional Services of the Architect, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Paragraph 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:
(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)

COMPENSATION FOR SERVICES RENDERED BY PRINCIPALS AND EMPLOYEES SHALL BE A MULTIPLE OF THREE POINT TWELVE (3.12) TIMES DIRECT SALARY EXPENSE EXCLUDING ANY COSTS OF MANDATORY OR CUSTOMARY CONTRIBUTIONS AND BENEFITS.

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11.3.3 For Additional Services of Consultants, including additional structural, mechanical and electrical engineering services and those provided under Subparagraph 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of ONE POINT TEN (1.10) times the amounts billed to the Architect for such services.
(Identify specific types of consultants in Article 12, if required.)

11.4 REIMBURSABLE EXPENSES
For Reimbursable Expenses, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of ONE POINT TEN (1.10) times the expenses incurred by the Architect, the Architect's employees and consultants directly related to the Project.

11.5 ADDITIONAL PROVISIONS
11.5.1 If the Basic Services covered by this Agreement have not been completed within TWENTY FOUR (24) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Subparagraphs 10.3.3 and 11.3.2.

11.5.2 Payments are due and payable THIRTY (30) days from the date of the Architect's invoice. Amounts unpaid SIXTY (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of interest agreed upon.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

11.5.3 The rates and multiples set forth for Additional Services shall be adjusted in accordance with the normal salary review practices of the Architect.

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ARTICLE 12 OTHER CONDITIONS OR SERVICES

(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

12.1 CIVIL ENGINEERING SERVICES FOR PARKING, DRAINAGE, SEWER CONNECTION WITHIN 1000 FEET OF SITE, WATER LINE AND PRIVATE DRIVEWAY INCLUDING BASIC DESIGN, BIDDING AND CONSTRUCTION PHASE SERVICE SHALL BE A LUMP SUM OF NINE THOUSAND SEVEN HUNDRED DOLLARS ($9,700.00).

12.2 SURVEY AS DESCRIBED IN PARAGRAPH 4.4 IS AVAILABLE FROM CIVIL ENGINEER FOR A LUMP SUM OF TWELVE HUNDRED DOLLARS ($1,200).

12.3 SERVICES TO PROVIDE DOCUMENTS AND MAKE PRESENTATIONS FOR LOT SPLIT, LARGE SCALE DEVELOPMENT AND CONDITIONAL USE AS REQUIRED BY CITY SHALL BE A LUMP SUM OF NINE THOUSAND DOLLARS. ($9,000).

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

(Printed name and title)

ARCHITECT *(Signature)*

JAMES R. FOSTER

(Printed name and title) MANAGING MEMBER

FOSTER • WITSELL EVANS & RASCO, PLLC

AIA DOCUMENT B151-1997
ABBREVIATED OWNER-ARCHITECT AGREEMENT

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Sewer Rehabilitation
A.5 page 1

STAFF REVIEW FORM

XXX AGENDA REQUEST
XXX CONTRACT REVIEW
_____ GRANT REVIEW

For the City Council meeting of: ______

FROM:

David Jurgens	Water/Sewer	Public Works
Name	Division	Department

ACTION REQUIRED: Mayor approve the attached change orders to sewer rehabilitation construction contracts with Insituform 651 TexArk (increase of $69,370.50), Jones 649 Brothers, Inc. (reduction of $75,495.30), and T-G Excavating 650 (reduction of $21,498.64), for a net reduction of $27,623.44

COST TO CITY:

$ (27,623.44)	$1,097,934.35	Sewer Rehabilitation
Cost of this request	Project/Contract Budget	Project Name
4470-9470-5815.00	$1,097,934.35	Sewer Mains Const
Account Number	Funds used to date	Program Name
96012-8320	$ 0	Water and Sewer
Project Number	Remaining Balance (excluding contingency)	Fund

BUDGET REVIEW: XXX Budgeted Item ____ Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:** ______

Marilyn J. Cramer	7-28-99		
Accounting Manager	Date	ADA Coordinator	Date
	7-28-99	Yolanda Fields	7-29-99
City Attorney	Date	Internal Auditor	Date
	7-29-99		
Purchasing Officer	Date		

STAFF RECOMMENDATION: Approve change orders as stated above.

	July 27, 99	
Division Head	Date	Cross Reference:
	7-30-99	
Department Director	Date	New Item: ~~Yes~~ No
	30 JUL 99	
Administrative Services Director	Date	Previous Ord/Res #: 74-98, 72-98, 73-98, 88-98
	7/30/99	
Mayor	Date	Orig Contract Date: June 2, 1998

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
WATER AND SEWER MAINTENANCE DIVISION

DEPARTMENTAL CORRESPONDENCE

To: Mayor Fred Hanna

Thru: Charlie Venable, Public Works Director

Thru: Don Bunn, Asistant Public Works Director

From: David Jurgens, Water/Sewer

Date: July 26, 1999

Re: Minisystem 15 Trenchless Sewer Rehabilitation Construction Contract Change Orders

1. General. Attached are three change orders for the various construction projects performed under the minisystem 15 sewer trenchless rehabilitation construction projects- one for each contractor. The net cost is a decrease of $27,623.44. Each change order is described in some detail below. The construction contracts were with Insituform, Jones Brothers, T-G Excavating, and Building Utilities.

2. Summary of changes.

	Insituform	Jones Bros	T-G Excav.	Totals
Amount of contract w/ previous change orders	228,937.50	645,080.85	223,916.00	1,097,934.35
Amount of this C.O.	69,370.50	(75,495.30)	(21,498.64)	(27,623.44)
Final contract amount	298,308.00	569,585.55	202,417.36	1,070,310.91

3. Details of changes.

A. Insituform Technologies. This change order involves an increase of $69,937.50, most of which reflected work which was moved from the Jones Brothers contract to the Insituform contract. Jones Brothers had significant difficulty internally reinstating taps in 6" mains, so a section of 6" was added to the Insituform job. There were two specific contract changes, as follows:

1) The unit quantities set forth in the contract documents are changed to reflect the actual quantities installed which are reflected on Exhibit A to the change order; and

2) A new line item is added for Cured-in-Place Pipe lining of 10" pipe. The actual quantity installed is reflected on Exhibit A to the change order.

B. Jones Brothers, Inc. This change order involves a decrease of $75,495.30, most of which was moved from the Jones Brothers contract to the Insituform contract. The rest reflects unit quantities actually installed.

C. T-G Excavating. This change order reflects unit quantities actually installed.

4. Budgeting. These change orders complete these projects. The contracts should be closed out upon payment of the amounts shown. A small retainage is pending for Jones Brothers and T-G Excavating, and the balance of the change order remains for Insituform. The balance remaining in the contracts, and the contingency, should be released back to the sewer rehabiliation project, number 96012.

5. Staff Recommendation. The Staff recommends that the Mayor approve the three attached change orders.

Enclosures:
Contract Review Request
Proposed Change Order for Insituform (3 copies)
Proposed Change Order for Jones Brothers (1 copy)
Proposed Change Order for T-G Excavating (1 copy)
City Council Resolution for Insituform #74-98
City Council Resolution for Jones Brothers # 72-98
City Council Resolutions for T-G Excavating (1 for the contract, 1 for C. O. # 1) # 73-98, 88-98

CHANGE ORDER

OWNER: CITY OF FAYETTEVILLE
PROJECT NAME: SANITARY SEWER MAIN REHABILITATION, WHITE RIVER WATERSHED; CONTRACT II, UNIT 3; MINISYSTEMS 13B, 15 & 18B/C BASINS 10, 12, 20 & 21.

Sheet 1 of 2
Change Order 1

LOCATION: FAYETTEVILLE, ARKANSAS
CONTRACTOR: Insituform Technologies, Inc.

Project No. 96012-8320
Date: June 16, 1999

I. DESCRIPTION OF CHANGES INVOLVED:

The following changes are made to the Contract Documents:

A) The unit quantities set forth in the contract documents are changed to reflect the actual quantities installed which are reflected on Exhibit A which is attached hereto and made a part of this change order.

B) A new line item is added for Cured-in-Place Pipe lining of 10" pipe. The actual quantity installed is reflected on Exhibit A which is attached hereto and made a part of this change order.

ADJUSTED CONTRACT PRICE-INCREASE

II. CHANGE ORDER CONDITIONS

1) The total contract sum is increased to a total contract sum of TWO HUNDRED NINETY-EIGHT THOUSAND THREE HUNDRED EIGHT DOLLARS AND 00/100 ($298,308.00) DOLLARS.

2) This Change Order unless otherwise provided herein does not relieve the Contractor from strict compliance with the guarantee provisions of the Original Contract, particularly with those pertaining to performance and operation of equipment.

III. ADJUSTMENTS IN CONTRACT TIME

1) There is no adjustment in contract time.

IV. ADJUSTMENTS IN AMOUNT OF CONTRACT

1) Amount of Original Contract — $228,937.50

2) Net (Addition)(Deduction) due to all previous Change Orders — $ 0.

3) Amount of Contract not including this Change Order — $228,937.50

4) Addition to Contract due to this Change Order — $69,370.50

5) Amount of Contract including this Change Order — $298,308.00

RECOMMENDED FOR ACCEPTANCE: ______________________ 16 June 99
(Project Engineer) Date

ACCEPTED: CONTRACTOR:

By ______________________ 6/18/99
Signature of Authorized Representative Date

OWNER: City of Fayetteville, Arkansas

By ______________________ 7/30/99
Signature of Authorized Representative Date

Sewer Rehabilitation

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Insituform Sewer Project List

March 9, 1999 — Final Report

Project Location	Total Taps	Ext Taps/ Pt Repairs	Internal Taps	Length (Feet)	Pipe Size Old/New	Televised (Y or N)	Map Page	Project Description
11 W Ash/20 E Sycamore Ash/Green Valley	5	5/0	0	309	6	Yes	367	Easement (I13) 104-103
Archibald Yell/East	2	2/0	0	380	6	Yes	523	(W2) 11A-11 Henry Eye/B&B BarBQ
S of Holly W of Shady	7	7/1	0	409	6	Yes	406	(I12) MH 170-169-168-224 Easement; 175'+28'+208'
N of Maple Razorback	0	0/0	0	315	6	Yes	443	Made up MH #s (W13) 22-11
W of Vandeventer N of Adams	7	7/2	0	300	6	Yes	445	Easement (I12) 66-65
(Jones Brothers) California	3	3/0	0	401	6	Yes	445	MH 203-202-201-209 29+324+128
Navajo-Pawnee	7	4/0	3	310	6	Yes	372	MH 110-108 Cul-de-Sacs, Easement
Summary of 6" Pipe				**2424**				
400 block S. College Ave	11	11/0	0	411	8	Yes	523 524	Street, external taps (W2) 35-33
900 block S. College Avenue	6	0/0	6	390	8	Yes	562	(W2) 146P-147P Street, internal taps
Harmon Field	4	1/0	3	1122	8	Yes	445	(W13B) 915-243B Easement; 7 segments
N of Sycamore North Walnut	2	0/1	2	286	8	Yes	368	MH 48-45 Partially sliplined; pt rep required
Summary of 8" Pipe				**2209**				
Lake Lucille Spillway	0	0/0	0	475	10	Yes	407	(I4) MH 97-96-95-94 Through Dam Spillway, easement
Summary of 10" Pipe				**475**				
302 S. Gregg	6	0	6	499	12	Yes	522	MH 560-539 Internal taps
Summary of 12" Pipe				**499**				
Grand Total:	**60**		**20**	**5607**				

Cost of Work Performed

Work Item	Cost per Unit	# of Units	Subtotal
6" Pipe	$46.00	2424	$111,504.00
8" Pipe	$44.00	2209	$97,196.00
10" Pipe	$52.50	475	$24,937.50
12" Pipe	$61.00	499	$30,439.00
Internal Taps (Estimate)	$400.00	20	$8,000.00
Wash and Televise	$3.50	5607	$19,624.50
Post-Televise	$1.00	5607	$5,607.00
Standard Mobilization	$1,000.00	1	$1,000.00
Emergency Mobilization	$1,000.00	0	$0.00
Project Total Cost:			$298,308.00

The quantities shown herein are true and correct for what was actually installed for this project.

David Jurgens

City of Fayetteville, Arkansas

6/10/99

Clayton B. Washburn, P.E.

Insituform Technologies, Inc.

G:\123DATA\SEWPROJ.WK4

CHANGE ORDER

OWNER: CITY OF FAYETTEVILLE
PROJECT NAME: SANITARY SEWER MAIN REHABILITATION, WHITE RIVER WATERSHED; CONTRACT II, UNIT 1; MINISYSTEMS 13B, 15 & 18B/C BASINS 10, 12, 20 & 21.

Sheet 1 of 2
Change Order 1

LOCATION: FAYETTEVILLE, ARKANSAS
CONTRACTOR: JONES BROS., INC.

Project No. 18-1355-0
Date: February 10, 1999

I. DESCRIPTION OF CHANGES INVOLVED:

The following changes are made to the Contract Documents:

A) The unit quantities set forth in the contract documents are changed to reflect the actual quantities installed which are reflected on Exhibit A-1 through A-3 inclusive which are attached hereto and made a part of this change order.

ADJUSTED CONTRACT PRICE - DEDUCT

II CHANGE ORDER CONDITIONS

1) The total contract sum is reduced to a total contract sum of FIVE HUNDRED SIXTY-NINE THOUSAND FIVE HUNDRED EIGHTY FIVE AND 55/100 ($569,585.55) DOLLARS.

2. This Change Order unless otherwise provided herein does not relieve the Contractor from strict compliance with the guarantee provisions of the Original Contract, particularly with those pertaining to performance and operation of equipment.

III ADJUSTMENTS IN CONTRACT TIME

1) There is no adjustment in contract time.

IV ADJUSTMENTS IN AMOUNT OF CONTRACT

1) Amount of Original Contract	$645,080.85
2) Net (Addition)(Deduction) due to all previous Change Orders	$0
3) Amount of Contract not including this Change Order	$645,080.85
4) Reduction to Contract due to this Change Order	$75,495.30

5) Amount of Contract including this Change Order $569,585.55

RECOMMENDED FOR ACCEPTANCE: ______________________ 2/10/99
(For RJN Group, Inc.) Date

ACCEPTED: CONTRACTOR:

By ______________________ 7-16-99
Signature of Authorized Representative Date

OWNER: City of Fayetteville, Arkansas

By ______________________ 7/30/99
Signature of Authorized Representative Date

OWNER: CITY OF FAYETTEVILLE, ARKANSAS
PERIODICAL ESTIMATE FOR PAYMENT REQUEST NO. 2 (FINAL) CONTRACT II, UNIT 1, #649
PROJECT: SEWER REHABILITATION, WHITE RIVER AND ILLINOIS RIVER WATERSHEDS, UNIT 1
SHEET NO. 1 OF 5 SHEETS
RJN PROJECT NO. 18-1355
FOR THE PERIOD: 8/1/98 TO 12/21/98, INCLUSIVE
CONTRACTOR'S NAME AND ADDRESS: JONES BROS., INC., P. O. BOX 727, MT. JULIET, TN 37121-0727
ORIGINAL CONTRACT PRICE: $645,080.85

CONTRACT SUMMARY						WORK PERFORMED TO DATE		
ITEM NO. (1)	DESCRIPTION (2)	UNIT (3)	CONTRACT QUANTITY (4)	CONTRACT UNIT PRICE (5)	CONTRACT COST (6)	NO. OF UNITS (7)	AMOUNT EARNED TO DATE (8)	PERCENT COMPLETE (9)
1A1	4" CIP	LF	100	$ 50.00	$ 5,000.00			
1A2	6" CIP	LF	2175	$39.50	$ 85,912.50	1615	$ 63,792.50	74%
1A3	8" CIP	LF	2193	$ 41.35	$ 90,680.55	2501	$ 103,416.35	114%
1A4	10" CIP	LF	163	$ 44.35	$ 7,229.05	160	$ 7,096.00	98%
1A5	12" CIP	LF	1010	$ 48.35	$ 48,833.50	682	$ 32,974.70	68%
1A6	10" CIP-JOB #1019	LF	1165	$ 44.35	$ 51,667.75	1,174	$ 52,066.90	101%
1A7	12" CIP-JOB #1018	LF	2430	$ 48.35	$ 117,490.50	2331	$ 112,703.85	96%
1B1	CONSTRUCT SHAL-LOW MANHOLE	EA	1	$ 5,500.00	$ 5,500.00			
1C1	INSTALL CLEANOUT	EA	2	$ 2,200.00	$ 4,400.00			
1D1	4" SVC (LINING) EXTERNAL	EA	50	$ 1,870.00	$ 93,500.00	52	$ 97,240.00	104%

CONTRACT SUMMARY						WORK PERFORMED TO DATE		
ITEM NO. (1)	DESCRIPTION (2)	UNIT (3)	CONTRACT QUANTITY (4)	CONTRACT UNIT PRICE (5)	CONTRACT COST (6)	NO. OF UNITS (7)	AMOUNT EARNED TO DATE (8)	PERCENT COMPLETE (9)
1D2	4" SVC (LINING) INTERNAL	EA	18	$ 100.00	$ 1,800.00	17	$ 1,700.00	94%
1E1	6" SVC (LINING) EXTERNAL	EA	4	$ 1,980.00	$ 7,920.00	1	$ 1,980.00	25%
1F1	4" SVC LINE	LF	604	$ 55.00	$ 33,220.00	171	$ 9,405.00	28%
1F2	6" SVC LINE	LF	36	$ 66.00	$ 2,376.00			
1G1	CLAY DAMS	EA	3	$ 165.00	$ 495.00	2	$ 330.00	67%
1H1	OBSTRUCTION REMOVAL	EA	9	$ 3,500.00	$ 31,500.00	12	$ 42,000.00	133%
1I1	ASPHALT REPAIR	LF	190	$ 110.00	$ 20,900.00	185	$ 20,350.00	97%
1I2	CONCRETE REPAIR	LF	50	$ 110.00	$ 5,500.00			
1I3	CONC. CURB/GUTTER REPLACEMENT	LF	75	$ 39.00	$ 2,925.00	10	$ 390.00	
1I4	CONC. SIDEWALK REPAIR	LF	65	$ 45.00	$ 2,925.00			
1J1	CONC. ENCASEMENTS	CY	2	$ 165.00	$ 330.00	2	$ 330.00	13%
1K1	TRENCH SAFETY	LF	55	$ 11.00	$ 605.00			
1L1	CLEANING/PRE-TV	LF	9236	$ 1.25	$ 11,545.00	8499	$ 10,623.75	92%

CONTRACT SUMMARY						WORK PERFORMED TO DATE		
ITEM NO. (1)	DESCRIPTION (2)	UNIT (3)	CONTRACT QUANTITY (4)	CONTRACT UNIT PRICE (5)	CONTRACT COST (6)	NO. OF UNITS (7)	AMOUNT EARNED TO DATE (8)	PERCENT COMPLETE (9)
1L2	POST TV INSP.	LF	9236	$ 1.00	$ 9,236.00	8499	$ 8,499.00	92%
1M1	HYDROMULCH SEED	LF	565	$ 6.00	$ 3,390.00			
1N1	ROCK EXCAVATION	CY	1	$ 200.00	$ 200.00			
EXTERNAL SERVICE RENEWAL - TRAILER PARK Per Paul Thompson, David Jurgens & Steve Lindsey				$ 937.50		5	$ 4,687.50	
			TOTALS		$ 645,080.85		$ 569,585.55	88%

CONTRACT SUMMARY						WORK PERFORMED TO DATE		
ITEM NO. (1)	DESCRIPTION (2)	UNIT (3)	CONTRACT QUANTITY (4)	CONTRACT UNIT PRICE (5)	CONTRACT COST (6)	NO. OF UNITS (7)	AMOUNT EARNED TO DATE (8)	PERCENT COMPLETED (9)
	N/A							
erials Stored on Site			XXXXXXX	XXXXXXX	XXXXXXX	XXXXXXX		XXXXXXX
			Totals	XXXXXXX				

CERTIFICATE OF THE CONTRACTOR OR HIS DULY AUTHORIZED REPRESENTATIVE

› the best of my knowledge and belief, I certify that all items, units, quantities, and prices of and material shown on the face of Sheet(s) 1,2,3 of this Periodical Payment Request are correct all work has been performed and materials supplied in full accordance with the terms and conditions f the corresponding construction contract documents between the undersigned as Contractor and City of Fayetteville, AR as Owner, dated: June 17, 1998, and all authorized hanges thereto; that the following is a true and correct statement of the contract account up to and ncluding the last day of the period covered by this estimate and that no part of the "Total Amount Due" as been received:

(a) Total amount earned	$ 569,585.55
(b) Retained percentage	$
(c) Total earned less retained percentage	$
(d) Total amount previously earned less retainage* . . .	$ 568,085.55
(e) Amount due this estimate	$ 1,500.00
(f) Excess cost of field engineering and inspection . .	$
(g) Liquidated Damages	$
(h) Total Amount Due	$ 1,500.00

I further certify that all claims outstanding as of this date against the undersigned as Contractor or labor, materials, and expendable equipment employed in the performance of said contract up to this ate have been paid in full in accordance with the requirements of said contract.

ONTRACTOR: Jones Bros., Inc. DATE: April 1, 1999

: TITLE: General Manager

STATEMENT OF THE OWNER'S CONSULTING ENGINEERS

I state that I have verified this Periodical Estimate, and that to the best of my knowledge and lief it is true and correct statement of work performed and materials supplied under the Contract, and at the Contractor's certified statement of his account and the amount due him is correct and just, and at all work and material included in this Periodical Estimate have been performed in full accordance th the terms and conditions of the corresponding construction contract documents and authorized anges thereto

N GROUP, INC..

: Resident Project Representative April 6, 1999

Date

OWNER'S RECOMMENDATION FOR PAYMENT

proved an[redacted]ayment Recommended: [signature] July 26, 99

Date

~~Line (c) from~~ ...

CHANGE ORDER

OWNER: CITY OF FAYETTEVILLE	Sheet 1 of 2
PROJECT NAME: SANITARY SEWER MAIN REHABILITATION, WHITE RIVER WATERSHED; CONTRACT II, UNIT 2; MINISYSTEMS 13B, 15 & 18B/C BASINS 10, 12, 20 & 21.	Change Order 2
LOCATION: FAYETTEVILLE, ARKANSAS	Project No. 18-1355-0
CONTRACTOR: T.G. EXCAVATING, INC.	Date: February 10, 1999

I. DESCRIPTION OF CHANGES INVOLVED:

The following changes are made to the Contract Documents:

A) The unit quantities set forth in the contract documents are changed to reflect the actual quantities installed which are reflected on Exhibit A attached hereto and made a part of this change order.

ADJUSTED CONTRACT PRICE - DEDUCT

II CHANGE ORDER CONDITIONS

1) The total contract sum is reduced to a total contract sum of TWO HUNDRED TWO THOUSAND FOUR HUNDRED SEVENTEEN AND 36/100 ($202,417.36) DOLLARS.

2. This Change Order unless otherwise provided herein does not relieve the Contractor from strict compliance with the guarantee provisions of the Original Contract, particularly with those pertaining to performance and operation of equipment.

III ADJUSTMENTS IN CONTRACT TIME

1) There is no adjustment in contract time.

IV ADJUSTMENTS IN AMOUNT OF CONTRACT

1) Amount of Original Contract	$186,543.00
2) Net Addition due to all previous Change Orders No.1	$37,373.00
3) Amount of Contract not including this Change Order	$223,916.00

4) Reduction to Contract due to this Change Order $21,498.64

5) Amount of Contract including this Change Order $202,417.36

RECOMMENDED FOR ACCEPTANCE: Paul E Koury 2/10/99
(For RJN Group, Inc.) Date

ACCEPTED: CONTRACTOR:

By ______ ______
Signature of Authorized Representative Date

OWNER: City of Fayetteville, Arkansas

By Fred Hanna 7/31/99
Signature of Authorized Representative Date

FINAL PAY ESTIMATE
NUMBER #3

NAME OF CONTRACTOR:
T-G Excavating, Inc., 26016 E. Admiral Pl. Catoosa, OK 74015

NAME OF OWNER:
City Of Fayettville, 113 West Mountain, Fayettville, Arkansas, 72701

NAME OF CONTRACT:
"Sanitary Sewer Main Rehabilitation White River and Illinois Watershed Contract II, Unit 2

DATE OF COMPLETION:
Original October 1998
Revised____________

AMOUNT OF CONTRACT
Original $186,543.00
Revised $223,916.00

DATE OF ESTIMATE
From 10-03-98
To 12-09-98

Item No.	Description	Approx Quantity	Unit	Unit Price	Amount	This Estimate Quant.	This Estimate Amount	Previous Estimate Quant.	Previous Estimate Amount	Total to Date Quant.	Total to Date Amount
1	6" To 8" Pipe Burst	1674.00	lf	$47.00	78,678.00		0.00	2038.00	95,786.00	2038.00	95,786.00
2	8" Ductile Iron Pipe	35.00	lf	$60.00	2,100.00		0.00	40.00	2,400.00	40.00	2,400.00
3	8" PVC Pipe	510.00	lf	$50.00	25,500.00		0.00	452.00	22,600.00	452.00	22,600.00
4	4' Dia. Manhole (0 - 6 Deep)	10.00	ea	$2,300.00	23,000.00		0.00	9.00	20,700.00	9.00	20,700.00
5	4' Dia. Manhole Additional Depth	14.00	vf	$220.00	3,080.00		0.00	9.00	1,980.00	9.00	1,980.00
6	Shallow Manhole Replacement	2.00	ea	$2,500.00	5,000.00		0.00		0.00	0.00	0.00
7	Install Cleanout	1.00	ea	$800.00	800.00		0.00		0.00	0.00	0.00
8	Manhole Inserts	10.00	ea	$100.00	1,000.00		0.00	9.00	900.00	9.00	900.00
9	Service Connections (Liners)	18.00	ea	$900.00	16,200.00		0.00	27.00	24,300.00	27.00	24,300.00
10	Service Connections (Open Cut)	7.00	ea	$300.00	2,100.00		0.00	10.00	3,000.00	10.00	3,000.00
11	6" Service Connections (Liners)	1.00	ea	$951.00	951.00		0.00		0.00	0.00	0.00
12	4" Service Line	200.00	lf	$15.00	3,000.00		0.00	47.00	705.00	47.00	705.00
13	6" Service Line	4.00	lf	$30.00	120.00		0.00	8.00	240.00	8.00	240.00
14	Clay Dams	4.00	ea	$100.00	400.00		0.00	4.00	400.00	4.00	400.00
15	Obstruction Removal	2.00	ea	$1,500.00	3,000.00		0.00	2.00	3,000.00	2.00	3,000.00
16	Asphalt Replacement	55.00	lf	$85.00	4,675.00		0.00	81.00	6,885.00	81.00	6,885.00
17	Curb & Gutter	25.00	lf	$30.00	750.00		0.00		0.00	0.00	0.00
18	Sidewalk Replacement	15.00	lf	$35.00	525.00		0.00	19.00	665.00	19.00	665.00
19	Concrete Encasement	2.00	cy	$150.00	300.00		0.00		0.00	0.00	0.00
20	Trench Safety	585.00	lf	$1.00	585.00		0.00	451.00	451.00	451.00	451.00
21	Cleaning & T.V. Inspection	1674.00	lf	$2.50	4,185.00		0.00	2022.00	5,055.00	2022.00	5,055.00
22	Post T.V. Inspection	2219.00	lf	$1.00	2,219.00		0.00	2530.00	2,530.00	2530.00	2,530.00
23	Hydromulch Seeding	575.00	lf	$3.00	1,725.00		0.00	730.00	2,190.00	730.00	2,190.00
24	Pit Compaction Tests	10.00	ea	$75.00	750.00		0.00	6.00	450.00	6.00	450.00
25	Sag Adjustments	20.00	lf	$150.00	3,000.00		0.00	10.00	1,500.00	10.00	1,500.00
26	Rock Excavation	2.00	cy	$200.00	400.00		0.00		0.00	0.00	0.00
27	Rip Rap	50.00	Ton	$50.00	2,500.00		0.00	54.00	2,700.00	54.00	2,700.00
CO-1	Emergency Rate Per/Day	3.00	ea	$3,316.97	9,950.91		0.00	1.20	3,980.36	1.20	3,980.36
	TOTAL:				196,493.91		0.00		202,417.36		202,417.36

ORIGINAL CONTRACT AMOUNT:	$186,543.00
ADDITIONS:	$37,373.00
DEDUCTIONS:	$0.00
ADJUSTED CONTRACT AMOUNT TO DATE:	$223,916.00
TOTAL AMOUNT EARNED TO DATE:	$202,417.36
MATERIAL ON HAND:	$0.00
TOTAL COMPLETED & STORED TO DATE:	$202,417.36
RETAINAGE:	$0.00
TOTAL EARNED LESS RETAINAGE:	$202,417.36
LESS PREVIOUS PAYMENTS:	$200,917.36
AMOUNT DUE THIS ESTIMATE:	$1,500.00

CERTIFICATION OF CONTRACTOR

ACCORDING TO THE BEST OF MY KNOWLEDGE AND BELIEF, I CERTIFY THAT ALL ITEMS AND AMOUNTS SHOWN ON THIS PERIODICAL ESTIMATE FOR PARTIAL PAYMENT ARE CORRECT THAT ALL WORK HAS BEEN PERFORMED AND/OR MATERIAL SUPPLIED IN FULL ACCORDANCE WITH THE REQUIREMENTS OF THE REFERENCED CONTRACT AND/ OR DULY AUTHORIZED DEVIATIONS, SUBSTITUTIONS, ALTERATIONS, AND/OR ADDITIONS, THAT THE FORGOING IS THAT NO PART OF THE BALANCE DUE THIS ESTIMATE, HAS BEEN RECEIVED, AND THAT THE UNDERSIGNED AND HIS SUBCONTRACTORS HAVE COMPLETED WITH ALL THE LABOR PROVISIONS OF SAID CONTRACT.

T[illegible]AVATING, INC. BY: [signature] DATE: 6-9-99

CERTIFICATION OF ENGINEER

I CERTIFY THAT I HAVE CHECKED AND VERIFIED THE ABOVE AND FORGOING PERIODIC ESTIMATE FOR PARTIAL PAYMENT; THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF IT IS A TRUE AND CORRECT STATEMENT OF WORK PERFORMED AND/OR BEEN INSPECTED BY ME AND/OR BY MY DULY AUTHORIZED REPRESENTATIVE OR ASSISTANTS AND THAT IT HAS BEEN PERFORMED AND/OR SUPPLIED IN FULL ACCORDANCE WITH REQUIREMENTS OF THE REFERENCED CONTRACT; AND THAT PARTIAL PAYMENT CLAIMED AND REQUESTED BY THE CONTRACTOR IS CORRECTLY COMPUTED ON THE BASIS OF WORK PERFORMED AND/OR MATERIAL SUPPLIED.

RJN GROUP BY: [signature] DATE: 6/30/99

CITY OF FAYETTEVILLE BY: [signature] DATE: 7/26/99

CITY OF FAYETTEVILLE BY: [signature] DATE: 7/30/99

RESOLUTION NO. 72-98

A RESOLUTION ACCEPTING THE RECOMMENDATION OF RJN GROUP, INC. AND AWARDING BID NO. 98-34, UNIT 1, CIPP, CONTRACT ENGINEERING DESIGN IN THE AMOUNT OF $645,080.85, PLUS A CONTINGENCY AMOUNT OF $64,508, TO JONES BROTHERS, INC. FOR SEWER LINING FOR THE WHITE RIVER MINISYSTEM 15 SEWER REHABILITATION.

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

Section 1. That the City Council hereby accepts the recommendation of RJN Group, Inc. and awards Bid No. 98-34, Unit 1, CIPP, contract engineering design in the amount of $645,080.85, plus a contingency amount of $64,508, to Jones Brothers, Inc., for sewer lining for the White River Minisystem 15 sewer rehabilitation; and authorizes the Mayor and City Clerk to execute a construction agreement for said amount. A copy of the agreement is attached hereto marked Exhibit "A" and made a part hereof.

PASSED AND APPROVED this 2nd day of June, 1998.

APPROVED:

By: ____________________
Fred Hanna, Mayor

ATTEST:

By: ____________________
Heather Woodruff, City Clerk

RESOLUTION NO. 73-98

A RESOLUTION ACCEPTING THE RECOMMENDATION OF RJN GROUP, INC. AND AWARDING BID NO. 98-34, UNIT 2, PIPE BURSTING, CONTRACT ENGINEERING DESIGN IN THE AMOUNT OF $186,543, PLUS A CONTINGENCY AMOUNT OF $18,654, TO T.G. EXCAVATING, FOR PIPE BURSTING FOR THE WHITE RIVER MINISYSTEM 15 SEWER REHABILITATION.

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

Section 1. That the City Council hereby accepts the recommendation of RJN Group, Inc. and awards Bid No. 98-34, Unit 2, pipe bursting, contract engineering design in the amount of $186,543, plus a contingency amount of $18,654, to T.G. Excavating, for pipe bursting for the White River Minisystem 15 sewer rehabilitation; and authorizes the Mayor and City Clerk to execute a construction agreement for said amount. A copy of the agreement is attached hereto marked Exhibit "A" and made a part hereof.

PASSED AND APPROVED this 2nd day of June, 1998.

APPROVED:

By: Fred Hanna
Fred Hanna, Mayor

ATTEST:

By: Heather Woodruff
Heather Woodruff, City Clerk

RESOLUTION NO. 88-98

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A CHANGE ORDER IN THE AMOUNT OF $37,373 WITH T.G. EXCAVATING, FOR EMERGENCY SEWER PIPE BURSTING REPAIRS AT GREGG AND PATRICIA STREETS, AND TO CONTINUE THE CONTINGENCY FOR THE EXISTING CONTRACT AT $18,654.

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

Section 1. That the Mayor and City Clerk are hereby authorized to execute a change order in the amount of $37,373 with T.G. Excavating, for emergency sewer pipe bursting repairs at Gregg and Patricia Streets, and to continue the contingency for the existing contract at $18,654. A copy of the change order is attached hereto marked Exhibit "A" and made a part hereof.

PASSED AND APPROVED this 7th day of July, 1998.

APPROVED:

By:____________________
Fred Hanna, Mayor

ATTEST:

By:____________________
Heather Woodruff, City Clerk

RESOLUTION NO. 74-98

A RESOLUTION ACCEPTING THE RECOMMENDATION OF RJN GROUP, INC. AND AWARDS BID NO. 98-34, UNIT 3, CIPP WITH IN-HOUSE DESIGN, IN THE AMOUNT OF $228,937, PLUS A CONTINGENCY AMOUNT OF $22,893, TO INSITUFORM TEXARK, INC. FOR SEWER LINING FOR THE WHITE RIVER MINISYSTEM 15 SEWER REHABILITATION.

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

Section 1. That the City Council hereby accepts the recommendation of RJN Group, Inc. and awards Bid No. 98-34, Unit 3, CIPP with in-house design, in the amount of $228,937, plus a contingency amount of $22,893, to Insituform Texark, Inc. for sewer lining for the White River Minisystem 15 sewer rehabilitation; and authorizes the Mayor and City Clerk to execute a construction agreement for said amount. A copy of the agreement is attached hereto marked Exhibit "A" and made a part hereof.

PASSED AND APPROVED this 2nd day of June, 1998.

APPROVED:

By: Fred Hanna

Fred Hanna, Mayor

ATTEST:

By: Heather Woodruff

Heather Woodruff, City Clerk

RZ 99-16.10
R C.1 page 1

JUL 14 1999
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

STAFF REVIEW FORM

X Agenda Request
___ Contract Review
___ Grant Review

For the Fayetteville City Council meeting of ~~August 3, 1999.~~ August 17, 1999

RECEIVED
JUL 20 1999
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

FROM:

Tim Conklin	Planning	Public Works
Name	Division	Department

RZ99-16.10

ACTION REQUESTED: To approve an ordinance for rezoning request RZ99-16.10 submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-O, Residential Office, and contains approximately 5.2 acres. The request is to rezone the property to C-1, Neighborhood Commercial.

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 7-19-99	Internal Auditor	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended denial and the Planning Commission approved the rezoning with a vote of 5-3-0. Commissioners Bunch, Hoover, and Odom voted against the rezoning.

Division Head	Date 7-19-99	**Cross Reference**
Department Director	Date 7-20-99	New Item: Yes No
Administrative Services Director	Date 20 JUL 99	Prev Ord/Res#: ____
Mayor	Date 7/20/99	Orig Contract Date: ____

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: **July 12, 1999**

RZ 99-16.10: Rezoning (Mid-Southern Enterprises, Inc., pp 401) was submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-O, Residential Office, and contains approximately 5.2 acres. The request is to rezone the property to C-1, Neighborhood Commercial.

RECOMMENDED MOTION:

Staff recommends denial of the requested rezoning from R-O to C-1 based on the findings included as part of this report.

PLANNING COMMISSION ACTION: **_YES_ Required**
_____Approved _____Denied

Date: _July 12, 1999_

Comments:

____
____

CITY COUNCIL ACTION: **_YES_ Required**
_____Approved _____Denied

Date: __/__/__

BACKGROUND :

A past request to rezone this property to C-2 was denied by the Planning Commission on November 27, 1989. This petition included this property on the west side of Salem Road as well as property east of Salem Road. At that time, the Planning Commission recommended and the City Council approved the rezoning of the property on the east side of Salem Road to C-2. The subject property on the west side of Salem Road was not rezoned at this time (see minutes for November 27, 1989 Rezoning Petition #R89-32 for Bob Davis.)

The applicant then brought forward a modified request on November 24, 1997. The request proposed rezoning 5.45 acres to C-2 and 3.34 acres to R-O. Staff recommended denial of the requested rezoning as inconsistent with General Plan 2020 and not justified or needed at the time. It was noted that an abundance of vacant C-2 property was in existence to the east (see Planning Commission minutes for November 24, 1997 RZ97-21.00 for Mid-Southern Enterprises.)

The applicant later brought forward a request to rezone 5.20 acres of the subject property to R-O. This request was recommended by the Planning Commission and approved by the City Council (see Planning Commission minutes for January 12, 1998 RZ98-2.00 for Sam Rogers.)

A lot split was granted on March 23, 1998 to create a 1.6 acre lot and an 8.36 acre lot. Arkansas National Bank was built on the 1.6 acre lot at the intersection of Salem and Wedington Drive (see Planning Commission minutes for March 23, 1998 for LS98-9 for Sam Rogers).

The applicant recently requested that the back 4.77 acres of the 8.36 acre tract presently zoned R-2, be rezoned to R-O. This request was approved by the Planning Commission in the June 28 Planning Commission Meeting. The applicant also requested the rezoning of the front 5.2 acres of the tract, including the existing Arkansas National Bank, to C-2. This request was denied (see Planning Commission minutes for June 28, 1999 for RZ99-16 for Mid-Southern Enterprises.)

The applicant is now requesting that the front 5.2 acres (including the 1.6 acre tract with the existing bank) which is currently zoned R-O be rezoned C-1 (Neighborhood Commercial.)

ADJACENT LAND USE AND ZONING:

North: Single family, R-2

South: Sports park, A-1

East: A bank and undeveloped land, C-2

West: Single family and undeveloped land, A-1

INFRASTRUCTURE:

Streets: The site is adjacent to Highway 16 West (Wedington Drive) which is classified as a Principal Arterial with 110' of R.O.W. Highway 16 West is in the process of being widened to five lanes. Salem Road to the east is classified as a Collector with 70' of R.O.W.

Water: There is an 8" waterline along Highway 16 West and Salem Road.

Sewer: There is an 8" sewer line to the north along Mica Street and on Salem Road.

LAND USE PLAN:

The General Plan 2020 shows this area as Residential. The area to the east of Salem Road is designated as Community Commercial.

PERMITTED USES IN C-2 THAT ARE NOT PERMITTED IN C-1:

C-1 (Neighborhood Commercial):	C-2 (Thoroughfare Commercial):
(not permitted)	Unit 14- Hotel, Motel and Amusement Facilities
(not permitted)	Unit 16- Shopping Goods
(not permitted)	Unit 17- Trades and Services
(not permitted)	Unit 19- Commercial Recreation
(not permitted)	Unit 20- Commercial Recreation, Large Sites
(not permitted)	Unit 21- Warehousing and Wholesale (with P.C. approval)
(not permitted)	Unit 24- Outdoor Advertising
(not permitted)	Unit 28- Center for Collecting Recyclable Materials (with P.C. approval)
(not permitted)	Unit 32- Sexually Oriented Business (with P.C. approval)
(not permitted)	Unit 33- Adult Live Entertainment Club or Bar

§161.13 DISTRICT C-1 NEIGHBOR-HOOD COMMERCIAL.

A. Purpose. The Neighborhood Commercial District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas.

B. Uses.

1. Permitted Uses.

Unit 1	City-Wide Uses by Right
Unit 12	Offices, Studios and Related Services
Unit 13	Eating Places
Unit 15	Neighborhood Shopping
Unit 18	Gasoline Service Stations and Drive-In Restaurants
Unit 25	Professional Offices

2. Uses Permissible on Appeal to the Planning Commission.

Unit 2	City-Wide Uses by Conditional Use Permit
Unit 3	Public Protection and Utility Facilities
Unit 4	Cultural and Recreational Facilities

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 C-1 (Neighborhood Commercial) is not 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 of C-1 is not justified and needed at this time because there is adequate commercial property adjacent to and east of this site which is currently undeveloped.**

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The proposed zoning would not create or 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 not undesirably increase the population density and would not undesirably increase the load on public services including schools, 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

Directors and asked Mr. Cummings if he would like to speak again as requested. Mr. Cummings stated the matters that he needs to discuss are probably matters that should be somewhere other than this, in litigation. It certainly doesn't involve the Planning Commission. He added that he thinks there is a little problem with the sewer that they should try to get straightened out and he would be more than happy to work with the City to do that. He commented that it has been brought to his attention sufficient times and they need to have an understanding regarding the sewer line that runs across this property. He noted that he would ask that the committee would allow him or get authorization for him to visit with whomever they feel is the correct management person about that. Chairman Jacks advised that he should probably discuss this with the City Engineer who should be available at just about any time.

* PUBLIC HEARING - REZONING PETITION #R89-32
BOB DAVIS - N OF HWY 16 W, E & W OF SALEM ROAD

The fourth item on the agenda was a rezoning petition #R89-32 submitted by Bob Davis and represented by Dave Jorgensen of Jorgensen Engineers for property located north of Highway 16 West on the east and west sides of Salem Road containing 16.84 acres more or less. Request was to rezone from R-2, Medium Density Residential to C-2, Thoroughfare Commercial.

John Merrell, Planning Management Director, stated that he doesn't have a lot to add to the written staff report that was furnished in the agenda packet. He advised that the staff has taken the position that they can not support the rezoning requested based on the surrounding land use and surrounding zoning and what they view as the growth trends in that area. He added that should it be the inclination of the Planning Commission to favor a rezoning in this area, the staff feels that the various alternatives of R-O, Residential-Office, might fit the best and might represent some form of a buffer zone. He commented that he has spoken to Bob Davis a couple of times about this petition and Mr. Davis has certain information that he would like to present to the Commission. Staff basically sees the issue here as where should the commercial development occur on Wedington Drive and where should they draw the line from residential to commercial. The point the staff is trying to imply is if this rezoning is granted to C-2, it might be pretty difficult to refuse to grant later rezonings to the west of this location. Although, the staff realizes that the petitioner would like to have more options available to him and C-2 certainly allows for more than R-O.

Commissioner Hanna stated that when they had the workshop with Al Raby on the new General Plan, Mr. Raby proposed a mall in this area. He noted that Mr. Raby didn't pick the site out, but he assumes that Mr. Raby was considering the location to be across the street from this property and slightly to the West. Judging from what he has seen in other areas with a mall, he has a hard time envisioning how they could fail to have rezoning requests to commercial for a lot of property around the mall area. For example, there is a lot of commercial across the highway and to the south of the Northwest Arkansas Mall. He asked Mr. Merrell if he had taken this into consideration when he made this recommendation. Mr. Merrell stated that he remembers that at one of the workshops with Mr. Raby, someone disagreed with the amount of proposed future commercial land use that was shown in this area and he feels the same way. He noted, however, that Mr. Hanna's point is well taken because if the final version does show that much commercial in the area then the whole stretch of Hwy 16 West between the Bypass and Rupple Road and maybe farther West would clearly be an emerging commercial area. It depends on what the City decides on as far as the Land Use Plan. He noted that he personally feels that Mr. Raby went a little overboard with commercial in that area.

The public hearing was opened.

Dave Jorgensen, representative, handed out to the Commissioners some color-coded zoning maps to show the surrounding zoning. He noted that he had submitted a letter of transmittal for this request that is attached to the agenda. It states that 1) the property has about 1,222 feet of length along Highway 16 and is about 600' deep with R-1 bordering on the west, R-2 on the east and R-O & C-1 on the south. 2) Present Land Use: The existing property is vacant except for Salem Road which runs though the center of the property in a north-south direction. Salem Road was presumably intended to tie Highway 16 to Mount Comfort Road to the North. There are several businesses to the South and the property to the North (Walnut Grove Addition) has quite a bit of R-2 and R-1 property. 3) Water & sewer are in place on a portion of it and is readily available. 4) Fire Protection would be present with suitable fire hydrant installations. 5) Highway 16 is considered a principal arterial and Salem Road has a 60' right-of-way. The intention is to tie Highway 16 to Mt. Comfort Road to the North. He explained that in general, they believe there is a public need for additional commercial property in this area. There are presently 73 acres of single-family or multi-family housing to the North with another 34 acres to the South of R-2 property. There is only about 2 1/2 acres of land zoned C-2 that can be purchased west of the Bypass. He commented that he has been told that it is very wise to allocate commercial property on an arterial street for various reasons with a reasonable depth and width as opposed to striping with 100' to 200' strips of commercial from one year to the next. He noted that they feel that this development would enhance the surrounding property and with the high concentration of R-2 property, more commercial property is necessary in this area to provide service to the surrounding area.

Mr. Jorgensen stated that when Mr. Davis came in and talked with him about this particular rezoning request, he tried to keep an open mind about it. He commented that this really isn't a frivolous request. He noted that the 71 Bypass will be Interstate 171 one of these days and probably in the near future. Sooner or later, there will have to be something commercialized out there.

Mr. Jorgensen read from the proposed General Plan 2010 that was put out by Al Raby's group which states that "primarily the western side of Fayetteville beyond the bypass remains undecided. With the opening of Interstate 171, the western area will be the primary target for new growth. Given the established land use plan and growing economic trends, there is likely to diversify that will include a demand for major new commercial areas, industry, middle income housing and transportation facilities." He advised that all of this does not apply totally, completely because this is not the final version of the proposed plan. Mr. Jorgensen noted that concerning the mall mentioned by Mr. Hanna, this report states that "a secondary commercial mall of 100 thousand square feet is projected for the southwest quadrant of the interchange." Mr. Jorgensen stated that it might be hard to squeeze in a mall in the southwest quadrant. He advised that it would be impossible to put a mall in there without having some support commercialized area in the vicinity of the surrounding area. He read the following statement from the proposed General Plan: "The mall should be of mixed use character and is proposed as an alternative to the emerging strip commercial along Highway 16." Mr. Jorgensen noted that the staff's recommendation states that the Commission does have the option of recommending to the Board of Directors a more restrictive zoning such as R-3, R-O or C-1. It states that none of these options are recommended by the staff in that they feel that the R-2 is a viable zoning designation for the property. He added that he finds this tremendously hard to believe. R-2 or R-3 is not the most desirable zoning for this location especially when you consider the fact that there is a tremendous amount of multi-family/single-family to the north and to the south. The Planning Commission will sooner or later have to make the decision as to where they want the commercialization in this area because it will eventually happen. He noted that the major intersection there has C-2 on the northwest and a little bit to the southwest and this particular property begins about 1100' from the ramp. He advised that after talking with the staff, etc., they have decided that it would be wiser to request a C-2 possibly on the east side of Salem Road and very possibly a C-1 or C-1 & R-O combination on the west side of Salem Road. In addition to that, they have R-2 just to the north of this and Mr. Davis has mentioned that he would like to possibly have a strip of property in between this commercialized property and the R-2 property for a greenspace (possibly 15' wide) as a barrier between the two. Mr. Jorgensen commented that as an engineer, he sees another reason for making this particular property commercial as opposed to the commercial to the north and to the south to keep the heavy traffic on the State Highway system as opposed to going through the residential property which is on a city street to hold down any heavy traffic on the main drag. The average daily traffic count is 5600 as of last year.

Mr. Jorgensen advised that some of the possible uses that the owners have mentioned such as a financial institution or a Wendy's restaurant would fit into C-1 as well as C-2.

Bob Davis stated that he is representing the Bryce Davis Estate and it has been mentioned in the newspaper articles in the past year that the city was going to move to the West so it is time for to plan in that direction. He noted that the Bryce Davis family has never built anything that the City could not be proud of. They feel that this property is a major portion of the intersection since their property is less than 2/10ths of a mile from the highway.

Chairman Jacks asked if anyone else wanted to speak to this petition. There being no response, the public hearing was closed.

Commissioner Hanna stated that he thinks it is just a matter of time before this area is developed in commercial.

MOTION

Commissioner Hanna moved to recommend approval of the rezoning as requested, seconded by Seiff and followed by discussion.

Commissioner Klingaman asked when Highway 16 is going to be made into a four-lane highway and has there been adequate right-of-way dedications so that it can be four-laned. He stated that he is concerned that the accesses to this should be controlled more than Highway 71 which has driveways about every 100'.

Mr. Jorgensen stated that the access would be covered in a large scale development plan and as far as the right-of-way goes, he assumes that there has probably been adequate right-of-way purchased for future expansion.

Don Bunn, City Engineer, stated that this would be dealt with at the large scale development stage and he doesn't know when the highway would be widened.

Jerry Allred commented that since growth is going to be in that direction, if they don't do some sort of alternative commercial zoning, there will be a bigger impact put on College Avenue. As that area grows and develops and the traffic increases, the residents would have to come to College Avenue in order to reach the support services. He noted that he is in favor of the rezoning petition due to future growth out in that direction.

Chairman Jacks stated that what Mr. Allred is challenging here is the long standing principles which have guided the Planning Commission's judgments of these things to do with commercial nodes at one mile intervals in lieu of strip commercial property. He added that he sees this as challenging that principle and the most zoning change that he would vote for would be to change part of that property on the east side to R-O and no zoning at all on the west piece. He added that he doesn't believe that they can break out of the pattern they have set there which has pretty well established the principle with C-1 properties to the west with appropriate intervals. He noted that Mr. Raby has pointed out to them that this area is a very important part coming into town and they will be beseeched with pressures for commercialization out this direction.

Commissioner Hanna stated that he heard exactly the same comments and objections six or seven years to any rezonings on Highway 62(Sixth Street) between Razorback Road and the Bypass. Now it is developed with several fast food places and other businesses and it looks a lot better than it did seven years ago. He advised that he envisions the same thing for Highway 16 West so that people would not have to drive five miles to get to North College or 6th Street to a fast food restaurant. He added that as development comes out that way, these ideas will change and it will be rezoned for business sooner or later. This strip isn't that far from the intersection itself.

Commissioner Springborn stated that with due regard to the good principles that should be governing the Planning Commission, he thinks that there would be little lost by a C-2 rezoning on the east half of it and leaving the west half for further consideration at some future date.

Commissioner Klingaman stated that he is concerned that if they grant a rezoning of this size, it will be sectioned off a portion at a time to whichever fast food restaurant wants a sliver for there particular establishment which would cause it to be all chopped up. He noted that he would like to see some planning done on the front end of trying to establish some small residential shopping areas with maybe one or two entrances rather than the maximum. As far as the concept of having C-2 there, he noted that it doesn't bother him because it is close enough to the interchange.

Commissioner Ozment stated that he doesn't know how they would define or put into perspective the size of a "node". The node concept is o.k., but 1100' from the intersection is kind of short for a node. A natural shopping mall node could probably be three times that wide. He commented that it would be nice if they could plan a frontage road off the highway to control access up and down through the shopping districts and not interrupt the traffic along the main highway. He advised that he has no problems with this on a big scale, but he would like to see the development come in a large fashion too and not be chopped up into 100' businesses.

Commissioner Hanna noted that they would have to come back before the Planning Commission for any lot splits and large scale developments.

Commissioner Cleghorn noted that it seems to him that they are voting on something that shouldn't be voted on yet. Most everyone is in agreement that sooner or later there will be some kind of commercial out that way. All they are doing is predicting what the growth patterns will be. It has been established on paper but the people haven't established it. It is like they are voting too soon on something that might be too critical.

Chairman Jacks noted that the only question before him as he sees it is the size of the node and they have a pretty big node going there now.

Commissioner Springborn observed that they are placing an awful lot of weight on the new Land Use Plan and until it is adopted, they have to exercise the best judgment they can with respect to the present one.

The motion to recommend approval of the rezoning petition as requested tied 4-4-0 with Ozment, Seiff, Hanna & Allred voting "yes" and Springborn, Jacks, Cleghorn & Klingaman voting "no". Chairman Jacks advised that it does not pass because it takes five positive votes to approve a rezoning petition.

MOTION

Commissioner Hanna moved to recommend approval of a rezoning of the eastern section of the property (to the east of the road dividing it) to C-2 and leave the western portion as it is presently zoned, seconded by Springborn. The motion passed 5-3-0 with Ozment, Springborn, Seiff, Hanna & Allred voting "yes" and Klingaman, Jacks & Cleghorn voting "no".

CONDITIONAL USE FOR HOME OCCUPATION (REAL ESTATE OFFICE) IN AN R-1 ZONE
DON WARD - 2015 HUNTSVILLE ROAD

The fifth item was a conditional use for a home occupation (real estate office) in an R-1 zone submitted by Don Ward for property located at 2015 Huntsville Road.

Chairman Jacks advised that they had a rezoning petition at this location previously which was denied. He asked if there was anyone in the audience who would like to speak in favor of or in opposition to this request. Mr. Ward was present, but had no comments.

MOTION

Commissioner Hanna moved to approve the conditional use as requested, seconded by Allred. The motion passed 8-0-0.

Chairman Jacks apologizes to Mr. Merrell for not asking him for him report on this item. Mr. Merrell stated that he just had a brief report and he did recommend approval of this request.

LARGE SCALE DEVELOPMENT PLAN FOR SUPERIOR INDUSTRIES
BOB BRACY - 1901 COMMERCE DRIVE

The sixth item on the agenda was a large scale development plan for an expansion to Superior Industries submitted by Albert Skiles, Architect, on behalf of Bob Bracy. Property is located at 1901 Commerce Drive and zoned I-1, Light Industrial - Heavy Commercial.

Don Bunn noted that this is for a 10,000 square foot addition to an existing industry in the industrial park. There weren't any problems with the utilities and the only questions that were raised at the Plat Review Committee meeting were concerning fire protection. He added that they do have sprinkler lines going into the building and there was some question about what sort of fire wall needed to be between this office space and the rest of the building and it was resolved. He stated that the staff recommends that the large scale development be approved.

Commissioner Springborn advised that the Subdivision Committee did not meet this week so they have no report on it.

Chairman Jacks asked if there was anyone in the audience who would like to speak on this item.

Cal Canfield who is in association with Albert Skiles representing Superior Industries stated that he is present to answer any questions. There being no

MINUTES OF A MEETING OF THE PLANNING COMMISSION

A regular meeting of the Planning Commission was held November 24, 1997 at 5:30 p.m. in Room 219 of the City Administration Building, 113 W. Mountain Street, Fayetteville, Arkansas.

MEMBERS PRESENT: Conrad Odom, Phyllis Johnson, Lee Ward, John Watkins, Gary Tucker, and Bob Reynolds.

STAFF PRESENT: Jim Beavers, Tim Conklin, Dawn Warrick, and Heather Woodruff.

ITEMS REVIEWED:	ACTION TAKEN
1. RZ 97-21.00: Rezoning (Mid-Southern Enterprises)	Denied
2. RZA 97-17.00: Annexation (Gary Atha)	Approved
3. RZ 97-20.00: Rezoning (Gary Atha)	Approved

APPROVAL OF THE MINUTES

The minutes were approved as distributed.

* RZ 97-21.00: (MID-SOUTHERN ENTERPRISES, INC.)
MID-SOUTHERN- N. OF WEDINGTON DR. & W. OF SALEM RD.

The rezoning was submitted by Marshall Carlisle of Murphy & Carlisle on behalf of Mid-Southern Enterprises, Inc. For property located north of Wedington Drive and west of Salem Road. The property is zoned R-2, Medium Density Residential, and contains approximately 9.966 acres. The original request was to change the zoning from R-2, Medium Density Residential, to C-2, Thoroughfare Commercial. The applicant's new proposal is to rezone 5.45 acres to C-2 (RZ 97-21.10) and 3.34 acres to R-O (RZ 97-21.20).

Recommendation: the staff recommended denial of the requested rezoning as being inconsistent with General Plan 2020 and was not justified or needed at this time. Planning Commission considered this tract for C-2 zoning in 1989 deciding to recommend only the east side of Salem Road (6.47 acres) and that tract remains undeveloped. Additional commercial zoning may be appropriate at a future time when improvements to accommodate additional traffic on 16W are made.

If the Planning Commission recommends C-2 zoning in this area, staff recommends that access to the entire tract be limited to one curb cut on Wedington Drive and Salem Road for the proposed loop street.

The applicant has presented a schematic subdivision plan. Staff comments on the plan follow:

1. Access to each lot should be provided by either cross access and/or public streets within the project.
2. The proposal (which is recognized as being very preliminary) appears to separate the tract into 20 independent lots. A common design theme for the development should be required.
3. The schematic subdivision proposes the bulk of the property to be C-2 with a small amount of R-O. Staff feels these proportions are inappropriate.
4. For general consideration, staff has made notes on the plat.

Mr. Marshall Carlisle, representative, noted there was existing C-2 land along Hwy 16, however, this tract was ready for development by the owner of the property, Mr. Rogers. If the rezoning were accomplished Mr. Rogers would develop a bank building. The purpose of the request was to be able to develop the land in the manner which would be compatible with what the city's ideas for this part of the community. The portion of the plat designated as R-O had alternatives. The north side could continue to be R-2, however, the property on the west side would be best zoned R-O.

There was no public comment.

Mr. Forney asked if R-O zoning would allow for a bank development.

Ms. Little replied R-O zoning would allow a bank.

Mr. Carlisle replied the owner had offers for the remaining C-2 property, which was contingent upon the rezoning. The possible businesses would required C-2 zoning or a conditional use. He was aware that a bank could be developed within an R-O or a C-1 zoning, however, there were other considerations involved.

Mr. Forney asked how the R-O and the C-2 uses compared.

Ms. Little replied restaurants were allowed in R-O with a conditional use.

Mr. Forney added many of the uses suggested by the applicant could be allowed under a lesser zoning than C-2. He added he would not support any portion of the property being rezoned to C-2.

MOTION

Mr. Forney moved to deny C-2 zoning for RZ 97-21.10.

Mr. Tucker seconded the motion.

The motion carried by a vote of 6-1-0. Mr. Ward voting nay.

Mr. Watkins moved to deny the RZ 97-21.20 request for remaining portion of the tract, in order to consider another possible rezoning for the entire tract.

Mr. Ward seconded the motion.

Mr. Odom asked the staff if the motion carried to deny the R-O zoning would the applicant be prevented from asking for the entire tract to be rezoned to R-O.

Ms. Little replied the applicant could change the change the configuration of the R-O rezoning request, and reapply this year.

Mr. Carlisle asked if the applicant could request another rezoning for the entire tract.

Ms. Little replied the applicant could request rezoning for the entire tract or smaller tracts.

The motion carried by a vote of 7-0-0.

*RZ98-2.00 REZONING REQUEST - SAM ROGERS
N OF WEDINGTON, W OF SALEM ROAD

The next item was a rezoning request submitted by Kurt Jones, Northwest Engineers, on behalf of Sam Rogers for property located north of Wedington, west of Salem Road. The property contains 5.20 acres and the request is to rezone the property from R-2, Medium Density Residential, to R-O, Residential-Office.

Recommended Motion:

Staff recommends approval of the requested rezoning subject to access to the entire tract being limited to one curb cut on Highway 16/Wedington Road and one curb cut on Salem Road.

Mr. Jones stated the Highway 16 section was a very long strip of land to be limited to one curb cut (almost 700 feet of frontage). He advised there were specific plans for the corner -- construction of a bank. He pointed out the sale of the corner to the bank would require a lot split and he requested they discuss the curb cut issue at the time the lot split was considered.

Ms. Little explained the concern was the stacking from the stop light at Salem and Wedington. She advised any curb cut on Wedington would need to be clear of that stacking area.

Mr. Jones stated he was not sure where the tract would be split since there were no final designs and again requested the curb cut issue not be decided until the large scale development or lot split stage.

Ms. Little stated the Planning Commission could delay the decision if they so wished.

Ms. Johnson asked if there was any configuration under which the property could develop which would cause staff to change their recommendation to more than one curb cut.

Ms. Little stated that, without seeing every possible configuration, she could not answer the question. She went on to say, however, that the recommendation was a very solid recommendation, noting they needed to protect the traffic flow on Wedington. She advised the chances of changing the staff recommendation were not great.

Ms. Johnson stated that, due to the heavy traffic on Wedington, the fact that the roadway would soon be 4-lane, the proximity to Rupple Road, the difficulties with the by-pass lights, etc., she did not believe they could ever agree to more than one curb cut.

Ms. Little agreed and stated it would be very difficult to envision a scenario where more than one curb cut could be judged as safe.

In response to a question from Mr. Odom, Ms. Little advised she had recently talked with Eric Phillips, State Highway Department, to coordinate the curb cut policy. She stated she had been assured that, while the Highway Department had standards, the city could have more stringent standards than the Highway Department which would be enforced by the Highway Department.

Public Comment:

There was no public comment.

Mr. Odom advised he would be very reluctant to approve the rezoning without the staff recommendations. He added he would listen to a request for a waiver at a later date should they have a configuration that would appear to be safe.

Mr. Ward pointed out the Overlay District ordinance allowed a curb cut every 250 feet.

Mr. Tucker asked if the applicant contemplated any residential uses on the tract.

Mr. Jones stated the area immediately to the north (zoned R-2) would be developed residentially but he did not anticipate any residential development in the R-O area.

Mr. Watkins asked how many acres of the 5.2 would be necessary for the bank.

Mr. Jones stated he believed it would be 1½ to 2 acres. He explained that, once the design began on the bank, he would have a better idea of how much land would be required and they would apply for a lot split.

Ms. Little asked if the bank location had been determined.

Mr. Jones stated the bank was interested in the southeast corner of the property.

Ms. Little stated she believed the decision regarding curb cuts could be better made when they reviewed the lot split request. She suggested waiting until the lot split request was reviewed to make the access decisions.

In response to a question from Mr. Odom, Ms. Little advised the Planning Commission could limit curb cuts at both lot split review and large scale development review.

Mr. Forney stated he supported the staff's recommendation. He advised the applicant he would be willing to listen to a future proposal to amend the recommendation but he believed this was the time to place the limitation on the number of curb cuts. He further stated he did not believe the R-O zoning classification was inconsistent with the land use plan. He noted they might want to review the R-O zoning classification since he did not believe there were any residential developments zoned R-O.

MOTION

Mr. Forney moved to approve RZ98-2.00 subject to staff recommendations.

Ms Hoffman seconded the motion.

The motion carried 6-2-0 with Commissioners Forney, Odom, Hoffman, Ward, Reynolds and Johnson voting "yes" and Commissioners Watkins and Tucker voting "no".

MINUTES OF A MEETING OF THE PLANNING COMMISSION

A regular meeting of the Planning Commission was held March 23, 1998, at 5:30 p.m. in Room 219 of the City Administration Building, 113 W. Mountain Street, Fayetteville, Arkansas.

MEMBERS PRESENT: Phyllis Johnson, Lorel Hoffman, Lee Ward, Gary Tucker, Bob Estes, Robert Reynolds. John Forney, Conrad Odom, John Watkins

STAFF PRESENT: Jim Beavers, Alett Little, Tim Conklin, Dawn Warrick, and Debra Humphrey

ITEMS REVIEWED:	ACTION TAKEN
LS 98-9.00: Lot Split (Sam Rogers)	Approved
AD 98-6.00: Parking Waiver (Joe Fennel)	Approved
AD 98-8.00: Administrative Item (Amendment to Parking Lot Ordinance)	Approved
CU 98-6.00: Conditional Use (Audra Lee)	Approved
RZ 98-6.00: Rezoning (The Dinerstein Companies)	Approved
AD 98-5:00: Administrative Item (Advanced Towing Barbed Wire Fence)	Denied
AD 98-9.00 Administrative Item (Christian Life Church Access Road)	Denied
AD 98-11.00 Administrative Item (Stonebridge Meadows Sign)	No action

APPROVAL OF THE MINUTES

The minutes were approved as distributed.

NOMINATION COMMITTEE:

Mr. Odom appointed the following Nominating Committee: Phyllis Johnson, Lee Ward, and Lorel Hoffman.

* LS98-9.00: LOT SPLIT (SAM ROGERS)
NORTH OF WEDINGTON DRIVE AND WEST OF SALEM ROAD

Submitted by Kurt Jones of Northwest Engineers on behalf of Sam Rogers for property located north of Wedingtn Drive and west of Salem Road. The property is zoned R-2, Medium Density Residential and R-O, Residential Office, and contains approximately 9.97 acres. Request is to create two lots (8.36 acres and 1.61 acres). This is the first lot split request.

Staff Recommendation:

Approval.subject to conditions of approval as noted.

Kurt Jones, of Northwest Engineers, appeared before the commission on behalf of the applicant. He was in agreement with all the conditions of approval except for Items (D and F). According to Mr. Jones the applicant would be required to pay for the road twice.

- Ms. Little stated that Item D could be omitted and the applicant and commission would only deal with Item F.

Mr. Jones inquired about the City and State paying 50% of the costs of the road and the developer would have to pay the other half. Mr. Jones further stated the owner would be willing to pay his fair share, but they have not had the opportunity to review the figures staff had provided, and therefore, could not state they were in agreement on Item F.

There were no public comments.

- Mr. Odom read Option #3 (Delay the assessment until development plans are filed for Tracts A and B and collect the proportionate share at that time). Mr. Odom inquired if this option was more agreeable to the applicant.

Mr. Jones stated this was more agreeable which allowed them additional time to review the figures identified in Item F.

- Ms. Little noted to the commission another project submitted by a bank would be coming before them in a couple of weeks. The question before the commission would be whether the bank, as the developer, would be charged with the assessment fee of paying for the road, or Mr. Rogers, as the owner. The bank would be leasing the property from Mr. Rogers.
- Ms. Little addressed Mr. Forney's concerns regarding the right-of-way, and noted item No. 11 requiring dedication of the ROW. She also stated all parties are aware the property would have one single owner who preferred to maintain control of the location of the curb cut on Tract A rather than Tract B.
- Ms. Johnson inquired if the dedication of the ROW is to go across the entire length of the entire property.
- Ms. Little stated the 40 foot right-of-way right angles to Salem Road goes the entire length of the north boundary of Tract B. It is located wholly on the part of the tract which was zoned R-2 and would be located directly north of proposed Tract B.

There was further discussion concerning the right-of-way and the location of the streets. Ms. Little referred to Plat No. 16, which addressed some of the commission's concerns and questions regarding the location of the right-of-way and right-of-way.

- Mr. Forney noted one of the conditions of approval is maintenance of the east/west connection at the west property line of the parent tract. He further noted the right-of-way from Tract B to the west edge of Tract A, but fixing there will be a connection to the west edge.
- Ms. Little confirmed this was correct, and noted at the Subdivision Committee there was some discussion about connecting the ROW to the west. However, she noted we would not want to fix the location of the ROW further west than the western boundary of Tract B the location. Ms. Little also stated the condition of approval that relates to this concern was 11A which deals with the construction of internal streets.
- Mr. Forney emphasized this project was previously submitted to Subdivision Committee and stated this was a very complex project. He further commented when approving lot splits we need they are truly lot splits and not subdivisions to alleviate future problems.

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MOTION

Mr. Forney made a motion to approve LS 98-9 subject to all conditions of approval in the report, eliminating Item 11D, and include an amendment to Item 11A to use Option 3, but to also include this subdivision would acquire connection to the west edge of Tract A upon development of the tract in the future from Salem Road, and those conditions of approval with the asterisk which constitute a part of this motion.

Mr. Reynolds seconded said motion.

Mr. Forney stated Option #2 was to be included in said motion.

Mr. Tucker inquired about the applicant's concern on Item 11F, and whether the $11,850 was the cost for the complete building, city's but the state's portion.

Mr. Jones stated he had several concerns regarding proportioning of the costs, city vs. the state, and felt the numbers were excessive and requested additional time to review the numbers. He further noted if this fee was assessed to the owner, what kind of payment procedures would city require.

- Mr. Beavers responded to Mr. Tucker's concern about the calculation identified and stated it was not related to the highway widening. It was the traditional assessment of a developer ½ of a standard city street. It had no basis on the highway department plans.
- Mr. Odom inquired if the motion was approved as it stood, would the developer be able to come back later and say this is not a fair number or do we close the door on their option.
- Ms. Little stated the developer would still have the option to come back and say it was not a fair number. However, she noted it would be unusual because the recommended option is just for Tract B. She further responded to the concern about payment options and indicated it could be paid into an escrow fund, and if there are any overages, it would be refunded with interest.

Mr. Jones stated his concern was when you look at the traffic this property would be generating compared to the traffic on Wedington, you would find the increase in traffic volume would be insignificant. and the cost therefore, would be very minor. He also stated this property would already limited to one curb cut, and would not get the benefit of the entire length of the highway. Therefore, he would like to request some additional time to review the number calculations and defer the assessment of this until the other developer came through.

- Ms. Johnson stated there would be no reason to delay due to the benefit the developer would be getting. Therefore, she stated that the commission vote on the motion as presented.

The motion carried with a vote of 8-1-0. Mr. Watkins voted nay.

*** RZ99-16: REZONING**
MID-SOUTHERN ENTERPRISES, INC., PP401
(Also see RZ99-17: Mid-Southern Enterprises, Inc., pp401)

This item was submitted by Marshall Carlisle on behalf of Mid-Southern for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-O, Residential Office, and contains approximately 5.2 acres. The request is to rezone the property to C-2, Thoroughfare Commercial.

Marshall Carlisle, Kurt Jones, and Sam Rogers were present on behalf of the project.

Staff recommended denial of the requested rezoning from R-O to C-2.

Commission Discussion

Johnson: RZ99-16 and RZ99-17 are companion items. I would like to discuss these 2 items together but they will require separate motions and votes. Our vote on rezonings are merely recommendations to the City Council. The staff has different recommendations on both rezonings. This is at the intersection of the northwest corner of Wedington Drive and Salem Road. There is already a bank in place at the intersection.

Conklin: That is correct.

Johnson: This is the "L" shaped property just behind the bank.

Conklin: The property the banks sits on also is being petitioned to be rezoned to C-2 and that include Arkansas National Bank. If you'll refer to page 6.25, the C-2 zoning request fronts Wedington Drive and Salem. Arkansas National Bank is currently on that corner. They are requesting that rezoning from R-O to C-2. The 4.77 acres in RZ99-17 is R-2 and they are requesting R-O. Staff is recommending approval of the change from the R-2 to Residential Office. Staff is recommending denial of the R-O to the C-2 zoning which is RZ99-16. Staff recommends denial because it is inconsistent with out future land use plan. It shows this area as residential. Immediately to the east there is property zoned C-2. In 1989, they discussed whether or not to rezone both sides of Salem Road to C-2. At that time, it was determined to only rezone the east side of Salem Road to C-2. The C-2 request was brought before us in November of 1997. At that time, the Planning Commission denied the rezoning request to C-2. They did approve the R-O rezoning and in January, 1998, the City Council did rezone it to R-O. Since then, Arkansas National Bank has been built on that corner.

Johnson: Mr. Carlisle, I see that you are hear for the applicant. Do you have additional information for us?

Carlisle: I would like to make a couple of comments. Sam Rogers is here and he is the developer. Kurt Jones, the engineer, is also here. Let's hit things directly instead of juggling around. I went back and read the minutes of the '89 Commission meeting. In those minutes, I found that a Commissioner named Hanna, who said that we either need rezone it commercial now or we'll do it later. I think that is exactly where we are. If you drive down Highway 16, go over the overpass of the bypass and look to your right and your left, there is no way in this world that you can see residential development along this strip of a 5 lane highway. We either do it now or do it later. It appears to me that Highway 16 is exactly the same thing that happened to Highway 62 and it couldn't be better. One of the problems is the jam up of traffic at the intersection of Salem Road. Everybody is trying to get out of there and drive a 1,000 miles to get whatever it is they are looking for because it has not been developed commercially. Soon or later Highway 16 is going to be developed commercially. The other side is zoned C-2 and nobody has done anything with it. Let me tell you something, if Sam Rogers is granted the C-2 rezoning, you can bet your bottom dollar, you're going to see it developed and it won't be very long. He has done this all his life. He has developed residential and commercial properties for over 40 years. I don't understand why the staff approved the R-O to the back of the property and denied the C-2 to the highway front. It appears to me and Mr. Jones, that is the way this property ought to be developed. If you have any questions, we'll try to answer them.

Public Comment

None

Further Discussion

Johnson: Looking at the General Plan 2020, I see that the dividing line for the proposed connection is north of Wedington and east of Salem and then there is no commercial no that plan which of course is a general plan. Exactly why that is that way, I don't know. This is residential and office type uses; single family and two family dwellings, office, studios; professional offices. Then by conditional use appeal to us, multi-family dwellings, eating places under the R-O designation. C-2 is one of the highest level of commercial although it is not as high as perhaps the downtown area.

Hoffman: Did you all discuss the C-1 designation for this site instead of C-2?

Conklin: I have not had any discussion with the applicant for C-1 designation.

Hoffman: And is the primary difference between C-1 and C-2 is what?

Conklin: Mobile homes sales, hotels, motels, liquor store, auto sales, pool hall, go cart track, adult entertainment and conditional use for sexually oriented businesses.

Hoffman: C-1 would cover all the other general commercial -- grocery store, convenience store --

Conklin: Gasoline station.

Johnson: The applicant, of course, is aware of the zoning regulations and I presume doesn't have an interest in C-1 or would have expressed that.

Hoffman: C-2 does carry some connotations this neighborhood may not be ready for or are even needed. C-1 would get us to the type of neighborhood commercial enterprises that the applicant was speaking of. With that in mind, I would lean more toward C-1 than C-2.

Johnson: What we have before us is the request for C-2. Unless we hear different from the applicant then that is what we must limit ourselves to.

Jones: The list that Tim read was actually items that are allowed in C-2 but not allowed in C-1.

Conklin: That's correct.

Johnson: Let me read to you the items allowed in C-1: city wide uses by right; offices, studios, and related services; eating places; neighborhood shopping; gasoline service stations; and drive in restaurants; and professional offices.

Carlisle: And that's C-1.

Jones: I think the main reason that we are asking for C-2 on this property is not that Mr. Rogers is interested in any of those items that are allowable in C-2 but not allowable in C-1 but the density of the development. What is allowable in C-2 -- setbacks and areas on the site -- versus the C-1 development. That is why we are asking for C-2 instead of the C-1 at this point. Obviously we would prefer C-1 over R-O because of the type development that Mr. Rogers is looking at for this property but we feel like C-2 is what is needed based on the size and configuration of this property and some of the other restrictions that have already been proposed on this property due to previous lot splits and rezonings. We don't feel like it can be developed to it's full potential as a C-1 property versus a C-2.

Johnson: The building area on a C-2 lot shall not exceed 60% of the total area of the lot and C-1 lot shall not exceed 40%.

Conklin: That is correct.

Jones: There are also some setback, I believe -- in C-2 there is no side setback for building requirements and in C-1 there are some side setbacks.

Conklin: They're actually the same. The difference is under C-1 from side property line when contiguous to a residential district it is 10 feet and in C-1 it's 15 feet. So you have a 5 foot additional setback in C-2.

Jones: If it's adjacent to R-zones.

Conklin: You have more setback in C-2.

Hoffman: My thoughts on it -- I don't know if I can suggest an alternate zoning -- it is true that we have a lot of C-2 zoning that is still vacant in the city and in this area. C-1 does meet the neighborhood's needs than a highly dense kind of regional, if you will, zoning. There was also in these minutes of the '89 meeting, Alderman Hanna, or whatever he was called back then also mentioned that there might be a mall coming in your area. Obviously that hasn't happened. It's gone more toward subdivision use and we will need the supporting commercial development but not the intensive regional commercial development. I don't see that happening on that road. I will not support C-2 zoning. I would support C-1 and I'm not sure about the mechanics of bring forward an alternate motion like that. That is not up to us.

Johnson: I don't believe it would be appropriate. That is my opinion and others may disagree. I think is like somebody petitioning for a divorce and being told they could have an adoption.

MOTION

Mr. Marr made a motion to deny RZ99-16.

Mr. Odom seconded the motion.

Further Discussion

Shackelford: If we decline this request, what is their limitation as far as coming back with the request if they want to pursue the C-1 zoning.

Johnson: How do our actions affect the applicant as he goes forward to the Council. Do they limit him in going forward to the Council.

Conklin: They would have to appeal the Planning Commission's decision if you deny this rezoning request.

Johnson: And as a practical matter, how is that different from the fact that they have to go forward even if we recommend approval.

Conklin: They have to provide a letter in writing stating why they feel the Planning Commission is in error to the City Clerk and it's within a certain number of days and then that gets placed on the Council agenda.

Johnson: It's my opinion that if we deny the C-2 and if the applicant wished to come back with C-1, he could do it immediately.

Conklin: That is correct.

Shackelford: Would they come to this board or would that be part of their appeal to City Council? Could they change that between here and City Council?

Conklin: No. If they want to ask for a different type of zone on this piece of property, we would have them come back to Planning Commission. If they appeal your decision, then the City Council would make the decision on what zone is proper for this tract of land.

Hoffman: They could go forward with C-1, if they wished?

Conklin: If the Council wanted to pass an ordinance, they could do that without coming back to the Planning Commission.

Marr: I would be in support of C-1 zoning. I feel that meets the needs of the neighborhood and I think it was a good argument you brought up about the need for commercial businesses there that might cut down on some traffic elsewhere. I don't think that C-2 is necessary to accomplish that.

Carlisle: It's a little difficult to make any kind of a major decision over here sitting in the pews. I have been asked by Mr. Rogers to ask you if we could table our application at this time so that we would have the opportunity to discuss and maybe come back to you with a C-1 application.

Johnson: We have a motion on the floor. It seems to me for purposes of economy of time of the Commission and perhaps the applicant that it might be just as well to allow that unless there objection from any Commissioners. Is there objection to allowing the applicant to withdraw his request at this time even though we have a motion. In other words, I think we could move ahead and vote on the motion but my sentiment is to allow it to be withdraw for them to go back and consider the C-1 option. Seeing no objection, that will be allowed. What about your next rezoning that you have before us, 99-17. Would you hold that aside, too, or do you want us to go forward with that?

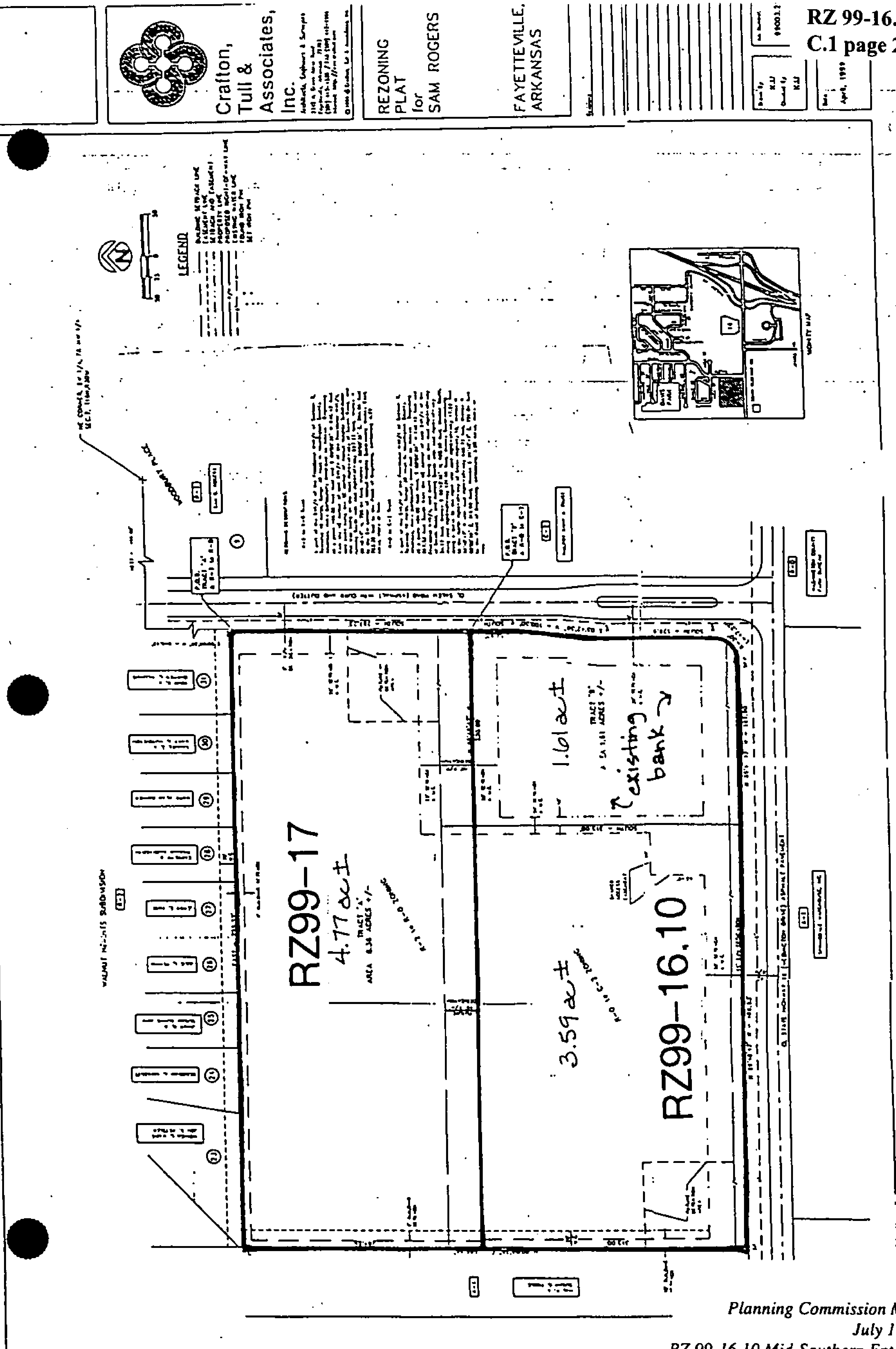
Carlisle: I'd like to get it out of the way if we could.

RZ 99-16.10
C.1 page 28

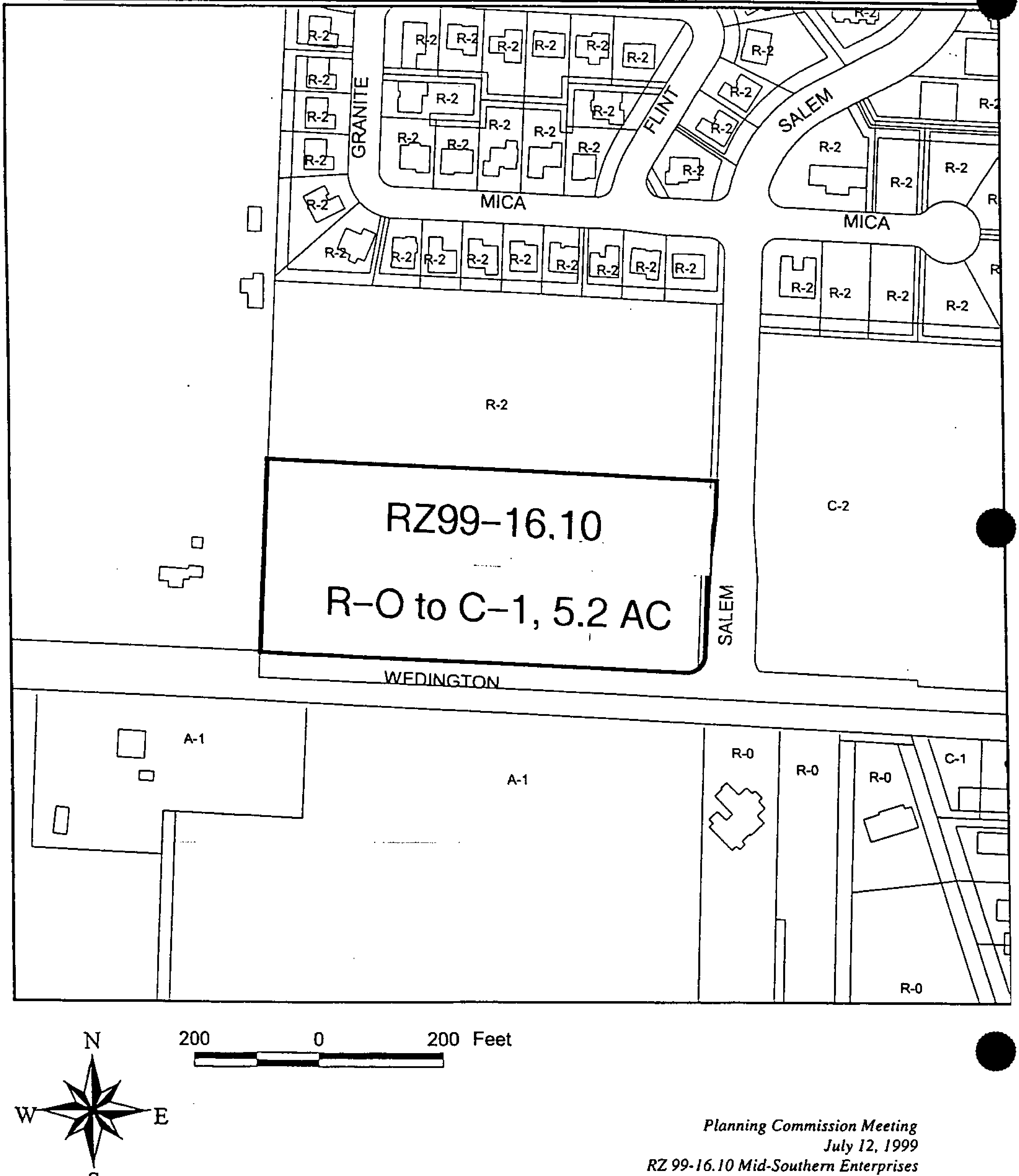
DESCRIBE PROPOSED PROJECT IN DETAIL

This property consists of 5.2 acres on Highway 16 West (Wedington Drive) with approximately 700 feet frontage. A part of this tract was involved in a lot split approved in March, 1998. A tract consisting of 1.61 acres is now occupied under a ground lease by a bank building owned by Arkansas National Bank.

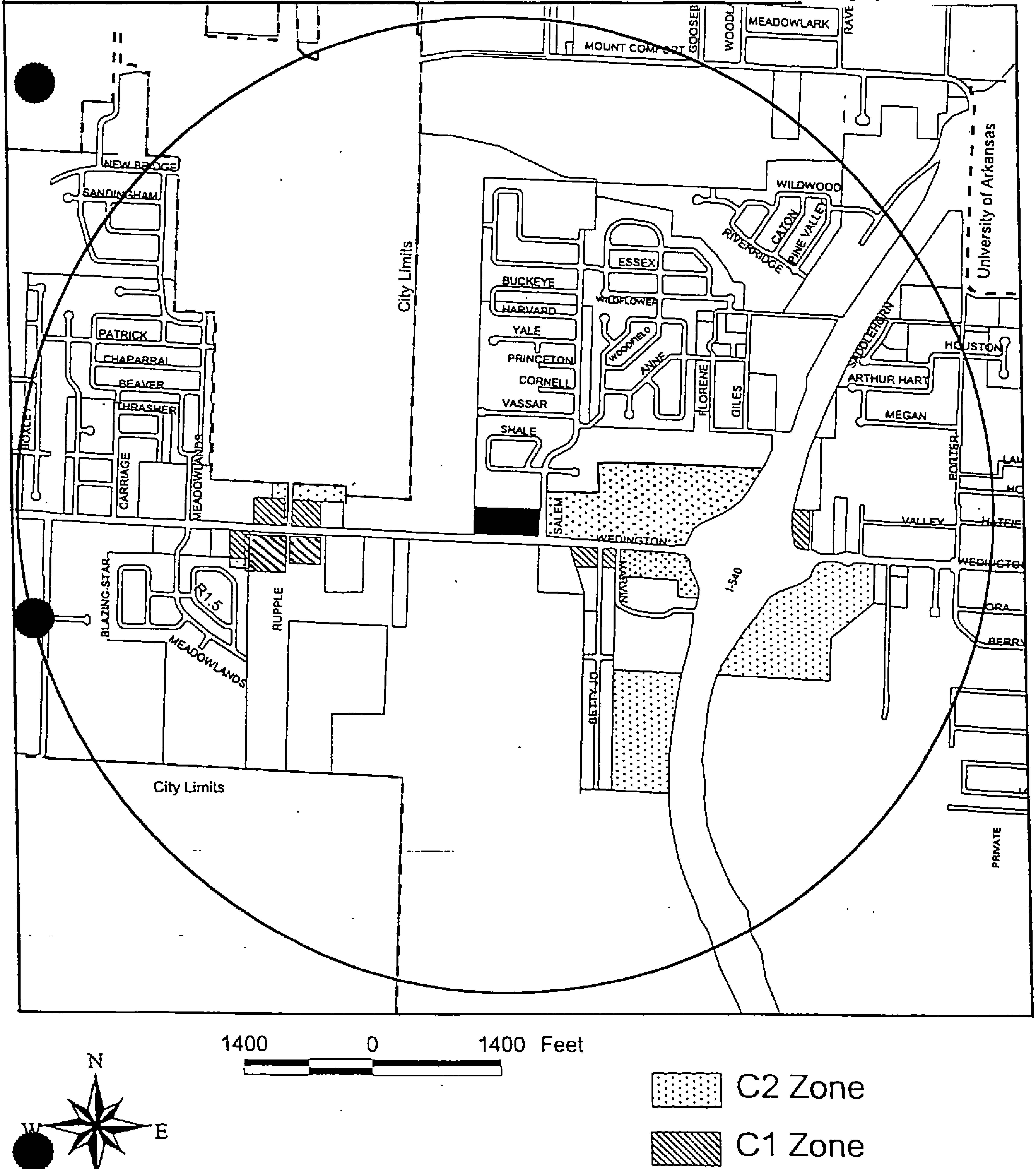
C-1 zoning will give to the owner/developer the flexibility of development which will best take advantage of the widened highway and the access provided by the improved traffic flow. Development of use providing conveniences for neighborhood shopping and personal services for residents in the surrounding area will be the key. The petitioner is an experienced developer, having been in the business in Northwest Arkansas for many, many years.


Crafton, Tull & Associates, Inc.
REZONING PLAT for SAM ROGERS
FAYETTEVILLE, ARKANSAS
LEGEND
RZ99-17
4.77 ac ±
1.61 ac ±
existing bank
3.59 ac ±
RZ99-16.10

RZ99-16.1 - Mid Southern Enterprises, Inc - Close Up



RZ99-16.1 - Mid Southern Enterprises, Inc - One Mil



RZ99-16.1: REZONING
MID-SOUTHERN ENTERPRISES, INC., PP401

This item was submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-O, Residential Office, and contains approximately 5.2 acres. The request is to rezone the property to C-1, Neighborhood Commercial.

Marshall Carlisle was present on behalf of the request.

Staff recommended denial of the requested rezoning.

Commission Discussion

Johnson: This property was before us a few weeks ago. At that time, a rezoning request to change this to C-2 was before us but after discussion with the Commission, the applicant withdrew that and now has come back with a request to rezone to C-1. The staff has recommended denial based on the finding included as a part of this report which I think primarily zeros in on the fact that on the 2020 Plan, this particular plot does not show commercial but is shown as residential properties. Tim, did you have additional information or explanation that you want to make from the -- I would call to your attention, Commissioners, in our packet on 4.3, staff has done a good job there of showing us the differences between what's allowed in C-2 and C-1, so you can take a look and see what this applicant would be allowed to do.

Conklin: Staff does recommend denial for the C-1 zoning as inconsistent with the Land Use Plan that was adopted in 1995. We did support residential office zoning and that zoning was approved in January of '98. Since then, Arkansas National Bank has been developed on the northwest corner of Salem and Wedington Road. There is additional land that is vacant that could be developed under R-O zoning and staff feels that R-O zoning would be the most appropriate zoning at this time.

Johnson: If you would tell us who you are and tell us what you have to say, Mr. Carlisle.

Carlisle: I am Marshall Lynn Carlisle, attorney at law, Fayetteville, Arkansas. I represent the applicant who actually is Mr. Sam Rogers, who is present. The engineering is being done by Kurt Jones and Kurt, unfortunately, is out of town but Chris Parton is here on behalf of Crafton and Tull and hopefully, he'll be able to answer any questions you all might have. I think everyone was here a couple of weeks ago except Mr. Estes when this matter was brought before you and there was some discussion about the various differences for development. I think I tried to point out, in our view and I think the view of any person who is reasonably intelligent, who drives out this highway and looks around and sees that this tract of land will never be developed residentially. It is going to be put to some commercial use and Mr. Rogers stands ready now to do that, if we can get the cooperation of the City of Fayetteville. I agree with Madam Chairman that the comparison that the staff has done on the packet that has been distributed clearly points out the differences from what we originally asked for and what we now ask for and I can say unequivocally that those things that are not permitted under C-1 and would be permitted under C-2 do not give us any problem. Mr. Rogers is ready to develop the property under the permitted uses as shown under C-1 zoning. I don't think it is necessary for me to repeat my comments that I made at the last meeting concerning the widening of the highway. That's one thing that you all are much more informed about than I am but if we can help with your deliberation by answering questions, I'm here, Mr. Rogers is here, and Mr. Parton is here. With that, I will stop my comments.

Johnson: Thanks. Looking at the R-O permitted uses, the uses that I see that are allowed in the C-1 wouldn't be allowed in R-O -- Tim, look over my shoulder on this -- I believe that C-1 would allow additionally, eating places, neighborhood shopping, service stations, drive in restaurants.

Conklin: That is correct. Restaurants are allowed as a conditional use in R-O. So, there is a possibility that under the current zoning, they could bring forward a conditional use for a restaurant on this property at this time.

Johnson: So instead of an eating place that would be allowed under R-O, you would have to come before us for a restaurant under a conditional use. That leaves neighborhood shopping to go in under C-1 and service stations and drive in restaurants, neither of which is allowable under R-O.

Conklin: That is correct.

Johnson: Other questions of staff or the applicant?

Hoover: In C-1, you cannot exceed 40% of building area on the lot. In R-O, what is the maximum?

Conklin: 60%.

Johnson: So this would be less dense in terms of building on the site.

Carlisle: Substantially, that is the difference.

Johnson: The footprint.

Conklin: That is correct.

Carlisle: And also the C-2 as I understand.

Public Comment

None

MOTION

Marr: I would like to make a motion that we approve RZ99-16.1.

Estes: Madam Chair, I second that.

Johnson: We have the motion by Commissioner Marr, seconded by Commissioner Estes that we approve the rezoning 99-16.1. Of course, our action is a recommendation, if it passes, to go forward to the City Council who has final authority in this matter. Is there discussion of the motion to approve the requested rezoning?

Further Discussion

Estes: Just briefly, having seconded the motion, I will, of course, vote for the motion. The reason is that it is true that our General Plan 2020 provides that this area is residential but as we all know a plan is just that. It is a projection and is not something that is set in stone. As a person drives through this area and looks at how it is developed to the south, common sense would tell us that this is not going to be a residential area. This is going to be commercial area and with the permitted uses under C-1, I believe, are very compatible with the area that is developing.

Bunch: I have a question for staff. Are there any other commercial developments to the east that are in process? I know there is considerable amount of land to the east that is zoned commercial.

Conklin: That is correct. Directly across the streets, we have a large scale development for McIlroy Plaza that currently is under development. East of that, there is vacant C-2 property and east of that property would be Wedington Place Subdivision which is currently undeveloped but the final plat has been approved. We looked at Bank of Fayetteville on one of those lots and we've had discussions with other developers in the community about developing additional land in that subdivision. East of the bypass, what's known as the Marinoni Farm, there is acreage right up front along Wedington Drive and Shiloh that is currently being considered for a development.

Johnson: This rezoning does include the existing bank which is located on 1.61 acres, correct?

Carlisle: Yes.

Odom: I'll be voting against the motion. The reason for this is that the general land use plan does not support this rezoning and while I agree with Mr. Estes, simply the plan not set in stone, in my opinion, in only the most compelling circumstances should you not follow that plan and in my opinion, a compelling reason has not been presented for us to stray from the plan. Secondly, we have an action that is a change from what we have done recently and that should be done by the City Council and not us. Lastly, I think there is plenty of commercial C-1/C-2 zoning that are currently being developed in this area. Therefore, I will be voting against this motion.

Johnson: I will be voting in favor of the motion for 2 reasons. One is that at our meeting as recent as last month, I don't think all of us did comment upon the suggestion that one of the Commissioners made that this applicant reconsider and go back to the drawing board and trash the C-2 request and come back with C-1. That was the only suggestion that was voiced. It seem to me that although, certainly, we are not bound by talk and we didn't tell the applicant what to do that the applicant might reasonably have felt from all the discussion he heard that if he changed that and came back quickly with a C-1 request that it would be favorably treated and secondly that the City Council will make the final decision about this and we should not usurp their authority. For those reasons, I will be voting in favor of the motion.

Bunch: In view of the other piece of property adjoining this, it has been rezoned also, now we have a substantial piece that is R-O and with considerable amount of undeveloped commercial property next to it, I think this would be a good transition into the neighborhood and would caution to allow the chance to develop the whole 10 acres as R-O since that is a recent rezoning. We should deny C-1 at this time to give the neighborhood and the area room to grow and see what the requirements are since this is a long range plan.

Roll Call

Upon roll call the motion carried on a vote of 5-3-0. Commissioner Bunch, Commissioner Hoover, and Commissioner Odom voted against the motion.

Johnson: The motion passed with a vote of 5-3. It goes to the City Council.

RZ 99-17
C.2 page 1

RECEIVED
JUL 29 1999
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

STAFF REVIEW FORM

_X_ Agenda Request
___ Contract Review
___ Grant Review

For the Fayetteville City Council meeting of August 17, 1999.

FROM:

Tim Conklin	Planning	Public Works
Name	Division	Department

ACTION REQUESTED: To approve an ordinance for rezoning request RZ99-17 submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-2, Medium Density Residential, and contains approximately 4.77 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 7-29-99	ADA Coordinator	Date
City Attorney	Date	Internal Auditor	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended approval and the Planning Commission approved the rezoning with a vote of 8-0-0.

Division Head	7-27-99 Date
Department Director	7-29-99 Date
Administrative Services Director	29 JUL 99 Date
Mayor	7/29/99 Date

Cross Reference

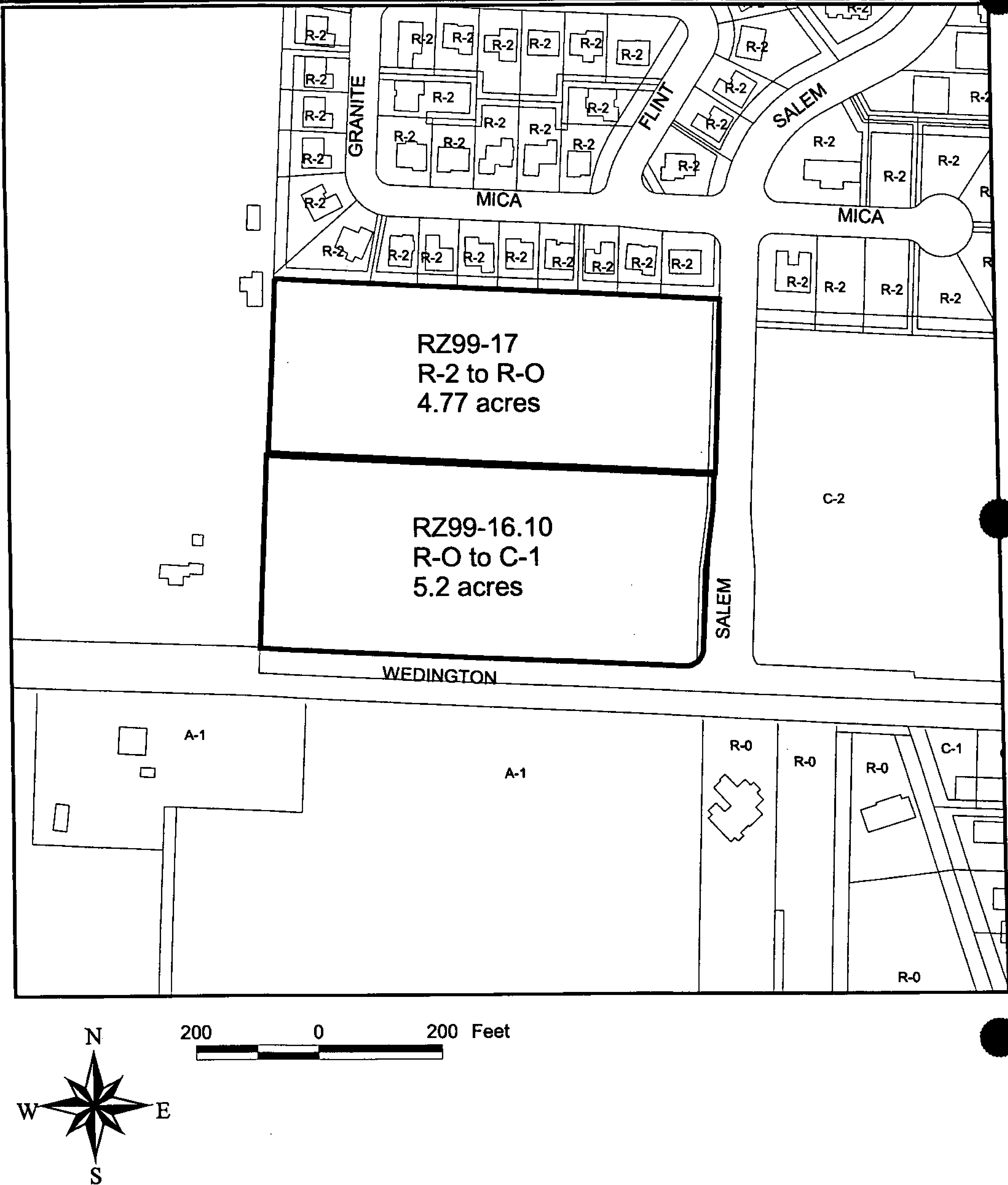
New Item: **Yes** **No**

Prev Ord/Res#: ________

Orig Contract Date: ______

RZ 99-17
C.2 page 2

RZ99-16,17 - Mid Southern Enterprises, Inc - Close Up



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: June 28, 1999

RZ 99-16.00: Rezoning (Mid-Southern Enterprises, Inc., pp 401) was submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-O, Residential Office, and contains approximately 5.2 acres. The request is to rezone the property to C-2, Thoroughfare Commercial.

RZ 99-17.00: Rezoning (Mid-Southern Enterprises, Inc., pp 401) was submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-2, Medium Density Residential, and contains approximately 4.77 acres. The request is to rezone the property to R-O, Residential Office.

RECOMMENDED MOTION:

Staff recommends denial of the requested rezoning from R-O to C-2 based on the findings included as part of this report. Staff recommends approval of the requested rezoning from R-2 to R-O based on the findings included as part of this report with the provision that all conditions of approval given in LS98-9 are completed to the satisfaction of the Planning Commission.

PLANNING COMMISSION ACTION: YES Required
_____ Approved _____ Denied

Date: June 28, 1999

Comments:

____

____

CITY COUNCIL ACTION: YES Required
_____ Approved _____ Denied

Date: / /

BACKGROUND :

A past request to rezone this property to C-2 was denied by the Planning Commission on November 27, 1989. This petition included this property on the west side of Salem Road as well as property east of Salem Road. At that time, the Planning Commission recommended and the City Council approved the rezoning of the property on the east side of Salem Road to C-2. The subject property on the west side of Salem Road was not rezoned at this time (see attached minutes for November 27, 1989 Rezoning Petition #R89-32 for Bob Davis and City Council minutes.)

The applicant then brought forward a modified request on November 24, 1997. The request proposed rezoning 5.45 acres to C-2 and 3.34 acres to R-O. Staff recommended denial of the requested rezoning as inconsistent with General Plan 2020 and not justified or needed at the time. It was noted that an abundance of vacant C-2 property was in existence to the east (see attached minutes for November 24, 1997 RZ97-21.00 for Mid-Southern Interprises.)

The applicant later brought forward a request to rezone 5.20 acres of the subject property to R-O. This request was recommended by the Planning Commission and approved by the City Council (see attached Planning Commission minutes for January 12, 1998 RZ98-2.00 for Sam Rogers and City Council minutes.)

A lot split was granted on March 23, 1998 to create a 1.6 acre lot and an 8.36 acre lot. Eleven conditions of approval were given subject to approval (See attached minutes for March 23, 1998 LS98-9 for Sam Rogers.) A bank was built on the 1.6 acre lot at the intersection of Salem and Wedington Drive.

The applicant is now requesting that the back 4.77 acres of the 8.36 acre tract presently zoned R-2, be rezoned to R-O. The applicant is also requesting that the front 5.2 acres (including the 1.6 acre tract with an existing bank) which is zoned R-O, be rezoned C-2. There is still vacant C-2 property to the east. Wedington Place is still being developed.

ADJACENT LAND USE AND ZONING:

North: Single family, R-2

South: Sports park, A-1

East: A bank and undeveloped land, C-2

West: Single family and undeveloped land, A-1

INFRASTRUCTURE:

Streets: The site is adjacent to Highway 16 West (Wedington Drive) which is classified as a Principal Arterial with 110' of R.O.W. Highway 16 West is in the process of being widened to five lanes. Salem Road to the east is classified as a Collector with 70' of R.O.W.

Water: There is an 8" waterline along Highway 16 West and Salem Road.

Sewer: There is an 8" sewer line to the north along Mica Street and on Salem Road.

LAND USE PLAN:

The General Plan 2020 shows this area as Residential. The area to the east of Salem Road is designated as Community Commercial.

§161.14 DISTRICT C-2 THOROUGH-FARE COMMERCIAL.

A. **Purpose.** The Thoroughfare Commercial District is designed especially to encourage the functional grouping of these commercial enterprises catering primarily to highway travelers.

B. Uses.

1. **Permitted Uses.**

Unit 1	City-Wide Uses by Right
Unit 4	Cultural and Recreational Facilities
Unit 12	Offices, Studios and Related Services
Unit 13	Eating Places
Unit 14	Hotel, Motel and Amusement Facilities
Unit 15	Neighborhood Shopping Goods
Unit 16'	Shopping Goods
Unit 17	Trades and Services

Unit 18	Gasoline Service Stations and Drive-In Restaurants
Unit 19	Commercial Recreation
Unit 20	Commercial Recreation, Large Sites
Unit 24	Outdoor Advertising
Unit 33	Adult Live Entertainment Club or Bar

2. Uses Permissible on Appeal to the Planning Commission.

Unit 2	City-Wide Uses by Conditional Use Permit
Unit 3	Public Protection and Utility Facilities
Unit 21	Warehousing and Wholesale
Unit 28	Center for Collecting Recyclable Materials
Unit 32	Sexually Oriented Business

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 C-2 (Thoroughfare Commercial) is not 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 of C-2 is not justified and needed at this time because there is adequate commercial property adjacent to and east of this site which is currently undeveloped.**

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: **The proposed zoning would create or 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 not undesirably increase the population density and would not undesirably increase the load on public services including schools, 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**

DESCRIBE PROPOSED PROJECT IN DETAIL

This property consists of 5.2 acres fronting on Highway 16 West (Wedington Drive) for approximately 700 feet frontage. A portion of this tract was involved in a lot split approved in March, 1998. A tract consisting of 1.61 acres is now occupied by a bank building owned by Arkansas National Bank. C-2 zoning provides the only logical development of the property in light of the widening of Wedington Drive in this area. The property will be developed by the owner.

DESCRIBE PROPOSED PROJECT IN DETAIL

This tract consists of 4.77 acres presently zoned R-2. The request is to rezone the property to R-0. This zoning will allow the owner/developer the flexibility of neighborhood shopping, offices, financial services and multi-family residential use. It will also provide a buffer area between the commercial highway frontage and Walnut Heights, a residential subdivision.

Directors and asked Mr. Cummings if he would like to speak again as requested. Mr. Cummings stated the matters that he needs to discuss are probably matters that should be somewhere other than this, in litigation. It certainly doesn't involve the Planning Commission. He added that he thinks there is a little problem with the sewer that they should try to get straightened out and he would be more than happy to work with the City to do that. He commented that it has been brought to his attention sufficient times and they need to have an understanding regarding the sewer line that runs across this property. He noted that he would ask that the committee would allow him or get authorization for him to visit with whomever they feel is the correct management person about that. Chairman Jacks advised that he should probably discuss this with the City Engineer who should be available at just about any time.

PUBLIC HEARING - REZONING PETITION #R89-32
BOB DAVIS - N OF HWY 16 W, E & W OF SALEM ROAD

The fourth item on the agenda was a rezoning petition #R89-32 submitted by Bob Davis and represented by Dave Jorgensen of Jorgensen Engineers for property located north of Highway 16 West on the east and west sides of Salem Road containing 16.84 acres more or less. Request was to rezone from R-2, Medium Density Residential to C-2, Thoroughfare Commercial.

John Merrell, Planning Management Director, stated that he doesn't have a lot to add to the written staff report that was furnished in the agenda packet. He advised that the staff has taken the position that they can not support the rezoning requested based on the surrounding land use and surrounding zoning and what they view as the growth trends in that area. He added that should it be the inclination of the Planning Commission to favor a rezoning in this area, the staff feels that the various alternatives of R-O, Residential-Office, might fit the best and might represent some form of a buffer zone. He commented that he has spoken to Bob Davis a couple of times about this petition and Mr. Davis has certain information that he would like to present to the Commission. Staff basically sees the issue here as where should the commercial development occur on Wedington Drive and where should they draw the line from residential to commercial. The point the staff is trying to imply is if this rezoning is granted to C-2, it might be pretty difficult to refuse to grant later rezonings to the west of this location. Although, the staff realizes that the petitioner would like to have more options available to him and C-2 certainly allows for more than R-O.

Commissioner Hanna stated that when they had the workshop with Al Raby on the new General Plan, Mr. Raby proposed a mall in this area. He noted that Mr. Raby didn't pick the site out, but he assumes that Mr. Raby was considering the location to be across the street from this property and slightly to the West. Judging from what he has seen in other areas with a mall, he has a hard time envisioning how they could fail to have rezoning requests to commercial for a lot of property around the mall area. For example, there is a lot of commercial across the highway and to the south of the Northwest Arkansas Mall. He asked Mr. Merrell if he had taken this into consideration when he made this recommendation. Mr. Merrell stated that he remembers that at one of the workshops with Mr. Raby, someone disagreed with the amount of proposed future commercial land use that was shown in this area and he feels the same way. He noted, however, that Mr. Hanna's point is well taken because if the final version does show that much commercial in the area then the whole stretch of Hwy 16 West between the Bypass and Rupple Road and maybe farther West would clearly be an emerging commercial area. It depends on what the City decides on as far as the Land Use Plan. He noted that he personally feels that Mr. Raby went a little overboard with commercial in that area.

The public hearing was opened.

Dave Jorgensen, representative, handed out to the Commissioners some color-coded zoning maps to show the surrounding zoning. He noted that he had submitted a letter of transmittal for this request that is attached to the agenda. It states that 1) the property has about 1,222 feet of length along Highway 16 and is about 600' deep with R-1 bordering on the west, R-2 on the east and R-O & C-1 on the south. 2) Present Land Use: The existing property is vacant except for Salem Road which runs though the center of the property in a north-south direction. Salem Road was presumably intended to tie Highway 16 to Mount Comfort Road to the North. There are several businesses to the South and the property to the North (Walnut Grove Addition) has quite a bit of R-2 and R-1 property. 3) Water & sewer are in place on a portion of it and is readily available. 4) Fire Protection would be present with suitable fire hydrant installations. 5) Highway 16 is considered a principal arterial and Salem Road has a 60' right-of-way. The intention is to tie Highway 16 to Mt. Comfort Road to the North. He explained that in general, they believe there is a public need for additional commercial property in this area. There are presently 73 acres of single-family or multi-family housing to the North with another 34 acres to the South of R-2 property. There is only about 2 1/2 acres of land zoned C-2 that can be purchased west of the Bypass. He commented that he has been told that it is very wise to allocate commercial property on an arterial street for various reasons with a reasonable depth and width as opposed to striping with 100' to 200' strips of commercial from one year to the next. He noted that they feel that this development would enhance the surrounding property and with the high concentration of R-2 property, more commercial property is necessary in this area to provide service to the surrounding area.

Mr. Jorgensen stated that when Mr. Davis came in and talked with him about this particular rezoning request, he tried to keep an open mind about it. He commented that this really isn't a frivolous request. He noted that the 71 Bypass will be Interstate 171 one of these days and probably in the near future. Sooner or later, there will have to be something commercialized out there.

Mr. Jorgensen read from the proposed General Plan 2010 that was put out by Al Raby's group which states that "primarily the western side of Fayetteville beyond the bypass remains undecided. With the opening of Interstate 171, the western area will be the primary target for new growth. Given the established land use plan and growing economic trends, there is likely to diversify that will include a demand for major new commercial areas, industry, middle income housing and transportation facilities." He advised that all of this does not apply totally, completely because this is not the final version of the proposed plan. Mr. Jorgensen noted that concerning the mall mentioned by Mr. Hanna, this report states that "a secondary commercial mall of 100 thousand square feet is projected for the southwest quadrant of the interchange." Mr. Jorgensen stated that it might be hard to squeeze in a mall in the southwest quadrant. He advised that it would be impossible to put a mall in there without having some support commercialized area in the vicinity of the surrounding area. He read the following statement from the proposed General Plan: "The mall should be of mixed use character and is proposed as an alternative to the emerging strip commercial along Highway 16." Mr. Jorgensen noted that the staff's recommendation states that the Commission does have the option of recommending to the Board of Directors a more restrictive zoning such as R-3, R-O or C-1. It states that none of these options are recommended by the staff in that they feel that the R-2 is a viable zoning designation for the property. He added that he finds this tremendously hard to believe. R-2 or R-3 is not the most desirable zoning for this location especially when you consider the fact that there is a tremendous amount of multi-family/single-family to the north and to the south. The Planning Commission will sooner or later have to make the decision as to where they want the commercialization in this area because it will eventually happen. He noted that the major intersection there has C-2 on the northwest and a little bit to the southwest and this particular property begins about 1100' from the ramp. He advised that after talking with the staff, etc., they have decided that it would be wiser to request a C-2 possibly on the east side of Salem Road and very possibly a C-1 or C-1 & R-O combination on the west side of Salem Road. In addition to that, they have R-2 just to the north of this and Mr. Davis has mentioned that he would like to possibly have a strip of property in between this commercialized property and the R-2 property for a greenspace (possibly 15' wide) as a barrier between the two. Mr. Jorgensen commented that as an engineer, he sees another reason for making this particular property commercial as opposed to the commercial to the north and to the south to keep the heavy traffic on the State Highway system as opposed to going through the residential property which is on a city street to hold down any heavy traffic on the main drag. The average daily traffic count is 5600 as of last year.

Mr. Jorgensen advised that some of the possible uses that the owners have mentioned such as a financial institution or a Wendy's restaurant would fit into C-1 as well as C-2.

Bob Davis stated that he is representing the Bryce Davis Estate and it has been mentioned in the newspaper articles in the past year that the city was going to move to the West so it is time for to plan in that direction. He noted that the Bryce Davis family has never built anything that the City could not be proud of. They feel that this property is a major portion of the intersection since their property is less than 2/10ths of a mile from the highway.

Chairman Jacks asked if anyone else wanted to speak to this petition. There being no response, the public hearing was closed.

Commissioner Hanna stated that he thinks it is just a matter of time before this area is developed in commercial.

MOTION

Commissioner Hanna moved to recommend approval of the rezoning as requested, seconded by Seiff and followed by discussion.

Commissioner Klingaman asked when Highway 16 is going to be made into a four-lane highway and has there been adequate right-of-way dedications so that it can be four-laned. He stated that he is concerned that the accesses to this should be controlled more than Highway 71 which has driveways about every 100'.

Mr. Jorgensen stated that the access would be covered in a large scale development plan and as far as the right-of-way goes, he assumes that there has probably been adequate right-of-way purchased for future expansion.

Don Bunn, City Engineer, stated that this would be dealt with at the large scale development stage and he doesn't know when the highway would be widened.

Jerry Allred commented that since growth is going to be in that direction, if they don't do some sort of alternative commercial zoning, there will be a bigger impact put on College Avenue. As that area grows and develops and the traffic increases, the residents would have to come to College Avenue in order to reach the support services. He noted that he is in favor of the rezoning petition due to future growth out in that direction.

Chairman Jacks stated that what Mr. Allred is challenging here is the long standing principles which have guided the Planning Commission's judgments of these things to do with commercial nodes at one mile intervals in lieu of strip commercial property. He added that he sees this as challenging that principle and the most zoning change that he would vote for would be to change part of that property on the east side to R-O and no zoning at all on the west piece. He added that he doesn't believe that they can break out of the pattern they have set there which has pretty well established the principle with C-1 properties to the west with appropriate intervals. He noted that Mr. Raby has pointed out to them that this area is a very important part coming into town and they will be beseeched with pressures for commercialization out this direction.

Commissioner Hanna stated that he heard exactly the same comments and objections six or seven years to any rezonings on Highway 62(Sixth Street) between Razorback Road and the Bypass. Now it is developed with several fast food places and other businesses and it looks a lot better than it did seven years ago. He advised that he envisions the same thing for Highway 16 West so that people would not have to drive five miles to get to North College or 6th Street to a fast food restaurant. He added that as development comes out that way, these ideas will change and it will be rezoned for business sooner or later. This strip isn't that far from the intersection itself.

Commissioner Springborn stated that with due regard to the good principles that should be governing the Planning Commission, he thinks that there would be little lost by a C-2 rezoning on the east half of it and leaving the west half for further consideration at some future date.

Commissioner Klingaman stated that he is concerned that if they grant a rezoning of this size, it will be sectioned off a portion at a time to whichever fast food restaurant wants a sliver for there particular establishment which would cause it to be all chopped up. He noted that he would like to see some planning done on the front end of trying to establish some small residential shopping areas with maybe one or two entrances rather than the maximum. As far as the concept of having C-2 there, he noted that it doesn't bother him because it is close enough to the interchange.

Commissioner Ozment stated that he doesn't know how they would define or put into perspective the size of a "node". The node concept is o.k., but 1100' from the intersection is kind of short for a node. A natural shopping mall node could probably be three times that wide. He commented that it would be nice if they could plan a frontage road off the highway to control access up and down through the shopping districts and not interrupt the traffic along the main highway. He advised that he has no problems with this on a big scale, but he would like to see the development come in a large fashion too and not be chopped up into 100' businesses.

Commissioner Hanna noted that they would have to come back before the Planning Commission for any lot splits and large scale developments.

Commissioner Cleghorn noted that it seems to him that they are voting on something that shouldn't be voted on yet. Most everyone is in agreement that sooner or later there will be some kind of commercial out that way. All they are doing is predicting what the growth patterns will be. It has been established on paper but the people haven't established it. It is like they are voting too soon on something that might be too critical.

Chairman Jacks noted that the only question before him as he sees it is the size of the node and they have a pretty big node going there now.

Commissioner Springborn observed that they are placing an awful lot of weight on the new Land Use Plan and until it is adopted, they have to exercise the best judgment they can with respect to the present one.

The motion to recommend approval of the rezoning petition as requested tied 4-4-0 with Ozment, Seiff, Hanna & Allred voting "yes" and Springborn, Jacks, Cleghorn & Klingaman voting "no". Chairman Jacks advised that it does not pass because it takes five positive votes to approve a rezoning petition.

MOTION

Commissioner Hanna moved to recommend approval of a rezoning of the eastern section of the property (to the east of the road dividing it) to C-2 and leave the western portion as it is presently zoned, seconded by Springborn. The motion passed 5-3-0 with Ozment, Springborn, Seiff, Hanna & Allred voting "yes" and Klingaman, Jacks & Cleghorn voting "no".

CONDITIONAL USE FOR HOME OCCUPATION (REAL ESTATE OFFICE) IN AN R-1 ZONE
DON WARD - 2015 HUNTSVILLE ROAD

The fifth item was a conditional use for a home occupation (real estate office) in an R-1 zone submitted by Don Ward for property located at 2015 Huntsville Road.

Chairman Jacks advised that they had a rezoning petition at this location previously which was denied. He asked if there was anyone in the audience who would like to speak in favor of or in opposition to this request. Mr. Ward was present, but had no comments.

MOTION

Commissioner Hanna moved to approve the conditional use as requested, seconded by Allred. The motion passed 8-0-0.

Chairman Jacks apologizes to Mr. Merrell for not asking him for him report on this item. Mr. Merrell stated that he just had a brief report and he did recommend approval of this request.

LARGE SCALE DEVELOPMENT PLAN FOR SUPERIOR INDUSTRIES
BOB BRACY - 1901 COMMERCE DRIVE

The sixth item on the agenda was a large scale development plan for an expansion to Superior Industries submitted by Albert Skiles, Architect, on behalf of Bob Bracy. Property is located at 1901 Commerce Drive and zoned I-1, Light Industrial - Heavy Commercial.

Don Bunn noted that this is for a 10,000 square foot addition to an existing industry in the industrial park. There weren't any problems with the utilities and the only questions that were raised at the Plat Review Committee meeting were concerning fire protection. He added that they do have sprinkler lines going into the building and there was some question about what sort of fire wall needed to be between this office space and the rest of the building and it was resolved. He stated that the staff recommends that the large scale development be approved.

Commissioner Springborn advised that the Subdivision Committee did not meet this week so they have no report on it.

Chairman Jacks asked if there was anyone in the audience who would like to speak on this item.

Cal Canfield who is in association with Albert Skiles representing Superior Industries stated that he is present to answer any questions. There being no earlier this year to provide parking for the Walton Arts Center.

The budget adjustment of $147,000 will be covered through the City Sales Tax.

RESOLUTION 129-89 APPEARS ON PAGE OF ORDINANCE AND RESOLUTION BOOK

405.1 J. A resolution authorizing a budget adjustment in the Sewer Plant Construction Division in the amount of $3,009,550 for debt service requirements as needed.

Debt service payment was budgeted in the Bond Fund. Staff did not budget a transfer to get the funds from the Construction Account. Staff assumed funds would come out of investments in the Debt Service Accounts held by the trustee. The trustee demanded that the constructed fund be depleted first.

RESOLUTION 130-89 APPEARS ON PAGE OF ORDINANCE AND RESOLUTION BOOK

405.2 K. A resolution authorizing approval for payment of $85,349.94 to the McDermott, Will & Emery Law Firm for June-October, 1989 and $18,440.52 to the Niblock Law Firm for October 5-November 3, 1989, for services rendered on the incinerator project.

RESOLUTION 131-89 APPEARS ON PAGE OF ORDINANCE AND RESOLUTION BOOK

Director Marinoni, seconded by Kelley, made a motion to approve the consent agenda. Upon roll call, the motion passed unanimously.

REZONING

405.3 Mayor Martin introduced consideration of an ordinance rezoning property as requested in Rezoning Petition R89-32.

Size of parcel: 16.84 acres

Location: North of Hwy 16 West on the east and west sides of Salem Road

Petitioner: Bob Davis

Change Requested: From R-2 "Medium Density Residential" to C-2 "Thoroughfare Commercial"

Planning Commission Action: Recommended approval by a 5-3-0 vote to rezone the eastern section of the property (to the east side of the road dividing it) and leave the western portion as it is presently zoned.

The initial motion of the Planning Commission was to approve the rezoning. However, the vote was tied at 4-4-0. It takes 5 positive votes to approve a rezoning petition, so the motion failed. 406.1

The ordinance was read for the first time. Director Marinoni, seconded by Kelley, made a motion to suspend the rules and place the ordinance on its second reading. Upon roll call, the motion passed, 7-0. The ordinance was read for the second time. Director Marinoni, seconded by Kelley, made a motion to further suspend the rules and place the ordinance on its third and final reading. City Attorney Rose read the ordinance for the third time. Upon roll call the ordinance passed by a vote of 7-0 approving the rezoning recommended by the Planning Commission. 406.2

ORDINANCE NO. 3467 APPEARS ON PAGE 173 OF ORDINANCE AND RESOLUTION BOOK XXV

PROPERTY CLEANUP

Mayor Martin introduced consideration of an ordinance ordering the abatement of unsightly conditions and the razing and removal of unsafe structures located at 1723-1725 West Mitchell. 406.3

The Staff recommends approval of this ordinance. The ordinance was left on its first reading at the November 7 Board meeting. The condemnation is requested for the vacant, dilapidated, and unsafe building owned by Myrtle Winkle and Madeline Tribble. 406.4

Kelley asked if there had been any response from the owners. John Merrell, Planning Management Director, stated the City has not heard from the owners, and there have been no improvements made to the property. 406.5

There was no motion to move the ordinance to its third and final reading, so it was left on its second reading. 406.6

BOND COUNSEL CONTRACT

Mayor Martin introduced consideration of a resolution approving the contract between the bond counsel, Wallace, Dover & Dixon, and the City regarding the proposed issuance of the Capital Improvement Revenue Bonds. 406.7

Linebaugh stated Staff has reached an agreement with the Wallace, Dover & Dixon Firm and recommend the contract. 406.8

Kelley, seconded by Marinoni, made a motion to approve the contract.

Vorsanger requested that the City Attorney indicate on the contract that he has reviewed the agreement. He further asked for clarification on the fees agreed upon in the contract. Linebaugh 406.9

MINUTES OF A MEETING OF THE PLANNING COMMISSION

A regular meeting of the Planning Commission was held November 24, 1997 at 5:30 p.m. in Room 219 of the City Administration Building, 113 W. Mountain Street, Fayetteville, Arkansas.

MEMBERS PRESENT: Conrad Odom, Phyllis Johnson, Lee Ward, John Watkins, Gary Tucker, and Bob Reynolds.

STAFF PRESENT: Jim Beavers, Tim Conklin, Dawn Warrick, and Heather Woodruff.

ITEMS REVIEWED:	ACTION TAKEN
1. RZ 97-21.00: Rezoning (Mid-Southern Enterprises)	Denied
2. RZA 97-17.00: Annexation (Gary Atha)	Approved
3. RZ 97-20.00: Rezoning (Gary Atha)	Approved

APPROVAL OF THE MINUTES

The minutes were approved as distributed.

RZ 97-21.00: (MID-SOUTHERN ENTERPRISES, INC.)
MID-SOUTHERN- N. OF WEDINGTON DR. & W. OF SALEM RD.

The rezoning was submitted by Marshall Carlisle of Murphy & Carlisle on behalf of Mid-Southern Enterprises, Inc. For property located north of Wedington Drive and west of Salem Road. The property is zoned R-2, Medium Density Residential, and contains approximately 9.966 acres. The original request was to change the zoning from R-2, Medium Density Residential, to C-2, Thoroughfare Commercial. The applicant's new proposal is to rezone 5.45 acres to C-2 (RZ 97-21.10) and 3.34 acres to R-O (RZ 97-21.20).

Recommendation: the staff recommended denial of the requested rezoning as being inconsistent with General Plan 2020 and was not justified or needed at this time. Planning Commission considered this tract for C-2 zoning in 1989 deciding to recommend only the east side of Salem Road (6.47 acres) and that tract remains undeveloped. Additional commercial zoning may be appropriate at a future time when improvements to accommodate additional traffic on 16W are made.

If the Planning Commission recommends C-2 zoning in this area, staff recommends that access to the entire tract be limited to one curb cut on Wedington Drive and Salem Road for the proposed loop street.

The applicant has presented a schematic subdivision plan. Staff comments on the plan follow:

1. Access to each lot should be provided by either cross access and/or public streets within the project.
2. The proposal (which is recognized as being very preliminary) appears to separate the tract into 20 independent lots. A common design theme for the development should be required.
3. The schematic subdivision proposes the bulk of the property to be C-2 with a small amount of R-O. Staff feels these proportions are inappropriate.
4. For general consideration, staff has made notes on the plat.

Mr. Marshall Carlisle, representative, noted there was existing C-2 land along Hwy 16, however, this tract was ready for development by the owner of the property, Mr. Rogers. If the rezoning were accomplished Mr. Rogers would develop a bank building. The purpose of the request was to be able to develop the land in the manner which would be compatible with what the city's ideas for this part of the community. The portion of the plat designated as R-O had alternatives. The north side could continue to be R-2, however, the property on the west side would be best zoned R-O.

There was no public comment.

Mr. Forney asked if R-O zoning would allow for a bank development.

Ms. Little replied R-O zoning would allow a bank.

Mr. Carlisle replied the owner had offers for the remaining C-2 property, which was contingent upon the rezoning. The possible businesses would required C-2 zoning or a conditional use. He was aware that a bank could be developed within an R-O or a C-1 zoning, however, there were other considerations involved.

Mr. Forney asked how the R-O and the C-2 uses compared.

Ms. Little replied restaurants were allowed in R-O with a conditional use.

Mr. Forney added many of the uses suggested by the applicant could be allowed under a lesser zoning than C-2. He added he would not support any portion of the property being rezoned to C-2.

MOTION

Mr. Forney moved to deny C-2 zoning for RZ 97-21.10.

Mr. Tucker seconded the motion.

The motion carried by a vote of 6-1-0. Mr. Ward voting nay.

Mr. Watkins moved to deny the RZ 97-21.20 request for remaining portion of the tract, in order to consider another possible rezoning for the entire tract.

Mr. Ward seconded the motion.

Mr. Odom asked the staff if the motion carried to deny the R-O zoning would the applicant be prevented from asking for the entire tract to be rezoned to R-O.

Ms. Little replied the applicant could change the change the configuration of the R-O rezoning request, and reapply this year.

Mr. Carlisle asked if the applicant could request another rezoning for the entire tract.

Ms. Little replied the applicant could request rezoning for the entire tract or smaller tracts.

The motion carried by a vote of 7-0-0.

RZ98-2.00 REZONING REQUEST - SAM ROGERS
N OF WEDINGTON, W OF SALEM ROAD

The next item was a rezoning request submitted by Kurt Jones, Northwest Engineers, on behalf of Sam Rogers for property located north of Wedington, west of Salem Road. The property contains 5.20 acres and the request is to rezone the property from R-2, Medium Density Residential, to R-O, Residential-Office.

Recommended Motion:

Staff recommends approval of the requested rezoning subject to access to the entire tract being limited to one curb cut on Highway 16/Wedington Road and one curb cut on Salem Road.

Mr. Jones stated the Highway 16 section was a very long strip of land to be limited to one curb cut (almost 700 feet of frontage). He advised there were specific plans for the corner -- construction of a bank. He pointed out the sale of the corner to the bank would require a lot split and he requested they discuss the curb cut issue at the time the lot split was considered.

Ms. Little explained the concern was the stacking from the stop light at Salem and Wedington. She advised any curb cut on Wedington would need to be clear of that stacking area.

Mr. Jones stated he was not sure where the tract would be split since there were no final designs and again requested the curb cut issue not be decided until the large scale development or lot split stage.

Ms. Little stated the Planning Commission could delay the decision if they so wished.

Ms. Johnson asked if there was any configuration under which the property could develop which would cause staff to change their recommendation to more than one curb cut.

Ms. Little stated that, without seeing every possible configuration, she could not answer the question. She went on to say, however, that the recommendation was a very solid recommendation, noting they needed to protect the traffic flow on Wedington. She advised the chances of changing the staff recommendation were not great.

Ms. Johnson stated that, due to the heavy traffic on Wedington, the fact that the roadway would soon be 4-lane, the proximity to Rupple Road, the difficulties with the by-pass lights, etc., she did not believe they could ever agree to more than one curb cut.

Ms. Little agreed and stated it would be very difficult to envision a scenario where more than one curb cut could be judged as safe.

In response to a question from Mr. Odom, Ms. Little advised she had recently talked with Eric Phillips, State Highway Department, to coordinate the curb cut policy. She stated she had been assured that, while the Highway Department had standards, the city could have more stringent standards than the Highway Department which would be enforced by the Highway Department.

Public Comment:

There was no public comment.

Mr. Odom advised he would be very reluctant to approve the rezoning without the staff recommendations. He added he would listen to a request for a waiver at a later date should they have a configuration that would appear to be safe.

Mr. Ward pointed out the Overlay District ordinance allowed a curb cut every 250 feet.

Mr. Tucker asked if the applicant contemplated any residential uses on the tract.

Mr. Jones stated the area immediately to the north (zoned R-2) would be developed residentially but he did not anticipate any residential development in the R-O area.

Mr. Watkins asked how many acres of the 5.2 would be necessary for the bank.

Mr. Jones stated he believed it would be 1½ to 2 acres. He explained that, once the design began on the bank, he would have a better idea of how much land would be required and they would apply for a lot split.

Ms. Little asked if the bank location had been determined.

Mr. Jones stated the bank was interested in the southeast corner of the property.

Ms. Little stated she believed the decision regarding curb cuts could be better made when they reviewed the lot split request. She suggested waiting until the lot split request was reviewed to make the access decisions.

In response to a question from Mr. Odom, Ms. Little advised the Planning Commission could limit curb cuts at both lot split review and large scale development review.

Mr. Forney stated he supported the staff's recommendation. He advised the applicant he would be willing to listen to a future proposal to amend the recommendation but he believed this was the time to place the limitation on the number of curb cuts. He further stated he did not believe the R-O zoning classification was inconsistent with the land use plan. He noted they might want to review the R-O zoning classification since he did not believe there were any residential developments zoned R-O.

MOTION

Mr. Forney moved to approve RZ98-2.00 subject to staff recommendations.

Ms Hoffman seconded the motion.

The motion carried 6-2-0 with Commissioners Forney, Odom, Hoffman, Ward, Reynolds and Johnson voting "yes" and Commissioners Watkins and Tucker voting "no".

February 3, 1998

City Attorney Rose stated that Mr. Mayes had asked for a waiver of the $800 large scale development fee at the agenda session.

Alderman Miller moved to grant this. Alderman Trumbo seconded. Upon roll call, the motion carried on a vote of 7 to 0.

ORDINANCE 4078 AS RECORDED IN THE CITY CLERK'S OFFICE.

* REZONING RZ98-2/ROGERS

Mayor Hanna introduced an ordinance rezoning 5.20 acres located north of Wedington Drive west of Salem Road from R-2, Medium Density Residential, to R-0, Residential-Office, requested by Kurt Jones on behalf of Sam Rogers. The Planning Commission voted 6-2-0 to recommend the rezoning.

City Attorney Rose read the ordinance for the first time.

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.

Alderman Daniel stated they had started out with 10 acres and could not get the zoning. They have come down to 5.2 acres and are going to R-0 instead of C-2.

Alett Little, Planning Director, stated this is just out of the overlay district. Commercial design standards apply. The Planning Commission discussed for a long time the issue of access and traffic management. They have limited it to one curbcut on Wedington, and the other access is from Salem. This will be discussed more at large scale.

Kurt Jones, Northwest Engineers, represented Sam Rogers. He stated there was a lot of discussion about curbcuts. They'd agreed to let the Planning Commission vote on it with the limitations, with the understanding they would have to come back and discuss this further. He stated he feels strongly the limitation is strict for this property. There is about 700' of frontage on Wedington. To serve that with one curbcut will be difficult. The owner feels once Wedington is widened he will have a hard time selling any kind of residential lots. He is currently negotiating with a bank and they have submitted a lot-split request for the corner at Salem and Wedington. That lot is 315' deep by 220' wide. The owner has no plans for the development of the R-2 property at this time.

There were no comments from the audience.

By consensus this was left on first reading.

MINUTES OF A MEETING OF THE PLANNING COMMISSION

A regular meeting of the Planning Commission was held March 23, 1998, at 5:30 p.m. in Room 219 of the City Administration Building, 113 W. Mountain Street, Fayetteville, Arkansas.

MEMBERS PRESENT: Phyllis Johnson, Lorel Hoffman, Lee Ward. Gary Tucker, Bob Estes, Robert Reynolds. John Forney, Conrad Odom, John Watkins

STAFF PRESENT: Jim Beavers, Alett Little, Tim Conklin, Dawn Warrick, and Debra Humphrey

ITEMS REVIEWED:	ACTION TAKEN
LS 98-9.00: Lot Split (Sam Rogers)	Approved
AD 98-6.00: Parking Waiver (Joe Fennel)	Approved
AD 98-8.00: Administrative Item (Amendment to Parking Lot Ordinance)	Approved
CU 98-6.00: Conditional Use (Audra Lee)	Approved
RZ 98-6.00: Rezoning (The Dinerstein Companies)	Approved
AD 98-5:00: Administrative Item (Advanced Towing Barbed Wire Fence)	Denied
AD 98-9.00 Administrative Item (Christian Life Church Access Road)	Denied
AD 98-11.00 Administrative Item (Stonebridge Meadows Sign)	No action

APPROVAL OF THE MINUTES

The minutes were approved as distributed.

NOMINATION COMMITTEE:

Mr. Odom appointed the following Nominating Committee: Phyllis Johnson, Lee Ward, and Lorel Hoffman.

* LS98-9.00: LOT SPLIT (SAM ROGERS)
NORTH OF WEDINGTON DRIVE AND WEST OF SALEM ROAD

Submitted by Kurt Jones of Northwest Engineers on behalf of Sam Rogers for property located north of Wedingtn Drive and west of Salem Road. The property is zoned R-2, Medium Density Residential and R-O, Residential Office, and contains approximately 9.97 acres. Request is to create two lots (8.36 acres and 1.61 acres). This is the first lot split request.

Staff Recommendation:

Approval subject to conditions of approval as noted.

Kurt Jones, of Northwest Engineers, appeared before the commission on behalf of the applicant. He was in agreement with all the conditions of approval except for Items (D and F). According to Mr. Jones the applicant would be required to pay for the road twice.

- Ms. Little stated that Item D could be omitted and the applicant and commission would only deal with Item F.

Mr. Jones inquired about the City and State paying 50% of the costs of the road and the developer would have to pay the other half. Mr. Jones further stated the owner would be willing to pay his fair share, but they have not had the opportunity to review the figures staff had provided, and therefore, could not state they were in agreement on Item F.

There were no public comments.

- Mr. Odom read Option #3 (Delay the assessment until development plans are filed for Tracts A and B and collect the proportionate share at that time). Mr. Odom inquired if this option was more agreeable to the applicant.

Mr. Jones stated this was more agreeable which allowed them additional time to review the figures identified in Item F.

- Ms. Little noted to the commission another project submitted by a bank would be coming before them in a couple of weeks. The question before the commission would be whether the bank, as the developer, would be charged with the assessment fee of paying for the road, or Mr. Rogers, as the owner. The bank would be leasing the property from Mr. Rogers.
- Ms. Little addressed Mr. Forney's concerns regarding the right-of-way, and noted item No. 11 requiring dedication of the ROW. She also stated all parties are aware the property would have one single owner who preferred to maintain control of the location of the curb cut on Tract A rather than Tract B.
- Ms. Johnson inquired if the dedication of the ROW is to go across the entire length of the entire property.
- Ms. Little stated the 40 foot right-of-way right angles to Salem Road goes the entire length of the north boundary of Tract B. It is located wholly on the part of the tract which was zoned R-2 and would be located directly north of proposed Tract B.

There was further discussion concerning the right-of-way and the location of the streets. Ms. Little referred to Plat No. 16, which addressed some of the commission's concerns and questions regarding the location of the right-of-way and right-of-way.

- Mr. Forney noted one of the conditions of approval is maintenance of the east/west connection at the west property line of the parent tract. He further noted the right-of-way from Tract B to the west edge of Tract A, but fixing there will be a connection to the west edge.
- Ms. Little confirmed this was correct, and noted at the Subdivision Committee there was some discussion about connecting the ROW to the west. However, she noted we would not want to fix the location of the ROW further west than the western boundary of Tract B the location. Ms. Little also stated the condition of approval that relates to this concern was 11A which deals with the construction of internal streets.
- Mr. Forney emphasized this project was previously submitted to Subdivision Committee and stated this was a very complex project. He further commented when approving lot splits we need they are truly lot splits and not subdivisions to alleviate future problems.

MOTION

Mr. Forney made a motion to approve LS 98-9 subject to all conditions of approval in the report, eliminating Item 11D, and include an amendment to Item 11A to use Option 3, but to also include this subdivision would acquire connection to the west edge of Tract A upon development of the tract in the future from Salem Road, and those conditions of approval with the asterisk which constitute a part of this motion.

Mr. Reynolds seconded said motion.

Mr. Forney stated Option #2 was to be included in said motion.

Mr. Tucker inquired about the applicant's concern on Item 11F, and whether the $11,850 was the cost for the complete building, city's but the state's portion.

Mr. Jones stated he had several concerns regarding proportioning of the costs, city vs. the state, and felt the numbers were excessive and requested additional time to review the numbers. He further noted if this fee was assessed to the owner, what kind of payment procedures would city require.

- Mr. Beavers responded to Mr. Tucker's concern about the calculation identified and stated it was not related to the highway widening. It was the traditional assessment of a developer ½ of a standard city street. It had no basis on the highway department plans.
- Mr. Odom inquired if the motion was approved as it stood, would the developer be able to come back later and say this is not a fair number or do we close the door on their option.
- Ms. Little stated the developer would still have the option to come back and say it was not a fair number. However, she noted it would be unusual because the recommended option is just for Tract B. She further responded to the concern about payment options and indicated it could be paid into an escrow fund, and if there are any overages, it would be refunded with interest.

Mr. Jones stated his concern was when you look at the traffic this property would be generating compared to the traffic on Wedington, you would find the increase in traffic volume would be insignificant, and the cost therefore, would be very minor. He also stated this property would already limited to one curb cut, and would not get the benefit of the entire length of the highway. Therefore, he would like to request some additional time to review the number calculations and defer the assessment of this until the other developer came through.

- Ms. Johnson stated there would be no reason to delay due to the benefit the developer would be getting. Therefore, she stated that the commission vote on the motion as presented.

The motion carried with a vote of 8-1-0. Mr. Watkins voted nay.

RZ99-17: REZONING
MID-SOUTHERN ENTERPRISES, INC. pp401
(Also see RZ99-16 - Mid-Southern Enterprises, Inc. pp401)

This item was submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-2 Medium Density Residential, and contains approximately 4.77 acres. The request is to rezone the property to R-O, Residential Office.

Marshall Carlisle, Kurt Jones, and Sam Rogers were present on behalf of the request.

Staff recommends approval of the request to rezone the tract from R-2 to R-O.

MOTION

Mr. Odom made a motion to approve RZ99-17.

Mr. Shackelford seconded the motion.

Roll Call

Upon roll call, the motion passed with a unanimous vote of 8-0-0.

*Per request from Marshall Carlisle on June 29, 1999, this item will not be introduced to the City Council until such time at the associated rezoning RZ99-16 is brought forward.

RECEIVED
AUG 02 1999
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

STAFF REVIEW FORM

X Agenda Request
___ Contract Review
___ Grant Review

For the Fayetteville City Council meeting of August 17, 1999.

FROM:

Tim Conklin	Planning	Public Works
Name	Division	Department

ACTION REQUESTED: To approve a resolution changing the name of Hackberry Street to Amber Drive, to make Amber the continuous street name running east and west through the Charleston Place P.U.D.

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 7-30-99	ADA Coordinator	Date
City Attorney	Date	Internal Auditor	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommends changing the name from Hackberry Street to Amber Drive. This is forwarded upon request of Dave Jorgenson.

Division Head	Date 7-30-99
Department Director	Date 8-2-99
Administrative Services Director	Date 2AUG99
Mayor	Date 8/2/99

Cross Reference

New Item: **Yes** **No**

Prev Ord/Res#: ______

Orig Contract Date: ______

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: 501-575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville City Council

THRU: Tim Conklin, City Planner

FROM: Dawn T. Warrick, Development Coordinator

DATE: July 30, 1999

SUBJECT: Street Name Change - Hackberry Drive between Amber and Winwood

---

A street name change is being requested for a small city street currently called Hackberry Drive. Hackberry Drive connects Winwood Drive to Overcrest Street; it is approximately 190' long. With the development of the Charleston Place subdivision, Amber Drive has been extended from the west and it now connects to the western end of Hackberry Drive. Discussion of a connection between the existing streets began in June 1996 when the concept plat for this development was initially presented to the Planning Commission. The connection was a part of the preliminary plat in every configuration that was presented prior to its approval and it has always been called and labeled Amber Drive.

The formal request which is attached to this memo is from the engineer representing the owner/developer of Charleston Place. This street name change was a condition of the Planning Commission approval of the final plat creating this subdivision (see attached minutes).

Since the two existing streets have now been connected, a common street name is needed in order to provide continuity and safety (emergency services, etc.) for the residents of the area.

There are two properties which are currently addressed off of Hackberry Drive. The owners have been contacted by City staff and are aware of the requested change.

JORGENSEN & ASSOCIATES
CONSULTING ENGINEERS, INC.

City of Fayetteville
113 W. Mountain
Fayetteville, AR 72701

6-3-99

Att: Planning Dept.
Re: Charleston Subd.

As requested, we will need to change the name of Hackberry Street which is on the east end of the Charleston Subdivision. The street to the west is Amber Drive which is the street name that we would like to change Hackberry to.

Please call me concerning any questions you may have.

Thank you.

Sincerely;

David L. Jorgensen, P.E.

2013 GREEN ACRES RD., SUITE A • FAYETTEVILLE, ARKANSAS 72703 • (501) 442-9127

FP99-3: FINAL PLAT
CHARLESTON PLACE SUBDIVISION, PP370

This item was submitted by Dave Jorgensen of Jorgensen and Associates on behalf of Greg House for property located east of Old Wire Road and south of Elmwood Drive. The property is zoned R-1, Low Density Residential, and contains approximately 12.84 acres with 51 lots proposed.

Dave Jorgensen and Greg House were present on behalf of the project.

Staff Recommendations

1. City Council approval of sewer easement vacation.

2. A street name change needs to be presented to City Council in order to change the short section of Hackberry to Amber Drive. This requires the applicant to submit a letter requesting the change and staff will process an agenda request.

3. Protective covenants for this Planned Unit Development shall be filed of record with the final plat. These covenants shall provide for the private maintenance of detention ponds, open channels (swales), and islands and must name the City as a third party.

4. Applicant shall work with staff to finalize the easements prior to engineering sign off on the final plat.

5. Payment of parks fees in the amount of $19,125 (15 lots @ $375.00.)

6. Sidewalk construction in accordance with current standards to include a 4 foot sidewalk with a 4 foot green space along both sides of Amber Drive and one side of Cypress Lane.

7. All Plat Review and Subdivision comments.

8. Staff approval of final detailed plans, specifications and calculations for grading, drainage, water, sewer, fire protection, streets, sidewalks, parking lots and tree preservation. The information submitted for the plat review process was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with the City's current requirements.

9. All green space shall be maintained by the Property Owner's Association including the island and sign at the east entrance to the development.

10. Completion of all punch list items prior to staff approval of final plat.

11. Installation of landscaped screening around detention areas.

Committee Discussion

Due to technical difficultly a transcript of the proceedings was not available. Following is a synopsis of the discussion.

Petrie inquired as to whether the alleys would be constructed or bonded. Jorgensen replied that a portion of the alleys might have to be bonded.

There was discussion regarding the purpose of the alleys being for rear access to the dwelling units and not for service vehicles.

There was a question regarding setbacks from detention areas. Only water features such as lakes that continuously hold water require setbacks.

Hoffman requested landscaped screening of the detention areas.

MOTION

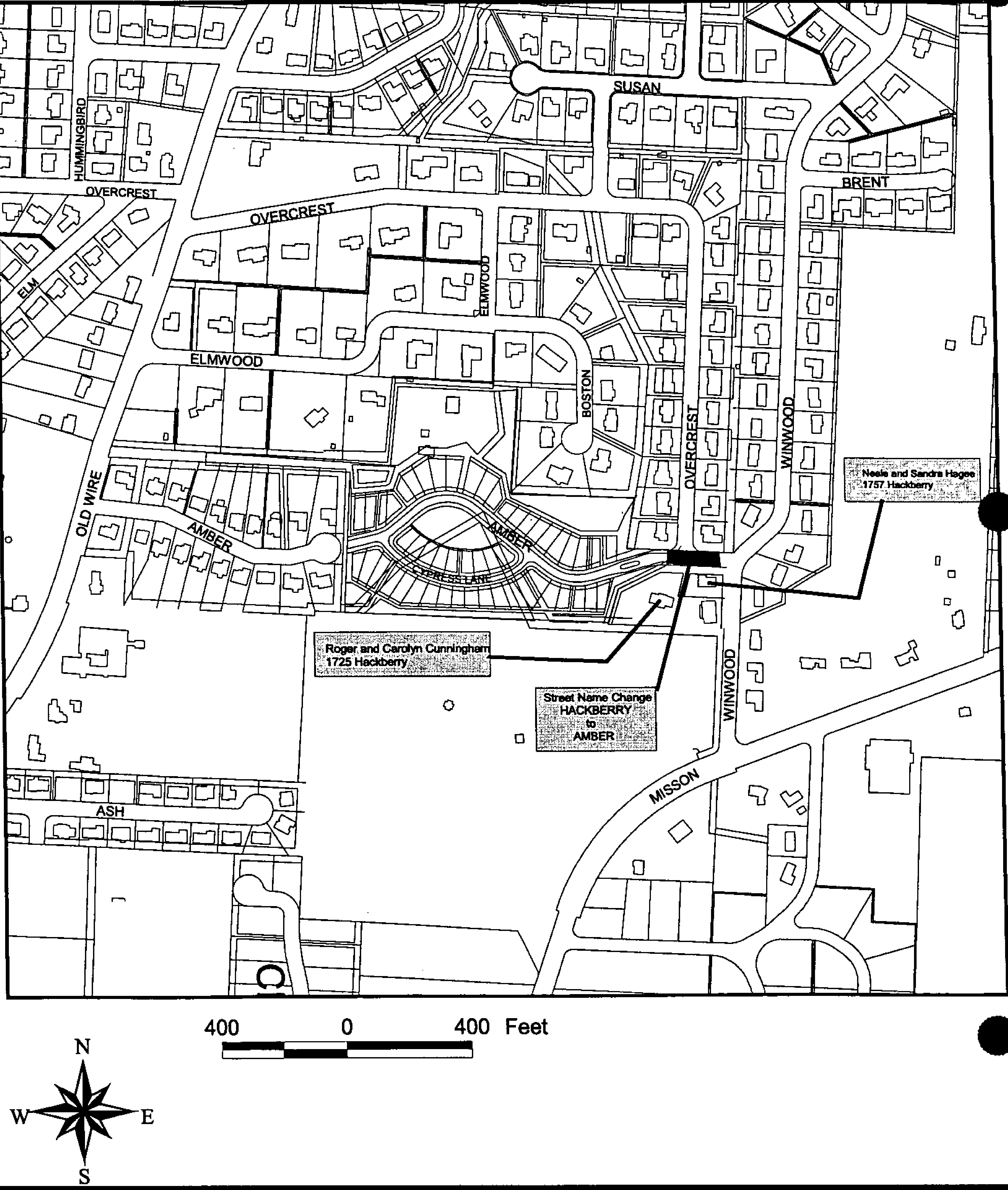
Mr. Estes made a motion to approve FP99-3 subject to all staff comments.

Ms. Hoover seconded the motion.

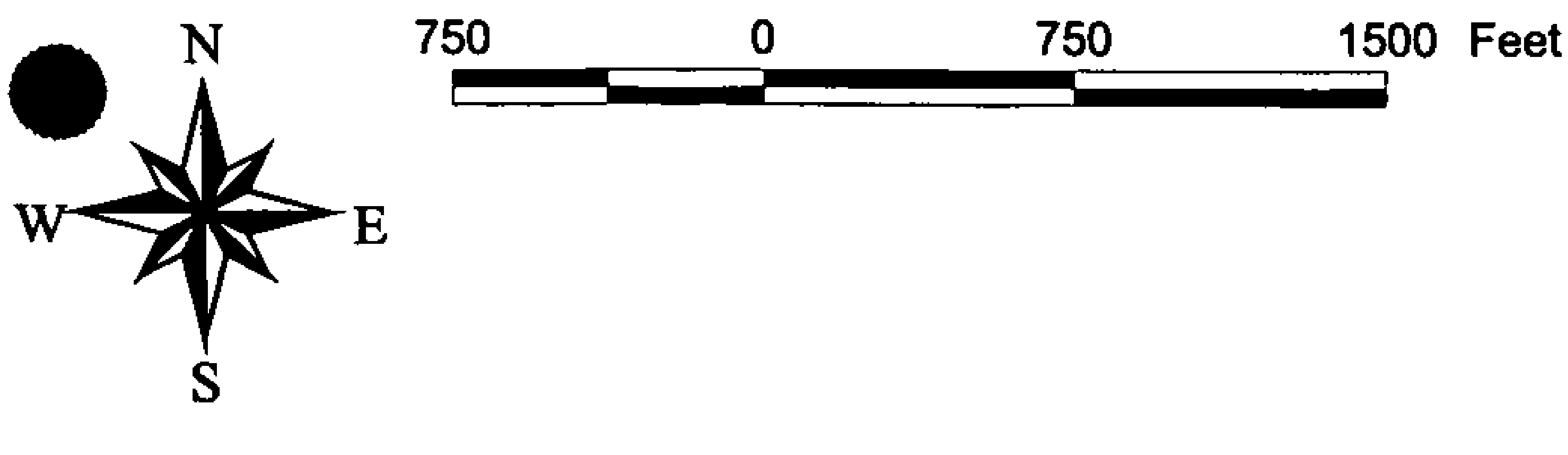
Ms. Hoffman concurred.

Amber Drive
C.3 page 6

AD99-15.00 - Charleston Place Subdivision - Close Up



AD99-15.00 - Charleston Subdivision



AGENDA REQUEST FORM

FROM Don Bunn — Name | PW Admin — Division | Public Works — Department

ACTION REQUIRED Approval of a Contract with United Plumbing of Springdale, Arkansas for the relocation of water and sewer in connection with the Dickson Street Enhancement Project in the amount of $ 598,961,00, and contingency amount of $ 61,039.00, and a budget adjustment.

COST TO CITY

$ 660,000.00	$ 500,000.00	Water and Sewer
Cost of this Request	Category/Project Budget	Category/Project Name
4470 9470 5808 00	$ 36,134.00	
Account Number	Funds Used to Date	Program Name
99027 0010	$ 463,866.00	Sales Tax
Project Number	Funds Remaining	Fund Category

BUDGET/CONTRACT REVIEW XX Budgeted Item XX Budget Adj. Attached

Bid document only (see note)	8/16/99		
Budget Coordinator	Date	Admin Services Director	Date
Marilyn J Crane re: time	8-17-99		
Accounting Manager	Date	ADA Coordinator	Date
(see note)	8-17-99	Yolanda Fields	8-17-99
City Attorney	Date	Internal Auditor	Date
	8-17-99		
Purchasing Officer	Date		

STAFF RECOMMENDATION Staff recommends the approval of a Contract with United Plumbing for the relocation of water and sewer in connection with the Dickson Street Enhancement Project in the amount of $ 598,961.00, a contingency amount of $ 61,039.00, and a budget adjustment.

	8/16/99
Ass't Public Works Director	Date
	8-17-99
Department Director	Date
	17AUG99
Admin Services Director	Date
Fred Hanna	8/17/99
Mayor	Date

Cross Reference

New Item: Yes **No**

Prev Ord/**Res** # 165-98

Orig. Contract # 689

Orig. Contract Date 12/15/98

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department: Sales Tax Capital Improvement Fund	Date Requested	Adjustment #
1999	Division:	08/16/99	
	Program:		

Project or Item Requested:
Additional funding is requested for the Dickson Street Water & Sewer Line Replacement Project.

Project or Item Deleted:
Water & Sewer Operations Building project funds are proposed for this adjustment.

Justification of this Increase:
The low bid for the project is in excess of the budget approved for the project.

Justification of this Decrease:
The Water & Sewer Operations Center Project will be scheduled in the 2000-2004 CIP.

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number					Project Number	
Waterline Improvements	200,000	4470	9470		5808	00	99027	20

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number					Project Number	
Building Costs	200,000	4470	9470		5804	00	98076	20

Approval Signatures

	Date
Requested By	8/17/99
Budget Manager	8/16/99
Department Director	8-17-99
Admin. Services Director	17AUG99
Mayor	8/17/99

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

Blue Copy: Budget & Research / Yellow Copy: Requester

D:\DATA\99BUDGET\BUDGTADJ\DCKSN_WS.WK4

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

August 16, 1999

To: Fayetteville City Council

From: Don Bunn, Ass't Public Works Director
Thru: Charles Venable, Public Works Director
Mayor Fred Hanna

Subject: Approval of Bids
Dickson Street Water and Sewer Relocations

A line item amount of $500,000.00 is in the 1999 Capital Improvements Program for the relocation and construction of water and sewer lines in Dickson Street. The purpose of the project is to relocate certain water and sewer lines so that they do not interfere with the street enhancement planned for Dickson Street and to construct a new 12-inch water line prior to the enhancement work. The new 12-inch water line will provide for additional fire protection along Dickson Street and for the general improvement of the water system in that area.

On July 19, 1999 the City opened bids on the water and sewer relocations. We received two (2) bids, both of which were in excess of the amount certified for the project. Therefore the bids were rejected and a new bid date of August 16 was set. Some modifications were made in the bid documents which will tend to promote lower bid prices than we received in July. Also, we hoped to receive 4 or 5 bids this time rather than only two.

At 11:30 PM on August 16, 1999 the City again opened bids on the project. Three bids were received:

United Plumbing	$ 598,961.00
Basic Construction	613,221.00
Building and Utilities	675,685.00

It is the recommendation of the Staff that the Council approve the award of a construction contract with United Plumbing in the amount of $ 598,961.00 along with a contingency of 61,039.00 and a budget adjustment.

DOCUMENT 00510

AGREEMENT

THIS AGREEMENT is dated as of the 17 day of August in the year 1999 by and between

The City of Fayetteville, Arkansas (hereinafter called OWNER) and

UNITED PLUMBING, L.L.C.
(hereinafter called CONTRACTOR)

OWNER AND CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Placement of approximately 1,530LF of 12" ductile iron or PVC water main, connection of existing branch lines to the new 12" main using 6" DI or PVC water main, installation of new services to serve existing buildings from new and existing 12" main, replacement of fire hydrant piping and valves, butterfly valves, gate valves, fittings, and other appurtenances; with affiliated pavement, sidewalk, and curb repair. Also included will be replacement of approximately 602 LF of 8" sanitary sewer main, replacement of approximately eight sanitary sewer services, and construction of one manhole on an existing sewer line; with affiliated pavement, sidewalk, and curb repair.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:
Dickson Street Improvement Project, also known as Dickson Street Enhancement Project.

Article 2. ENGINEER.

The Project has been designed by The Benham Group, Inc., who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME.

3.1 The Work will be substantially complete on or before November 19, 1999 for the western portion of the project; and on or before February 15, 2000 for the eastern portion of the project. The dividing line for the eastern and western portions of the project is Rollston Avenue, as indicated on the drawings. Bidder further agrees that the work will be completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions on or before March 1, 2000.

3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the time specified in Paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER Seven Hundred Fifty Dollars ($750.00) for each day that expires after the time specified in Paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the OWNER, CONTRACTOR shall pay OWNER Seven Hundred Fifty Dollars ($750.00) for each day that expires after the time specified in Paragraph 3.1 for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

4.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds as follows:
Total of Unit Prices Five Hundred Ninety Eight Thousand, Nine Hundred Sixty-One and no/100 Dollars $ 598,961.00

Unit prices are as listed in the attached bid form.

Article 5. PAYMENT PROCEDURES.

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, within 30 days after receipt of Contractor's Application for Payment. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in Paragraph 14.1 of the General Conditions.

5.1.1 Prior to completion of work in excess of 50% of the contract price, progress payments will be an amount equal to:

Ninety percent of the Work completed, and

Ninety percent of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

5.1.2 Upon completion of a minimum of 50% of the contract price in work completed, and upon a determination by the ENGINEER that satisfactory progress is being made, and upon approval by the Contractor's surety, progress payments will be in an amount equal to:

Ninety-Five percent of the Work completed, and

Ninety-Five percent of the materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

5.1.3 Provided at any time ENGINEER shall determine that satisfactory progress is not made, progress payments shall be made in accordance with paragraph 5.1.1 above until said time that ENGINEER shall make a new determination that progress is again satisfactory.

5.1.4 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to One Hundred percent of the Contract Price, less such amounts the ENGINEER shall determine in accordance with Paragraph 14.7 of the General Conditions.

5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with Paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Paragraph 14.13.

Article 6. Not used.

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work locality, and with all local conditions and Laws and Regulations that in any manner may affect cost, progress or performance of the Work.

7.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in Paragraph 4.2 of the General Conditions, and accepts the determination set forth in Document 00200 of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to rely.

7.3 CONTRACTOR has obtained and carefully studied (or assumes, responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

7.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.3 of the General Conditions.

7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

Article 8. CONTRACT DOCUMENTS.

8.1 The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR are attached to the Agreement, made a part hereof and consists of the following:

A. This Agreement.

B. Exhibits to this Agreement.

C. Performance, Statutory, and Defect Bonds.

D. Notice of Award.

E. General Conditions.

F. Supplementary Conditions (Document 00812).

G. Certified Minimum Wage Rates (Document 00822).

H. Specifications bearing the title Dickson Street Improvement Project – Water and Sewer Line Modifications.

consisting of sections as listed on the attached table of contents.

I. Drawings, consisting of a cover sheet and sheets listed on the attached Index with each sheet bearing the following general title:

Water Line Modification – General Notes (W2)
Water Line Modification (W1 through W8)
Water Line Modification – Details (W9)
Sewer Line Modification – General Notes
Sewer Line Modification (SS1 through SS3)

J. ~~Addenda numbered ____ to ____, inclusive.~~ no addenda TLK

K. CONTRACTOR's Bid (Attached).

L. Documentation submitted by CONTRACTOR prior to Notice of Award.

M. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Paragraphs 3.4 and 3.5 of the General Conditions.

N. The documents listed in Paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

O. Information Available to Bidders (Document 00200).

8.2 There are no Contract Documents other than those listed above in Paragraph 8.1. The Contract Documents may only be amended, modified or supplemented as provided in Paragraphs 3.4 and 3.5 of the General Conditions.

Article 9. MISCELLANEOUS.

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on the 17 day of August, 1999

OWNER

By____________________

Title____________________

(CORPORATE SEAL)

Attest____________________
City Clerk

Address for Giving Notices:

113 W. Mountain
Fayetteville, AR 72701

CONTRACTOR

By Terry Krug

Title Member Manager

(CORPORATE SEAL)

Attest____________________

Title____________________

Address for Giving Notices:

P.O. Box 67
Tontitown AR 72770

"END OF DOCUMENT 00510"

DRAFT August 2, 1999

DRAFT

ORDINANCE NO.________

AN ORDINANCE ESTABLISHING CRITERIA TO ASSESS AND REDUCE VISUAL AND LAND USE IMPACTS ASSOCIATED WITH THE DEVELOPMENT OF WIRELESS COMMUNICATIONS FACILITIES IN THE CITY OF FAYETTEVILLE, ARKANSAS.

WHEREAS, the City of Fayetteville desires to provide a range of locations for wireless communications facilities in all zones unless prevented by law; and,

WHEREAS, the City of Fayetteville wishes to minimize the adverse visual impacts of towers and antennas by encouraging antenna location on existing structures, including utility poles, signs, water towers, buildings, and other wireless communications facilities where feasible; and,

WHEREAS, the City of Fayetteville encourages co-location and site sharing of new and existing wireless communications facilities; and,

WHEREAS, the City of Fayetteville wishes to facilitate the use of public property and structures for wireless communications facilities; and,

WHEREAS, the City of Fayetteville desires to enhance the ability of providers of telecommunications services to provide such services to the community quickly, effectively and efficiently; and,

WHEREAS, the City of Fayetteville wishes to maintain FCC compliance (in the event there is a conflict between these regulations and FCC or FAA regulations, the latter regulations shall govern).

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

Section 1. Purpose

The purpose of this Ordinance is to protect the health, safety and welfare of the community by establishing criteria to assess and reduce visual and land use impacts associated with the development of wireless communications facilities.

Section 2. Conditional Use Approval Required in all Zoning Districts

A. That Chapter 161, Zoning Regulations, § 161.03, District A-1, Agricultural, B.1., Permitted Uses, Unit 3, Public Protection and Utility Facilities; §161.17, District I-1, Heavy Commercial and Light Industrial, B.1., Permitted Uses, Unit 3, Public Protection and Utility Facilities; and §161.18, I-2, General Industrial, B.1. Permitted Uses, Unit 3, Public Protection and Utility Facilities, of the Code of Fayetteville, are hereby deleted.

B. That Chapter 161, Zoning Regulations, of the Code of Fayetteville, is hereby amended to add Unit 3, Public Protection and Utility Facilities to Sections 161.03-161.20, Subsections B.2., Uses Permissible on Appeal to the Planning Commission.

DRAFT

DRAFT

Section 3: Definitions.

That Chapter 151, Definitions, of the Code of Fayetteville, is hereby amended to add the following:

Act: The Communications Act of 1934, as it has been amended from time to time, including the Telecommunications Act of 1996, and shall include any future amendments thereto.

Alternative Tower Structure: Man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers and are built for the express purpose of serving as a tower or for locating antennas.

Antenna: Any structure or device used to collect or radiate electromagnetic waves, including both directional antennas, such as panels, microwave dishes and satellite dishes and omnidirectional antennas, such as whips but not including satellite earth stations.

Antenna Height: The vertical distance measured from the base of the Antenna support structure at grade to the highest point of the structure. If the support is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

Co-Location: Locating wireless communications equipment for more than one provider at a single communications facility, on a building, or on an alternative tower structure.

FAA: The Federal Aviation Administration.

Fall Zone: The area within which a Tower or Antenna might cause damage to persons or property should the tower or antenna be knocked down, blown over or fall on its own.

FCC: The Federal Communications Commission.

Guyed Towers: A communication tower that is supported, in whole or in part, by guy wires and ground anchors.

Height: The vertical distance measured from the mean elevation of the finished grade to the highest point on the tower or other structure, even if said highest point is an antenna or antenna array.

Lattice Tower: A guyed or self-supporting three or four sided, open , steel frame structure used to support telecommunications equipment.

Monopole Tower: A communication Tower constructed without the use of guy wires and ground anchors and consisting of only a single pole.

Personal Use: "Personal Use" refers to a non-commercial use by a resident of the subject property. If any revenues are generated from the operation of the tower, it will not be for personal use as such term is used.

Stealth Technology: Systems, components and materials used in the construction of wireless communications facilities to make it compatible with the surrounding property.

Telecommunications: The transmission, between or among points as specified by the user of information of the user's choosing, without change in the form or content of the information as sent and received.

Tower or Communication Tower: Any structure that is designed and constructed for the primary purpose of supporting one or more antennas, including lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. This term is not intended to describe buildings or other structures that have been constructed primarily for a purpose other than supporting one or more antennas, despite the fact that such structure may currently, or in the future, actually support one or more antennas.

Wireless Communications Facility (WCF): A land use facility that transmits and/or receives electromagnetic signals for the purpose of transmitting analog or digital voice or data communications. It includes antennas, microwave dishes, horns and other types of monopoles, or similar structures supporting said equipment, equipment buildings, shelters or cabinets, and other accessory development. Wireless communications facility includes personal wireless services as defined in the Federal Telecommunications Act of 1996, and as subsequently amended.

Section 4. **Wireless Communications Facilities.** That Chapter 163, Use Conditions, of the Code of Fayetteville, is hereby amended to add the following:

§163.29. Wireless Communications Facilities.

A. The following general requirements shall apply to all new wireless communications facilities.

1. Noise Requirements

Equipment used in connection with a tower or antenna array shall not generate noise that can be heard beyond the site. This prohibition does not apply to air conditioning units no noisier than ordinary residential units or generator used in emergency situations where regular power supply for a facility is temporarily interrupted; provided that any permanently installed generator shall be equipped with a functional residential muffler.

2. Compliance With Federal Regulations

Applicant shall comply with all applicable federal regulations. Proof of compliance shall be provided upon request of the City Planner.

3. Lighting and Signage

a. Wireless communications facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Security lighting or motion-activated lighting may be used around the base of a tower and within the wireless communication facility, provided that the lighting is shielded in such a way that no light is directed towards adjacent properties or rights-or-way.

b. Signs shall be limited to those needed to identify the property and the owner and warn of any danger. No signs, symbols, identifying emblems, flags, or banners shall be allowed on towers.

B. New Towers. New wireless communication towers shall meet the following requirements:

1. Type of Towers Allowed. New towers shall be limited to monopole type structures or alternative tower structures.

2. Tower and Antenna Height Limitations. Towers or alternative tower structures are permitted to a maximum height of one hundred and fifty (150') feet.

3. Fall Zone. The minimum distance from the base of any tower to any residential dwelling unit shall be the tower height or required setback, whichever is greater, unless all persons owning said residences or the land on which said residences are located consent in a signed writing to the construction of said towner. This setback is considered a "fall zone". In the event that an existing structure is proposed as a mount for a wireless communication facility, a fall zone shall not be required.

4. Camouflaging or Stealth Technology for New Towers. If the applicant demonstrates that it is not feasible to locate on an existing structure, towers shall be designed to be camouflaged to the greatest extent possible, including but not limited to: use of compatible building materials and colors, screening, landscaping and placement within trees.

5. Color of Towers. To the extent that any antennae extend above the height of the vegetation immediately surrounding it, they shall be a neutral color, painted or unpainted, unless the FAA requires otherwise.

6. Information Required To Process New Tower Requests

a. Provide a map of the geographic area that your project will serve.

b. Provide a map that shows other existing or planned facilities that will be used by the wireless communication service provider who is making the application.

c. Provide a map that shows other potential stand-alone locations for your facility that have been explored.

d. Provide a scaled site plan containing information showing the property boundaries, proposed tower, existing land use, surrounding land uses and zoning, access road(s) location and surface material, existing and proposed structures and topography. The plan shall indicate proposed landscaping, fencing, parking areas, location of any signage and specifications on proposed lighting of the facility.

e. Describe why the proposed location is superior, from a community perspective, to other potential locations. Factors to consider in the community perspective should include: visual aspects, setbacks and proximity to single family residences.

f. Describe your efforts to co-locate your facility on one of the poles or towers that currently exists, or is under construction. The applicant should demonstrate a good faith effort to co-locate with other carriers. The Planning Commission may deny a permit to an applicant that has not demonstrated a good faith effort to provide for co-location. Such good faith effort includes:

(1). A survey of all existing structures that may be feasible sites for co-locating wireless communications facilities;

(2). Contact with all the other wireless communications licensed carriers operating in the City and Washington County; and
(3). Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location.
(4). Letter from tower owner stating why co-location is not feasible.

g. Describe how you will accommodate other antenna arrays that could co-locate on your facility. Describe how this accommodation will impact both your pole or tower, and your ground mounted facilities. Provide documentation of your provider's willingness to accommodate other providers who may be able to co-locate on your facility.

7. Balloon Test or Crane Test.

For new towers, the applicant shall arrange for a balloon or crane test at the proposed site, and a photograph taken, to illustrate the height of the proposed tower. The time period, not to exceed one week, within which the test will be performed, shall be advertised in a newspaper of general circulation in the City at 14 days, but not more than 21 days prior to the test.

8. Sight Line Representation.

A sight line representation shall be drawn from four points 90° apart and 100' from the proposed tower. Each sight line shall be depicted in profile, drawn at one inch equals 40 feet. The profiles shall show all intervening trees and buildings.

9. Proposed (after condition) photographs.

The proposed tower shall be superimposed on photographs to show what will be seen from four locations . The four locations used to photograph the view of the proposed tower shall be taken 90° apart and 300' from the base. The four locations shall be approved by the City Planner.

10. Structural Integrity and Inspections of Towers

a. The applicant shall provide a certification letter that states the tower meets or exceeds design criteria and all local, state, and federal requirements regarding the construction, maintenance, and operation of the tower.

b. If a tower fails to comply with the requirements and criteria above and constitutes a danger to persons or property, then upon written notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such requirements and criteria. If the owner fails to bring such tower into compliance within thirty (30) days, the City may terminate that owner's conditional use permit and/or cause the removal of such tower (at the owner's expense).

c. By making an application hereunder, Applicant agrees to regularly maintain and keep in a reasonably safe and workmanlike manner all towers, antenna arrays, fences and outbuildings owned by applicant which are located in the City. Applicant further agrees to conduct inspections of all such facilities not less frequently than every 12 months. Applicant agrees that said inspections shall be conducted by one or more designated persons holding a combination of education and experience so that they are reasonably capable of identifying functional problems with the facilities.

11. Security Fencing and Anti-climbing Device

Through the use of security fencing, Towers and equipment shall be enclosed by wood board fencing not less than six (6) feet in height. The tower shall also be equipped with an appropriate anti-climbing device. The facility shall place signs indicating "No Trespassing", "High Voltage" or other pertinent information on the outside of the fence, unless it is decided that the goals of this ordinance would be better served by waiving this provision in a particular instance. Barbed wire fencing or razor wire shall be prohibited.

12. Vegetative Screening Requirements

Wireless communications facilities shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both.

C. Co-location. Applicants for co-location shall meet the following requirements:

1. Administrative Approval for Antenna Co-locations and Locations on Other Structures. The City Planner, following an administrative review without requiring the issuance of a Conditional Use Permit, may approve the following antenna installation:

a. Locating on Existing Structures. Installation of an antenna on an existing structure other than a tower (such as a building, sign, light pole, electric transmission tower and similarly scaled public utilities /facilities, water tower, or other free-standing non-residential structure), provided that the addition of the antenna does not add more than twenty (20') feet to the height of the existing structure.

b. Locating on Existing Towers. Installation of an antenna on an existing tower of any height, and the placement of additional buildings or other supporting equipment used in connection with such additional antenna, so long as the proposed additions would add no more than twenty feet (20) feet to the height of the existing tower. The addition or modification, to the extent possible, should be designed to minimize visibility.

c. For the purposes of co-location, the applicant must submit information from a licensed professional engineer certifying the capacity of the tower for additional providers and a letter of intent from the applicant indicating their intent to share space.

D. Other requirements.

1. Wireless Communications Facilities Placed on Top of Buildings

When a wireless communications facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the buildings's silhouette.

2. Wireless Communications Facilities Placed on Sides of Buildings.

Antennae which are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly behind them.

E. Exemptions

1. Personal Use. Towers for personal use which, including the height of all antenna arrays, do not extend more than 80' from the ground.

2. Temporary Structures. Temporary structures designed to be used for not more than 14 days in connection with a special event of for any reasonable period of time in and immediately following an emergency, including without limitation those towers which are identified as "C.O.W.s." or "Cellular on Wheels."

3. Existing Towers. All existing towers may be replaced with the same type and height of tower structure as currently exists.

4. Emergency and Utility Towers and Antennas. Towers and antennas under thirty five (35') in height used for 9-1-1 services and utility monitoring (gas, water, sewer, traffic lights, etc.)

F. Municipal Profits from Towers

The City of Fayetteville should actively market its own property and existing structures as suitable collocation sites. As noted above the review process is shortened and simplified when collocation on city property is submitted by applicant. An annual lease amount should be charged according to the fair-market value of the location. The revenues can be earmarked to improve the public area within which the tower is located. In cases where the company no longer needs the tower, the City may require it to be removed. Applicants can provide collocation space for city-owned antennae.

G. Abandoned Antennas or Towers

At such time that a licensed carrier abandons or discontinues operation of a wireless communications facility, such carrier will notify the City of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations. In the event that licensed carrier fails to give such notice, the wireless communications facility shall be considered abandoned upon such discontinuation of operations. Upon abandonment or discontinuation of use, the carrier shall physically remove the wireless communications facility within 90 days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

1. Removal of antennae, mount, equipment shelters and security barriers from the subject property.

2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.

3. Restoring the location of the wireless communications facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.

H. Notification of Change of Ownership/Operator

Upon assignment or transfer of a Conditional Use Permit or any of the rights thereunder to a new wireless telecommunications operator, the owner or operator shall provide written notice within thirty (30) days to the City Planner.

Section 5. Public Notification

That Section 157.04 is hereby amended to add the following:

B.6. Wireless Communications Facilities. Applicants requesting permits for new towers shall notify property owners within 500' of the site of the tower; applicants requesting permits for co-location shall not require notification. Notification shall be certified mail for adjoining property owners, including across streets and regular mail for the remaining property owners within the notification area.

Section 6. Emergency Clause. This ordinance is necessary to preserve the public peace, health, safety, and welfare, and because of such, an emergency is declared to exist and this ordinance shall be in full force and effect from the date of its passage and approval.

PASSED and APPROVED this ________ day of _____________, 1999.

APPROVED:

____
MAYOR

ATTEST:

____
CITY CLERK

DRAFT August 16, 1999

ORDINANCE NO.________

AN ORDINANCE ESTABLISHING CRITERIA TO ASSESS AND REDUCE VISUAL AND LAND USE IMPACTS ASSOCIATED WITH THE DEVELOPMENT OF WIRELESS COMMUNICATIONS FACILITIES IN THE CITY OF FAYETTEVILLE, ARKANSAS.

WHEREAS, the City of Fayetteville desires to provide a range of locations for wireless communications facilities in all zones unless prevented by law; and,

WHEREAS, the City of Fayetteville wishes to minimize the adverse visual impacts of towers and antennas by encouraging antenna location on existing structures, including utility poles, signs, water towers, buildings, and other wireless communications facilities where feasible; and,

WHEREAS, the City of Fayetteville encourages co-location and site sharing of new and existing wireless communications facilities; and,

WHEREAS, the City of Fayetteville wishes to facilitate the use of public property and structures for wireless communications facilities; and,

WHEREAS, the City of Fayetteville desires to enhance the ability of providers of telecommunications services to provide such services to the community quickly, effectively and efficiently; and,

WHEREAS, the City of Fayetteville wishes to maintain FCC compliance (in the event there is a conflict between these regulations and FCC or FAA regulations, the latter regulations shall govern).

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

<u>Section 1. Purpose</u>

The purpose of this Ordinance is to protect the health, safety and welfare of the community by establishing criteria to assess and reduce visual and land use impacts associated with the development of wireless communications facilities.

<u>Section 2.</u> Conditional Use Approval Required in all Zoning Districts

A. That Chapter 161, Zoning Regulations, § 161.03, District A-1, Agricultural, B.1., Permitted Uses, Unit 3, Public Protection and Utility Facilities; §161.17, District I-1, Heavy Commercial and Light Industrial, B.1., Permitted Uses, Unit 3, Public Protection and Utility Facilities; and §161.18, I-2, General Industrial, B.1. Permitted Uses, Unit 3, Public Protection and Utility Facilities, of the Code of Fayetteville, are hereby deleted.

B. That Chapter 161, Zoning Regulations, of the Code of Fayetteville, is hereby amended to add Unit 3, Public Protection and Utility Facilities to Sections 161.03-161.20, Subsections B.2., Uses Permissible on Appeal to the Planning Commission.

Section 3: Definitions.

That Chapter 151, Definitions, of the Code of Fayetteville, is hereby amended to add the following:

Act: The Communications Act of 1934, as it has been amended from time to time, including the Telecommunications Act of 1996, and shall include any future amendments thereto.

Alternative Tower Structure: Man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers and are built for the express purpose of serving as a tower or for locating antennas.

Antenna: Any structure or device used to collect or radiate electromagnetic waves, including both directional antennas, such as panels, microwave dishes and satellite dishes and omnidirectional antennas, such as whips but not including satellite earth stations.

Co-Location: Locating wireless communications equipment for more than one provider at a single communications facility, on a building, or on an alternative tower structure.

FAA: The Federal Aviation Administration.

Fall Zone: The area within which a Tower or antenna might cause damage to persons or property should the tower or antenna be knocked down, blown over or fall on its own.

FCC: The Federal Communications Commission.

Guyed Towers: A communication tower that is supported, in whole or in part, by guy wires and ground anchors.

Height: The vertical distance measured from the mean elevation of the finished grade to the highest point on the tower or other structure, even if said highest point is an antenna or antenna array.

Lattice Tower: A guyed or self-supporting three or four sided, open , steel frame structure used to support telecommunications equipment.

Monopole Tower: A communication tower constructed without the use of guy wires and ground anchors and consisting of only a single pole.

Original Tower Height. Height of a tower on the date of the passage of this ordinance.

Personal Use: "Personal Use" refers to a non-commercial use by a resident of the subject property. If any revenues are generated from the operation of the tower, it will not be for personal use as such term is used.

Stealth Technology: Systems, components and materials used in the construction of wireless communications facilities to make it compatible with the surrounding property.

Telecommunications: The transmission, between or among points as specified by the user of information of the user's choosing, without change in the form or content of the information as sent and received.

Tower or Communications Tower: Any structure that is designed and constructed for the primary purpose of supporting one or more antennas, including lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. This term is not intended to describe buildings or other structures that have been constructed primarily for a purpose other than supporting one or more antennas, despite the fact that such structure may currently, or in the future, actually support one or more antennas.

Wireless Communications Facility (WCF): A land use facility that transmits and/or receives electromagnetic signals for the purpose of transmitting analog or digital voice or data communications. It includes antennas, microwave dishes, horns and other types of monopoles, or similar structures supporting said equipment, equipment buildings, shelters or cabinets, and other accessory development. Wireless communications facility includes personal wireless services as defined in the Federal Telecommunications Act of 1996, and as subsequently amended.

Section 4. **Wireless Communications Facilities.** That Chapter 163, Use Conditions, of the Code of Fayetteville, is hereby amended to add the following:

§163.29. Wireless Communications Facilities.

A. The following general requirements shall apply to all new wireless communications facilities.

1. Noise Requirements

Equipment used in connection with a tower or antenna array shall not generate noise that can be heard beyond the site. This prohibition does not apply to air conditioning units no noisier than ordinary residential units or generator used in emergency situations when regular power supply for a facility is temporarily interrupted; provided that any permanently installed generator shall be equipped with a functional residential muffler.

2. Compliance With Federal Regulations

Applicant shall comply with all applicable federal regulations. Proof of compliance shall be provided upon request of the City Planner.

3. Lighting and Signage

a. Wireless communications facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Security lighting or motion-activated lighting may be used around the base of a tower and within the wireless communication facility, provided that the lighting is shielded in such a way that no light is directed towards adjacent properties or rights-or-way.

b. Signs shall be limited to those needed to identify the property and the owner and warn of any danger. No signs, symbols, identifying emblems, flags, or banners shall be allowed on towers.

B. New Towers. New wireless communication towers shall meet the following requirements:

DRAFT August 16, 1999

1. Type of Towers Allowed. New towers shall be limited to monopole type structures or alternative tower structures.

2. Tower and Antenna Height Limitations. Towers or alternative tower structures are permitted to a maximum height of one hundred and fifty (150') feet.

3. Fall Zone. The minimum distance from the base of any tower to any residential dwelling unit shall be the tower height or required setback, whichever is greater, unless all persons owning said residences or the land on which said residences are located consent in a signed writing to the construction of said tower. This setback is considered a "fall zone". In the event that an existing structure is proposed as a mount for a wireless communication facility, a fall zone shall not be required.

4. Camouflaging or Stealth Technology for New Towers. If the applicant demonstrates that it is not feasible to locate on an existing structure, towers shall be designed to be camouflaged to the greatest extent possible, including but not limited to: use of compatible building materials and colors, screening, landscaping and placement within trees.

5. Color of Towers. To the extent that any antenna extends above the height of the vegetation immediately surrounding it, they shall be a neutral color, painted or unpainted, unless the FAA requires otherwise.

6. Information Required To Process New Tower Requests

a. Provide a map of the geographic area that your project will serve.

b. Provide a map that shows other existing or planned facilities that will be used by the wireless communication service provider who is making the application.

c. Provide a map that shows other potential stand-alone locations for your facility that have been explored.

d. Provide a scaled site plan containing information showing the property boundaries, proposed tower, existing land use, surrounding land uses and zoning, access road(s) location and surface material, existing and proposed structures and topography. The plan shall indicate proposed landscaping, fencing, parking areas, location of any signage and specifications on proposed lighting of the facility.

e. Describe why the proposed location is superior, from a community perspective, to other potential locations. Factors to consider in the community perspective should include: visual aspects, setbacks and proximity to single family residences.

f. Describe your efforts to co-locate your facility on one of the poles or towers that currently exists, or is under construction. The applicant should demonstrate a good faith effort to co-locate with other carriers. The Planning Commission may deny a permit to an applicant that has not demonstrated a good faith effort to provide for co-location. Such good faith effort includes:

(1). A survey of all existing structures that may be feasible sites for co-locating wireless communications facilities;

(2). Contact with all the other wireless communications licensed carriers operating in the City and Washington County; and

(3). Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location.
(4). Letter from tower owner stating why co-location is not feasible.

g. Describe how you will accommodate other antenna arrays that could co-locate on your facility. Describe how this accommodation will impact both your pole or tower, and your ground mounted facilities. Provide documentation of your provider's willingness to accommodate other providers who may be able to co-locate on your facility.

7. Required (after condition) and Balloon Test or Crane Test Photographs.

The proposed tower shall be photographed from four locations taken 90° apart and 300' from the center of the tower. The proposed tower shall be superimposed on the photographs. A balloon or crane test shall be performed to illustrate the height of the tower and photographed from the same four locations. The time period, not to exceed one week, within which the test will be performed, shall be advertised in a newspaper of general circulation in the City at least 14 days, but not more than 21 days prior to the test. The four locations shall be approved by the City Planner.

8. Sight Line Representation.

A sight line representation shall be drawn from four points 90° apart and 100' from the proposed tower. Each sight line shall be depicted in profile, drawn at one inch equals 40 feet. The profiles shall show all intervening trees and buildings.

9. Structural Integrity and Inspections of Towers

a. The applicant shall provide a certification letter that states the tower meets or exceeds design criteria and all local, state and federal requirements regarding the construction, maintenance, and operation of the tower.

b. If a tower fails to comply with the requirements and criteria above and constitutes a danger to persons or property, then upon written notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such requirements and criteria. If the owner fails to bring such tower into compliance within thirty (30) days, the City may terminate that owner's conditional use permit and/or cause the removal of such tower (at the owner's expense).

c. By making an application hereunder, the applicant agrees to regularly maintain and keep in a reasonably safe and workmanlike manner all towers, antenna arrays, fences and outbuildings owned by applicant which are located in the City. The applicant further agrees to conduct inspections of all such facilities not less frequently than every 12 months. The applicant agrees that said inspections shall be conducted by one or more designated persons holding a combination of education and experience so that they are reasonably capable of identifying functional problems with the facilities.

10. Security Fencing and Anti-climbing Device

Through the use of security fencing, towers and equipment shall be enclosed by wood board fencing not less than six (6) feet in height. The tower shall also be equipped with an appropriate anti-climbing device. The facility shall place signs indicating "No Trespassing", "High Voltage" or other pertinent information on the outside of the fence, unless it is decided that the goals of this ordinance would be better served by waiving this provision in a particular instance. Barbed wire fencing or razor wire shall be prohibited.

11. Vegetative Screening Requirements

Wireless communications facilities shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both.

12. Setbacks from property lines. Wireless communications facilities shall meet current setbacks as required by zoning.

C. Co-location. Applicants for co-location shall meet the following requirements:

1. Administrative Approval for Antenna Co-locations and Locations on Other Structures. The City Planner, following an administrative review without requiring the issuance of a Conditional Use Permit, may approve the following antenna installation:

a. Locating on Existing Structures. Installation of an antenna on an existing structure other than a tower (such as a building, sign, light pole, electric transmission tower and similarly scaled public utilities /facilities, water tower, or other free-standing non-residential structure), provided that the addition of the antenna does not add more than twenty (20') feet to the height of the original structure.

b. Locating on Existing Towers. Installation of an antenna on an existing tower of any height, and the placement of additional buildings or other supporting equipment used in connection with such additional antenna, so long as the proposed additions would add no more than twenty feet (20) of height to the original height of the tower. The addition or modification, to the extent possible, should be designed to minimize visibility.

c. For the purposes of co-location, the applicant must submit information from a licensed professional engineer certifying the capacity of the tower for additional providers and a letter of intent from the applicant indicating their intent to share space.

D. Other requirements.

1. Wireless Communications Facilities Placed on Top of Buildings

When a wireless communications facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the buildings's silhouette.

2. Wireless Communications Facilities Placed on Sides of Buildings.

Antenna which are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly behind them.

E. Exemptions

1. Personal Use. Towers for personal use which, including the height of all antenna arrays, do not extend more than 80' from the ground and shall meet the current setbacks as required by zoning.

2. Temporary Structures. Temporary structures designed to be used for not more than 14 days in connection with a special event or for any reasonable period of time in and immediately following an emergency, including without limitation those towers which are identified as "C.O.W.s." or "Cells on Wheels."

3. Existing Towers. All existing towers may be replaced with the same type and height of tower structure as currently exists.

4. Emergency and Utility Towers and Antennas. Towers and antennas under thirty five (35') in height used for 9-1-1 services and utility monitoring (gas, water, sewer, traffic signals, etc.)

F. Municipal Profits from Towers

The City of Fayetteville should actively market its own property and existing structures as suitable co-location sites. As noted above the review process is shortened and simplified when co-location on city property is submitted by applicant. An annual lease amount should be charged according to the fair-market value of the location. The revenues can be earmarked to improve the public area within which the tower is located. In cases where the company no longer needs the tower, the City may require it to be removed. Applicants can provide co-location space for city owned antennas.

G. Abandoned Antennas or Towers

At such time that a licensed carrier abandons or discontinues operation of a wireless communications facility, such carrier will notify the City of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations. In the event that licensed carrier fails to give such notice, the wireless communications facility shall be considered abandoned upon such discontinuation of operations. Upon abandonment or discontinuation of use, the carrier shall physically remove the wireless communications facility within 90 days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

1. Removal of antenna, mount, equipment shelters and security barriers from the subject property.

2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.

3. Restoring the location of the wireless communications facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.

H. Notification of Change of Ownership/Operator

Upon assignment or transfer of a Conditional Use Permit or any of the rights thereunder to a new wireless telecommunications operator, the owner or operator shall provide written notice within thirty (30) days to the City Planner.

Section 5. Public Notification

That Section 157.04 is hereby amended to add the following:

B.6. Wireless Communications Facilities. Applicants requesting permits for new towers shall notify property owners within a 500' radius from the center of the tower. Applicants requesting permits for co-location shall not require notification. Notification shall be certified mail for adjoining property owners, including across streets and regular mail for the remaining property owners within the notification area.

Section 6. Emergency Clause. This ordinance is necessary to preserve the public peace, health, safety, and welfare, and because of such, an emergency is declared to exist and this ordinance shall be in full force and effect from the date of its passage and approval.

PASSED and APPROVED this ____________ day of ____________, 1999.

APPROVED:

____
MAYOR

ATTEST:

____
CITY CLERK

FAILED

RECEIVED
AUG 02 1999
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

STAFF REVIEW FORM

X Agenda Request
___ Contract Review
___ Grant Review

For the Fayetteville City Council meeting of August 17, 1999.

FROM:

Tim Conklin	Planning	Public Works
Name	Division	Department

ACTION REQUESTED: To approve a resolution changing the name of Hackberry Street to Amber Drive, to make Amber the continuous street name running east and west through the Charleston Place P.U.D.

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	7-30-99 Date	Internal Auditor	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommends changing the name from Hackberry Street to Amber Drive. This is forwarded upon request of Dave Jorgenson.

Division Head	7-30-99 Date
Department Director	8-2-99 Date
Administrative Services Director	2AUG99 Date
Mayor	8/2/99 Date

Cross Reference

New Item: **Yes** **No**

Prev Ord/Res#: ___

Orig Contract Date: ___

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: 501-575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville City Council

THRU: Tim Conklin, City Planner

FROM: Dawn T. Warrick, Development Coordinator

DATE: July 30, 1999

SUBJECT: Street Name Change - Hackberry Drive between Amber and Winwood

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A street name change is being requested for a small city street currently called Hackberry Drive. Hackberry Drive connects Winwood Drive to Overcrest Street; it is approximately 190' long. With the development of the Charleston Place subdivision, Amber Drive has been extended from the west and it now connects to the western end of Hackberry Drive. Discussion of a connection between the existing streets began in June 1996 when the concept plat for this development was initially presented to the Planning Commission. The connection was a part of the preliminary plat in every configuration that was presented prior to its approval and it has always been called and labeled Amber Drive.

The formal request which is attached to this memo is from the engineer representing the owner/developer of Charleston Place. This street name change was a condition of the Planning Commission approval of the final plat creating this subdivision (see attached minutes).

Since the two existing streets have now been connected, a common street name is needed in order to provide continuity and safety (emergency services, etc.) for the residents of the area.

There are two properties which are currently addressed off of Hackberry Drive. The owners have been contacted by City staff and are aware of the requested change.

JORGENSEN & ASSOCIATES
CONSULTING ENGINEERS, INC.

City of Fayetteville
113 W. Mountain
Fayetteville, AR 72701

6-3-99

Att: Planning Dept.
Re: Charleston Subd.

As requested, we will need to change the name of Hackberry Street which is on the east end of the Charleston Subdivision. The street to the west is Amber Drive which is the street name that we would like to change Hackberry to.

Please call me concerning any questions you may have.

Thank you.

Sincerely;

David L. Jorgensen, P.E.

2013 GREEN ACRES RD., SUITE A • FAYETTEVILLE, ARKANSAS 72703 • (501) 442-9127

FP99-3: FINAL PLAT
CHARLESTON PLACE SUBDIVISION, PP370

This item was submitted by Dave Jorgensen of Jorgensen and Associates on behalf of Greg House for property located east of Old Wire Road and south of Elmwood Drive. The property is zoned R-1, Low Density Residential, and contains approximately 12.84 acres with 51 lots proposed.

Dave Jorgensen and Greg House were present on behalf of the project.

Staff Recommendations

1. City Council approval of sewer easement vacation.

2. A street name change needs to be presented to City Council in order to change the short section of Hackberry to Amber Drive. This requires the applicant to submit a letter requesting the change and staff will process an agenda request.

3. Protective covenants for this Planned Unit Development shall be filed of record with the final plat. These covenants shall provide for the private maintenance of detention ponds, open channels (swales), and islands and must name the City as a third party.

4. Applicant shall work with staff to finalize the easements prior to engineering sign off on the final plat.

5. Payment of parks fees in the amount of $19,125 (15 lots @ $375.00.)

6. Sidewalk construction in accordance with current standards to include a 4 foot sidewalk with a 4 foot green space along both sides of Amber Drive and one side of Cypress Lane.

7. All Plat Review and Subdivision comments.

8. Staff approval of final detailed plans, specifications and calculations for grading, drainage, water, sewer, fire protection, streets, sidewalks, parking lots and tree preservation. The information submitted for the plat review process was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with the City's current requirements.

9. All green space shall be maintained by the Property Owner's Association including the island and sign at the east entrance to the development.

10. Completion of all punch list items prior to staff approval of final plat.

11. Installation of landscaped screening around detention areas.

Committee Discussion

Due to technical difficultly a transcript of the proceedings was not available. Following is a synopsis of the discussion.

Petrie inquired as to whether the alleys would be constructed or bonded. Jorgensen replied that a portion of the alleys might have to be bonded.

There was discussion regarding the purpose of the alleys being for rear access to the dwelling units and not for service vehicles.

There was a question regarding setbacks from detention areas. Only water features such as lakes that continuously hold water require setbacks.

Hoffman requested landscaped screening of the detention areas.

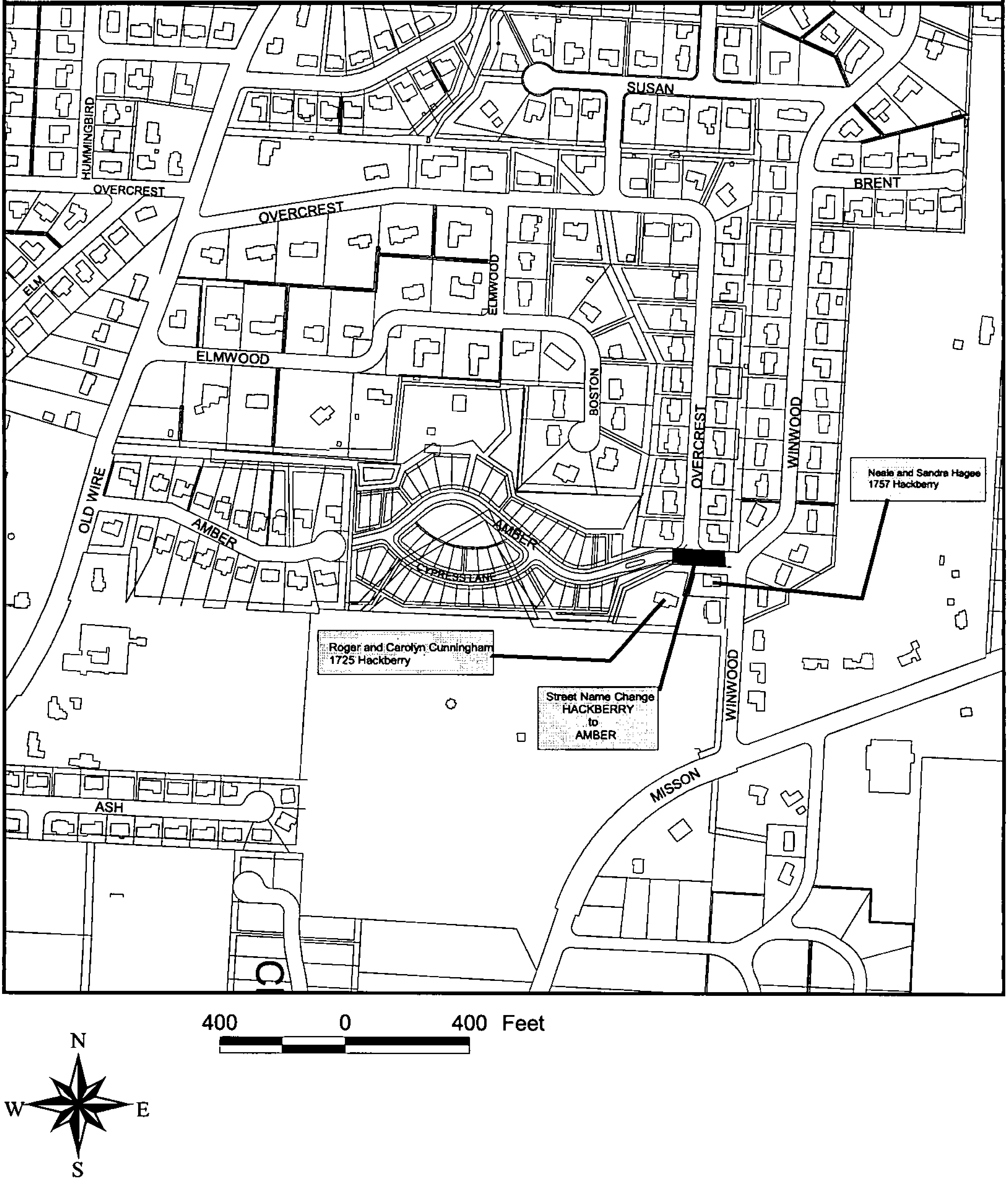
MOTION

Mr. Estes made a motion to approve FP99-3 subject to all staff comments.

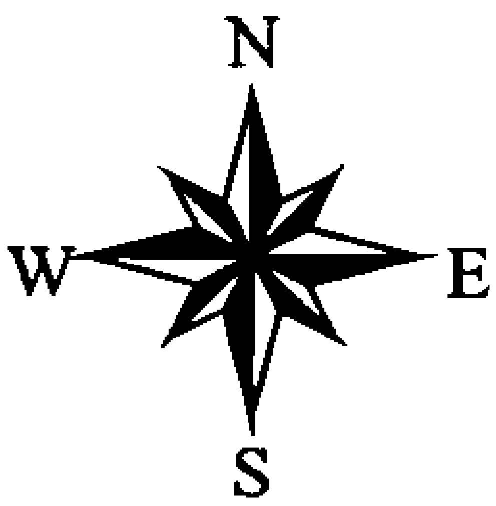
Ms. Hoover seconded the motion.

Ms. Hoffman concurred.

AD99-15.00 - Charleston Place Subdivision - Close Up



AD99-15.00 - Charleston Subdivision



CITY OF FAYETTEVILLE CITY COUNCIL FINAL AGENDA

FAYETTEVILLE CITY COUNCIL AUGUST 17, 1999

A meeting of the Fayetteville City Council will be held on August 17, 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 will be considered:

A. CONSENT AGENDA

1. **APPROVAL OF MINUTES:** Approval of minutes from August 3, 1999 City Council meeting.
2. **MT. OLIVE WATER ASSOCIATION:** A resolution authorizing the City to grant a water line permanent and temporary construction easement O.455 acres) to Mt. Olive Water Association for the construction and operation of a water line along the East boundary of Lake Wilson.
3. **DETENTION CENTER:** A resolution authorizing the Mayor and City Clerk to convey 186 square feet of City property to Washington County, Arkansas as outlined by the footprint of Washington County Detention Center on City owned property west of Mill Avenue.
4. **FAMILY VIOLENCE SHELTER:** A resolution approving a contract with Foster Witsell Evans and Rasco for architectural services in conjunction with construction of a Shelter and offices for the Project for Victims of Family Violence. Compensation for architectural services and engineering costs is $51,900 with a project contingency of $5,190 (10%), for a total cost of $57,090.
5. **SEWER REHABILITATION:** A resolution approving change orders to the sewer rehabilitation construction contracts for a new reduction of $27,623.44. Cost changes include:
   a. Insituform, TexArk, for an increase of $69,370.50
   b. Jones Brothers, Inc, for a reduction of $75,495.30
   c. T-G Excavating, for a reduction of $21,498.64.
6. **HIGHWAY 265 UTILITY RELOCATION:** A resolution approving the Highway-Utility Construction / Relocation Agreement with the Arkansas State Highway and Transportation Department for water and sewer relocations and adjustments on Highway 265 (between Highways 45 and 16). Per the agreement, $1,465,759.34 (51.44%) of the actual cost of the eligible portions will be reimbursable to the City by the Highway Department.

B. OLD BUSINESS

C. NEW BUSINESS

1. **RZ 99-16.10:** An ordinance approving rezoning request RZ 99-16.10 submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-O, Residential Office, and contains approximately 5.2 acres. The request is to rezone the property to C-1, Neighborhood Commercial.
2. **RZ 99-17:** An ordinance approving rezoning request RZ 99-17 submitted by Marshall Carlisle on behalf of Mid-Southern Enterprises for property located at the northwest corner of Wedington Drive and Salem Road. The property is zoned R-2, Medium Density Residential, and contains approximately 4.77 acres. The request is to rezone the property to R-O, Residential Office.
3. **AMBER DRIVE:** A resolution approving the changing of the name of Hackberry Street to Amber Drive, to make Amber the continuous street name running east and west through the Charleston Place P.U.D.
4. **DICKSON STREET WATER & SEWER RELOCATIONS:** A resolution approving the award of a contract to relocate certain water and sewer lines on Dickson Street, and to construct a new 12-inch water line for additional fire protection and general improvement of the water system. Information on the amount of the bid and the low bidder will be available August 16th.
5. **CELL TOWER ORDINANCE:** An ordinance establishing criteria to assess and reduce visual and land use impacts associated with the development of wireless communications facilities in the City of Fayetteville, Arkansas.

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.

STAFF REVIEW FORM

X AGENDA REQUEST
X CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council meeting of 8-17-99

FROM:

Sid Norbash — Engineering — Public Works
Name — Division — Department

ACTION REQUIRED: Approval of the Highway - Utility Construction / Relocation Agreement with Arkansas Highway and Transportation Department, Reference to Hwy 265 Widening (Hwy 45 to Hwy 16) - Water & Sewer Relocations.

COST TO CITY:

$1,465,759.34 (Revenue)	$1,400,000	State Hwy-Utility Relo.
Cost of this Request	Category/Project Budget	Category/Project Name
5400-0940-4303.00	-0-	
Account Number	Funds Used To Date	Program Name
97043	$1,400,000	Water & Sewer
Project Number	Remaining Balance	Fund

BUDGET REVIEW: X Budgeted Item ___ Budget Adjustment Attached

Budget Manager — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:** ___

Marilyn J Cramer — Accounting Manager — 8-10-99 Date
ADA Coordinator — Date
City Attorney — 8 Aug 99 Date
Yolanda Fields — Internal Auditor — 8-10-99 Date ✓
Purchasing Officer — 8-10-99 Date

STAFF RECOMMENDATION: Approval of the Agreement.

Division Head — 10 Aug 99 Date

Cross Reference

Department Director — 8-10-99 Date

New Item: **Yes X No ___**

Administrative Services Director — 10AUG99 Date

Prev Ord/Res #: ___

Fred Hanna — Mayor — 8/10/99 Date

Orig Contract Date: ___

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: Fayetteville City Council

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

From: Sid Norbash, Staff Engineer SN

Date: August 10, 1999

Re: **Highway Utility Construction/Relocation Agreement**
Highway 265 (Hwy 45 to Hwy 16) Widening / Water & Sewer Relocations

Highway 265 is scheduled for major improvements in 1999 by the Arkansas Highway and Transportation Department. These improvements are to take place on Hwy 265 between Highway 45 and Highway 16. A vicinity map is attached for your information.

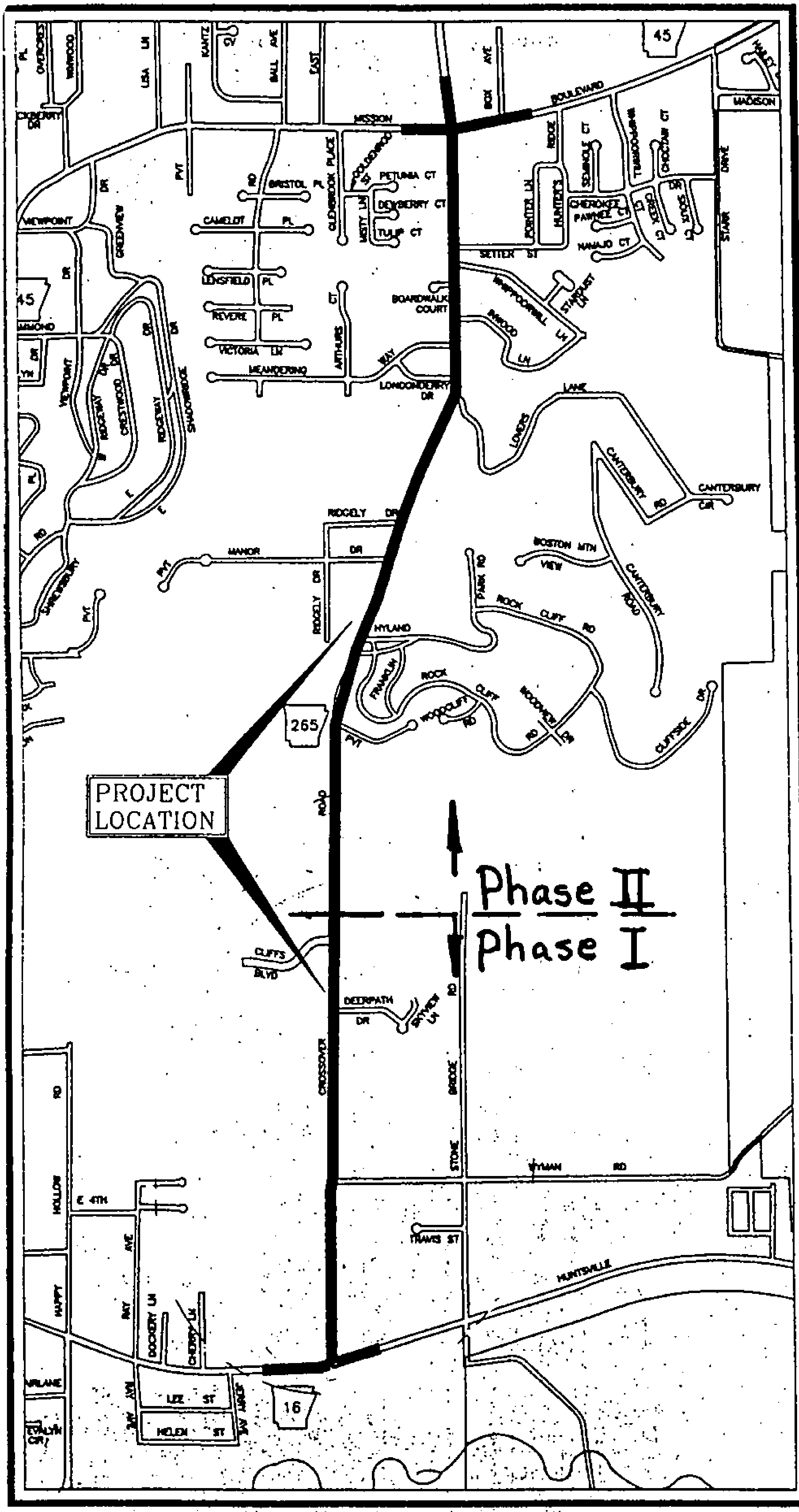
The total estimated cost of Water and sewer relocations and adjustments for this project is $2,849,455.16, **this amount is only that portion of the project cost which is eligible for reimbursement.** Per Highway Department's Agreement $1,465,759.34 (51.44%) of the actual cost of the eligible portions will be reimbursable to the City by the Highway Department.

The attached agreement has been prepared by the Arkansas Highway and Transportation Department according to the governing rules and regulations, and must be approved by the City Council.

The Staff requests that the Council approve the Agreement with the Highway Department.

SN/sn

Attachments: 2



VICINITY MAP
NO SCALE

AC ☒
LS ☐

ARKANSAS STATE HIGHWAY COMMISSION
HIGHWAY - UTILITY CONSTRUCTION/RELOCATION AGREEMENT

State Job No. 004999 (Utilities) County Washington

Federal Aid Project STP-9142 (6) Route 265 Section 2

Job Location Hwy. 16 - Hwy. 45 (S) Utility Owner City of Fayetteville Water & Sewer Department

THIS AGREEMENT, made and entered into this ______ day of ____________________, 19 ____, by and between the Arkansas State Highway Commission, acting by and through the duly authorized representatives of the Arkansas State Highway and Transportation Department, with headquarters at Little Rock, Arkansas, hereinafter referred to as the "Department," and the *City of Fayetteville Water & Sewer Department of Fayetteville, AR,* acting by and through its duly authorized representatives, hereinafter referred to as the "Owner" WITNESSETH:

The Department proposes to make highway improvements as specified under the above referenced job number and, the, "Owner" will adjust or relocate its existing facilities as set out in the attached plans and cost estimate.

The Department will participate in the cost of said adjustment/relocation to the extent that eligibility is hereinafter established.

Payment will be made on an *actual cost* basis as mutually agreed between "Owner" and "Department."

This agreement is governed by all applicable State and Federal laws, rules, and regulations including the Arkansas State Highway Commission Utility Accommodation Policy adopted by Commission Minute Order 96-167 as amended and supplemented, the Federal Aid Program Guide on Utility Adjustments and Accommodation on Federal Aid Highway Projects as amended and supplemented, and the provisions of 23 CFR § 645 as amended and supplemented.

DESCRIPTION OF WORK: *See attached "EXHIBIT A"*

The Department agrees that the required adjustment is *51.44%* eligible for reimbursement for the *actual cost* which is estimated to be *$2,849,455.16* of which *$1,465,759.34* to be paid by the Department and *$1,383,695.82* is to be borne by Owner.

Owner will not commence work until authorized by the Department, and will then endeavor to begin within 30 *calendar* days and complete within (*) *calendar* days thereafter.

On completion of said work, "Owner" is responsible for the cleanup and restoration of the work area including the disposal of surplus materials and debris.

Final billing must include all supporting detail. "Owner" shall also submit one (1) set of "as-built" drawings at this time.

Payment will be 100% of lump sum bills and 90% of actual cost bills, final 10% being released on completion of Department's audit. Such audit shall be completed within 90 days of the approval of the final bill.

* 81 calendar days for Phase I, and 197 calendar days for Phase II

Expenses incurred under an actual cost agreement may be billed to the Department monthly in increments of $5,000.00 or more.

"Owner" must maintain cost records and accounts to support the agreed adjustment/relocation work. Said records to be retained and available for inspection for a period of three (3) years from date of final payment.

"Owner" shall be responsible for any and all hazards to persons, property, and traffic.

With respect to traffic control, owner shall adhere to the requirements of the "Manual of Uniform Traffic Control Devices", as amended and supplemented.

Owner shall be responsible for and shall hold harmless the Arkansas State Highway Commission, the Department and their officers and employees from any and all claims, actions, causes of action, suits, damages, lossess or liability whatsoever, arising out of Owner's performance of the work subject to this Agreement.

Notwithstanding anything hereinbefore written, neither the "Owner" nor the "Department" by execution of this Agreement waives or relinquishes any rights which either may legally have within the limits of the Law or Constitution, either State or Federal.

CITY OF FAYETTEVILLE
WATER & SEWER DEPARTMENT

ARKANSAS STATE HIGHWAY COMMISSION
Acting By and Through The
HIGHWAY AND TRANSPORTATION DEPARTMENT

Title Mayor

Director of Highways & Transportation

Title

Chief, Right of Way Division

Title

Chief-Utilities Section
Right of Way Division

Job 004999 (Utilities)
City of Fayetteville
Water & Sewer Department

"EXHIBIT A"

Adjust water and sewer facilities to clear highway construction by relocating 14,095 feet of 8 and 12 inch waterline and 3,275 feet of 8 and 10 inch sewer line. Restore services by installing 18,935 feet of 6, 8, and 12 inch waterlines, and 3,925 feet of 8, 10, 12 and 14 inch sewer lines.

The pro rata factor for reimbursement will be determined by the following method:

$$\frac{\text{TOTAL ESTIMATED REIMBURSABLE COST} = \$1{,}099{,}507.77}{\text{TOTAL ESTIMATED CONSTRUCTION COST} = \$2{,}137{,}274.63} = 51.44\%$$

Total Estimated Construction Cost	$2,137,274.63
P.E. Cost Est. (Fixed Upper $377,378.95)	$ 377,378.95
Const. Eng. Est. (Fixed Upper $165,809.58)	$ 165,809.58
Est. Right of Way	$ 79,442.00
Est. Clearing	$ 87,000.00
Est. Health	$ 500.00
Advertise	$ 1,000.00
Salvage 19 X 50.00	$ 950.00
TOTAL	$2,849,455.16

$2,849,455.16 X 51.44% = $1,465,759.34

The "Owner" is also upgrading waterline from 12 inch to 24 inch for which betterment credit has been applied.

The "Owner" is not equipped to do this work; therefore, work will be done by contract.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

August 5, 1999

To: Fayetteville City Council

From: Don Bunn, Ass't Public Works Director

Subject: Approval of Bids
Dickson Street Water and Sewer Relocations

A line item amount of $500,000.00 is in the 1999 Capital Improvements Program for the relocation and/or construction of water and sewer lines in Dickson Street. The purpose of the project is to relocate certain water and sewer lines so that they do not interfere with the street enhancement planned for Dickson Street and to construct a new 12-inch water line prior to the enhancement work. The new 12-inch water line will provide for additional fire protection along Dickson Street and for the general improvement of the water system in that area.

On July 19, 1999 the City opened bids on the water and sewer relocations. We received two (2) bids, both of which were in excess of the amount certified for the project. Therefore the bids were rejected and a new bid date of August 16 was set. Some modifications were made in the bid documents which will tend to promote lower bid prices than we received in July. Also, we hope to have 4 or 5 bidders this time rather than only two.

We are requesting that the Council approve the award of a contract for the work at their regular meeting on August 17. We are attempting to plan the construction such that it is substantially completed by Thanksgiving so that disruption will be minimized during the holiday season. In order to have a chance to accomplish this goal, we must get the contractor to work just as soon as possible.

Information on the amount of the bid and the low bidder will be available to the Council sometime during the afternoon of August 16. Full information will be presented to the Council the evening of the August 17 meeting.

113 WEST MOUNTAIN 72701 501 521-7700
FAX 501 575-8257