

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA CITY COUNCIL MAY 2, 2000

The meeting of the Fayetteville City Council will be held on May 2, 2000 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville Arkansas.

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:** Approval of the minutes of the April 18, 2000 City Council meeting.
2. **SOCCER COORDINATOR:** A resolution approving a budget adjustment to hire a Soccer Coordinator to administer the youth and adult soccer program for the City Parks and Recreation Division.
3. **CLEVELAND STREET:** A resolution approving an engineering contract amendment in the amount of \$22,446.00 with Crafton-Tull and Associates for changes to the Cleveland Street project.
4. **HWY 45 WATERLINE:** A resolution approving an engineering design contract in the amount of \$36,740.00 with McClelland Consulting Engineers for a new 12 inch water line adjacent to and on the new Highway 45 East White River Bridge to be constructed in 2000/2001 by the AHTD and approval of a budget adjustment.

B. OLD BUSINESS

1. **RZ 00-13.00:** An ordinance approving rezoning request RZ 00-13.00 submitted by Charles Venable on behalf of the City of Fayetteville for property located at 1020 Harold Street. The property is zoned R-1, Low Density Residential and contains approximately 0.77 acres. The request is to rezone to R-0, Residential Office. The ordinance was left on the first reading at the April 18, 2000 meeting.



2. **PERMIT REPORT:** A report from the City Attorney regarding the ordinance requirements for Stormwater Management, Drainage, and Erosion Control permits and Grading permits for CMN Business Park.

C. NEW BUSINESS

1. **VA 00-2.00:** An ordinance for VA 00-2.00 submitted by the City of Fayetteville on behalf of property owners Albert and Marty Pennington for property located at 3 Wallin Mountain Road, West Fork, Arkansas. The request is to vacate a 30 foot utility easement.
2. **STEELE CROSSING:** An appeal of a Planning Commission decision submitted by Alderman Kyle Russell regarding LSD 00-5.00 (Steele Crossing Shopping Center).

CHECKLIST FOR CITY COUNCIL MEETING: 5/2/2000

AGENDA DUE:	Draft	Tentative	Agenda Session	Final
DATE:	4/17/00	4/21/00	4/25/00	4/28/00

DISTRIBUTION:	T	A	F	Staff:	T	A	F
Bob Reynolds	✓	✓		Mayor Hanna	✓	✓	
Ron Austin	✓	✓		John Maguire	✓	✓	
Cyrus Young	✓	✓		Nancy Hendricks	✓		
Kyle Russell	✓	✓		Charles Venable	✓	✓	
Trent Trumbo	✓	✓		Don Bunn	✓	✓	
Bob Davis	✓	✓		Marilyn Cramer	✓	✓	
Kevin Santos	✓	✓		Steve Davis	✓	✓	
Heather Daniel	✓	✓		Yolanda Fields	✓	✓	
	✓			Jerry Rose	✓	✓	
Northwest AR Times	✓	✓		Tim Conklin	✓	✓	
Morning News	✓	✓		Alett Little	✓	✓	
AR Democrat-Gazette	✓	✓					

- ☐ **Draft Agenda**
 - ☒ Check for Additional Items
 - ☐ Mail Notification Letters to Applicants / Property Owners

- ☐ **Tentative Agenda**
 - ☒ Include all contracts
 - ☒ Include budget adjustments
 - ☒ All signatures on Staff Review Form
 - ☒ Page numbers correct
 - ☒ 24 copies of agenda packet distributed to Distribution
 - ☒ 34 copies of agenda cover distributed to general staff
 - ☒ 10 copies of agenda cover placed in City Clerk's office agenda cubbybox
 - ☐ Put minutes cover (items approved) on front of agenda

Continued: CHECKLIST FOR CITY COUNCIL MEETING: ____/____/2000

- ☐ **Agenda Session**
 - ☒ Attendance
 - ☒ Additional Information
 - ☒ New Information
 - ☒ Requested Information
 - ☒ Distribute Agenda Session packet to anyone absent
 - ☒ Make sure Lana / Marilyn have their copies

- ☐ **Final Agenda**
 - ☐ Additional Information
 - ☐ Minutes
 - ☐ All signatures on Staff Review Form and executed contracts (other side)
 - ☐ Include all contracts
 - ☐ Include budget adjustments
 - ☐ 24 copies of agenda packet distributed to Distribution
 - ☐ 34 copies of agenda cover distributed to general staff
 - ☐ 15 copies of agenda cover placed in City Council entry box
 - ☐ Advertisement
 - ☐ Display ad faxed to NWAT, Friday, 11:00 a.m.
 - ☐ Fax proof checked / returned to NWAT by Friday afternoon
 - ☐ Cut out Final Agenda from Monday newspaper
 - ☐ Internet disk: approved minutes, agenda, public meetings to Kevin Springer

- ☐ **City Council**
 - ☐ Roll tally
 - ☐ Assemble and bring full agenda
 - ☐ Resolutions / Ordinances:
 - ☐ Resolutions / Ordinances assembled and signed
 - ☐ Update Resolutions / Ordinances Book
 - ☐ Attach correspondence / conversations to Resolutions / Ordinances
 - ☐ Resolutions / Ordinances indexed and microfilmed
 - ☐ Publish ordinances
 - ☐ File ordinances at Washington County Courthouse
 - ☐ Distribute originals and copies with cover letters
 - ☐ Send ordinances for codification
 - ☐ Thank you letters to speakers
 - ☐ Send notification letters to applicants
 - ☐ Index City Council minutes
 - ☐ Distribute City Council minutes
 - ☐ Planning
 - ☐ Marilyn Cramer
 - ☐ Arthur Andersen
 - ☐ Public Library

CITY COUNCIL May 2, 2000

	<u>Roll</u>				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	✓				
SANTOS	✓				
MAYOR HANNA	✓				
	RA KP Consent.				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	✓				
SANTOS	✓				
MAYOR HANNA					
	2-0-1 RA 3RD BD R 2:00-1:30	PASS			
YOUNG	✓	✓			
RUSSELL	✓	✓			
REYNOLDS	✓	✓			
AUSTIN	✓	✓			
DAVIS	✓	✓			
TRUMBO	✓	✓			
DANIEL	✓	✓			
SANTOS	✓	✓			
MAYOR HANNA					
	2-0-0.	2-0-0.			

CITY COUNCIL May 2, 2000

	2ND. ^{3RD} 1CS				
	H HD. VA 00-2.00.	BD BA	PASS		
YOUNG	✓	✓	✓		
RUSSELL	✓	✓	✓		
REYNOLDS	✓	✓	✓		
AUSTIN	✓	✓	✓		
DAVIS	✓	✓	✓		
TRUMBO	✓	✓	✓		
DANIEL	✓	✓	✓		
SANTOS	✓	✓	✓		
MAYOR HANNA					
	8-0. 1CR/1CS moved to Perry Plan & number P.C. decision	8-0.	8-0.		
	STEEL CROSSING.				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS	N				
AUSTIN	N				
DAVIS	N				
TRUMBO	N				
DANIEL	✓				
SANTOS	✓				
MAYOR HANNA					
	4-4-0. FAILED 1CS H SOCCER Council.				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	✓				
SANTOS					
MAYOR HANNA					
	8-0.				

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Bob Kittinger
3829 Gardenia Drive
Fayetteville, AR 72701

Re: City Council Meeting

Dear Mr. Kittinger:

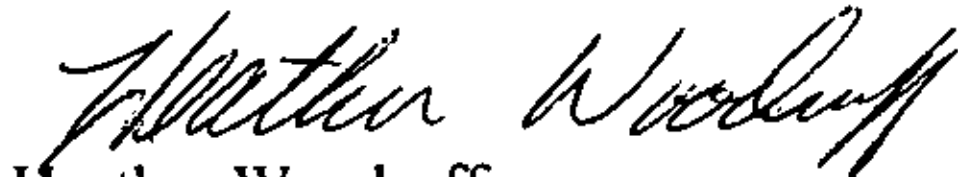
Thank you for taking the time to attend the City Council meeting on May 2, 2000. I realize sacrifices often have to be made in order to attend. I wanted you to know how important and appreciated your contributions were.

I can not impress upon you enough the importance of public participation. Our Council needs to hear the voices of our dedicated and concerned citizens.

If I can assist you in anyway, please contact the City Clerk's office at 575-8323.

Once again, thank you for your participation.

Sincerely,



Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Patricia Mikkelson
2414 N. Blackberry Drive
Fayetteville, AR 72701

Re: City Council Meeting

Dear Ms. Mikkelson:

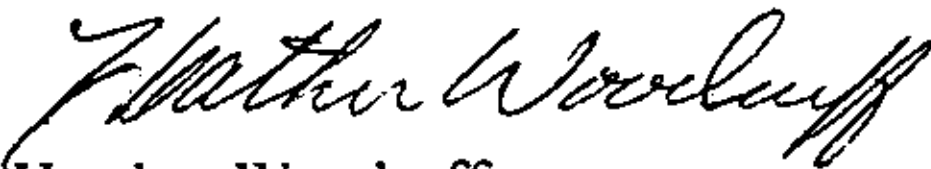
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Once again, thank you for your participation.

Sincerely,



Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Anita Schnee
2399 Abbott Lane
Fayetteville, AR 72701

Re: City Council Meeting

Dear Ms. Schnee:

Thank you for taking the time to attend the City Council meeting on May 2, 2000. I realize sacrifices often have to be made in order to attend. I wanted you to know how important and appreciated your contributions were.

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Once again, thank you for your participation.

Sincerely,


Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Joe Williams
585 N. Rockcliff Road
Fayetteville, AR 72701

Re: City Council Meeting

Dear Mr. Williams:

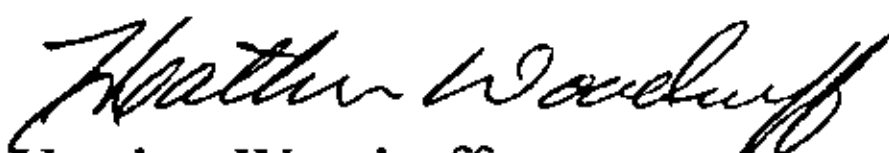
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Sincerely,


Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

John DuVal
1131 N. Eastwood Drive
Fayetteville, AR 72701

Re: City Council Meeting

Dear Mr. DuVal:

Thank you for taking the time to attend the City Council meeting on May 2, 2000. I realize sacrifices often have to be made in order to attend. I wanted you to know how important and appreciated your contributions were.

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Once again, thank you for your participation.

Sincerely,


Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Audrea Fourney
1214 N. Shady Lane
Fayetteville, AR 72701

Re: City Council Meeting

Dear Ms. Fourney:

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Sincerely,



Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Steve Frankenberger
414 W. Prospect Drive
Fayetteville, AR 72701

Re: City Council Meeting

Dear Mr. Frankenberger:

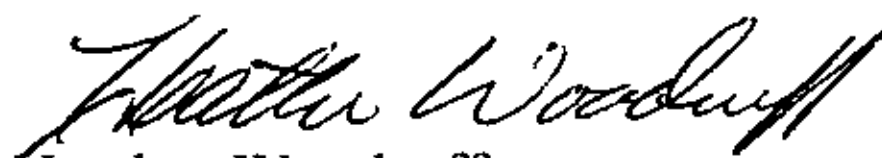
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Sincerely,



Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Morton Newmark
1039 E. Overcrest Street
Fayetteville, AR 72701

Re: City Council Meeting

Dear Mr. Newmark:

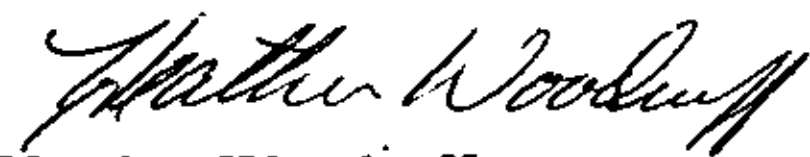
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Once again, thank you for your participation.

Sincerely,



Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Rick McKinney
609 E. Rogers Drive
Fayetteville, AR 72701

Re: City Council Meeting

Dear Mr. McKinney:

Thank you for taking the time to attend the City Council meeting on May 2, 2000. I realize sacrifices often have to be made in order to attend. I wanted you to know how important and appreciated your contributions were.

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Once again, thank you for your participation.

Sincerely,



Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Peter Heinzelmann
1737 Appleberry Drive
Fayetteville, AR 72701

Re: City Council Meeting

Dear Mr. Heinzelmann:

Thank you for taking the time to attend the City Council meeting on May 2, 2000. I realize sacrifices often have to be made in order to attend. I wanted you to know how important and appreciated your contributions were.

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Sincerely,


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City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Richard Maynard
1717 Sang Ave.
Fayetteville, AR 72701

Re: City Council Meeting

Dear Mr. Maynard:

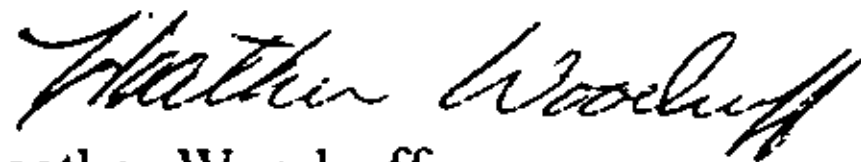
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Once again, thank you for your participation.

Sincerely,



Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Coleen Gustin
3270 Rom Orchard
Fayetteville, AR 72701

Re: City Council Meeting

Dear Ms. Gustin:

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Sincerely,



Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Kit Williams
39 E. Center, Suite 108
Fayetteville, AR 72701

Re: City Council Meeting

Dear Mr. Williams:

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Sincerely,



Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Cary Arsaga
16 W. Maple
Fayetteville, AR 72701

Re: City Council Meeting

Dear Mr. Arsaga:

Thank you for taking the time to attend the City Council meeting on May 2, 2000. I realize sacrifices often have to be made in order to attend. I wanted you to know how important and appreciated your contributions were.

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Once again, thank you for your participation.

Sincerely,


Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Donna Porter
1030 Huntsville Road
Fayetteville, AR 72701

Re: City Council Meeting

Dear Ms. Porter :

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Once again, thank you for your participation.

Sincerely,



Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Gary Adams
760 N. 46th Ave.
Fayetteville, AR 72704

Re: City Council Meeting

Dear Mr. Adams:

Thank you for taking the time to attend the City Council meeting on May 2, 2000. I realize sacrifices often have to be made in order to attend. I wanted you to know how important and appreciated your contributions were.

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Once again, thank you for your participation.

Sincerely,


Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

O. E. Luttrell
4480 W. Luttrell Lane
Fayetteville, AR 72704

Re: City Council Meeting

Dear Mr. Luttrell:

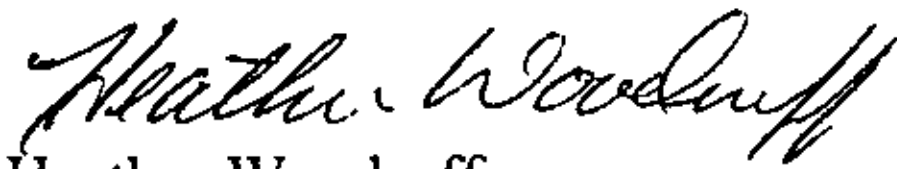
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Once again, thank you for your participation.

Sincerely,



Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Wayne Flora
5890 Michael Cole Drive
Fayetteville, AR 72701

Re: City Council Meeting

Dear Mr. Flora:

Thank you for taking the time to attend the City Council meeting on May 2, 2000. I realize sacrifices often have to be made in order to attend. I wanted you to know how important and appreciated your contributions were.

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Once again, thank you for your participation.

Sincerely,



Heather Woodruff
City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 3, 2000

Bill Jowers
452 North 46th Street
Fayetteville, AR 72704

Re: City Council Meeting

Dear Mr. Jowers:

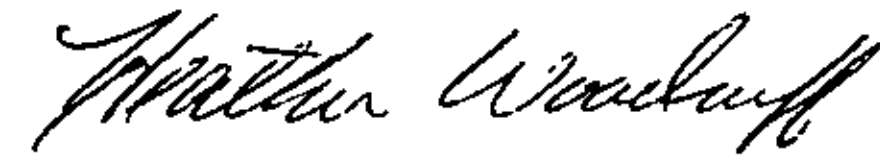
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Once again, thank you for your participation.

Sincerely,



Heather Woodruff
City Clerk

Post-it® Fax Note 7671		Date 4/25/00	# of pages 2
To	KIRK KANKIN	From	HEATHER W
Co./Dept.		Co.	
Phone #		Phone #	501 575-8323
Fax #	704-376-3918	Fax #	

Post-it® Fax Note 7671		Date 4/25/00	# of pages 2
To	Mickey Harrington	From	HEATHER W
Co./Dept.		Co.	
Phone #		Phone #	575-8323
Fax #	751-3715	Fax #	

Post-it® Fax Note 7671		Date 4/25/00	# of pages 2
To	Jim Irwin	From	HEATHER W
Co./Dept.		Co.	
Phone #	501-227-0280	Phone #	501-575-8323
Fax #		Fax #	

RECEIVED

APR 25 2000

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

MEMORANDUM

TO: Heather Woodruff, City Clerk
FROM: Kyle Russell, Alderman
DATE: April 25, 2000
SUBJECT: Appeal of Planning Commission approval of LSD 00-5.00 on April 24, 2000

Pursuant to Fayetteville Code of Ordinances (hereinafter F.C.O.) section 159.54(F)(1), I hereby appeal the decision of the Planning Commission of April 24, 2000, to approve LSD 00-5.00 (Steele Crossing Shopping Center) on the ground that I believe the applicant's plan clearly violates the Tree Protection and Preservation Ordinance, section 162.11(C)(1). In the interest of expediting the process of the appeal, I request that it be placed on the agenda for the City Council meeting of May 2, 2000.

Our ordinances state that in the event of an appeal to the council, "The city council shall hear all persons desiring to be heard on the question of whether the findings and decisions of the planning commission were in error. . . . The city council may refuse to approve a large scale development for any of the reasons specified in division (D) of this subsection." F.C.O. section 159.54(F)(2).

Among the reasons for which the council may reject a LSD plan is that "the proposed development would violate a city ordinance, a state statute, or a federal statute." F.C.O. section 159.54(D)(2). Although 29.59 percent of the property in question is currently covered in tree canopy, the plan submitted by Argus Properties, as I understand it, would preserve canopy that covered between 10 and 11 percent of the property. Under F.C.O. section 162.11(C)(1), "In all new subdivisions, large scale developments, and commercial developments, trees shall be preserved as outlined below under the percent minimum canopy: The square foot percentage of 'canopy area required' for preservation in new development is based on the total area of the property. . . . C-2 Thoroughfare commercial -- 15%." As dissenting Planning Commissioner Nancy Allen said during the commission's meeting of April 24, "10 percent is not 15 percent." Therefore, I believe, as does Landscape Administrator Kim Hesse judging from her comments at the Planning Commission meeting, that the plan is not in compliance with the ordinance.

I have heard three arguments from the public, from planning commissioners, and from fellow City Council members, in favor of approving this plan. First, the developers have made a reasonable effort to compromise in this process. This is a true statement. To the credit of the applicant, the tree preservation level has risen from 2.3 percent in the initial plan, to above 10 percent in the most recent plan. However, I believe the critical compromising occurred in 1992 and before, when the citizens drafted and the City Council passed the Tree Protection and Preservation Ordinance. The 15 percent "*minimum* canopy" requirement in C-2 zones was a compromise. It seems to me that these minimum canopy requirements were enacted so that there would be bright-line minimum standards that developers would have to meet. If all plans simply met that requirement, it would not be necessary for us to go into the details of each plan on a case-by-case basis. I believe it was a major purpose of this ordinance to avoid this kind of dispute by setting forth the rules clearly. Now all we have to do is follow them.



Second, the developer claims to have been surprised by the ordinances, or that his company bought the land in question relying on previous "variances" or "waivers" which the city has granted to past developers with regard to the Tree Protection and Preservation Ordinance and other city ordinances. In my opinion, it is unfortunate if Kim Hesse's predecessor as Landscape Administrator interpreted and enforced the ordinance as if it were a tree *replacement* ordinance. It is equally unfortunate if city staff and/or the Planning Commission have been granting waivers to an ordinance's *minimum* requirements.

However, I believe it is the duty of the City Council members, whenever they have a chance, to enforce the laws they have enacted rather than tolerate them being waived or ignored left and right. If we do not put our collective foot down with regard to this, the first development in a major commercial district, and require these developers to abide by the law, it will be very difficult to require future developers to abide by it because of the precedent we would be setting. I also believe if we fail to require compliance in every case, it would be unfair to the many developers in this city who understand the ordinance's existence and purpose and comply with it. As dissenting Planning Commissioner Bob Estes stated during the commission's April 24 meeting, all applicable ordinances were on the books when the developer bought the land. If the developer bought the property anyway, either oblivious to the ordinances or relying on future waivers, he should have known that he was taking his chances on getting his non-complying plan approved.

Third, and finally, I have heard much talk about the number of jobs, sales tax revenue and property tax revenue that this business would create in Fayetteville if the plan were approved. I find these arguments to be completely irrelevant to a discussion regarding compliance with the Tree Protection and Preservation Ordinance. If the citizens who drafted the ordinance, or the City Council members who voted to pass it, had wanted to, they could have inserted a provision that allowed the Landscape Administrator, the Planning Commission, or the City Council to approve otherwise non-complying plans if, in their judgment, the number of jobs or the amount of tax revenue that the development is projected to create outweighs the importance of the trees in question. But there is no such provision in the ordinance. If anyone believes there *should be* such a provision, they are welcome to propose it, and I would be happy to discuss its merits or demerits at that time. Until then, I believe we should stick with the law as it exists.

Thank you for your consideration in this matter. Regardless of the outcome, I hope this appeal provides a productive discussion among the applicant, the City Council, city staff and interested members of the public.

cc: Fred Hanna, Mayor
City Council members
Kirk Rankin, Argus Properties
Tim Conklin, Planning Director
Kim Hesse, Landscape Administrator
Planning Commission members
Media

**TENTATIVE AGENDA
CITY COUNCIL
MAY 2, 2000**

The meeting of the Fayetteville City Council will be held on May 2, 2000 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville Arkansas.

A. CONSENT AGENDA

1. ☒ **APPROVAL OF THE MINUTES:** Approval of the minutes of the April 18, 2000 City Council meeting.
2. ☒ **SOCCER COORDINATOR:** A resolution approving a budget adjustment to hire a Soccer Coordinator to administer the youth and adult soccer program for the City Parks and Recreation Division.
3. ☒ **CLEVELAND STREET:** A resolution approving an engineering contract amendment in the amount of \$22,446.00 with Crafton-Tull and Associates for changes to the Cleveland Street project.
4. ☒ **HWY 45 WATERLINE:** A resolution approving an engineering design contract in the amount of \$36,740.00 with McClelland Consulting Engineers for a new 12 inch water line adjacent to and on the new Highway 45 East White River Bridge to be constructed in 2000/2001 by the AHTD and approval of a budget adjustment.

B. OLD BUSINESS

1. ☒ **RZ 00-13.00:** An ordinance approving rezoning request RZ00-13.00 submitted by Charles Venable on behalf of the City of Fayetteville for property located at 1020 Harold Street. The property is zoned R-1, Low Density Residential and contains approximately 0.77 acres. The request is to rezone to R-0, Residential Office. The ordinance was left on the first reading at the April 18, 2000 meeting.

2. ord. Jerry Rose - form water May.

C. NEW BUSINESS

1. ✓ **VA 00-2.00:** An ordinance for VA 00-2.00 submitted by the City of Fayetteville on behalf of property owners Albert and Marty Pennington for property located at 3 Wallin Mountain Road, West Fork, Arkansas. The request is to vacate a 30 foot utility easement.

2. *appeal of steel crossing - High Runwell*

**TENTATIVE AGENDA
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B. OLD BUSINESS

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C. NEW BUSINESS

- 1. VA 00-2.00:** An ordinance for VA 00-2.00 submitted by the City of Fayetteville on behalf of property owners Albert and Marty Pennington for property located at 3 Wallin Mountain Road, West Fork, Arkansas. The request is to vacate a 30 foot utility easement.

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CITY COUNCIL
MAY 2, 2000**

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B. OLD BUSINESS

C. NEW BUSINESS

1. **VA 00-2.00:** An ordinance for VA 00-2.00 submitted by the City of Fayetteville on behalf of property owners Albert and Marty Pennington for property located at 3 Wallin Mountain Road, West Fork, Arkansas. The request is to vacate a 30 foot utility easement.

 Dale - Assistant - 27-Longans.

**MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
APRIL 18, 2000**

A meeting of the Fayetteville City Council was held on April 18, 2000 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

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; City Clerk Heather Woodruff; Staff; Press; Audience.

Mayor Hanna opened the meeting by announcing that Agenda Item 4 under New Business had been withdrawn. He asked City Attorney Jerry Rose to explain.

Mr. Rose reminded the Council what their purpose would be in hearing this item to begin with and what his advice to them would be regarding the matter. He stated the Council would be hearing an appeal of the decision of the Planning Commission to deny large scale development approval to Argus Properties. The first question to ask would be, does the City Council have the right to hear that matter under city ordinances. Mr. Rose said that the ordinance appears to be clear. He said that according to the Uniform Development Ordinance passed by the City Council, owners of record or any member of the City Council may appeal a Planning Commission decision to deny or approve a preliminary subdivision plat or large scale development. A letter from Argus Properties has been received stating their desire to appeal such a decision that was primarily concerned with the tree preservation section of the Tree Protection and Preservation Ordinance. The relationship between the Tree Protection and Preservation Ordinance and a large scale development is set out in what is known as the Tree Ordinance. The next question concerns the Landscape Administrator's role in a Tree Preservation Plan submitted to the Planning Commission. The ordinance says that the Tree Preservation Plan submitted by a developer shall be reviewed and recommendations shall be made to the Planning Commission by the Landscape Administrator. Her job is to review and make recommendations to the Planning Commission. No landmark or rare tree can be removed from land to be developed unless the Landscape Administrator, who can seek consideration and recommendation from the Tree and Landscape Advisory Committee, decides there is no reasonable way the property can otherwise be developed, improved or properly maintained and the tree saved. To determine that this paragraph is part of the preservation plan and not an independent duty on the Landscape Administrator's part, we need to look at Section 6 of the UDO, Section B, which is about tree removal.

Mr. Rose said he would be concerned if there were no appellant rights to a decision made by the Landscape Administrator. Basic due process under the Arkansas and the United States Constitutions generally require a hearing and the right to be heard by those effected by administrative decisions. Because of that, he does not know of any city ordinances that do

not have a right to appeal any administrative decision to either Planning Commission or the City Council or both. There would be a question of the constitutionality of any ordinance that did not provide for this process of appeal.

Mr. Rose said that Argus Development had met with Mayor Hanna, Charles Venable, Public Works Director and himself today to discuss a way to agree between the City and themselves that would satisfy the developers and conform with City ordinances. Mr. Rose proposed a possible motion that would allow the developers to dismiss this appeal and return to City Staff and the Planning Division with a plan that would meet with large scale development approval. Meetings would involve Mr. Venable, Public Works Director, and also the Landscape Administrator. The purpose would be to try to work out an agreement in conformity with the city ordinances that would again be presented to the Planning Commission for consideration as required by the city ordinances. Mr. Rose read the proposed motion.

Alderman Santos said that this motion was almost exactly what the Environmental Concerns Committee had recommended, except they had added they would like the City to ask the Community Design Center to help with a local area development plan for the entire three hundred acres of the business park. He asked if this could be added as an amendment to the proposed motion.

Mr. Rose said it could be added if that were the desire of the Council.

Alderman Austin seconded the original motion.

Alderman Russell seconded the amendment.

Alderman Young asked that his opinion be included in the minutes. He asked Mr. Rose if when he read the statement in the motion regarding all applicable ordinances, if that would include all overlay district, parking lot and green space ordinances and all other ordinances of the City of Fayetteville.

Mr. Rose said he would never advise the Council to do anything that is contrary to what the City ordinances require. He said he assumed he could say the same for all City staff and for the Council members also.

Alderman Young said he wanted to know when this proposal goes before the Planning Commission again, they would be discussing not just the tree ordinance but all other ordinances as well.

Mr. Rose answered that large scale development approval requires the consideration of a large variety of ordinances. The Tree Preservation Ordinance is only one piece of that. There are many other things, including setbacks, commercial design standards, etc.

Alderman Russell stated he would find it helpful in the future when the Council hears appeals of Planning Commission decisions if the Commission members would state the reasons why

they made a decision to deny a project. He said the reason for denying this proposal was not clear to him from reading the Planning Commission minutes. Apparently the Tree Preservation Ordinance was a big part of their decision and Commercial Design Standards were mentioned but not everybody weighed in on that.

Mayor Hanna said he was not certain he understood Alderman Santos' amendment but he took it to mean that the Community Design Department would have to be involved in the complete project. He said they had spent a good deal of time today meeting with the developers of this project and they were very amenable in trying to meet the city ordinances, and did not want to cause dissension in the community over this issue, but time is an element to them. He feels like Alderman Santos' proposal is a little bit after the fact. He said he had no objection to using the Community Design Department, if the land owners want to do it. Mayor Hanna does not think the Council should include the provision in this resolution. The petitioners are only asking to withdraw their appeal.

Mr. Rose said that he was concerned that in the same way the Council requires that the developers abide by all city ordinances, the developers should have the assurance from the Council that they are not asking more of them than is required by city ordinances. He was concerned legally about requirements made on one developer that are not made on others.

Alderman Trumbo suggested that Alderman Santos' recommendation might be more appropriately given to the Ordinance Review Committee for study and recommendation.

Alderman Santos said he was not really talking about an ordinance, nor was he talking about this development. He is thinking about a general plan, a guideline like the University's master plan, for future development. It would look at the different lots and the ordinances and see what will fit on there, so when the next potential developer comes in he can look at this plan and pick a lot that fits with his program. Alderman Santos said he did not see this being an ordinance or see it as binding. It would simply be a general guideline explaining the city's requirements in one document so future developers will not be surprised when they encounter the city's ordinances. The ordinances will have been built in to this guideline.

Alderman Russell asked if the Council was going to serve the interests of the property owners, who may not want to work with this group, or if it was going to serve the public interest and take advantage of this wonderful free service that exists in the community.

Mayor Hanna agreed that it is a great service. He said he has much respect for Dr. Glasser who has helped the city a great deal. However he would feel more comfortable with this as a separate resolution rather than as part of this motion.

Alderman Santos said he thought all needed was the consensus of the Council that they would like to ask Dr. Glasser's group to work on this. Thus, Alderman Santos withdrew his

motion. Alderman Russell said he agreed with that and he withdrew his second.

Alderman Young said in Chapter 169 of the grading ordinance it states no grading, filling, excavation or land alteration of any kind shall take place without a grading permit. In the Storm Water Management ordinance it states none of the above can take place without first obtaining a Storm Water Management Drainage and Erosion Control Permit from the City. He said he has found out that this development does not have either one of these permits. He asked why they were allowed to start construction without required permits.

Mayor Hanna said when the staff and Planning Commission address this again he is sure Alderman Young's concerns would also be addressed. But that is not going to be before the Council since it is being sent back to the Planning Commission.

Alderman Young said the question is compliance with the ordinances. If the Council sends it back to the Planning Commission and they uphold the Tree Ordinance, he does not see where that gives any protection to the trees because this is storm water and grading. He said people have come before the Planning Commission concerned about property that is adjacent to a development and are given assurances by the Planning Commission and the staff that they are protected by these ordinances. They are only protected if the ordinances are enforced and he said he does not see anyone in Administration enforcing these ordinances.

Charles Venable asked Alderman Young if he were referring to the work being done with grading of the streets and the drainage structure being installed. He said that the City's Engineering Division has looked at this and compared the work with what the City has approved. He said he was really not sure what Alderman Young was asking. He said each individual lot will also have to meet the grading requirement.

Alderman Young stated he was talking about the preliminary plats that Mel Milholland submitted and approved. They are then required by the ordinances to get a grading and drainage permit before they start construction of the roads and all of this other stuff. It is his understanding that they do not have a final grading permit nor a drainage permit. They are looking at the plans right now but the storm water drainage has not been approved yet.

Mr. Venable said the developers do have a permit to do the grading they are doing now.

Alderman Young stated he did not see how the developers could get a partial or rough permit as was explained to him. The ordinance reads you either have one or you do not.

Mr. Venable said he would not argue this either way. He stated because of the size of the development that each individual lot would have to be looked at separately. They did submit their plans for the road work and this is what they are working on now. Their storm sewers and everything else will be according to what the City has asked of them and those have been

reviewed.

Alderman Young replied that plans are currently being reviewed but have not yet been approved.

Charles Venable said the storm water has not gone in yet along the streets.

Alderman Young said according to the ordinance nothing is to be done until approved, but all kind of dirt is being moved and they are building box structures out there.

Mayor Hanna said that work was being done on the streets.

Alderman Young said it was drainage for the subdivision, preliminary plat.

In response to a question from Mayor Hanna, Alderman Young said that it was for the whole subdivision?

Mayor Hanna reminded the Council that this issue was not directly connected with the motion currently before the Council. He said that this was not really the place for the Council to try to decide to discuss this.

Alderman Russell said he thought that it was the time, if the Council was talking about compliance with city ordinances.

Alderman Young said that was what these people in the audience are concerned with compliance with city ordinances. He spoke directly to the audience, saying that the only thing he can see is that the developers are calling the shots in Fayetteville, because no one is telling them no on these ordinances.

Mayor Hanna said that was not true.

Alderman Young questioned why they allowed to get started before they had the required permits.

Mayor Hanna said he had not checked these particular permits but he said if Alderman Young would look at what has been done to date he would find that the developers have abided by everything that the City has required them to do. The City has required them to do what is set down in the ordinances for development of this type.

Alderman Trumbo suggested the Council ask Mr. Rose to look into this and report back to the Council later. He did not think this was the forum to argue about this.

Mr. Rose said he would be pleased to ask for an explanation of what work has been done out there regarding drainage and excavation of any kind, and what kind of permit if any, have been obtained and what the rationalization is, and bring that back to the Council.

Alderman Trent Trumbo made a motion to accept the withdrawal. Alderman Ron Austin seconded the motion. Upon roll call the motion passed unanimously. (See Exhibit A for Motion).

Mayor Hanna thanked the people who have been involved with this, the public who made their feelings known and the developers who have shown a willingness to try to cooperate with the Council. He hoped this would be resolved properly and that it will not be back before the Council.

CONSENT AGENDA

APPROVAL OF MINUTES

Approval of the minutes of the April 4, 2000 City Council meeting.

PARKING LOT LEASE

A resolution approving a contract with Arkansas Teacher Retirement System for the lease of 27 parking spaces in the parking lot located east of Block Avenue and south of Rock Street.

RESOLUTION 52-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

COMMUNITY BLOCK GRANT

A resolution approving the 2000 Community Development Block Grant agreement and funding approval.

RESOLUTION 53-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

STEARNS STREET

A resolution approving request AD 99-30.00 submitted by David Bercaw on behalf of Lenk Development for property located south of Zion Road. The property is zoned R-2, Medium Density Residential and contains approximately 5 acres. The request is to guarantee future construction of Stearns Street with a letter of credit.

RESOLUTION 54-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MASTER STREET PLAN AMENDMENT

A resolution to amend the Master Street Plan to remove the north/south collector street that is located east of Crossover Road between Township and Skillern Road.

RESOLUTION 55-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ADVANTAGE ARKANSAS PROGRAM

A resolution certifying local government endorsement of Automated Research and Marketing to participate in the Advantage Arkansas Program (Arkansas Enterprise Zone Program Act 947 of 1993).

RESOLUTION 56-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Bob Davis made a motion to pass the Consent Agenda as read. Alderman Trent Trumbo seconded the motion. Upon roll call the Consent Agenda passed with a vote 7-0-1 with Alderman Cyrus Young abstaining.

Mayor Hanna stated he had a request from George Faucette on behalf of Butterfield Trail Village to move item No. 3 to first under Old Business because it is not controversial and there will be no presentation. The Council agreed.

OLD BUSINESS

RZ 00-12.00: An ordinance approving rezoning request RZ 00-12.00 submitted by George Faucette on behalf of Butterfield Trail Village for property located at the southwest corner of Joyce Blvd. and Old Missouri Road. The property is zoned A-1, Agricultural and contains approximately 6 acres. The request is to rezone to R-O, Residential Office. The ordinance was left on the second reading at the April 4, 2000 meeting.

Mr. Rose read the ordinance.

Mayor Hanna asked if there was any discussion from the Council or comment from the audience.

Upon roll call the ordinance passed unanimously.

ORDINANCE 4243 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SENIOR COMMUNITY CENTER

An ordinance approving a 2-mil tax for one year to fund a Senior Community Center/Services. The ordinance was left on the second reading at the April 4, 2000 meeting.

Mr. Rose read the ordinance.

Alderman Daniel stated she would really like to see this go to a vote of the people. She explained that this had nothing to do with how she feels personally about this project. She

said she was concerned about the tax situation and the future effectiveness of this Council. She said the Council is going to be going to the public for help to fund the new sewer treatment plant that is essential and will be very expensive. She is not against property tax or sales tax. But she would like the Council to consider tabling this project at this time and putting it to a vote of the people.

Alderman Trumbo said he respected Alderman Daniel's views on this subject and agreed that increasing taxes is not popular. But he believed that each alderman is elected by the constituents from his ward and their political philosophies should coincide with those of the majority of those constituents. The Council does have the legal authority to impose up to 5 mils in property taxes. He felt this project had gone through several public hearings and the Council had received feedback. Each Council member should now listen to their constituents and vote their conscience.

Alderman Russell says he would have no problem with putting it to a vote of the people, but he personally is ready to go ahead and approve the tax. He said he would be inclined to put it to a public vote if it were a permanent tax rather than just one year. He said he is ready to take responsibility as an alderman and vote on the project now.

Alderman Trumbo also reminded the Council that there is matching grant money for this project allocated and that could conceivably be lost if delays continue to occur.

Alderman Reynolds said he had heard from only one person and he was from the county, not the city. He said he felt the City owes this to the seniors and the pioneers of this city and was ready to vote on it now.

Alderman Davis said he had talked to many people about this and they agreed that the seniors need a quality center and realized this was only a one-year tax. He said he had no problem voting on it now.

Alderman Santos said he agreed with Alderman Daniel and would rather vote on this as a citizen than as an alderman. However, with the overwhelming public support he believed this project has, he felt that a special election would be a waste of time and that the project would be approved by the voters. He felt the Council should go ahead and vote now.

Alderman Austin said he also agreed the Council should vote tonight. He said the determining factor for him was that this is a temporary tax. He wished that every time a tax was passed there was a "sunset" date attached to it.

Alderman Young said he was concerned about this when it first came forward and that his constituents did call him. They were all for passing this tax. He received only one negative call. He said if this was a continuous tax, he would send it to the people in a heart beat, but

since it is a one shot deal, he will vote for it.

Alderman Reynolds said he would like to add into the wording of the tax that it will be collected for only one year and cannot be rolled onto any other project.

Mayor Hanna said that was already in the wording.

Alderman Heather Daniel made a motion to table the Senior Community Center.

Mayor Hanna asked if there was a second to this motion. There being none, the motion died for lack of a second. The floor was then opened for public comment.

Robert Reus said he lives in downtown Fayetteville. He said that twelve years ago the City Board of Fayetteville came up with a sales tax scheme to fund the schools. Mr. Reus denounced it at the time as skating around the law. Board member Ann Henry declared it illegal. It was passed anyway. After much expensive litigation, the court struck down the entire sales tax. When a new sales tax was rededicated, it was with the assurance that capital improvements were to be funded by the sales tax and that the only use for the property tax in the future in this town would be to fund the police and the fire retirements. He said the Council is breaking that promise now. As a homeowner he is not happy. The Council is saying that they need to levy a 2-mil property tax. He thinks the Council is engaging in a shell game and things are getting very, very close to the way they were before we had the change of government. He said he was here to tell the Council that they are doing wrong and that the penalty is going to be that he is going to be here from now on watching every move and nitpicking every detail.

The Council thanked Mr. Reus for his comments.

Upon roll call the ordinance passed unanimously.

ORDINANCE 4244 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZ 00-11.00

An ordinance approving rezoning request RZ 00-11.00 submitted by Ronald G. Woodruff on behalf of the Joyce M. Ogden Family Trust for property located at 2300 Cato Springs Road. The property is zoned R-2, Medium Density Residential and contains approximately 4.02 acres. The request is to rezone to C-2, Thoroughfare Commercial. The ordinance was left on the second reading at the April 4, 2000 meeting.

Mr. Rose read the ordinance.

Alderman Santos said he felt this ordinance made perfect sense.

Upon roll call the ordinance passed unanimously.

ORDINANCE 4245 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

RZ 00-13.00

An ordinance approving rezoning request RZ 00-13.00 submitted by Charles Venable on behalf of the City of Fayetteville for property located at 1020 Harold Street. The property is zoned R-1, Low Density Residential and contains approximately 0.77 acres. The request is to rezone to R-O, Residential Office.

Mr. Rose read the ordinance.

Mayor Hanna said that the Council had a request from the staff to change this rezoning request from R-O to C-1 because of the usage the property will be sold for and the appraisal was done under the C-1 zoning.

Alderman Trumbo said C-1 zoning was fine with him. There is other C-1 zoning in that area.

Alderman Davis said he believed that the 20-20 Plan showed that C-1 was appropriate for this property. He recommended that the Council leave this on the first reading tonight to give the public enough time to respond.

Mayor Hanna agreed it should be left on the first reading

Alderman Ron Austin made a motion to amend RZ 00-13.00 from R-O zoning to C-1. Alderman Kevin Santos seconded the motion. Motion/vote was struck on the amendment.

Janet Gallman, a lawyer in Fayetteville said she and her husband, Bill Ricker, live at 3255 Lee Avenue that is also known Lot 4 and part of Lot 5 in Maple Crest Subdivision. There is a lot between them and the back side of this fire station. They have been at this location for twenty years. She said the quality of life there has been wonderful despite commercial properties around them. Although the fire station was there and the guys had calls intermittently, it was still fine. In fact, she was still upset that the fire station was moved. Now there is not a fire station anywhere between Highway 71 and College Avenue and 265. Ms. Gallman said she has become well known to the Planning Commission. She feels ordinances are not enforced and notices are not given. It is mainly through citizen's

complaints that ordinances get enforced, even in residential districts.

Ms. Gallman said the problem she has with this property being zoned as C-1 revolves around two things. C-1 allows a use unit 18. A use unit 18 lets them have as a matter of right, without asking anybody, gasoline service stations and drive-in restaurants. R-O would not allow that use unit but R-O would allow certain other limited commercial uses that are available under our limited commercial use section. There is a plethora of C-1 uses available in R-O but the applicant has to comply with certain conditions, which are there for protecting adjoined residential districts. If the Council zones it C-1 not only do they run the risk of a use unit 18 or possibly a use unit 15, they run the risk that there will not be appropriate conditions applied or, if applied, they will not be enforced. For example, within the last year a gravel parking lot was built immediately behind her back fence and she received no notice concerning that. It is an accessory use to another business further north of there that expanded its business by more than 10-15%, yet she received no notice of that. There is a 30 or 40 foot pole light with two high halo lights on it that light up her back yard all night long until she called SWEPCO last week and asked them to move it. Now they light up the buildings and bounce the light back into her back yard. There have been other similar things change that she received no notice about. When the Auto Magic Car Care Center was built, she did get notice from the applicant themselves and their engineer. She was assured by City Planning Staff of an eight-foot elevation. They raised the property over her and her back yard is now muck. There were going to be trees and vegetation put in but none was done. She was shown a plan that would supposedly preserve storm water run off from their concrete parking lot and on which replacement trees were added according to the tree ordinance. None of that was ever done. She got the city engineer involved and he made them construct a dirt berm on yet another lot between her and the center. Consequently, all of a sudden some parking started happening on that dirt berm. She said she needed to spend that energy on her work and less at City Hall asking the Council to think about what they are doing. She said she understood that the City should zone it C-1 because it looks commercial. It looks commercial because it was a fire station but the City has abandoned its use as a fire station. It is possible that someone could either retro fit it as a residence or could improve it for some sort of limited C-1 or residential office use. She gave the Council some hand outs showing a comparison of the use units that are available under R-1, R-O and C-1. Most of the C-1 uses can be done as R-1 and the change should not significantly alter the amount of money the property would sell for. If it is zoned R-O and the buyer has to come in and is told up front what use unit the property is under and the conditions involved, the Council will eliminate the need for her come back again. She is asking the Council to follow the lead of the Planning Commission and zone the property R-O.

Alderman Davis said he appreciated Ms. Gallman's comments. He wanted to mention that because the City moved the fire station her insurance rates will not go 

Mayor Hanna said he thought Ms. Gallman had some very good points. He explained that

the City does not have residential and commercial fire stations. The reason that fire station was moved was the rooms the firemen stayed in and the equipment was outdated. The decision was made to move the station to improve that situation. The station is now 60 seconds from Ms. Gallman's neighborhood so fire protection should not be hampered. He also asked Ms. Gallman if she would write down a list of the zoning violations she had mentioned earlier and he would be glad to look into them.

Ms. Gallman said she did not want to be the neighborhood Nazi and her purpose was not to get anyone further in trouble. She said most of the people had corrected the problems brought to their attention. It really has not been a problem.

Alderman Trumbo told Janet that he could concur with Ms. Gallman's reasoning and he asked for a memorandum from Mr. Conklin regarding the issues Ms. Gallman brought up.

Mayor Hanna asked if the Council wished to withdraw the motion and the second on this item.

Alderman Santos said the handout given by Mrs. Gallman helped him understand the situation better. He withdrew his.

The motion and the second on this item was withdrawn. The Council left Item No. 1 RZ 00-13.00 on the first reading.

CHARLESTON PLACE

An appeal of a Planning Commission decision submitted by Greg House for property located in the Charleston Place PUD. The request is for a non-residential structure within 75 feet of an adjacent R-1 zoning district.

Greg House said he was representing the petitioner, MTM of El Dorado regarding this appeal. He also wished to apologize for having a misunderstanding with Alett Little that contributed to having to hear this issue this evening. He began his presentation by saying that none of their proposed improvements would necessitate a variance. All were permitted by City Code, a position supported by Tim Conklin whose department had recommended approval of their improvements. Their proposal also has the support of all the residents in Charleston Place that have purchased homes there as evidenced by the letters that he has submitted. At least seven of the surrounding neighbors, the neighbors on each side of the Greenwoods (who brought this original complaint) have submitted a letter in support of what they are doing there in Charleston Place. They are effected as much as the Greenwoods. He added that Chuck Chalfant who expressed some current concerns in front of the Planning Commission about the proposed entry pylons. Mr. Chalfant and he visited and they agreed to move the pylons a little further to the west so that they would not impact his property. He has also E-mailed him a letter, in which was made available for the Council, in support of all

that they have asked for in the development. As to the particular issues, the dock that was built purportedly without permission, and they felt they did have permission. He addressed this issue at length in the letters to the Council, is outside the seventy-five-foot setback range, contrary to what may have been stated which is permitted in Section 163.23 of the zoning ordinance. The proposed picnic pavilion can also be constructed outside the one hundred-foot setback area that would also meet the requirement of Section 163.23. The entrance structures as he stated in his letter, will meet Fayetteville's minimum street standards and there is ample precedence for these entrance structures in many developments in town including Savanna Estates, Brookbury, Fox Run and Ridgemont. We hope they will provide a kind of visual speed break because people tend to go fairly fast through that neighborhood and the site of a structure that designates it as a residential area will remind people that it is a residential area and they will drive a little slower. He brought a plat with him. Most of the Council was able to visit this yesterday. He thought Mr. Santos was the only one that had not seen this.

Alderman Santos said he drove out there Sunday.

Greg House said it was our hope that by making these planned improvements, we can make it even a nicer place for the residents to use and especially in their green spaces. The impact by agreeing not to use the non-residential structures, as they are called, after dark, will be minimal to the surrounding neighbors concerned. Also he wanted to note that people that are purchasing homes in this neighborhood, most of them are middle age or older and do not have a tendency to party as much as younger folks, and that seems to be one of the concerns that there are going to be wild parties on this huge dock. In conclusion he wanted to state that somebody who has developed these improvements could have been brought into preliminary plats stage, as he mentioned yesterday that the drainage, of which he was not aware of when they were doing the engineering, that they were going to have it in a pond. He thought they were going to have a spill way and so the pond would still be pretty, spring fed and they would not have an ugly structure in the middle of it. They came up with an idea to try to cover it, and he had talked to Alett about it, and she said she thought that it was a good idea and they left it as that. He felt like we should be permitted to make changes in developments, even after the final plat, because sometimes we come up with a better idea. He hopes that the Council will see fit to approve this.

Alderman Daniel said despite a lot of rejections. She was not keen on granting him any slack here because the objection from the people who already live there and so on. She was in a quandary about whether or not to support Mr. House's project but she did. She feels that this really did not follow the procedure it should have although she does not have any problem with it personally but she is thinking about those adjoining residents and so she does not feel like she can support this and override the Planning Commission.

Greg House said he understood and he wanted to point out that and there may be more people here than the Greenwoods that showed up in the last meeting, but they gave notice to

all the neighbors and there is a vocal minority that are concerned and there is, he has submitted letters from neighbors that were against their project to be begin with, but or now in support of it, and are in support of even these changes, so apparently he sees that as a vote of confidence with what they have already done and in their ability to continue to do a nice project.

Alderman Daniel said the stone foundation is another matter because it is very interesting. She is not exactly sure what should be done with that but it is very close to the property line, isn't it?

Greg House stated the stone foundation was about ninety-seven feet, he believed to the western property line and as he mentioned in order to comply with the setback requirement, maybe they could eliminate three feet of it. He asked Alderman Daniel if she was talking about the stone structure they want to put in the pavilion?

Alderman Daniel answered that was what she was talking about. She thought that it did have historical significance and thought that needed to be looked at too. She was thinking mainly about the dock that they had constructed.

Greg House said the dock was primarily constructed just for aesthetics. If it is a big concern about the use of it, as he said when they were out there, he will take the walkway that goes to the dock off. They just wanted to cover up the ugliness.

Reed Greenwood, 1601 Elmwood, asked the Council to support the decision of the Planning Commission, to deny the developers request for additional structures in the green space on the north side of the development. He essentially made the same appeal to the Council that he made at the Planning Commission. When they heard the request from the developer to add structures to the development, he thought that was precipitated by a complaint from himself. His understanding was that there was going to be green space, no structures there. That was the understanding that the Planning Commission also had when they approved the final plat for this. The Council would be looking at essentially waiving ordinances that he was about to cite in the PUD ordinance and he read that, and he believed that the Council has access to copies of it, and there are things that are important principles in this process that we are all engaged in here. There are four requirements that he saw was involved in this. One is the PUD ordinance requires that structures of that type presented by the developer be included in the final plat of the development. The developer should show in the final plat what they are going to do in terms of construction of homes and lots and non-residential structures. They were not on the final plat. The developer built one of the structures without securing proper approval procedures from the City. Supposedly he had an informal discussion with the Planning Director at that time and she supposedly gave approval for that which he had not talked with her about it and he did not know for sure what happened in that situation. However, it did not follow what he understood to be the ordinances which you include the

structure in the plat, the Planning Commission reviews it and makes approval. As matter of fact the Planning Director, when he filed the complaint, said that was the case. So it needs to go before the Planning Commission. As he reads the PUD ordinance it refers to a 250-foot setback not a 75-foot setback. There was some discussion at the Planning Commission about which ordinance applied. He does not know if anybody has ever ruled on that but it says fairly clearly that there is a 250-foot setback for recreational structures. His final point was that there also is a requirement in the PUD ordinance that these kinds of structures be completed before the issuance of the eighth building permit. There are 12-13 houses going up in that development. That is more than eight. He could refer the Council to the specific sections of the PUD ordinance regarding the final plan that says specifically that plan shall include the right location of recreational facilities in the plan. He went down before the Planning Commission meeting when this was denied and reviewed the plat. They are not on there. The only thing in that green space, in the way of a structure, is an old spring house that is referred to as a well house. They assumed, and he did not know how many letters that Mr. House has from neighbors, and if the Council wanted him to get letters, he could get more letters. He figured that he had the Planning Commission on his side and there was not much point in going around asking the neighbors to get involved in this again but some of them that he had talked with said they were concerned. He found neither of those structures in the final plat, neither the pie, if you stand up on you look right straight down in his back yard. Or this so-called pavilion that was to be built on top of the so called old barn that probably does have historical significance, so did the house that was torn down, so did the old barn that was immediately behind their property that was torn down. There were a lot of trees out there taken down that are were quote mature trees. But that is sort of beside the point. He thinks it was an interesting aspect of this. The developer had a long time to decide what he wanted to put back there. He still does not have any clearance that the 75-foot setback applies rather than the 250-foot setback. He assumed the 250-foot setback was there just because of the potential nuisance of recreational facilities that close to existing residential neighbors. They are very concerned about the noise. There was a pavilion in the original information that they received on this development. It was very close to the back part of their property. They felt like that was a potential nuisance, whether during the day or after dark, so they complained about that and it was removed from the plans before they went to the Planning Commission. He thought the Council should pay particular attention to the ordinance that concerns the completion in a timely manner of the recreational facilities. They are supposed to be done before the eighth building permit is issued. There are about thirteen houses going on up there. So it was not done in a timely fashion. They understood, and he considered a covenant between the developer and the City, that green space was going to remain a buffer between the two developments, the existing development that has been there for some thirty years and this new development. It seemed to him that if the Council was going to waive those requirements, all the ones that he had cited, that there should be some compelling reason to do that. He did not see recreational facilities of the kind they are talking about as compelling reasons to change the final plat. Had it to do with drainage, a sewer line, safety, these seem to him that those are compelling

reasons. He might just mention that on the sewer line that went between his house and the Galbraiths, he still has not been able to get that property restored to the condition that it was in before they started the development. They are missing about a foot of top soil there. They lost a thirty-foot pine tree that died slowly as a result of the digging around the roots. He asked the developer through his engineer if they would move the tree and would they come back and add soil. He informed the engineer that no they would not do that. So he thinks the Council has a number of things to consider. One of which is overruling a unanimous vote of the Planning Commission in regard to waiving these ordinances. We ask that the Council support the Planning Commission's decision that the developer move that pier that directly overlooks our back yard and is certainly an intrusive structure as far as they are concerned. They ask that the Council support the Planning Commission's decision that the developer not be permitted to construct a pavilion in the green space. If the Council allows this what will they be looking at next? They could add a swimming pool, a lighted tennis court, or whatever and come back and then ask for forgiveness. The whole purpose of this planning process is not to have to do that. It is to think through clearly what it is you want to do. With one final comment he wanted to point out that they are looking at substantial loss of tree canopy up there. Those houses, and he did not want to render a judgment about aesthetics or any that kind of stuff because that is territory that he knows very little about. But those houses are built on very small lots. The fronts of the houses take up almost all of the lot space. What does that do to the trees? Well; the trees that are in the green space are very important as a result of the demise of the trees that are going to be removed and are being removed to build the houses. If the developer were really interested in trying to do something that was going to help that hillside, why not plant some more trees in that green space that would help reflect the water shed and help enhance the beauty of that. What they really do not want is a violation, if you will, of what they consider being the covenants between the developer and the City. They do not want the nuisance of having those recreational facilities back there because of the potential for 51 folks instead of the Faucettes next door of having a party and creating a nuisance for them and the other neighbors. He thanked the Council for allowing him to come and address this. He hopes this is the last time he ever has to talk about it because they would like to get this over and get it aside. But he does think there are some important principles here. First of all, overriding the Planning Commission that does their work conscientiously and seriously and he does not always agree with; they decide. He did not agree with what they decided on this initially because they gave the developer 69 lots up there instead of what he came back with which was 51. So he asked the Council to think carefully about overriding the Planning Commission's decision that was made carefully and judiciously. He is asking the Council carefully to consider the ordinances that are in affect and the fact that you would have to waive those requirements if you approve these particular structures. Thank you very much.

Paula Martucci, 1511 Elmwood Drive, said she has never been given notice of any of the changes that were made. But the gentleman that just spoke, she lives in fear every day. She walks around her yard and wonders what new is going to be on in the addition behind them.

Part of the reason that she bought her lot was that it had a beautiful tree lot next to her. And there was not any construction going on but she knew a neighborhood was going in and it was going to be a nice neighborhood. She came down to the Planning Commission and got copies of the plats and had xeroxed copies made of all the changes that had been suggested. This was probably a year ago. She had a blueprint. She paid extra so she could have the blueprint so she would know what was going on. This is the first time she has ever bought and is the biggest investment she has ever made in her life. She is a single mother with a small child. She is very interested in what is going to go on the neighborhood behind her. What really bothers her is this idea of asking for forgiveness rather than permission. And when she comes down and gets copies and she watches for the red signs to go up saying there is a public hearing, she expects to know ahead of time before she walks around in her back yard and see new buildings or new structures going up. And as a mom of a small child she is thinking, gosh, that dock looks like a great attractive nuisance as she gets a little bit bigger and things. Part of what attracted them to that area were the rabbits, squirrels and things, which live in the wooded lot, and she has a beautiful view from an old cathedral ceiling of those trees on the lot next to her. And she is just worried that one day she is going to come home and all of those trees are going to be gone because we thought of something new that would make that housing addition beautiful. She knew people change their minds as they are developing an addition and might have good ideas but what she would ask is that the Council would support the Planning Commission's decision that the principle that you should ask for permission first. She is an attorney and she knows Mr. House is an attorney by training and they should respect the fact that they have policies and procedures in place so that people can communicate those ideas and people can be heard and then the Council can use their wisdom to make decisions. The only time she has ever been communicated whatsoever about this property was a week ago she had a young lady knock on her door and say, hi, we would like you to sign a petition. She started to show her some papers. And she asked for a copy of the papers. The young lady said, no, but we will mail you some. I have yet to receive any of those copies. So the only time she has been communicated with was one knock on her door. She said she knew the Council has heard a lot of long-winded people today but she would ask that the Council would support the Planning Commission's decision and deny their request.

Mr. House stated he had outlined that pretty thoroughly in his letters, but just in case some of the Council did not have the opportunity to review that, the PUD ordinance Section 166.06 states changes within a PUD, minor changes caused by conditions unforeseen at the times of initial approval may be authorized by the City Planner without Planning Commission approval. During the process of their development they did make changes after the Planning Commission approved the lot. One of the major changes was the addition of alleys. They did that in consultation with Alett Little. She agreed. They went through a very lengthy process about what areas would be set aside to make sure the alleys did not impact on the 35% green space and rather a laborious task but it went without Planning Commission

approval, a change authorized by the City Planner. And as he mentioned in subsequent discussion, they talked about the dock. Ms. Little said in her opinion that was a great idea and in his opinion that was approval, just like he had gotten approval from her to do the alleys. He did not see the dock as nearly a major a change as the alleys. So in their feeling they had permission. He was not asking forgiveness and he has said that from day one. They were saying they felt that they had permission to build the dock and the ordinance supports what Alett stated. Now Tim Conklin had a different opinion about whether this was a major change or not but this was after the fact. With response to Mr. Greenwood's comments about the improvements and at what point they can be built, Paragraph 21 of the same section states that prior to issuance of more than eight building permits for any residential PUD, all approved non-residential facilities shall be constructed. While they had not even gotten the approval yet for the entry structure or the pavilion, so how could he be outside the law when he was coming there asking for the approval. And he came to the Planning Commission to ask for the approval. Section 163.23 as he stated beforehand, and this is in a letter from Tim Conklin, Planning Department, to him on February 10, 2000, and he assumed the Council had a copy of this, Tim states how they arrived at the setback issues and they are not asking for a waiver of the ordinance but what they are asking for is within the ordinance. Mr. Greenwood acts as if he has approved the first thing and is now being vehemently objecting these changes. He has objected to everything they have done from day one. In regards to the nuisance issue, the development was already approved for this park like setting with a jogging trail and the alleys, so in their opinion that are not exasperating the nuisance by allowing the people an easier way to use this green space. There are some things that could be done to satisfy the neighbors like Mr. Greenwood and that is perhaps maybe planting an evergreen hedge or cane row or something to cut off his view, which they would be willing to do as a stipulation of part of this if that would be necessary. His other thought he might point out was if for some reason part of this is objectionable but not all of it, we do not have to vote it all or nothing, perhaps some of the issues might be more comfortable to approve than others and might consider splitting the issues of the three different things that we are requiring. Thank you.

Alderman Daniel said to Greg House that she remembered his project when it came before the Council that a big, big issue was the integrity of this buffer and she thought this is what persuaded her and some of the others to vote in favor of this and she remembered that this was stressed. It was really important. And she thinks that the citizens and residents out there feel that this being compromised, and she was amazed that she was even dealing with this so soon after the project was approved.

Greg House said that part of the reason the Council is dealing with so soon is that he knew that these were issues they wanted to bring up and Mr. Conklin suggested that they do them all at once.

Alderman Austin asked Mr. House if this dock was removed, as he said he might remove the

approach to the dock rather, it would no longer be a recreational facility but would not the residents of those homes recreate in their back yards like the neighbors, like the eleven neighbors or not? If all the eleven people who face this had a party in their back yard, would not it be more of a nuisance than one small party in the back of this area? He just does not understand the problem with the recreation. If you need to remove it then remove it, or make it less recreational looking or whatever to comply. Being part of a family and living in a residence means you should be able to use your backyard and cook out and have your friends over, have Easter egg hunts, whatever. That's his idea.

Alderman Santos said he thought Mr. House should leave the dock. These are minor changes that improve what is already a very nice development. He thinks Mr. House did and indeed believe that Alett Little gave you permission to do it and he thinks the Planning Commission voting against him was a little bit of reaction to their frustration with Mr. House's continuously pushing the envelope of the regulations. He would like a promise from him that he would try to work with the Planning Commission and not ask for forgiveness instead of permission in the future.

Alderman Russell said he had a few comments. He thought it was a good idea to separate the three issues and vote on them that way since Mr. House was appealing three separate issues and the reason he would like to do that was because he had some questions. He thought that the entrance pylons are probably the least controversial. He asked Mr. House if it was true that he revised the size of the entrance columns to satisfy any neighbors that were complaining about that?

Greg House answered, yes, which was in response to some comments of the Planning Commissioners.

Alderman Russell said that he would be leaning toward approving those and he would do some further investigation on picnic pavilion personally before approving it, namely he would like Mr. Rose's opinion on the setback requirements with regard to the picnic pavilion, the recreational structure, setback requirements because there is some dispute about which setback requirements would apply to the picnic pavilion, whether it is 75 feet or 250 feet, depending on whether it is lighted. He needs more information on that.

Charles Venable said he thought that what they were referring to was in 166.06 that has to do with the PUD under C7, which has to do with perimeters, and that is where they are coming up with 250 feet, but Tim Conklin's interpretation came from 163.23 that is non-residential uses in R districts that does limit any picnic area to 100 feet and an outdoor activity area is 75 feet.

Alderman Daniel asked Greg House if he would object to someone looking at that stone structure and taking an interest in it from a historic perspective?

Greg House said he did not mind at all. He would be very interested.

Alderman Daniel said something that is not considered recreational could be done but she was not sure. She spoke with someone today especially interested in masonry who would like to look at it.

Alderman Russell said he thought he was with Alderman Santos on the dock. He thinks that it was unfortunate that there was a misunderstanding about the process but consider two things. One, Mr. House believed that he had permission for the dock, and two, that he really thinks that the dock may not be great, but it would be better than they would have without the dock which an ugly concrete thing sticking up in the middle of a pond. He moves to approve the entry pylons the continued existence of the dock and table action on the picnic pavilion pending further investigation regarding the historic significance of the building and the setback requirements.

Alderman Davis said he wanted to ask Alderman Russell a question. Since there have been changes on the entry should that not go back to the Planning Commission and have them look at that since it has been revised. (?)

Alderman Russell said he thought that would be appropriate. He would not have a problem with that. He did not mind letting the Planning Commission look at it.

Alderman Young said that when Alderman Russell mentioned that was least controversial he wondered about that because he thought that was one of the more controversial but it may be controversial with the people living in that subdivision rather than people outside there. He does not know that.

Mayor Hanna said there was a motion to approve the entry ways and the dock.

Alderman Daniel asked Alderman Russell if he wanted to change his motion.

Alderman Russell said he would the motion to approve the entry ways pending the Planning Commission's approval of the revised plans for the entry ways.

Alderman Russell said he thought the Planning Commission has looked at the dock and he thought the Council had all their information with respect to the dock, so he would go ahead to move to approve the dock and send the rest of it back to the Planning Commission for their further consideration.

Alderman Santos seconded the motion.

Mayor Hanna said there was a motion and a second to approve the dock and send the revised

plan on the entry way and send the pavilion plans back to the Planning Commission.

Alderman Russell said if the Council was going to do a historical investigation, he thought they should consider those things.

Alderman Young said he was thinking about supporting the Planning Commission on this and he still was. He would send the other two items back so then it would just come down to the dock.

Alderman Russell said if the Council would like to vote on them separately he would agree to separate his motion.

Alderman Davis said he had no problem with sending the whole thing back to the Planning Commission.

Alderman Russell said the dock is the one thing the Council could go ahead and act upon. He talked about defining the issues earlier, and he thought that it was important for the Council, the developer, the neighbors and the Planning Commission to know what is still open for discussion and what the Council has ruled on.

Mayor Hanna said that there were no changes in the dock. Alderman Russell was right on that. The Council should vote.

Alderman Davis said the only question that he had was the 75 feet or the 250 feet? The Council won't know until Mr. Rose and Mr. Conklin get together and determine which is legally correct.

Mr. Rose asked if the Council could table that part of it. He will bring that information back to the Council. What worried him was that the Council was going to refer things back to the Planning Commission with no particular instructions and they are going to make the same decision they made five weeks before.

Alderman Russell suggested the Council do all three things separately. He withdrew his first motion.

Alderman Santos withdrew his second motion.

Alderman Russell moved to approve the dock as submitted by Mr. Greg House over ridding the decision of the Planning Commission.

Alderman Santos seconded the motion.

Mayor Hanna said there was a motion and a second to approve the dock.

Alderman Kyle Russell made a motion to approve the dock as submitted by Greg House over ridding the decision of the Planning Commission. Alderman Kevin Santos seconded the motion. Upon roll call the motion passed 5-3-0. Aldermen Cyrus Young, Robert Reynolds and Heather Daniel voted nay.

Alderman Russell made a motion to table the issue of the picnic pavilion, suggest that Mr. Rose and Mr. Venable decide about the setback requirement and allow the Planning Commission to consider the setback requirement as interpreted by the City Attorney as well as the historical significance of the structure before making their decision.

Alderman Santos asked if this was something you could get a variance for from the Board of Adjustments if it a matter of three feet or something like that. Is that the route to go?

Alderman Young said that may be something they need to scope out because of the PUD ordinances and all.

Mayor Hanna said they could look at that. Could the Council have a second? There was a motion and a second.

Alderman Russell asked if that would mean it would come back to Council before it would come back to the Planning Commission? He wants the Planning Commission to look at it.

Alderman Kyle Russell made a motion to table the issue of the picnic pavilion, suggest that Mr. Jerry Rose and Mr. Charles Venable decide about the setback requirement, and allow the Planning Commission to consider the setback requirement as interpreted by the City Attorney as well as historical significance of the structure before making their decision.

Alderman Ron Austin seconded the motion. Upon roll call the motion passed unanimously.

Alderman Russell moved to table the issue of the entry pylons with instructions for the Planning Commission to rule on the revised plans by Mr. Greg House.

Alderman Santos seconded the motion.

Alderman Kyle Russell made a motion to table the issue of the entry pylons with instructions for the Planning Commission to rule on the revised plans by Mr. Greg House. Alderman Kevin Santos seconded the motion. Upon roll call the motion

passed unanimously.

LAKE HILLS CHURCH

An appeal of a Planning Commission decision submitted by Jon Allen on behalf of Lake Hills Church for property located on Hwy 265, south of Williams Dance Studio. The property is zoned A-1, Agricultural and contains approximately 3.58 acres. The request is to rezone to P-1, Institutional.

Jon Allen, founding Pastor of Lake Hills Church, stated they started this church with ten people, his family and two other couples, and they met in homes for approximately a year, and then when they could not find a living room big enough to handle them, they met in hotel suites and conference rooms. Then they met at a Seventh Day Adventist Church for a while, they met on Saturdays, so they rented it on Sunday. Recently they have been meeting at a school. They are very excited about being able to finally build. The Council may be aware that most new churches are anxious to build and so they have a tendency to build too soon and so they build too small, and so they cannot grow and they cannot reach new people and they are stuck with debt. If you look around Northwest Arkansas, you see hundreds of small churches in exactly that situation. So they are concerned about that property because it is narrow, and very deep. It is only 185 feet wide. They wanted to build one time on this property. They did not want to build something then come back later and add to it. They just want to build the master plan, the largest building they could ever put on this property, given the constraints of green space, parking and those kinds of things. The fact was that the building would be too large for their needs and so they said, well if they had some rental space, office space they could lease out offices until such time their congregation was larger and needed the space and meanwhile the rental would help them pay back the money they had to borrow and so forth. So they contacted an architectural engineering firm and they put together a plan and they took it to the City Planning who was Ms. Little at the time. She looked it over, asked some questions and her exact words were, "You know, I just don't see a problem with it." They went and paid more architectural money, came with a formal plan to the Planning Commission and asked to have a R-O zoning. It is presently zoned A-1. They asked to have it zoned R-O and a conditional use permit to build their church on that with an understanding that the strip of offices that was attached there would be used to rent to low impact use, such as a piano teacher, an architect, and then in the future they would use the whole space but they would never come back and need to build anything else particularly. So they have eight contiguous property owners. Five have never said a word. One was vociferously supportive. And two spoke against it. Their concern was that if this was rezoned R-O, it was suggested that they sell the property, take the profit, go somewhere else and they would be stuck with an R-O property in their neighborhood. The fact is the property to the north is zoned R-O and they thought that a church would be a good buffer between the Williams Center and the other residential areas. And they had no intention to leave and they offered to give some kind of bill of assurance or whatever was appropriate to do that. The Planning Commission spent some time considering whether to maybe zone just

the footprint of the building or maybe just zone the front half of the building or whatever. Finally the Planning Commission suggested that they withdraw their application and go back to the Planning Staff and come up with an appropriate zoning and plan that would allow them to do what they wanted to do. He said he would withdraw their application and after he had done that the Planning Commission said they also have a condition of use permit. And almost in a blink of an eye they were given a condition of use permit. Of course that was for an A-1 property that did not really meet their needs. There was also a factual error. The building plan was actually about 15,000 square feet and part of it was the second story. The footprint of the building was about 10,000 square feet. In fact the condition of use permit was 10,000 feet. It went to the Planning Staff and it was changed. They worked with Mr. Conklin and everybody was very helpful but they said basically unless you get R-O there is really no way you can have offices and have this multiple use, and all that. The Planning Staff asked if he was aware that the less used real estate in Fayetteville was church parking lots, used a couple of hours on Sunday. They thought that would be a good multiple use to have this kind of office arrangement. Anyway, they worked with the City Planning Department and they said that the appropriate zoning for a church is a P-1. They did some research and found out that the church located on the corner of Township and Mission for instance is zoned P-1 that is just a couple of blocks from their church site. The Mission Blvd. Baptist Church is zoned P-1. They have added property twice to their original property and each time it has been zoned P-1. So they thought that would be the appropriate thing. They did not want to be bad neighbors and did not want their neighbors to worry that some day this would be turned into some kind of R-O district or something. And really out of consideration for them they decided to give up on the R-O plan and the rental space and just go for a P-1 zoning and build the building which would be all church facility even though it would be a stretch for them financially. They spent a lot of money, took aerial photographs, had the place surveyed, did everything they had to do. They came back with what they were told would be a slam dunk and they asked for the P-1 and again five neighbors said nothing. One man was supportive and two people spoke against it. And this time it was not because it was an R-O zone. It was in fact because it was a P-1 zone. It was said that if it was re-zoned P-1 that in fact they might try to build a museum or a zoo or a golf course or any of the other things that could be done on a P-1. Again they offered to do a bill of assurance and all that, but the word that sort of shifted the mood of the Planning Commission was they were told that if you re-zone this property from A-1 to P-1, direct quote, "Only God knows what these people will do with this property." And they said if the Planning Commission re-zones this to a P-1 you give up all control over this property. That word "control" was used about five times, and then finally the vote was taken, and it was against them. Now he is not an attorney, Mr. Rose, but he has read through the ordinance book, and the A-1 zoning which is what their property is now, states the regulation of the Agricultural Districts are designed to protect agricultural land until an orderly transition to urban development has been accomplished; to prevent wasteful scattering of development in rural areas; obtain economy of public funds in the providing of public improvements and services of orderly growth; conserve the tax base; prevent unsightly development, increase scenic attractiveness;

and conserve open space. He submits that there is nothing in there about controlling this operation. It is certainly not an A-1 usage. It is going to be for a church. They have taken great pains to be an asset to the community. It is going to be a beautiful building. They are saving much more of the tree canopy than the ordinance requires. It will be very much like a park setting and will be a nice place. The neighbors will not have to worry that they are "going to try to shoe horn" some other use on the property. They have no intention to do anything except to build a church there. His concern is that somehow, if for instance someone came with X number of acres and wanted to build houses and have it re-zoned R-1. It would be re-zoned R-1 and large scale development would take care of the details and that would be it. But because they are a church and they have asked for a P-1, somehow they are a suspect. There is some doubt about what they really want to do to this property. The people in his congregation have been very upset about this. They have offered, over his objection, they did not do it, to come down here maybe three hundred strong and it would make this crowd tonight look rather small, but they do not want to cause descent. They do not want to cause any kind of aggravation. They just want to build their church and quit using their money for redesign and all the other things they have had to do. Having said all that, they have decided they are going to withdraw their appeal of the Planning Commission's turn down of their last zoning. Given the fact that the condition of use permit A-1 is off by 5,000 feet but other than that, they are going to go ahead and build just the way they are. They do not want cause anxiety to anybody. He gave his word to the two people who had objected to our thing that they would do that and so he is going to do that. He just wanted to be on record because the next time a church comes down this road he would hate for them to have to face these hurdles. You know, people in his congregation have used words like, persecution, unfair, somehow because they are a church they cannot be trusted to do what they say they are going to do. If everybody came there, they could probably generate three hundred people here. And you know, they are just a cross section of this town. They have school teachers, Wal Mart clerks, physicians, just a little bit of about everybody part of their church. They pay their taxes, they cut their grass, they use these goofy purple bags, they are just good citizens. And somehow they are trying to "shoe horn" some questionable activity on this property. It just seems like an unnecessary hurdle they have had to go through. Anyway, unless the Council has a question or something he is finished.

Thank you very much for listening.

The Council thanked Mr. Allen for his comments.

Mayor Hanna asked if anyone had any questions for Pastor Allen. He asked Pastor Allen if he was withdrawing his appeal?

Pastor Jon Allen replied that he was withdrawing his appeal.

Alderman Trumbo announced that Saturday, M & M Augustine Foundation Easter Feed, St.

Thomas Catholic Church on the campus of the University of Arkansas. Be there at 10:30 a.m. or at 11:00 a.m. It is open for the general public. The more, the merrier! They need a lot of volunteers to deliver Meals On Wheels.

Alderman Russell announced that not this Saturday, but next Saturday, April 29th is Earth Day, Fayetteville Urban Resources Stream Team is sponsoring a Community Stream Clean Up at Scull Creek from 10:00 a.m. to 3:00 p.m. To get there drive north on Gregg until you pass the White Oaks Station and take the first left.

Mayor Hanna adjourned the meeting at 8:30 p.m.



FAYETTEVILLE

LEGAL DEPARTMENT
CITY ATTORNEY DIVISION

JERRY E. ROSE, CITY ATTORNEY
LAGAYLE D. MCCARTY, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE

To: Fred Hanna, Mayor
Fayetteville City Council

From: Jerry E. Rose, City Attorney *J.E.R.*

Date: April 24, 2000

Re: **Ordinance Requirements for Stormwater Management,
Drainage, and Erosion Control Permits and Grading Permits.**

At the request of Alderman Cyrus Young I have prepared this report on the stormwater management drainage, and erosion control permits (SMD and EC permits) and grading permits. Specifically, Alderman Young asked this office to determine what permits, if any, were issued to the CMN Business Park and whether or not any permits issued were in conformity with current city ordinances. The report has been prepared in a question and answer format.

1. What ordinances apply? Chapters 169 and 170 of the Uniform Development Ordinance (Titled Physical Alteration of Land and Stormwater Management, Drainage and Erosion Control, respectively) are the main permitting ordinances.
2. What permits are required? Section 169.03 states that no grading, filling, excavation or land alteration of any kind shall take place without a grading permit. Section 170.03 states that no person may subdivide and develop, change to a more intensive land use, construct or reconstruct a structure, or change the size of a structure, except as hereinafter exempted, without first obtaining a stormwater management, drainage and erosion control permit from the City.
3. May the grading permit and the SMD and EC permit be combined? Yes, §169.03 states that any application for a grading permit required under this chapter shall be combined with a drainage permit application under the Stormwater Management, Drainage and Erosion Control Ordinance. Section 170.03 states that grading permit requirements may be combined into the SMD and EC permit when determined appropriate by the city engineer. (note that §169 is mandatory and §170 is discretionary).

4. Is a drainage permit the same thing as an SMD and EC permit? I think so but its hard to say with certainty. The only time "drainage permit" is used is in §169.03 above. Section 170.03 states that there are two types of SMD and EC permits: (1) construction permits and (2) grading permits. There is no mention of a "drainage permit" in Chapter 170.
5. Why does CMN Business Park need permits? CMN Business Park applied for and received subdivision large scale development approval from the Planning Commission. Phase I and Phase II of that project provide for a commercial subdivision to be laid out to include lots, streets and water and sewer. Individual developments over 1 acre within the subdivision would each have their own large scale development application and approval before the planning commission. Every large scale development requires SMD and EC permitting and grading permitting.
6. What permits were issued to CMN Business Park? No final SMD and EC or grading permit has been issued. Four approval letters which the city engineering staff considers to be a partial/phased permit have been issued. I am attaching those four partial/phased permits to this memo.
7. Are these partial/phased permits issued prior to final review and approval of the Stormwater Management, Drainage and Erosion Control Plan and the final review and approval of the grading plan? Yes.
8. What about the argument that until the final plans are completed one cannot know whether or not a partial/phased permit should be issued? Not a bad question but I'm not sure my law degree is much use in answering it. I am assured by city staff that all of the work being done under the authority of the partial/phased permits meets the engineering requirements of the ordinances. Certainly a review of the text of the partial/phased permits show on their face a compliance with city standards and are approved subject to specific instructions. The developer proceeds at his own risk. If the final permit or plan is not approved it must be revised to conform with the requirements of the ordinance or work cannot be completed.
9. Does the issuance of a partial/phased permit allow the developer to circumvent or avoid any of the requirements of a final permit or plan? No. All requirements as to the particular work being done appear to be followed even including review by the landscape administrator when required.
10. Can you show me where in the ordinances that a partial/phased permit is specifically allowed? No. There is no specific authorization for such a permit. There is also no

specific prohibition of such a system.

11. Is it possible to interpret the SMD and EC ordinance and the Physical and Alteration of Land Ordinance in such a way as to prevent any developer from doing virtually any work until a final grading and/or SMD and EC plan or permit is approved? Probably.
12. Is it possible to interpret these ordinances so as to allow for a partial/phased permit? Yes. Not only are they not specifically prohibited but §156.04 allows variances to the SMD and EC ordinance.
13. Who interprets these ordinances? Section 152 of the UDO states that the city engineer administers, interprets and enforces these ordinances. Appeals from the city engineer's interpretations are to the Planning Commission.
14. Are the developers dictating how these ordinances are being interpreted? I found no evidence of this. I can tell you from my own experience that I get far more complaints from developers about stringent or excessive enforcement than from citizens regarding lax enforcement.
15. Is there any reason to believe that city engineering staff is deliberately not following these ordinances? No. My conversations with city engineering staff indicate a genuine desire and commitment to follow to the letter all city ordinances. Where such ordinances allow for interpretations and discretion it appears to have been applied fairly and with common sense.

I have attempted to answer the questions that seem to arise from the inquiry Alderman Young requested. Let me remind you again that I am not an engineer and accordingly my area of expertise is limited. If I can answer any other questions, I will be pleased to try. I am sure the city engineering staff will also make themselves available for further inquiry.

/cbp
Attachment

DEPARTMENTAL CORRESPONDENCE

TO: Mr. Charles Venable, Public Works Director

THRU: Mr. Jim Beavers, City Engineer

FROM: Ron Petrie, Staff Engineer *RSP*

DATE: April 24, 2000

RE: CMN Business Park, Phases I & II
Engineering Approvals

Attached are copies of the approval letters that were sent to Milholland Company for the CMN Business Park project engineering approvals.

A summary of these approvals are listed below by date:

July 20, 1999 - Grading Plan/Street Subgrade Approval
September 2, 1999 - Revised Grading Plan Approval
January 11, 2000 - Box Culverts Approval
April 5, 2000 - Water & Sewer Approval

Please let me know if you need additional information.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

April 5, 2000

Milholland Company
Melvin L. Milholland, P.E.
205 West Center Street
Fayetteville, Arkansas 72701

RE: CMN Business Park II
Water & Sewer Approval

Dear Sir:

The revised water & sewer construction plans for this project have been reviewed for general compliance with applicable requirements and are approved subject to the following items:

1. If at all possible, provide signed easement documents and construction plans for the waterline connection near the mall.
2. Provide the signed easement documents for the proposed waterline on Lot 1, Centerbrook Subdivision or install the waterline a minimum distance of 10' from the existing right-of-way.
3. The existing mud creek sanitary sewer piers may have to be completely replaced rather than reinforced depending upon the site conditions.
4. Approval from the Arkansas Department of Health. This has been provided, although a copy of the revised plans from the City Reviews was requested by the Health Department.
5. Because of the proposed location of the waterline at several locations, the road embankment will have to be in place and properly compacted prior to placing the waterline within the fill section.
6. A preconstruction conference is required prior to beginning construction and after the above items have been addressed.
7. Milholland Company to provide construction inspection.
8. The review by the City was for general compliance and does not warrant your design and does not relieve the Owner from any items discovered during construction which are deemed necessary to comply with City criteria.

CMN Business Park
April 5, 2000

Page Two (2)

A separate review letter will be sent as soon as possible for the remainder of the project which includes street and drainage. Please do not hesitate to call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald S. Petrie", with a stylized flourish at the end.

Ronald S. Petrie, P.E.
Staff Engineer

July 20, 1999

Milholland Company
Melvin L. Milholland
205 West Center Street
Fayetteville, Arkansas 72701

COPY

Re: CMN Business Park II, Phases I & II
Grading Plan/Street Subgrades

Dear Sir:

The revised grading plan that was resubmitted June 3, 1999 along with the proposed street subgrades have been reviewed for general compliance with City standards and are approved with the following conditions:

1. A plan for the grading associated with the wetlands mitigation to be submitted prior to beginning that construction.
2. Prior to placing fill within the floodway, floodplain, or wetlands, the COE approved permit must be provided to the Engineering Department.
3. Provide a copy of the executed contract documents with the required Performance & Payment Bond, Insurance, etc....
4. Provide a copy of the approved State NOI or site specific NPDES.
5. Any and all damage to all City streets, due to this construction or contractor for CMN, shall be repaired to the City satisfaction with no expense to the City.
6. As stated previously, the proposal to use boulders in lieu of a fence or rail on the rock cuts is not approved. The permanent safety railing must meet the SBBC requirements. Also, a temporary safety system must be in place during construction when rock cuts exceed 3 feet.
7. The grading on Lot 7 extends beyond the tree preservation fencing. Please clarify.
8. The street subgrade undercut, removal of unstable in-situ material, and fill to meet the recommendations as contained in the March 1999 geotechnical report.

9. Grubbs, Hoskyn, Barton & Wyatt to provide "full-time" inspection on the street subgrade construction. The handwritten daily test results will be available at the job site.
10. The contractor to provide a one (1) week notice to the City prior to the installation of the proposed traffic control devices. Also, the contractor to provide safety personnel and flagmen when the street has to be closed. The City must be notified when the street will be closed for any extended period of time.
11. As previously stated, the blasting contractor must meet the blasting ordinance and Fire Code requirements. If Joyce Street must be closed for blasting, the closure must have a short duration and be preplanned for specific times with a minimum of 24 hours notice given to the City.
12. As previously stated, some intermediate grading of the lots to use the excavated materials is acceptable, but the final grading cannot be approved without a drainage plan.
13. Because of the limited amount of existing cover over the 36" waterline on Mall Avenue, three (3) feet of hillside or SB-2 material should be placed over the existing ground surface prior to driving heavy equipment over the waterline.
14. A preconstruction conference is required prior to beginning construction. A separate preconstruction conference concerning the sanitary sewer replacement and encasement.
15. This review was for general compliance and does not relieve the owner from any items discovered during construction which are deemed necessary to comply with City criteria.

Just for clarification, the following items that are shown on these plans are **not** approved at this time. A separate review will be made and separate review letters will be sent concerning these items:

1. As discussed at today's meeting, a separate letter concerning the acceptable street sections that can be utilized for this project will be sent.
2. The intersection of Shiloh and Steele along with the proposed islands are still under review and are not approved at this time.
3. The two (2) Mud Creek bridges will not be reviewed by the City. The City will rely completely on Garver Engineers for the design of these two bridges.
4. The permanent drainage improvements including the proposed swale and 54" SRMP as shown on Lot 6 cannot be approved in advance of the submittal of the drainage calculations.

CMN Business Park, Phase I & II
Page Three (3)

If you have any questions, please feel free to call and discuss.

Sincerely,

Ronald S. Petrie, P.E.
Staff Engineer

COPY

September 2, 1999

Milholland Company
Melvin L. Milholland
205 West Center Street
Fayetteville, Arkansas 72701

Re: CMN Business Park II, Phases I & II
Revised Grading Plan

Dear Sir:

The revised grading plan that was resubmitted September 1, 1999 which included the lot fills have been reviewed for general compliance with City standards and is approved with the following conditions:

1. A plan for the grading associated with the wetlands mitigation to be submitted prior to beginning that construction.
2. Prior to placing fill within the floodway, floodplain, or wetlands, the COE approved permit must be provided to the Engineering Department.
3. Provide the Engineering Department a copy of the approved Floodplain Development Permit prior to placing any fill within the floodplain.
4. As previously stated, some intermediate grading of the lots to use the excavated materials is acceptable, but the final grading cannot be approved without a drainage plan.
5. All comments and conditions from the previous approval letters.
6. This review was for general compliance and does not relieve the owner from any items discovered during construction which are deemed necessary to comply with City criteria.

If you have any questions, please feel free to call and discuss.

Sincerely,

Ronald S. Petrie, P.E.
Staff Engineer

January 11, 2000

Milholland Company
Guy Washburn, P.E.
205 West Center Street
Fayetteville, Arkansas 72701

COPY

Re: CMN Business Park II, Phases I & II
Proposed Box Culverts

Dear Sir:

The revised plans and drainage report for these box culverts that were resubmitted for this project have been reviewed for general compliance with city standards and are approved subject to the following comments or requested revisions:

1. The letter of transmittal states that a copy of the *Bar Shop drawing for 90 degree wingwall* is attached. This plan sheet was not found with the submitted materials.
2. The storm pipe sizes that are shown to connect to the wingwalls have not been reviewed and are subject to change.
3. A copy of a previously approved handrail detail with vertical supports is attached. Please revise the detail in these construction drawings.
4. On Sheet P29, the drop inlet detail that is shown does not contain dimensions that match the plan & profile sheets. Will this detail be utilized or will the standard AHTD detail as shown on standard drawing FPC-9 be utilized for construction?
5. A preconstruction conference is required prior to beginning this construction and after the above items have been addressed in sufficient detail. Please contact Sid Norbash to schedule and provide two revised sets of plans at this meeting.
6. Milholland Company to provide construction inspection.
7. This review was for general compliance and does not warrant your design and does not relieve the owners from any items discovered during construction which are deemed necessary in order to comply with City criteria.

STAFF REVIEW FORM

Soccer Coordinator
A. 2. Page 1

XX AGENDA REQUEST
 _____ CONTRACT REVIEW
 _____ GRANT REVIEW

For the Fayetteville City Council meeting of May 2, 2000
 FROM: _____

Connie Edmonston
 Name

Parks and Recreation
 Division

Public Works
 Department

ACTION REQUIRED:

Approval of budget adjustment to hire a Soccer Coordinator to administer the youth and adult soccer program for the City Parks and Recreation Division.

COST TO CITY:

\$51,950 - Revenue

\$37,564 - Cost

Cost of this Request

1010-5220- (See Attached)
 Account Number

Project Number

\$547,289
 Category/Project Budget

\$135,980
 Funds Used To Date

\$411,309
 Remaining Balance

Category/Project Name

Athletic Program
 Program Name

Parks Development
 Fund

BUDGET REVIEW: _____ Budgeted Item xx Budget Adjustment Attached

Steph Sand
 Budget Manager

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

Marilyn J. Cramer
 Accounting Manager

4-19-00
 Date

[Signature]
 City Attorney

4-19-00
 Date

[Signature]
 Purchasing Officer

4-19-00
 Date

GRANTING AGENCY:

Gelanda Field
 Internal Auditor

4-19-00
 Date

ADA Coordinator

Date

STAFF RECOMMENDATION:

Approval of Budget Adjustment

Connie Edmonston
 Division Head

4-19-00
 Date

[Signature]
 Department Director

4-19-00
 Date

[Signature]
 Administrative Services Director

4-19-00
 Date

[Signature]
 Mayor

4/20/00
 Date

Cross Reference

New Item: Yes No

Prev Ord/Res #: _____

Orig Contract Date: _____

Orig Contract Number: _____

STAFF REVIEW FORM

Description Soccer Coordinator Meeting Date 5/2/00

Comments:
Budget Coordinator

Reference Comments:

Accounting Manager

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Hanna and City Council

THRU: Charlie Venable, Public Works Director

FROM: Connie Edmonston, Parks & Recreation Superintendent *C.E.*

DATE: April 18, 2000

RE: New Soccer Coordinator Position Request

On April 11, 2000, the Fayetteville Parks and Recreation Advisory Board voted for the Parks and Recreation Division to administer youth recreational and adult soccer programs beginning in the fall of 2000, and to proceed with the internal process of hiring a full time staff member to handle soccer activities. Currently, there are over 800 participants in the youth recreational soccer program and no offerings for adults. This position will also coordinate with the existing competitive teams from the Comets, Woodland Junior High Scholastic Soccer team, and the Fayetteville High School teams.

We are requesting a full time position called Soccer and Event Specialist that would administer soccer programs throughout the fall and spring seasons. Also added to this position the responsibilities of special events including the Gulley Park Summer Concert Series, Gulley Park Run, and new positive community special events that would attract large audiences. However, this position would spend the majority of their time developing and promoting soccer in our community.

Revenues from participant registration will cover the costs of the new position and program costs as demonstrated on the Annual Soccer Budget. The cost per participant, depending upon age and number of seasons registered, will be \$25 to \$60. Figures are based on the estimated 650 youth and 150 adults participating. If the Fayetteville Soccer Association chooses to co-exist with our new program, it may take a year or so to build the participant numbers back up after this transition. However, we feel confident participants will eventually play in our program. Park staff believes our soccer program will grow in numbers and offer more leagues for our citizens. Estimated revenues for the program total \$59,950, whereas expenses total \$57,715. The program should be self-sufficient. (See details on Annual Soccer Budget.)

This position would start in June, therefore only 58 percent, or \$10,764, of the personnel funding required for the entire year would be needed for 7 months in 2000. The projected 2000 revenue is \$51,950 due to the fact most participants register for both seasons in the fall. Estimated

expenses in 2000 are \$37,546. (See details on 2000 Soccer Budget.)

For the past four years, there have been numerous participant complaints over the management of the soccer program by the Fayetteville Soccer Association (FSA). Participation is down from previous years, when enrollment exceeded 1,000 participants. Communities all over the state are witnessing increases in soccer participation numbers. In 1998, two soccer forums were held for the public's input on the soccer situation and plans for the future. Many concerns about the management were expressed. From this meeting, a list of recommendations from the Parks and Recreation Division and the Youth Center was distributed to FSA. Because of the continual problems, the Parks and Recreation Division chose to assist FSA in paying their approximate \$10,000 water bill for the soccer fields, lining the fields, and operating the concession stand to allow FSA to concentrate their volunteer efforts on the management of the program to serve the participants' needs.

In 1999, the Parks and Recreation Division established a Soccer Advisory Board made up of members from the recreational, competitive and scholastic soccer programs. The purpose of this board was to establish communication and policies to best serve our soccer community. FSA has continually experienced excessive board member turn-over and the board at large has been uncooperative.

As a last result, the Parks and Recreation Advisory Board had to make an extremely difficult decision in voting FSA, which has operated our city's soccer program for over twenty years with volunteers, to be replaced by a program that is administered by a full time Parks and Recreation Division employee. Both Park Staff and the Parks and Recreation Advisory Board believe it is time for a change in the management of soccer. It is imperative that the Parks and Recreation Division soccer program be initiated in order to best serve our soccer community. To initiate this program, Parks and Recreation requests the addition of the soccer position to our staff. A job description is attached.

If you have any questions, please call me at 444-3473.

Attachments:
Soccer Budget
Job Description
New Personnel Form
Budget Adjustment

Fayetteville Parks and Recreation
Programs and Special Events
Soccer Budget

REVENUE	Annual Budget	2000 Budget (7 Months)
Team Sponsorships (60 teams @ \$250)	\$15,000	\$15,000
U6/U8 Registration (250 participants @ \$25 one season, \$35 both seasons)	\$7,500	\$7,500
U10 Registration (250 participants @ \$35 one season, \$45 both seasons)	\$10,000	\$10,000
U12/U18 Registration (150 participants @ \$50 one season, \$60 both seasons)	\$8,250	\$8,250
Adult Team Registration (8 teams @ \$400)	\$3,200	\$3,200
Tournament Team Registration (80 teams @ \$200)	\$16,000	\$8,000
Revenue Total	\$59,950	\$51,950

EXPENSE		
Player Scholarships (30 scholarships @ \$20)	\$600	\$600
Soccer & Event Specialist (salary, benefits)	\$25,628	\$10,764
Computer/Printer	\$1,600	\$1,600
Phone	\$200	\$200
Operational (pager, shirts, conference, phone charges, etc..)	\$2,585	\$2,585
Referees	\$6,450	\$4,500
Referee Coordinator	\$260	\$180
Uniforms (500 shirts @ \$6)	\$3,000	\$3,000
Uniforms (150 shirts @ \$8)	\$1,200	\$1,200
Coaching Materials	\$500	\$500
Equipment (nets, balls, cones, air machine, etc...)	\$2,600	\$2,600
Sanction Fees (players, coaches, associate membership)	\$5,245	\$5,245
Adult League Prizes	\$160	\$160
Tournament Referees	\$5,520	\$3,000
Tournament Referee Coordinator	\$207	\$130
Tournament Prizes	\$960	\$500
Contract Services	\$1,000	\$800
Expense Total	\$57,715	\$37,564

INCOME	\$2,235	\$14,386
---------------	----------------	-----------------

NA 9

SOCCKER AND EVENT SPECIALIST

NATURE OF WORK

Under the direct supervision of the Program Coordinator, the Soccer and Park Event Specialist plans, develops and administers the soccer program and special park events for the City Parks and Recreation Division. Responsibilities include conducting the soccer program and special events.

PRIMARY RESPONSIBILITIES AND DUTIES

Responsible for program management, customer service and general facility supervision.

Establish short and long term goals and objectives for the soccer program.

Responsible for organizing publicity for the soccer program and special events by working with the various media outlets to print registration announcements, standings, and features on the area teams/event.

Recruits, trains and schedules referees for the soccer program.

Recruits and trains coaches for the soccer program.

Conducts skill development clinics and Fun Days for the youth.

Works with the Athletic Field Maintenance Coordinator to ensure the soccer fields are adequately maintained and safe.

Registers teams for league play, schedules practices and handles communications between the Parks and Recreation Division and participants/coaches.

Obtains sponsorships for the soccer program and special events.

Orders uniforms and all supplies necessary to operate the soccer program.

Assembles registration packet, brochures, and newsletters for participants.

Works with the Soccer Advisory Board and Parks and Recreation Advisory Board to ensure that the soccer program is of the highest quality.

Conducts evaluations and surveys of soccer needs as requested.

Prepares financial and participation summary reports.

Schedules the concessionaire for the soccer games, tournaments, and clinics.

Supervises evening and weekend games, tournaments, clinics, and special events.

Assists in the recruitment and execution of the Summer Concert Series in Gulley Park, the Gulley Park Cow Paddy Run, and other special park events.

Performs additional duties as assigned by the Program Coordinator, Parks Development Coordinator, and Parks and Recreation Superintendent.

REQUIREMENTS OF THE POSITION

Ability to recruit, train and organize a staff of employees and volunteers to handle duties relating to the execution of the Division's programs and special events.

Ability to work effectively with other division employees, Parks and Recreation Advisory Board, Soccer Advisory Board, and the public.

Ability to work with the public in a "customer friendly" manner to ensure the best quality service of the Division's programs.

Thorough knowledge of soccer rules and operations of the soccer program.

Possession of a valid driver's license.

Computer skills required.

New Personnel Request

Division/Program Name: Parks & Recreation/Athletics
 New Personnel Title...: Soccer & Event Specialist
 Pay Plan Grade.....: NA9
 Priority.....: _____

Personnel Information

Annual Salary.....: 20,000
 Employee Status.....: FT (FT or PT)
 FTE Amount.....: 100% (1=100% & .75=75%)

Personnel Services Cost

Salaries & Wages: \$ 20,000
 Overtime Amount.: _____ (# of Hours)
 FICA.....: 1,540
 Life Insurance...: 137
 Health Insurance: 3,756 F (F or I)
 LTD Insurance....: 92
 AD&D Insurance...: 45
 Retirement.....: _____ (Y or N)
 Worker's Comp....: 58 I (Workers Comp Code)
 Total.....: \$ 25,628

Capital Outlay

Account Number	Description	Amount Requested
	Computer and Printer	\$1,600
	Phone	\$200

Operation and Maintenance Expense

Account Number	Description	Amount Requested
1010 5220 5200 00	Office Supplies & Printing	1,000
1010 5220 5310 01	Pager	200
1010 5220 5302 00	Staff Shirts	100
1010 5220 5304 00	Conference or State Association Meetings	1,000
1010 5220 5303 00	Publication and Dues	35
1010 5220 5310 01	Telephone Line and Monthly Charges	250

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

**Soccer Coordinator
A. 2. Page 9**

Budget Year 2000	Department: Public Works Division: Parks & Recreation Program: Athletics	Date Requested 04/19/2000	Adjustment #
----------------------------	---	-------------------------------------	---------------------

Project or Item Requested: Authorization to add a position and recognize additional revenue and corresponding expenses for the soccer program.	Project or Item Deleted: No deletions are proposed - additional revenue will offset additional cost.
--	--

Justification of this Increase: Parks & Recreation Advisory Board has determined the soccer program will be administered by Parks & Recreation Division.	Justification of this Decrease: The additional revenue is from individual and team registrations as well as team sponsorships and tournament revenue.
--	---

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number	Project Number
See Attachment	37,564	See Attachment	

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number	Project Number
Adult Recreation Leagues	37,564	1010 0001 4411 00	

Approval Signatures

Requested By  Budget Manager	Date 4-19-2000 Date
Department Director	Date
Admin. Services Director	Date
Mayor	Date

Budget Office Use Only

Type:	A	B	C	☒ D	E
Date of Approval					
Posted to General Ledger					
Posted to Project Accounting					
Entered in Category Log					

City of Fayetteville, Arkansas
Soccer Program
Budget Adjustment Attachment

Salaries & Wages	1010-5220-5100-00	10,764
Extra Services	1010-5220-5102-00	7,810
Tournament Supplies & Award	1010-5220-5200.05	660
Uniforms	1010-5220-5302-00	4,350
Publications & Dues	1010-5220-5303-00	5,245
Travel & Training	1010-5220-5304-00	700
Telephone Expense	1010-5220-5310-01	2,535
Contract Services	1010-5220-5315-00	800
Minor Equipment	1010-5220-5890-00	4,700

Total		37,564
		=====

FAYETTEVILLE

*presented at
c.c. 5/2/00*

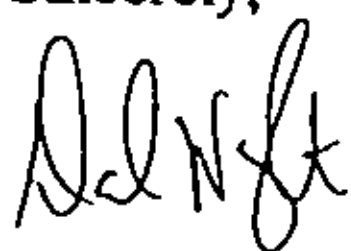
THE CITY OF FAYETTEVILLE, ARKANSAS

March 15, 2000

To Whom It May Concern:

Please allow this letter to confirm field allocations for soccer fields operated and maintained by Fayetteville Parks and Recreation. Below you will find each time allocation for every field in the City. Beside the time slot, you will see the sport association that the time slot was assigned to. Allocations were based on policies determined by the Parks and Recreation Soccer Advisory Board. This Board is comprised of members from the Arkansas Comets, the Fayetteville Soccer Association and Woodland Jr. High School Scholastic Soccer Program. Please refer to the charts on reverse for all weekend allocations. If there are any questions concerning these allocations, they should be directed to Fayetteville Parks and Recreation at 444-3471.

Sincerely,



David Wright
Program Coordinator
Fayetteville Parks and Recreation

Saturday

Lewis A	9-11	11-1	1-3	3-5	5-7
Lewis B	AC	AC	AC	AC	
Lewis C	(FSA)	(FSA)	W	W	
Lewis D	FSA	FSA	FSA	W	
Asbell 1	FSA	FSA	AC	AC	
Asbell 2	FSA	FSA	AC		
Asbell 3	FSA	FSA	FSA	FSA	
Asbell 4	FSA	FSA	FSA		
Walker 1					
Walker 2	AC	AC	AC	AC	

Sunday

Lewis A	9-11	11-1	1-3	3-5	5-7
Lewis B	AC	AC	AC	FSA	FSA
Lewis C	AC	AC	W	W	
Lewis D	AC	AC	AC	W	
Asbell 1	AC	AC	AC	AC	
Asbell 2				AC	
Asbell 3				AC	
Asbell 4					
Walker 1	FDA	FDA		FSA	FSA
Walker 2	FDA	FDA	FDA		

Wednesday, April 12, 2000

REGION/STATE

City to assume recreational soccer duties

By ERIK STINNETT

Staff Writer

After what was at times a heated clashing of opinions, a motion was passed late Tuesday night giving Fayetteville Parks and Recreation Department control over recreational and adult soccer in Fayetteville beginning this fall.

The much anticipated decision at City Hall was made after both the Arkansas Comets club and the Fayetteville Soccer Association made their respective pitches to be the chief provider of recreational soccer in Fayetteville. Both entities were seeking the Parks and Recreation Department's full and exclusive backing.

The result of the motion is that both the Comets and FSA will work through Parks and Recreation to offer their soccer services.

"The problems with the

soccer associations here in Fayetteville have been ongoing, but for whatever reason they've been unable to resolve the logistical problems within their organizations, therefore it creates inequities among all the soccer associations in the city," Parks and Recreation board member Bill Ackerman said.

"It's our desire to resolve these problems and assist the associations now with the proper logistics, handling and scheduling and all that goes with their respective associations."

Included in the motion, which was submitted by Ackerman, was the allowance of the Parks and Recreation staff to proceed with the internal process of hiring a full-time staff member to handle the soccer program.

"I believe it was a good decision," Parks and Recreation President Connie

Edmonston said. "We believed that soccer needed to go in a new direction. With all the calling and complaints, we knew something new needed to happen."

"We had two good proposals, but I know our Parks and Recreation will provide a great program."

While the Comets came away pleased with the board's decision, FSA found little reason for optimism concerning the ruling.

"I think we're finally going to have a group that is going to listen to the concerns of the people and is going to step forward and say, 'We want a quality program. What we have is not sufficient and we're going to try and make it better.'"

Comets director of coaching Samir Haj said. "I think that's definitely a victory for the game."

"I think our role is that we're trying to unify everybody and it seems like if the city is going to

take over the recreational portion and the amateur portion and still include us as the competitive program, I think that's the best of all worlds."

FSA vice president Duyen Tran felt her organization's argument fell on deaf ears Tuesday and doubts whether the Parks board is up to the task of undertaking recreational soccer.

"It is not a good decision," she said. "... No. 1, it's not fair because we were under the impression that we were here to present our program and the Comets were here to present their program, the city never had any expression that they are going to offer a program."

"They did not have to prove anything about whether or not they will be able to run the program and then all of a sudden a motion comes up and they vote that way. I'm not sure how they're going to run it."

Lincoln officer resigns after reportedly refusing to stop for traffic violation

By SARAH FISHER

the former officer did know he was

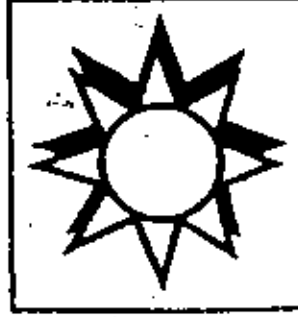
fresh."

the inch " Blocker said "We were

the inch " Blocker said "We were

Friday

April 14, 2000



Sunny

Today is the 105th day of the year. There are 261 days left.
Sunrise: 6:44 a.m.
Sunset: 7:51 p.m.

High: 75

Low: 46

Mostly sunny and breezy.

Weather A12.



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Northwest Arkansas TIMES

Fayetteville's hometown newspaper proudly serving Washington County

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Clunn, D
in FLW

Deaths / A2
Comics / D6

E-MAIL

Volume 134, No. 290

Fayetteville, Arkansas • Internet — <http://www.recordtimes.com>

7

Getting ugly

By MATT WAGNER

Staff Writer

Earlier this week the city's Parks and Recreation Division assumed control of Fayetteville's recreational soccer program, but confusion and discord surrounding the administrative change may lead to a nasty confrontation over scheduling conflicts, a parks official said Thursday.

The Parks and Recreation Advisory Board rejected plans presented by both the Fayetteville Soccer Association and the Arkansas Comets club Tuesday on how to administer recreational soccer, ultimately electing to place the responsibility in the city's hands.

the board's decision, the FSA vehemently opposed the move and has announced plans to start registering participants for the upcoming season Saturday, said FSA President Debbie Winters.

Parks and Recreation Superintendent Connie Edmonston said the FSA's reaction to the board's decision has caused considerable confusion and will likely lead to future scheduling problems on public soccer fields at Asbell Elementary School and east of Lewis Avenue.

"If (FSA) wants to do that, that's fine," Edmonston said. "That's their business. But the foreseeable problem is people are going to be confused, and we

Changes in soccer program causing confusion, frustration among public, official says

“

If (FSA) wants to do that, that's fine.

That's their business. But the

foreseeable problem is people are going to be confused, and we don't want to confuse the public.

— Parks and Recreation Superintendent Connie Edmonston

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"I think it's a very sad day," Butler said. "In one sense, it's a relief, but I can tell you there's no joy in the office."

"We have all, at one time or

"It was a very emotional moment," he added.

The Prosecuting Attorney's Office is embroiled with Butler's absence. Deputies can't charge

interim prosecutor is named.

"The work does not stop," he said. "We're going to make sure criminals are still being

said of the announcement's suddenness. But he did say it was overdue. "I think he should've stepped down a long

Butler's departure has also led to a locked-door policy for his office in the courthouse basement. While he doesn't

Soccer

Continued from A1

don't want to confuse the public."

FSA coach John Plummer agreed with Edmonston and is advising parents not to preregister because the fee is non-refundable.

"There's room for confusion," Plummer said. "I'm telling people, 'Wait until you see more in the paper and on television. Don't paint yourselves in a corner. If you preregister, you're stuck.' The reality is if the majority of the kids sign up with the city, then the FSA may end up with an irregular schedule."

The priority on the soccer fields will be youth and adult recreational

leagues run by the city at the top, followed by competitive programs and then all other organizations requesting to use the fields, Edmonston said.

In other words, the Comets club — a competitive league — would have dibs on public soccer fields before the FSA, making tension between the two warring soccer factions even more intense than it

has been in the past.

"(The) Parks (Division) has set a priority," Edmonston explained. "If we're going to have the program, we're not going to let other people use the fields (ahead of us)."

More pressing in Edmonston's mind is the possibility that parents may register their children with the FSA this weekend and later learn of the priorities set by the city's recreational soccer program.

"People (in Fayetteville) have never had a choice with recreational soccer," she said. "If they register (with the FSA), they may not get their money back. And then the question is 'Where will they play?'"

Winters said the FSA understands and accepts the priorities adopted by the city and is confident the under-18 soccer organization will retain its membership and ability to schedule necessary field time.

"We don't feel the city is going to fill all these fields," she said. "I just don't see how all the fields will be taken up."

In the two years Edmonston has served as parks superintendent, she said she has handled a continual stream of complaints about the FSA's organizational and administrative shortcomings. Scheduling conflicts, problems finding and keeping good referees and limited access to the concession stand and restrooms at the fields have all been recurring complaints, she added.

"There were so many complaints it was unreal," Edmonston said. "I believe we owe it to the people to make sure there's a good league here."

Winters contended the FSA has consistently met the needs of its membership but agreed the city's

soccer program would finally Fayetteville residents a choice.

"It's hard to divide the kids, but I think choice is good," she said. "If they can provide a better program, that's fine. But we are a quality program and I think most of our membership will choose to stay with us."

The Parks and Recreation Division will be sending out soccer registration forms through Fayetteville public schools, Edmonston said. Another notice is running on Community Access Television, Channel 8, to make the public aware of the administrative change affecting recreational soccer.

Edmonston encouraged anyone with suggestions about the new program to e-mail them to the Parks and Recreation Division at programsandspecialevents@hotmail.com.

BARBARA'S GARDENS

of Fayetteville

Spring LANDSCAPE EXPO

Saturday, April 15 • 11 a.m. to 3:00 p.m.

Register for a FREE Perennial Garden! \$100 worth of Perennials of your choice!



WHERE COLOR IS EXPLODING!

GARDENING SEMINARS:

11:00-11:30 - LadyBug Landscape - soil preparation
12:00-1:00 - Country Heritage - subject to be announced
1:00-2:00 - Hank Euler - Landscape problems & solutions
2:00-3:00 - North Ark LandDesign
- Scott Woods - Getting your feet wet with water gardening



Arkansas Certified Nurseryman

LANDSCAPE PROFESSIONALS

Will be available to visit and answer questions from 11 to 3

LadyBug Landscape - Susan Bolding
Daggett Landscape - Carol Daggett
Nature's Catalog - Kathy Gibson
Knee Deep/Preferred Lawn Care - Scott Woods
K.C. Landscape

Country Heritage Landscape Design - Cooper Lee
North Ark LandDesign - Hank Euler
Hurlbut Landscape and Design - Don Hurlbut
City of Fayetteville Square Gardens

Final Closeout!

Last Day, Saturday, April 22
All Fixtures for Sale

Discounts 50%-90% OFF

Church Supplies . . . 90% Off Books . . . 70% Off
Seasonal . . . 90% Off Bibles . . . 60% Off
Bible Covers

Free Bible-top sized metal 3:30 p.m.

Developing a roomful in business Jackie Clark (right) answers questions from the judges about her invention, the Easy Feet foot massager, as Jackie Gamble waits her turn at Greenland Elementary School's Invention Convention. Sixth-graders had to come up with an invention, a marketing program and anticipated production and sales costs as part of their study of economics.

Dan Watson said. Watson said the expansion being designed by architect Dennis Becker of Design Direction in Fayetteville.

Commissioner using data, estimates the population at between 669 and 70. The 1,100-square-foot block building at 235 Henry

Fayetteville

Parents in middle as city takes over soccer program, association resists

BY LAURA KELLAMS
ARKANSAS DEMOCRAT-GAZETTE

FAYETTEVILLE — Parents are choosing sides in a battle over who should run a recreational soccer program for kids in Fayetteville.

The Parks and Recreation Advisory Board decided Tuesday to take over the community soccer program, but the all-volunteer Fayetteville Soccer Association, which previously ran it, will continue to recruit players. With registration beginning today for the soccer association, parents are left to decide months before the fall soccer season which program is the best for their children.

"I'm going to go with the city," said Katherine Sharp, mother of 7-year-old Julia, who's played soccer for two years. "Fayetteville Soccer Association has been given the chance, and they failed repeatedly. Let's give the city a chance now."

That's why city officials say

they decided to take over the program: parents' complaints that Fayetteville Soccer Association was unorganized and mismanaged.

But association supporters say any problems relate to a volunteer program run by parents. About 850 children are on the association teams, said Debby Winters, the association board president.

"If you're going to have nearly 1,000 kids, you're going to have some complaints. We've been making a lot of changes in the last year or two, trying to communicate better with the public," Winters said.

She said the association plans to go ahead and register children for the fall season from 10 a.m. to 1 p.m. today at Lewis Park despite the city's decision, because the registration has been planned for months. The city doesn't have a program going yet, so it wouldn't make sense to stop the soccer registration, at

least not yet, she said.

James Ulick said he and his 14-year-old son, Ande, have been pleased with the Fayetteville Soccer Association. It's run by people who love kids and love soccer and dedicate their free time to the sport, he said.

"I think getting the government involved in something that's already working on the public level is a mistake," Ulick said. "The city should have talked to parents and said, 'Who do you think should run it?' They'd say, 'Don't spend our tax dollars.'"

Eric Schuldt, the development director for the city Parks and Recreation Division, said parents should see the city's role as a plus. With a full-time employee dedicated to soccer, the program will be better organized, he said.

He said the parks division is discouraging parents from signing up with the Fayetteville Soccer Association. See **SOCCER**, Page 3B



Kerry Nelson, 12, of Fayetteville tries to steal the ball away from Ryan Billingley, 13, of Fayetteville during their soccer practice Friday afternoon at Lewis Park in Fayetteville. The Parks and Recreation Advisory Board decided Tuesday to take over the community soccer program, but the all-volunteer Fayetteville Soccer Association will continue to recruit players.

Term Care, which inspects and regulates more than 250 nursing homes in the state.

Carol Shockley, who was the assistant chief program administrator, on April 3 accepted the job of director, which pays \$68,920 a year, according to a department news

Soccer

Continued from Page 1B

cer Association. The city has the upper hand in that battle because it owns and manages the fields that all the teams share.

The parks board decided Tuesday that the city-run programs would have first priority for scheduling soccer fields once the playing season starts.

A letter handed out at Fayetteville schools on Friday informed parents of the "new and exciting, comprehensive soccer program" the city is starting for youth and adults.

"These recreational leagues will be the primary soccer programs taking place at Lewis and Asbell fields beginning in the fall of 2000," the letter stated.

The city's youth soccer program will come first, then the city's adult program, then the privately run competitive program called the

Charge

Continued from Page 1B

illegally searched their homes.

Wal-Mart officials deny the allegations.

Selection

Continued from Page 1B

committee and was formed to recommend a recruiting firm.

The selection committee has

zens who often have no one else to look out for them," Shockley said.

The Office of Long Term Care, an arm of the department's Medical Services Division, also oversees intermediate care facilities for the mentally retarded, 130 residential care homes and adult day-

"Leave it to adults to screw up a kids' game."

— Bob Shoulders, a member of the Parks and Recreation Advisory Board

Arkansas Comets. The Comets program is more selective of its players and travels out of town for games, unlike the recreational programs that just play in Fayetteville.

Last on the priority list will be "all other programs," Schuldt said, which includes the Fayetteville Soccer Association. He said the association shouldn't register teams because its teams won't have much field time this fall.

Bill Craft, a soccer coach and former board president for the Fayetteville Soccer Association, said the association should have a higher priority for fields than the competitive program.

Kitterman is charged in Benton County Circuit Court with felony theft. But Kitterman says in his lawsuit that he bought the items seized from his home either at Wal-Mart's employee store in Bentonville or at maintenance shop auctions.

discussed that it might take up to a year to find a suitable candidate, particularly since there's a national superintendent shortage. The School Board has approved hiring an interim superintendent in the meantime. Two people have ap-

sector in Texas, according to the department.

Shockley, 50, of Conway worked for 16 years as assistant superintendent at the Conway Human Development Center, which was operated by the department.

"Our program has gotten better every year. Our kids are happy. Why has the city attacked it? Why is the city getting into programs its citizens are volunteering to do for free?" Craft said.

Bob Shoulders, a member of the Parks and Recreation Advisory Board, said the soccer association has done a good job for an all-volunteer program. But Shoulders said he's heard countless complaints for several years about "customer unfriendly" practices such as phone calls not being returned and registration checks cashed without kids being included on teams.

"With paid staff members that can keep up with everything, the city is going to be in a position to be more responsive," Shoulders said.

Shoulders said the battle for kids and soccer fields "could get ugly, if it isn't already."

"Leave it to adults to screw up a kids' game," he said.

Two of the other five plaintiffs in the civil cases were arrested and charged with felony theft, but prosecutors dropped the charges for lack of evidence. Criminal charges were never filed against the other three plaintiffs.

plied for the interim position — one of them also an applicant for the permanent superintendent post.

The board is expected to discuss the interim position at a special board meeting Thursday.

ement windows and a new air conditioning system are in the plans.

"When you come down [DeFonti Boulevard] you won't be able to see much change once it's complete," Watson said. "But from the back, where most of this construction will be, you'll be able to see that the building has grown some."

K & S Auto

A/C Recharge

\$34.95

plus freon

26th & Hwy 102

Between Rogers & Bentonville

621-5546

Palm Sund
April 16th, 6:00

Then
JOURNAL

*For the joy set before
He walked on toward*

University
333 W. Maple, Fa

Spring Sp

Custom Inground

Gunite Pools

TRI CO POOLS

16'x32' KIDNEY

3'x5' DEEP

Offer Expires
4/30/2000

TRI CO

Companies

\$14,900

725 Industrial Park f

CALL FOR MORE INFORM

**Fayetteville Parks and Recreation
Programs and Special Events**



RECREATIONAL SOCCER PROGRAMS

Fayetteville Parks and Recreation is beginning a new and exciting comprehensive soccer program. This program will include recreational opportunities for both youth and adult participants. These recreational leagues will be the primary soccer programs taking place at Lewis and Asbell fields beginning in the Fall of 2000.

Registration will begin May 15. Registration forms will be distributed through the schools, and will be available at the Parks and Recreation Office and the Fayetteville Youth Center/Boys and Girls Club. Fayetteville Parks and Recreation looks forward to meeting your recreational soccer needs! Please send any suggestions for this new program to programsandspecialevnts@hotmail.com.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

MEMO

TO: Fayetteville Soccer Association ✓
Arkansas Comets Soccer
Woodland Junior High Interscholastic Soccer

FROM: Connie Edmonston *C-E*
Parks and Recreation Superintendent

DATE: April 14, 2000

SUBJECT: Soccer Field Priority

On April 11, 2000, the Fayetteville Parks and Recreation Advisory Board voted to have the Fayetteville Parks and Recreation Division administer the youth recreational and adult soccer programs beginning in the fall of 2000. Organizational priorities have been established to determine the soccer field usage at Lewis Soccer Complex, Asbell School Park and Walker Park North as follows:

First Priority:	Fayetteville Parks and Recreation Youth Recreational Leagues
Second Priority:	Fayetteville Parks and Recreation Adult Recreational Leagues
Third Priority:	Competitive Soccer
Fourth Priority:	All other groups requesting usage

Due to this recent decision by the Fayetteville Parks and Recreation Advisory Board, it is imperative that soccer organizations not represent themselves as a Fayetteville Parks and Recreation program. Please plan your programs to follow the above guidelines which will provide the least confusion to the soccer participants. If you have any questions concerning usage priorities, scheduling, or rental policies, please call the parks office at 444-3471.

cc: Fayetteville Parks and Recreation Advisory Board

STAFF REVIEW FORM

X AGENDA REQUEST
X CONTRACT REVIEW (amendment)
 GRANT REVIEW

For the Fayetteville City Council meeting of May 2, 2000

FROM:

Jim Beavers Engineering Public Works
Name Division Department

ACTION REQUIRED:

Approval of a, engineering contract amendment in the amount of \$22,446.00 with Crafton-Tull and Associates for changes to the Cleveland Street project.

COST TO CITY:

<u>\$22,446.00</u> cost of this Request	<u>\$43,432</u> Project Budget	<u>Cleveland Street</u> Project Name
<u>4470-9470-5809.00</u> Account Number	<u>\$19,583</u> Funds Used To Date	<u>Street Improvements</u> Program Name
<u>98028-2</u> Project Number	<u>\$23,849</u> Remaining Balance	<u>Sales Tax</u> Fund

BUDGET REVIEW: X Budgeted Item Budget Adjustment Attached

[Signature]
Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

Margaret J. Cramer
Accounting Manager
[Signature]
City Attorney
[Signature]
Purchasing Officer

<u>4-13-00</u> Date	<u> </u> ADA Coordinator	<u> </u> Date
<u>4-17-00</u> Date	<u> </u> Internal Auditor	<u> </u> Date
<u>4-14-00</u> Date		

STAFF RECOMMENDATION: Approval

[Signature]
Division Head
[Signature]
Department Director
[Signature] 4-17-00
Administrative Services Director
[Signature]
Mayor

4/13/00
Date
4-17-00
Date

Date
4/17/00
Date

Cross Reference

New Item: **No**

Prev Ord/Res # 42-98 ✓
P.O. 98-0001603

Orig Contract Date: April 7'98

STAFF REVIEW FORM

Page 2

Description Cleveland Street - CTA amendment

Meeting Date May 2, 2000

Comments:

Reference Comments:

Budget Coordinator

Accounting Manager

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor

DEPARTMENTAL CORRESPONDENCE

To: Fred Hanna, Mayor

Thru: Charles Venable, Public Works Director
Contract Review

From: Jim Beavers, City Engineer *JB*

Date: April 6, 2000

Re: Council Meeting May 2, 2000
Amendment number one to the Cleveland Street engineering contract with Crafton-Tull and Associates.

As previously presented to the Street Committee and the City Council through the CIP process, the Cleveland Street project scope has been changed from Garland to Frisco to Leverett to Hall.

The project scope includes minor widening to 28 ft., curb and gutter and a sidewalk on one side (location varies) from Garland to Leverett, drainage as needed downstream from Leverett and drainage, curb and gutter and a new sidewalk on the north side of Cleveland from Garland to Hall (at Leverett Elementary).

The current schedule, based upon the CIP is design in 2000 and construction in 2001.

An amendment is necessary to the original contract with Crafton-Tull and Associates to provide for the additional design reflected in the changed scope.

The original contract for design through bidding is \$58,431.83. The proposed amendment is an additional \$22,446.00 for design for a revised total of \$80,877.83.

The proposed contract amendment has been reviewed is considered fair and reasonable. Staff requests that the amendment be approved.

Enc:

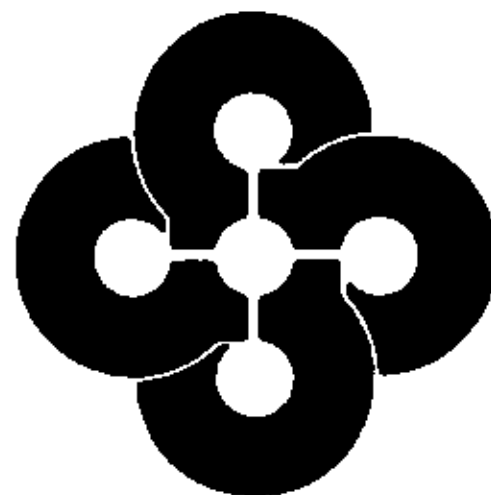
1. One original contract amendment

Principals

Danny L. Brown, P.E.
Bob H. Crafton, P.E.
Thomas E. Hopper, P.E.
Cline L. Mansur, P.E., R.L.S.
R.E. (Gene) Reece, P.E.
David Swearingen, A.I.A.
James L. Tull, C.D.A.

Principal Emeritus

Lemuel H. Tull, P.E.



Crafton, Tull & Associates, Inc.
Architects, Engineers & Surveyors

Associates

Everett L. Balk, P.E.
Al Harris, R.L.S.
Kurtis J. Jones, P.E.
James W. Kooistra, A.I.A.
Tom Mansur, P.E.
Robert C. Reece, P.E.
Rick G. Rose, R.L.S.
George G. Strella, P.E., D.E.E.
James P. Swearingen, A.I.A.
Richard Wright, R.L.S.

Harry G. Gray, P.E.
(1941-1997)

CONTRACT AMENDMENT

April 12, 2000

Mr. Jim Beavers, P.E.
City Engineer
City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

RE: Cleveland Street Improvement Project
CTA Job No. 98073.01

Dear Mr. Beavers:

In accordance with your letter to us dated March 13, 2000 regarding the above referenced project and in accordance with Section XIII of our Agreement of Engineering Services dated April 7, 1998, we request your consideration of an increase in the upper limit of compensation for our services due to significant changes in the scope of work and changes to work previously completed. The changes have been discussed in previous correspondence with the City of Fayetteville and in meetings with the City staff. These changes are summarized below:

• **Garland to Hall Addition:**

The City of Fayetteville wishes to extend the Cleveland Street improvements to the west between Garland Avenue and Hall Avenue. These improvements will include the addition of curb and gutter, storm drainage, an asphalt overlay, and a sidewalk. Crafton, Tull and Associates will conduct a topographic survey of this section of street, revise the drainage design, and submit complete construction plans for this work. In addition, Crafton, Tull & Associates will coordinate the street design for Cleveland Street with the street design for Garland Avenue being accomplished by the Arkansas Highway and Transportation Department.

• **Leverett to Gregg Revisions:**

The City of Fayetteville wishes to end the Cleveland Street improvements just east of the Cleveland Street/Leverett Avenue intersection. The City requires Crafton, Tull & Associates to remove from the construction plans all street design east of this location and revise the drainage design accordingly. In addition, the City requires Crafton, Tull & Associates to re-design the Cleveland/Leverett intersection to allow increased sight distance, including the re-design of a retaining wall at the southwest corner of this intersection.

- **Final Plan Preparation**

The City agrees to compensate Crafton, Tull & Associates to revise work previously completed, including coordination with utility companies, quantity estimates, cost estimates, and written specifications. Crafton, Tull & Associates, at no additional cost to the City, will complete all contract items not previously completed.

The additional compensation for the work described above is detailed in the attached man-hour estimate and fee proposal. Crafton, Tull & Associates proposes to accomplish the work in accordance with the attached design schedule. This Contract Amendment shall not change the fees for Phases B, C, D and E described in the Agreement for Engineering Services, Section XII. The requested compensation is summarized below:

Additional Design Phase Services – costs not to exceed	\$19,691.56
Additional Fixed Fee for Design Services	<u>\$ 2,754.44</u>
Total Additional Amount Requested	\$22,446.00

SUMMARY

Previous Total Contract Amount	\$58,431.83
Additional Requested Amount	<u>\$22,446.00</u>
New Total Contract Amount	\$80,877.83

Based on the information contained herein, we respectfully request your consideration to increase the upper limit of our Agreement for Engineering Services. We trust that we have adequately documented this request, and should you have any questions or require any additional information, please contact us at your convenience.

Very Truly Yours,

CRAFTON, TULL & ASSOCIATES



Robert M. Crafton, P.E.
Senior Vice President

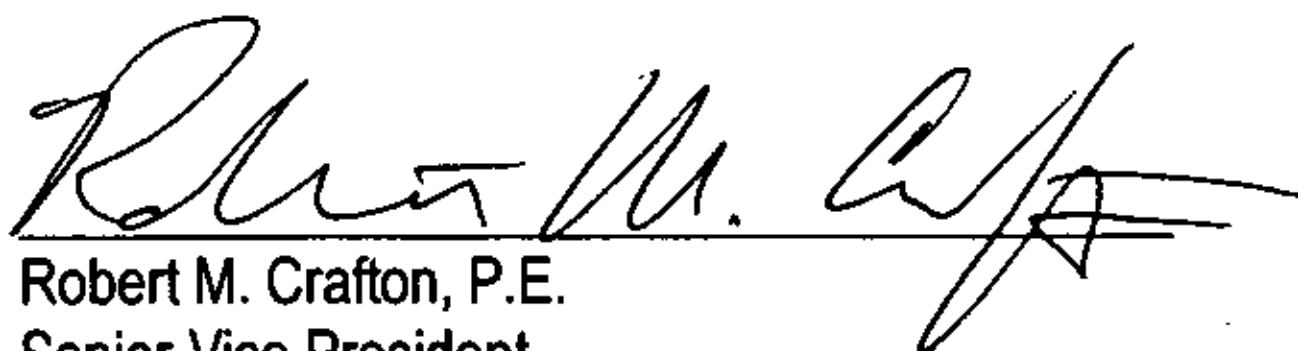
Enclosures

IN WITNESS WHEREOF, the parties hereto have caused the original Agreement to be amended
and duly executed as of the date and year first herein written.

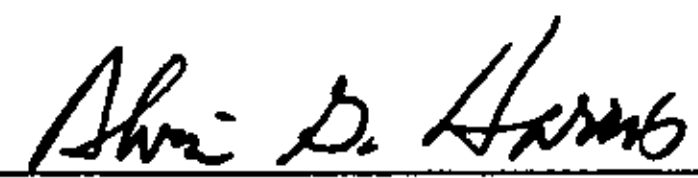
CITY OF FAYETTEVILLE

ATTEST:

CRAFTON, TULL & ASSOCIATES, Inc.


Robert M. Crafton, P.E.
Senior Vice President

ATTEST:


Alvin G. Harris, P.L.S.
Vice-President

SCOPE OF SERVICES / MAN-HOUR ESTIMATE
 REVISIONS TO CONSTRUCTION PLANS FOR THE
CLEVELAND STREET IMPROVEMENT PROJECT
 FAYETTEVILLE, ARKANSAS
 April 12, 2000

ENGINEERING SERVICES

This scope of services includes revision of the construction plans for the proposed Cleveland Street Improvement Project. This proposal reflects changes to the original contract scope of work or changes to original City design decisions. This proposal does not include bidding phase or construction phase services.

ITEM NO.	ITEM DESCRIPTION	Man-hour Estimate					
		CLRC. ASST.	SURV. CREW	SUPR. SURV.	ENGR. TECH	DSGN. ENGR.	SUPR. ENGR.
GARLAND TO HALL ADDITION							
1	Topographic survey from Garland to Hall - x-section exist. roadway, locate all exist. utilities and right-of-way. Reduce data and add to topo map.		16.0	8.0	16.0	4.0	2.0
2	Lengthen project to the west. Add all street design from Hall to Garland.				16.0	16.0	2.0
3	Coordinate Cleveland Street/Garland Avenue intersection design to match AHTD plans				4.0	4.0	1.0
4	Revise drainage report and storm system design to include Hall to Garland				16.0	16.0	8.0
5	Submit street and drainage design to City for approval.				1.0	1.0	1.0
6	Meet with City to discuss plans					1.0	1.0
7	Revise plans per City review				8.0	2.0	
Sub-Total Garland to Hall Addition		0	16	8	61	44	15
LEVERETT TO GREGG REVISIONS							
8	Study effect of Cleveland Street drainage design on downstream properties		6.0			24.0	8.0
9	Re-design Cleveland Street and Leverett Avenue intersection for more sight distance				16.0	16.0	1.0
10	Shorten project to the east. Remove all street design from Leverett to Gregg.				4.0	2.0	
11	Revise intersection drainage design				4.0	4.0	1.0
12	Submit revised plans to City for approval				1.0	1.0	1.0
13	Meet with City to discuss revised plans					1.0	1.0
14	Revise plans per City review				8.0	2.0	
Sub-Total Leverett to Gregg Revisions		0.0	6.0	0.0	33.0	50.0	12.0
RETAINING WALL REVISIONS							
15	Re-design retaining wall at Leverett				16.0	16.0	4.0
16	Submit retaining wall design to City for approval				1.0	1.0	1.0
17	Meet with City to discuss revised retaining wall					1.0	1.0
18	Revise retaining wall per City review				2.0	1.0	
Sub-Total Retaining Wall Revisions		0	0	0	19	19	6

SCOPE OF SERVICES / MAN-HOUR ESTIMATE
 REVISIONS TO CONSTRUCTION PLANS FOR THE
CLEVELAND STREET IMPROVEMENT PROJECT
 FAYETTEVILLE, ARKANSAS
 April 12, 2000

FINAL PLAN PREPARATION

19	Submit revised plans to utility companies		4.0	2.0	1.0
20	Revise quantities		8.0	8.0	2.0
21	Revise cost estimate			4.0	1.0
22	Revise specifications	4.0		4.0	1.0
23	Estimate construction schedule			4.0	1.0
24	Submit final check plans, specs, cost estimate and schedule to City for approval		1.0	1.0	1.0
25	Meet with City to discuss final plans			1.0	1.0
26	Revise plans and specs per City review	2.0	4.0	4.0	
27	Submit final sealed plans, specs, cost estimate, schedule, design calculations and drawings on compact disk to City.	2.0	1.0	2.0	2.0
Sub-Total Final Plan Preparation		8.0	0.0	0.0	18.0
TOTALS		8.0	22.0	8.0	131.0

MAN-HOUR SUMMARY & COMPUTATION OF DIRECT LABOR

Clerical Assistant	8.0 Hours	\$12.00	\$96.00
Survey Crew	22.0 Hours	\$45.00	\$990.00
Supervising Surveyor	8.0 Hours	\$21.00	\$168.00
Engineering Technician	131.0 Hours	\$15.20	\$1,991.20
Design Engineer	143.0 Hours	\$21.00	\$3,003.00
Supervising Engineer	43.0 Hours	\$27.00	\$1,161.00
Total	355.0		\$7,409.20

REIMBURSABLE EXPENSES

	QTY.	UNITS	RATE	TOTAL
Travel Mileage (7 trips to City, 5 trips to site)	60.0	Miles	\$0.31	\$18.60
CADD Charges	66	Hours	\$20.00	\$1,310.00
Plan Sheet Plotting	25	Sheets	\$18.00	\$450.00
Printing and Reproduction	250	Sheets	\$1.00	\$250.00
Sub-Total				\$1,328.60

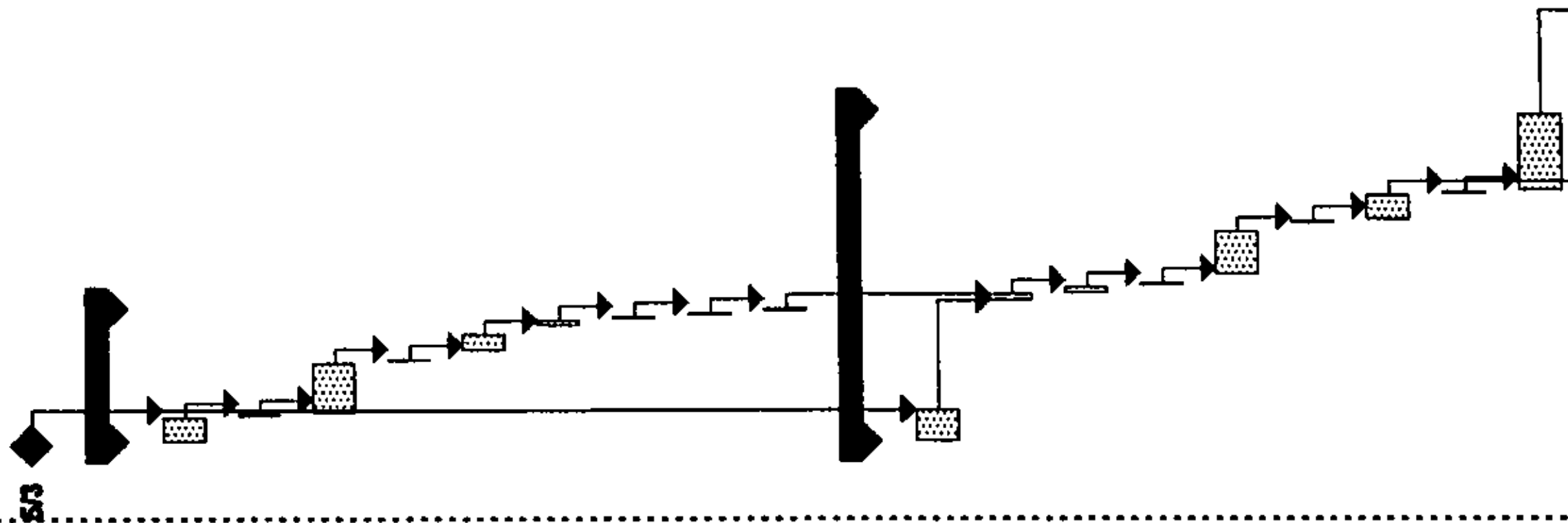
FEE SUMMARY

	TOTAL
Total Direct Labor	\$7,409.20
Overhead (147.84%)	\$10,953.76
Fixed Fee	\$2,754.44
Reimbursable Expenses	\$1,328.60
TOTAL FEE	\$22,446.00

DESIGN REVISIONS FOR CLEVELAND STREET IMPROVEMENT PROJECT

Crafton, Tull & Associates
2345 N. Green Acres Road
Fayetteville, AR 72703
(501) 443-4535

ID	Task Name	Dur.	Start	Finish	2000											
					Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	NOTICE TO PROCEED - REVISIONS TO CLEVELAND STREET IMPROVEMENT PROJECT	1d	5/3/2000	5/3/2000												
2	LEVERETT TO GREGG REVISIONS	27d	5/4/2000	6/8/2000												
3	Study affect of Cleveland Street drainage design on downstream properties	5d	5/4/2000	5/10/2000												
4	Write Engineering Assessment	1d	5/11/2000	5/11/2000												
5	City reviews Engineering Assessment	10d	5/12/2000	5/25/2000												
6	Meet with City to discuss Engineering Assessment	1d	5/26/2000	5/26/2000												
7	Re-design Cleveland Street and Leverett Avenue Intersection for better sight distance	5d	5/29/2000	6/2/2000												
8	Revise intersection drainage design	2d	6/5/2000	6/6/2000												
9	Revise curb return radii as directed by City	1d	6/7/2000	6/7/2000												
10	Shorten the project. Remove all street design from Leverett to Gregg.	1d	6/6/2000	6/6/2000												
11	Re-design sidewalk for 6' width	1d	6/9/2000	6/9/2000												
12	GARLAND TO HALL ADDITION	65d	5/4/2000	8/2/2000												
13	Conduct topographic survey from Garland to Hall and reduce data	7d	5/4/2000	5/12/2000												
14	Add street design from Garland Avenue to Hall Avenue	2d	6/12/2000	6/13/2000												
15	Coordinate Cleveland Street / Garland Avenue Intersection design with AHTD plans	2d	6/14/2000	6/15/2000												
16	Submit revised plans to City for approval	1d	6/16/2000	6/16/2000												
17	City reviews revised plans	10d	6/19/2000	6/30/2000												
18	Meet with City to discuss revised plans	1d	7/3/2000	7/3/2000												
19	Revise plans per City review	5d	7/4/2000	7/10/2000												
20	Apply for AHTD permit for Garland Ave. Intersection	1d	7/11/2000	7/11/2000												
21	AHTD approves permit for Garland Ave. Intersection	15d	7/12/2000	8/1/2000												



**DESIGN REVISIONS FOR
CLEVELAND STREET IMPROVEMENT PROJECT**

Crafton, Tull & Associates
2345 N. Green Acres Road
Fayetteville, AR 72703
(501) 443-4535

ID	Task Name	Dur.	Start	Finish	2000											
					Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
22	Revise drainage report and drainage design to include Garland to Hall	5d	7/11/2000	7/17/2000												
23	Submit revised drainage design, water, sanitary sewer relocation designs to City	1d	7/18/2000	7/18/2000												
24	City reviews revised drainage and water and sewer relocations	10d	7/19/2000	8/1/2000												
25	Meet with City to discuss revised plans	1d	8/2/2000	8/2/2000												
26	RETAINING WALL REVISIONS	19d	8/3/2000	8/28/2000												
27	Re-design retaining wall at Leverett	5d	8/3/2000	8/9/2000												
28	Submit retaining wall design to City for approval	1d	8/10/2000	8/10/2000												
29	City reviews revised retaining wall design	10d	8/11/2000	8/24/2000												
30	Meet with City to discuss revised retaining wall design	1d	8/25/2000	8/25/2000												
31	Revise plans per City review	2d	8/28/2000	8/29/2000												
32	FINAL PLAN PREPARATION	60d	8/30/2000	11/21/2000												
33	Submit plans to utility companies	1d	8/30/2000	8/30/2000												
34	Utility companies review plans	20d	8/31/2000	9/27/2000												
35	Hold coordination meeting with utility companies	1d	9/28/2000	9/28/2000												
36	Revise plans per utility coordination meeting	5d	9/29/2000	10/5/2000												
37	Revise cross sections and add cross sections for Cleveland from Hall to Garland	2d	10/6/2000	10/9/2000												
38	Search title and write legal descriptions of R/W taking at Leverett/Cleveland Intersection	3d	10/10/2000	10/12/2000												
39	Design Maintenance of Traffic Plans	2d	10/13/2000	10/16/2000												
40	Design Permanent Signing and Striping Plans	2d	10/17/2000	10/18/2000												
41	Revise quantities	2d	10/19/2000	10/20/2000												
42	Revise cost estimate	1d	10/23/2000	10/23/2000												

STAFF REVIEW FORM

☒ AGENDA REQUEST
☒ CONTRACT REVIEW
☐ GRANT REVIEW

For the Fayetteville City Council meeting of May 2, 2000

FROM:

Jim Beavers

Name

Engineering

Division

Public Works

Department

ACTION REQUIRED:

Approval of (1) an engineering design contract in the amount of \$36,740.00 with McClelland Consulting Engineers for a new 12 inch water line adjacent to and on the new Highway 45 East White River Bridge to be constructed in 2000/2001 by the AHTD, (2) a budget adjustment.

COST TO CITY:

\$36,740.00
cost of this Request

\$ 121,140
Project Budget

Highway 45 East water
Line Relocations
Project Name

5400-5600-5808.00
Account Number

\$ 121,140
Funds Used To Date

Water/Sewer Improvements
Program Name

00038-1
Project Number

- 0 -
Remaining Balance

Sales Tax
Fund

BUDGET REVIEW:

 Budgeted Item ☒ Budget Adjustment Attached

[Signature]
Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

[Signature]
Accounting Manager

4-12-00
Date

ADA Coordinator

Date

[Signature]
City Attorney

4-12-00
Date

[Signature]
Internal Auditor

4-14-00
Date

[Signature]
Purchasing Officer

4-13-00
Date

STAFF RECOMMENDATION: Approval

[Signature]
Division Head

4/12/00
Date

Cross Reference

[Signature]
Department Director

4-17-00
Date

New Item: **Yes**

[Signature]
Administrative Services Director

Date

Prev Ord/Res #

[Signature]
Mayor

4/17/00
Date

Orig Contract Date:

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: Fred Hanna, Mayor

Thru: Charles Venable, Public Works Director *CV*
Contract Review

From: Jim Beavers, City Engineer *JB*

Date: April 12, 2000

Re: Council Meeting May 2, 2000
Proposed engineering contract with McClelland Consulting Engineers
Highway 45 East water line relocations

The AHTD is planning to construct new bridges over the White River and Richland Creek on Highway 45 East with construction to begin this summer. The new bridges will be constructed on the south side of the existing bridges and the existing bridges demolished after the new bridges are in service. The City of Fayetteville's six inch water line is currently attached to the existing White River bridge and goes under Richland Creek. Therefore it is necessary to design and construct a new water line on the new White River Bridge and connecting lines. The proposed line will be upgraded from a 6 to 12 inch main.

The proposed engineering contract with McClelland Consulting Engineers will provide for the design of a new 12 inch water line from the end of the existing 12 inch water line, approximately the Bordeaux Village Subdivision entrance, east across the new bridge to Wyman Road. Construction management/inspection services are not included in the contract and will be negotiated after the design is complete. The proposed design contract is \$36,740.00. A budget adjustment is required for this project. It may be necessary to delay the Highway 62 water line improvements/upgrade from 2000 to 2001 to fund the Highway 45 water relocation design and construction.

Enc:

1. Vicinity Map
2. Three original contracts for signature.

STAFF REVIEW FORM

Page 2

Description Highway 45 East water relocations - MCE contract Meeting Date May 2, 2000

Comments:

Reference Comments:

Budget Coordinator

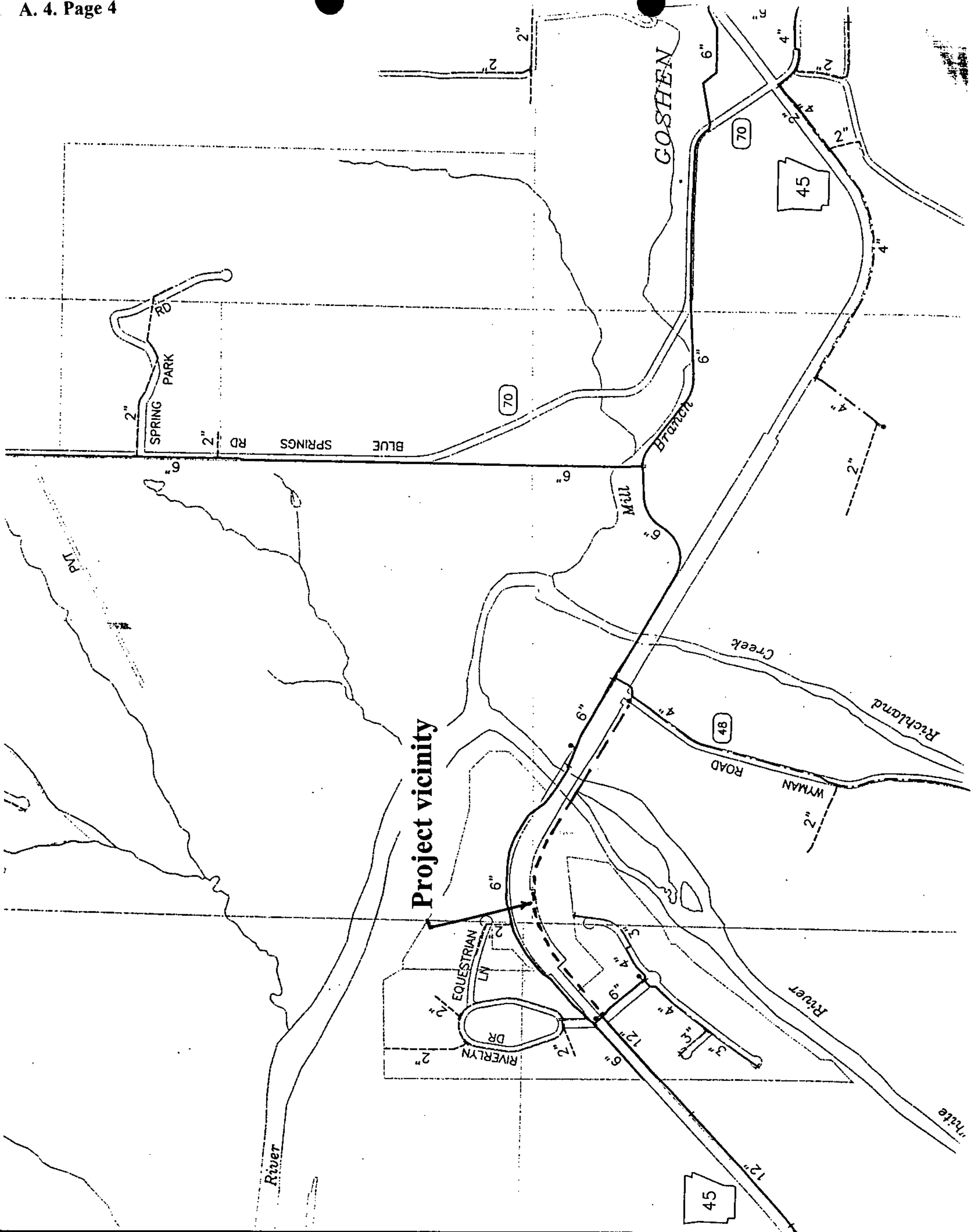
Accounting Manager

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor



CITY OF FAYETTEVILLE AGREEMENT FOR ENGINEERING SERVICES

STATE OF ARKANSAS

COUNTY OF WASHINGTON

This Agreement entered into and executed this ____ day of _____, 2000,
by and between the City of Fayetteville acting by and through its Mayor hereinafter called
the "OWNER" and McClelland Consulting Engineers, Inc. with offices in Fayetteville,
Arkansas, hereinafter called the "ENGINEER".

WITNESSETH:

Whereas, the "OWNER" is planning to replace a water main in the vicinity of the Highway 45
bridge over White River with a new 12-inch water main to be attached to the new Highway
45 White River bridge and extended approximately 2,700 feet to existing 12-inch water
mains in the vicinity of this bridge; and Whereas the "OWNER'S" forces are fully employed
on other urgent work that prevents their early assignment to the aforementioned work; and
Whereas, the "ENGINEER'S" staff is adequate and well qualified and it has been determined
that its current work load will permit completion of the plans for the project on schedule;

Now therefore, it is considered to be in the best public interest for the "OWNER" to obtain
assistance of the "ENGINEER'S" organization in connection with said engineering services.

In consideration of the faithful performance of each party of the mutual covenants and
agreements set forth hereinafter, it is mutually agreed as follows:

SECTION I - EMPLOYMENT OF ENGINEER

The "OWNER" agrees to employ the "ENGINEER" to perform, and the "ENGINEER" agrees to perform, professional engineering services in connection with the projects set forth in the Sections to follow; and the "OWNER" agrees to pay and the "ENGINEER" agrees to accept, as specified in the Sections to follow as full and final compensation for work accomplished in the specified time.

SECTION II - DESCRIPTION OF THE PROJECT

The services provided by the "ENGINEER" are anticipated to include but not necessarily be limited to preliminary design, final design, coordination with the "OWNER", other utility companies, The Arkansas Highway and Transportation Department and the Arkansas Department of Health, as necessary to obtain required approvals of construction drawings and specifications, as well as bidding assistance and easement preparation services related to:

- Installing a new 12-inch water main on the new Highway 45 bridge to be built across the White River in Goshen, Arkansas.
- Connecting this bridge crossing to an existing 12-inch main west of the bridge in the vicinity of the Bordeaux Village entrance.
- Connecting this bridge crossing to a 12-inch main currently scheduled to be constructed and expected to be completed in the next three months on the east side of the bridge in the vicinity of North Wyman Road.

SECTION III – INFORMATION & SERVICES

The "OWNER" will furnish any specifications, standards and other information which may relate to the project including GPS survey data. Aerial mapping data will be provided, free of charge, to the "ENGINEER" on magnetic media.

The Arkansas Highway and Transportation Department is to provide design data and plans for the new bridge and the new bridge approaches to the "OWNER", and this information will likewise be made available to the "ENGINEERS".

SECTION IV - SERVICES TO BE FURNISHED BY THE "ENGINEERS" DURING "DESIGN" PHASE

The project will be designed and constructed to meet water and sewer standards in accordance with the "OWNER'S" Water and Sewer, and other related Standards. Construction specifications shall be based on "Standards Specifications for Highway Construction Edition 1996 of the AHTD" and latest special provisions and City of Fayetteville Specifications relating to the design of this project. The design concept with regard to water and sewer relocations, geometric, detours, right-of-way, utility easements, and other related items shall be submitted by the "ENGINEER" (in the form of a Preliminary Engineering Assessment) and approved by the "OWNER" prior to beginning design work.

The "ENGINEER" shall provide all field survey data from field work for designing the project and this shall be tied to the "OWNER'S GPS control network.

The "ENGINEER" shall be responsible for obtaining, interpreting and evaluating geotechnical or any other form of data necessary for the design of this project.

The "ENGINEER" shall attend coordination meetings with the "OWNER", Arkansas Highway and Transportation Department and other affected utility companies.

The "ENGINEER" shall provide surveying, mapping, and related services as required to prepare Right-of-Way/Easement documents for the "OWNER'S" use in acquisition activities.

The "ENGINEER" shall furnish plans to all utility companies affected by the project and if necessary, shall conduct a coordination meeting among all affected utility companies to enable them to coordinate efforts for the necessary utility relocations. This coordination meeting will take place at the City Engineer's office.

During the final "design" phase of the project, the "ENGINEER" shall conduct final designs to prepare construction plans and specifications including final construction details and quantities, special provisions, cost estimates, make final field inspection with "OWNER", make any needed plan changes as a result of the final field inspection and all other work required to advertise and receive bids.

Prior to the start of construction, the "ENGINEER" shall establish benchmark for elevation control and tie layout work to Fayetteville's GPS.

SECTION V - COORDINATION WITH "OWNER"

The "ENGINEER" shall hold conferences throughout the design of the project with representatives of the "OWNER" to the end that the design, as perfected, shall have full benefit of the "OWNER'S" knowledge and be consistent with the current policies and construction practices of the "OWNER". The "OWNER" reserves the right to accept or reject any or all plans, but this stipulation will not relieve the "ENGINEER" of responsibility for the design of the project.

SECTION VI - OFFICE LOCATION FOR REVIEW OF WORK

Review of the work as it progresses under this Agreement shall be made at the "OWNER'S" City Engineer's office.

SECTION VII – CONCEPT AND PRELIMINARY SUBMISSION

The "ENGINEERS" shall submit two (2) sets of concept plans, two (2) sets of preliminary plans and three (3) sets of the final plans for field inspections.

SECTION VIII - FINAL SUBMISSION

The final submission for the construction contract shall consist of the following:

- A. One (1) copy of all design calculations.
- B. Three sets of final plans, contract documents and specifications.

- C. The originals of all drawings, specifications and contract documents. All design drawings on magnetic media shall be submitted on disks compatible with the AutoCAD Release 14 software.
- D. The estimated cost of construction and a detailed estimate of time in calendar days required for completion of the contract.

SECTION IX - ENGINEERS RESPONSIBILITY DURING "BIDDING" AND "CONSTRUCTION" PHASES

During the "Bidding" phase of the project, the "ENGINEER" shall provide all engineering and administrative services needed to obtain bids for the construction project, evaluate the bids, and consult with and advise the "OWNER" as to the acceptability of the best bidder.

This AGREEMENT does not cover "Construction" phase services. In the event that the "OWNER" desires to have the "ENGINEER" provide such services, the terms, conditions and compensation related thereto shall be mutually negotiated at a time selected by the "OWNER".

SECTION X - SUBCONTRACTING

Subcontracting by the "ENGINEER" of any of the services provided herein shall require prior approval by the "OWNER".

SECTION XI - TIME OF BEGINNING AND COMPLETION

The "ENGINEER" shall begin work under this Agreement within ten (10) days of notice to proceed and shall complete the plans for the construction contract within 150 calendar days.

The completion time is predicated upon the fact that the "OWNER" will cause to be processed approvals of interim work in an expeditious manner 15 days per submittal.

SECTION XII - FEES AND PAYMENTS

A. "Design" Phase Services:

For, and in consideration of, the services to be rendered by the "ENGINEER", the "OWNER" shall pay the "ENGINEER" on the basis of actual salary costs for work time directly connected with work chargeable to the project, plus payroll additives and general overhead costs of 178% of direct labor costs, plus direct reimbursable expenses associated with the project, plus a fixed fee which are payable as follows:

- | | |
|--|---------------------|
| 1) "Design" phase services, "surveying services" and preparation of the "Ownership Map/Utility Easements Plan Costs not to exceed: | \$ <u>25,854.72</u> |
| 2) Fixed fee for "Design" services: | \$ <u>3,085.28</u> |
| 3) "ENGINEERING" contract amount for "Design" phase Services not to exceed: | \$ <u>28,940.00</u> |

The basis of this upper limit and justification for the fee is contained in Appendix "A" attached hereto. Subject to the City Council approval, adjustment of the upper limit may be made should the "ENGINEER" establish and the "OWNER" agree that there has been or is to be a significant change in scope, complexity or character of the services to be performed; or if the "OWNER" decides to shorten the duration of work from the time period specified in the Agreement for completion of work and such modification warrants such adjustment.

Appendix "B" covers the classification of personnel and the salary rate for all personnel to be assigned to this project by the "ENGINEER".

Final payment for Design services shall be made upon the "OWNER'S" approval and acceptance with the satisfactory completion of the "Design" phase for the project.

B. "Bidding" Phase Services:

For "Bidding" phase services rendered by the "ENGINEERS", the "OWNER" shall pay the "ENGINEERS" on the basis of salary costs for work-time directly connected with the project, plus payroll additives and general overhead costs of 178% of direct labor costs (plus direct reimbursable expenses associated with the project), plus a fixed fee which are as follows:

1) "Bidding" phase services costs not to exceed:	<u>\$ 2,061.05</u>
2) Fixed fee for "Bidding" services:	<u>\$ 238.95</u>
3) "ENGINEERING" contract amount for "Bidding" Phase services not to exceed	<u>\$ 2,300.00</u>

Final payment for "Bidding" phase services shall be made upon the "OWNER'S" approval and acceptance with the satisfactory completion of the "Bidding" phase of the project.

C. "Special" Services:

For "Special" services, such as preparation of detailed easements and/or construction staking, the "OWNER" shall pay the "ENGINEER" as follows:

- 1) For "Easement" preparation services, the "OWNER" shall pay the "ENGINEER" an estimated fee of \$1,500 with the final negotiated fee for easement preparation to be determined after the completion of an

Ownership Map and Preliminary Engineering.

- 2) For "Construction Staking" services, if authorized in writing separately from this Agreement, the "OWNER" shall pay the "ENGINEER" an estimated fee of \$4,000 with the final negotiated fee for construction staking to be determined after the completion of final plans and bidding.

SECTION XIII - CHANGES

The "OWNER" may at any time, by written order, make changes within the general scope of the contract in the work and services to be performed. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this contract, an equitable increase or decrease shall be made in the upper limit contract amount, including fee or time of required performance, or both, and the contract shall be modified in writing accordingly.

Changes, modifications or amendments in scope, price or fees to this contract shall not be allowed without a formal contract amendment approved by the Mayor or the City Council in advance of the change in scope, price or fees.

Any claim by the "ENGINEER" for adjustment under this clause must be asserted with thirty (30) days from the date of receipt by the "ENGINEER" of the notification of change; provided, however, that the "OWNER", if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to the date of final payment under this contract. Failure to agree to any adjustment shall be cause for a dispute

concerning a question of fact within the meaning of the clause of this contract entitled SECTION XVI - MISCELLANEOUS PROVISIONS, (1) Dispute Resolutions. However, nothing in this clause shall excuse the "ENGINEER" from proceeding with the contract as changed.

SECTION XIV - OWNERSHIP OF DOCUMENTS

All documents, including original drawings, disks of CADD drawings and cross sections, estimates, specifications, field notes, and data are and shall remain the property of the "OWNER". The "ENGINEER" may retain reproduced copies of drawings and copies of other documents.

SECTION XV - POSTPONEMENT OR CANCELLATION OF THE CONTRACT

It is understood that the "OWNER" will have the right to suspend or cancel the work at any time.

- A. Postponement - Should the "OWNER", for any reason whatsoever, decide to postpone the work at any time, the "OWNER" will notify the "ENGINEER", who will immediately suspend work. Should the "OWNER" decide during such suspension not to resume the work, or should such suspension not be terminated within a year, the work shall be canceled as hereinafter provided.
- B. Cancellation - Should the "OWNER", for any reason whatsoever, decide to cancel or to terminate the use of the "ENGINEER'S" service, the "OWNER" will give written notice thereof to the "ENGINEER" who will immediately terminate the work. If the "OWNER"

so elects, the "ENGINEER" may be instructed to bring a reasonable stage of completion to those items whose value would otherwise be lost. The "ENGINEER" shall turn over all data, charts, survey notes, figures, drawings and other records or information collected or produced hereunder whether partial or complete. Upon such termination of the "ENGINEER'S" services, the "ENGINEER" shall be paid a proportional amount of the total fee, less prior partial payments, based on the ratio of work done to the total amount of work to be performed.

SECTION XVI - MISCELLANEOUS PROVISIONS

- A. Dispute Resolution - Any dispute concerning a question of fact in connection with the work and having a financial value of \$10,000, or less, shall be referred for determination to the Mayor of the City of Fayetteville whose decisions in the matter shall be final and conclusive. Disputes resulting from claims greater than \$10,000 shall be subject to mediation.
- B. Responsibility for Claims and Liability - The "ENGINEER" shall save harmless the "OWNER" from all claim and liability due to the "ENGINEER" activities, or those of the "ENGINEERS" subconsultants, agents, or employees during the time this contract is in force.
- C. General Compliance with Laws - The "ENGINEER" shall comply with all Federal, State and local laws and ordinances applicable to the work. The "ENGINEER" shall be a professional engineer, licensed in the State of Arkansas.

- D. "ENGINEER'S" Endorsement - The "ENGINEER" shall endorse and recommend all plans, Specifications, estimates and engineering data furnished by it. All design shall be checked in accordance with accepted engineering practices. All plan quantities shall be checked and verified.
- E. That, the City Engineer or his designated representative will direct and coordinate the "ENGINEER'S" efforts and will be the source of instructions to the "ENGINEERS" and shall have the authority to interpret the "OWNER'S" policy as necessary to maintain the "ENGINEER'S" work schedule and to administer the AGREEMENT.
- F. That, the estimates of cost for the Projects provided for herein are to be prepared by the "ENGINEER" through exercise of his experience and judgment in applying presently available cost data, but it is recognized that the "ENGINEER" has no control over cost of labor and materials conditions, so he cannot warrant that the project construction costs will not vary from his cost estimates.
- G. That, the "ENGINEERS" direct expenses are defined as the costs incurred on or directly for the Project, other than the Salary and General Overhead Costs. Such direct expenses shall be computed on the basis of actual purchase price for items obtained from commercial sources plus a 5% mark-up. Direct expenses shall include, but not be limited to, necessary transportation costs, including mileage at the "ENGINEER'S" current rate per mile when the "ENGINEER'S" own automobiles are used, meals and lodging, laboratory tests, and reproduction charges.

- H. That, the "OWNER", shall pay for all costs of publishing advertisements for bids and for obtaining permits and licenses that may be required by local, State, or Federal authorities and shall secure the necessary land, easements and rights-of-way as described by the "ENGINEER".
- I. That, in the event of any legal or other controversy requiring the services of the "ENGINEER" in providing expert testimony in connection with the Project, except suits or claims by third parties against the "OWNER" arising out of errors or omissions of the "ENGINEER", the "OWNER" shall pay the "ENGINEER" for services rendered in regard to such legal or other controversy, on a basis to be negotiated.
- J. That, visits to the construction site and observations made by the "ENGINEER" as part of his services shall not relieve the construction Contractor(s) of his obligation to conduct comprehensive inspections of the work sufficient to ensure conformance with the intent of the Contract Documents, and shall not relieve the construction Contractor(s) of his full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s) and for all safety precautions incidental thereto.
- K. That, the "ENGINEER", if authorized to provide Construction Phase Services, shall provide an on-site Resident Inspector and will make reasonable efforts to guard the "OWNER" against defects and deficiencies in the work of the Contractor(s) and to

help determine if the construction contract has been fulfilled. The Resident Inspector's day-to-day observation will not, however, cause the "ENGINEER" to be responsible for those duties and responsibilities which belong to the construction Contractor(s) and which include, but are not limited to, full responsibility for the techniques and sequences of construction and the safety precautions incidental thereto, and for performing the construction work in accordance with the Contract Documents. The Resident Inspector shall have the authority to reject both unsatisfactory workmanship and materials. His primary duties are as follows:

1. Check construction activities to determine compliance with the Plans and Specifications. Inform the Contractor and "OWNER" of any work that is in noncompliance.
2. Check that all testing required by the Specifications is performed.
3. Visit the testing laboratory to determine if it has the equipment and qualified personnel necessary to conduct the tests required by the Specifications.
4. Review test reports and certificates for conformance with the Specifications.
5. Maintain a file of test reports and certifications.
6. Inform the Contractor of deficiencies in order that corrections can be made and retesting performed prior to covering any substandard work with additional material.
7. Document quantities of materials used on the project by actual measurements and computations in a field notebook or computer printouts retained in a folder.
8. Maintain a diary which should contain daily entries made and signed by the Resident Observer. Each entry should include the following, plus any additional pertinent data:

- (A) Date and weather conditions.
- (B) Names of important visitors.
- (C) Construction work in progress and location.
- (D) Size of Contractor's work force and equipment in use.
- (E) The substance of important conversations with the Contractor concerning conduct, progress, changes, test results, interpretations of Specifications or other details.

SECTION XVII - SUCCESSORS AND ASSIGNS

The "OWNER" and the "ENGINEER" each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement, except as above, neither the "OWNER" nor the "ENGINEER" shall assign, sublet or transfer its interest in this Agreement without written consent of the other. Nothing herein shall be construed as creating any possible personal liability on the part of any officer or agent of any public body which may be party hereto.

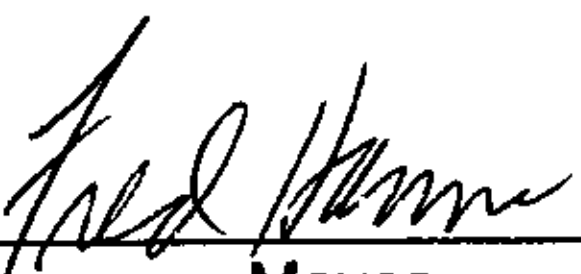
SECTION XVIII - COVENANT AGAINST CONTINGENT FEES

The "ENGINEER" warrants that it has not employed or retained by company or person, other than a bonafide employee working solely for the "ENGINEER", to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for the "ENGINEER", any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract.

For breach or violation of this warranty, the "OWNER" shall have the right to annul this contract without liability.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date and year first herein written.

FOR THE CITY OF FAYETTEVILLE

By: 
Mayor

ATTEST: _____

Date: 4/17/00

FOR McCLELLAND CONSULTING ENGINEERS, INC.

By: 
President

ATTEST: 

Date: 4/11/00

APPENDIX "A"
Basis for Payments to the "ENGINEER"
Water Main at Highway 45 Bridge

A. "Design" Phase Services

Labor Classification	Estimated Time	Labor Rate	Extended
Principal Engineer	8 hours	\$41.11/hr.	\$328.88
Project Manager	108 hours	\$29.94/hr.	\$3233.52
Structural Engineer	20 hours	\$29.94/hr.	\$598.80
Registered Surveyor	44 hours	\$14.44/hr.	\$635.36
Computer Technician	30 hours	\$18.03/hr.	\$540.90
Survey Crew (2 Man)	36 hours	\$19.25/hr.	\$693.00
Engineering Technician	24 hours	\$11.50/hr.	\$276.00
Chief Draftsman	30 hours	\$16.50/hr.	\$494.00
Senior Draftsman	48 hours	\$13.50/hr.	\$648.00
Junior Draftsman	96 hours	\$9.75/hr.	\$936.00
Clerical	72 hours	\$12.00/hr.	<u>\$864.00</u>
	Direct Labor		\$9,248.46
	Overhead at 178%		<u>\$16,462.26</u>
	Subtotal		\$25,710.72
	Fixed Fee		<u>\$ 3,085.28</u>
	Subtotal		\$28,796.00
	Direct Costs		<u>\$ 144.00</u>
	TOTAL		\$28,940.00

APPENDIX "A"
Basis for Payments to the "ENGINEER"
Water Main at Highway 45 Bridge

B. "Bidding" Phase Services

Labor Classification	Estimated Time	Labor Rate	Extended
Project Manager	10 hours	\$29.94/hr.	\$299.40
Structural Engineer	2 hours	\$29.94/hr.	\$59.88
Junior Draftsman	12 hours	\$9.75/hr.	\$117.00
Clerical	20 hours	\$12.00/hr.	<u>\$240.00</u>
Direct Labor			\$716.28
Overhead at 178%			<u>\$1,274.98</u>
Subtotal			\$1,991.26
Fixed Fee			<u>\$ 238.95</u>
Subtotal			\$2,230.21
Direct Costs			<u>\$ 69.79</u>
TOTAL			\$2,300.00

APPENDIX "B"

**Labor Rates
Water Main at Highway 45 Bridge**

<u>CATEGORY</u>	<u>HOURLY RATE RANGE</u>
Principal Engineer	\$40 to \$45
Project Manager	\$29 to \$33
Registered Surveyor	\$14 to \$18
Computer Technician	\$17 to \$21
Engineering Technician	\$10 to \$15
Survey Crew (2 man)	\$18 to \$23
Clerical Support	\$9 to \$14
Chief Draftsman	\$16 to \$20
Senior Draftsman	\$12 to \$16
Junior Draftsman	\$7 to \$11
Mileage	\$0.32/mi
Direct Costs	Invoice + 5%
Overhead Expense	178%

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year 2000	Department: Public Works Division: Water Capital Mains Program:	Date Requested 04/12/2000	Adjustment #
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Project or Item Requested:
Funding is requested for the White River Bridge 45 East Water Line project.

Project or Item Deleted:
None. A portion of the funding for project #00026, Highway 62 West - Water Line Replacement is proposed for this adjustment.

Justification of this Increase:
The Arkansas Highway and Transportation Department is planning to replace the bridge that crosses Highway 45 at White river. The City needs to relocate the water lines in advance of the bridge replacement project.

Justification of this Decrease:
The White River project is a higher priority project.

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number	Project Number
Waterline Improvements	36,740	5400 5600 5808 00	00038 10

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number	Project Number
Waterline Improvements	36,740	5400 5600 5808 00	00026 20

Approval Signatures

Requested By

Date

Budget Manager

Date

Department Director

Date

Admin. Services Director

Date

Mayor

Date

Budget Office Use Only

Type:

A

B

C

☒ D

E

Date of Approval

Posted to General Ledger

Posted to Project Accounting

Entered in Category Log

JANET B. GALLMAN
ATTORNEY AT LAW
28 EAST CENTER STREET, SUITE 201
P.O. BOX 4248
FAYETTEVILLE, ARKANSAS 72702-4248

TELEPHONE
(501) 444-7777

FAX (501) 444-7829
e-mail: jpgatty@nwark.com

April 25, 2000

The Honorable Fred B. Hanna, Jr.
Mayor of the City of Fayetteville
113 W. Mountain Street
Fayetteville, Arkansas 72701

VIA HAND-DELIVERY

Dear Mayor Hanna:

At your and Mr. Trumbo's insistence at the City Council meeting held Tuesday, April 18, 2000, I am submitting the attached list outlining activities and development which have occurred in or close to my neighborhood, 3255 North Lee Avenue, over the last 2 to 3 years, that do not take into account the effect on the adjoining residential uses. As I said at the meeting, my purpose is not to get anyone in trouble. Let me state now that my purpose was not to criticize or cast aspersions on our City Planner, Mr. Tim Conklin, or his department. He and his staff are knowledgeable and perform admirably under the pressures of expansive area development in the recent past and in light of their limited resources.

The problems I outline below, however, are due to failing to impose appropriate conditions when there has been significant expansion or alteration of an existing business uses adjacent to residential and at the stage of initial development in the recent past.

Rather than wasting the City resources at the present, I ask that you allow me a sufficient period of time (say 45 days) to see if I can persuade the various neighbors to resolve these complaints without City intervention. I would rather give you a report of how things are resolved than create more enforcement problems for the City. If, however, a matter cannot be resolved, I will follow up with the City as needed. Thank you for your time and thoughtful attention.

FIRESTONE / AAMCO 3264 & 3270 No. College Avenue

1. Firestone recently replaced the view-obscuring 6'-tall fence that used to be at the rear of its building (where there is a metal & scrap salvage dumpster, a trash dumpster, & loads of used tires) with a see-through chain link fence.

Solution: install those plastic strips in the chain link fencing to obscure the view or replace chain link fence with a view obscuring fence as was originally required for this use.

2. Mosquitoes breed in the water allowed to collect in the used tires.

Solution: Get rid of the used tires more often. Modify tires so they do not hold water.

3. Firestone has (2) high-intensity halogen lights now on the rear of its building which shine directly into the windows on the back of my house (more than 100' east), light up my back yard, and, generally, blind you when you walk out the back door.

Solution: point the lights down; shield them; lower the wattage; or install downward lighting. If this doesn't work, try a motion detector.

4. An elevated gravel parking lot was created with fill dirt and gravel on the grassy area and in the utility easement between the Firestone fenced area and my property when AAMCO recently added an almost two-story addition to the rear of its building. Aside from the obvious environmental and health hazards of caustic gravel/limestone dust, vehicles often remain parked there awaiting repairs. One of them, a large panel van, was parked alongside my back fence for almost a month. In addition, water drains off the lot towards mine.

Solution: This lot should either comply with the parking lot ordinance, i.e., no gravel and attention be given to drainage and run-off or be reclaimed and returned to grass for drainage reasons noted below.

5. Electric Pole Light Pole at SE corner of Firestone Lot (next to Saturn) with (1) 500 watt Halogen light pointed at Saturn dealership & (1) 1000 watt Halogen light pointed at AAMCO gravel parking lot recently created outside Firestone's fenced area (i.e., between Firestone and my property). This is the light which was directly lighting up my backyard which SWEPCO adjusted. Now, the 1,000 watt light reflects off the other light and the pole, into my backyard. The 500 watt light also reflects off the light-colored Saturn building and onto the back of my house.

Solution: Use other appropriate lighting and remove pole.

6. At the same time of the AAMCO building expansion, the dirt driveway used by AAMCO (and Firestone?), which runs west to east over the partial lot 3 (between my lot 4 property and Auto Magic Car Care Center's Lots 3, 2, & 1) was graded and graveled. That gravel road runs from N. College Avenue to N. Lee Avenue immediately north of my property. It can be seen from College Avenue and recently has begun to be used by the public as a cut-through off of College to get back into the residential areas east of there. One night shortly before the Planning Commission meeting on the rezoning of the Harold Street Fire Station, a Semi-tractor Trailer rig pulled up to park there. Would you want this 25' to 30' outside your bedroom window?

Solution: Post "private driveway" signs and put a gate on the lot line (where there used to be one) between the AAMCO/Firestone lots & Lot 3 which is closed at the close of business to discourage cut-through traffic. Auto Magic Car Care was made to do this and its lots are on Lee Avenue.

SATURN 3244 N. College Avenue

1. Parking Lot Pole Lights were either raised higher or intensity increased when renovating and upgrading from Wheeler Motor Company's use. This lights up the two houses across the street from us and there is one light which shines directly at us — I think it is the one in the extreme SW corner. In any event, Wheeler used to turn the lights off at night, just as did Consumers (now Liquor World, etc.) and did the old K-Mart shopping center (Office Depot, etc.).

Solution: Adjust lights downward and/or lower intensity; or turn-off pole lights and install lower level lighting for all night use.

2. Orange Halogen Garage Light installed recently is pointed directly at us.

Solution: Point the light down.

3. Parking Vehicles on Part of Lot 5 (immediately south of my house) (zoned R-1) and jumping the curb on Lee Avenue to get to back of Saturn.

Solution in the Works: I previously visited with the Manager of Saturn and asked them to please not park past my privacy fence creating a sea of automobiles outside my windows. They responded immediately and have been very good about this. There are only a few cars (without current licenses) and an occasional employee over there. However, due to the presence of cars, the public seems to think it is now an alternate entrance. I watched someone jump the curb and proceed on to the main vehicle lot looking at cars. I am open to any suggestions on this one. By the way, the City has already had to replace the water main and the curb both of which were broken due to a delivery vehicle which years ago used to do this.

4. Car Alarm repeatedly going off. This has happened on just few occasions. Last night on a Cadillac at 7:00, 8:00, 9:00, 10:00; (I called the police); 10:20; 10:40; etc.

Solution: Get the phone number for someone at Saturn to call to disable the darned things.

Mayor Fred B. Hanna, Jr.

Mayor of the City of Fayetteville

April 25, 2000

Page 4 of 6

SUPERIOR MITSUBISHI 3195 No. College Avenue

1. Public Address System Playing Music — after hours and early a.m. It is beyond me what purpose blaring elevator music serves at 11:30 p.m. on Saturday nights or 6:30 a.m. on Sunday mornings.

Solution: Turn off the music at the close of business.

2. Halogen Lighting pointed out at College Avenue and towards residences.

Solution: Turn around the lights pointed out at highway; adjust other lights downward so they don't spread across the highway *ad infinitum*.

LIQUOR WORLD & ITS SHOPPING CENTER 3332 N. College Avenue

1. (3) Parking Lot Pole Lights were upgraded to high intensity with the re-development of this center after Consumers Grocery Store closed. One light is pointed directly into my back yard. Liquor World does extinguish its lights at the close of business. However, the pole lights are left burning. Consumers turned off the parking lot lights at 10:00 p.m. Why was this changed? There is an example of appropriate (less than 10') downward lighting immediately behind Village Inn which is consistent with the parking lot lights being required to be turned off in the past.
2. Illuminated "LIQUOR WORLD" sign projecting into residential neighborhood. Aside from the fact that it escapes me how a retail liquor store is allowed to operate where it is abutted on (2) sides by Residential (RO to the South; R1 to the East), the fact remains that there is an illuminated sign designed to attract commercial traffic over Lee Avenue. There has been serious debate over the years whether that portion of Lee Avenue north of my property is even a City Street. The historical context is that the original developers of Maple Crest Subdivision or the shopping center gave the City some sort of assurances that there would not be traffic through the residential neighborhood, i.e., up Lee Avenue, to get to the shopping center.

AUTOMAGIC CAR CARE LUBE CENTER 3287 N. Lee Avenue

1. The elevation of this property was drastically raised. See attached letter. At the time I went to the City Planning Department, a lady (who is no longer there) showed me what she the southern elevation, the side facing me, which depicted a landscaping buffer. The perimeter landscaping is on the other side of the building facing the Liquor World parking lot (C-2 property). There is only one volunteer privet bush on the south side. There is no view obscuring fence, yet the building as built appears above my 6' privacy fence in my

backyard. In addition, cars are being "detailed" in that area rather than in the bays so that we are subjected to loud buffing and vacuuming machines as well as some pretty distasteful music with outright nasty lyrics.

Solution: Put in a view-obscuring fence to cut down on noise, etc., and/or vegetation which will help with the continuing drainage problems. Detail car in the bays rather than in the parking lot.

2. There is an unlicensed truck used on the south side and towards the end of the lot. This certainly should be screened, removed, or licensed.

Solution: A fence and/or vegetation would obscure this.

NIBBLES "OFFICE" 3274 North Lee Avenue (R-O)

1. One of the pine trees put in as screening vegetation on the south side died, was cut down, and has not been replaced, allowing cars to pull in and out over the lawn and park there.

Solution: Plant a tree.

CAFE NIBBLES 3290 North Lee Avenue (Conditional Use in R-0)

1. Parking on Lot 3 outside bedroom & living room windows and on the dirt berm created to protect against stormwater run-off from Auto Magic Car Care Lube Center.

Solution: I thought this was previously resolved and, to the operators' credit, there have only been (4) or so instances in the past (7) months which seem to occur when there is some sort of a special event. They posted a small "No Parking" yard sign which eventually blew over in the wind. It disappeared or I would have put it back up for them. I intend to install some landscaping and a low, open rail fence along the area and would gladly attach some new small "no parking" signs on the fence posts facing this area if this is okay with everyone.

2. Exterior Lighting is supposed to be extinguished at the close of business under the conditional use ordinance. It is not the now-downward pointing floodlights that bother us. It is the "brass & glass" carriage lights at the entrance which shine into our bedroom windows all night through metal mini-blinds and dark blue curtains.

Solution: Please, turn off the carriage lights at night after the close of business.

Mayor Fred B. Hanna, Jr.
Mayor of the City of Fayetteville

April 25, 2000

Page 6 of 6

OLD K-MART SHOPPING CENTER: 3100 Block of North College

1. There is some perimeter landscaping on the north side which was required with the recent re-development of this property and the addition of the strip center adjacent to IHOP. Some of it has been blown over, run over, etc., is dead, and needs to be replaced.

Solution: Replace the missing vegetation.

Highest regards,



Janet P. Gallman (-Ricker)

cc: ✓ Mr. Tim Conklin, City Planner
✓ Mr. Jerry E. Rose, City Attorney
✓ Mr. Robert Reynolds, Alderman, Ward 1, Position 1
✓ Mr. Ron Austin, Alderman, Ward 1, Position 2
Mr. Cyrus Young, Ward 2, Position 1
Mr. Kyle Russell, Ward 2, Position 2
Mr. Trent Trumbo, Ward 3, Position 1
✓ Mr. Bob Davis, Ward 3, Position 2
Mr. Kevin Santos, Ward 4, Position 1
✓ Ms. Heather A. Daniel, Ward 4, Position 2

RICHARD P. OSBORNE, ATTORNEY

20 EAST CENTER STREET • FAYETTEVILLE, ARKANSAS 72701 • 501.521.5555 • FAX: 501.444.0000

September 29, 1997

Mr. Jim Beavers, Assistant City Engineer
City of Fayetteville
113 W. Mountain Street
Fayetteville, AR 72701

FAXED
9-29-97 8:45am JRM

VIA FAX TO: (501) 575-8316

Re: Proposed New Auto Oil & Lube Facility for Auto Magic Car Care Center (Jeff Kisor)
Proposed Site: 3287 Lee Avenue, Fayetteville, AR

Dear Mr. Beavers:

I represent William G. Ricker and Janet P. Gallman-Ricker, landowners of 3255 Lee Avenue (Lot 4 & N 5' Lot 5, Maple Crest Addition), which is immediately south and down-slope from the referenced project. On September 25, 1997, my clients received a "Notice" from Mr. Kisor's Architect, Mr. James T. Key, concerning the project. Ms. Gallman (a lawyer who practices under her maiden name) dropped by your office on Friday, September 26, 1997, to review the grading plan. Neither you nor the other engineers were available.

The purpose of this letter is to inform you of the concerns my clients have concerning the project, namely STORMWATER DRAINAGE. A brief history is important for you to understand their concerns.

Sometime in the fall of 1995 the Kisor's predecessor in interest or someone at their request removed most of the vegetation and topsoil from Lots 1, 2, and part of Lot 3 (the proposed site for the new facility), and replaced it with red clay. Mr. Key has noted this on his site plan. At that time the grade was also elevated. The result was that the Rickers began having a problem with stormwater overflowing the replacement clay soil. The water flowed not only into their driveway making it a bog, but also over their backyard where it would stand for weeks. The stormwater also left a fine silt of red clay in its wake.

The Rickers have gone through two spring seasons and one fall season of "clay flooding." The situation has improved somewhat with the re-growth of vegetation on Lots 1, 2, and 3, and with the grading that was done south of the Rickers late this summer on the lands owned by Jim Bob Wheeler or his family Trusts, and which are apparently rented to the Saturn dealership. The stormwater can more quickly flow off of their backyard onto the "Saturn" parking lot unimpeded to the culvert along Harold Street. Nevertheless, as of this morning, there are still puddles of water standing in their backyard from the rains of a week ago.

Mr. Jim Beavers, City Engineer
Kisor - New Auto Oil & Lube Facility
3287 Lee Avenue, Fayetteville, AR 72701

September 29, 1997

Page 2 of 2

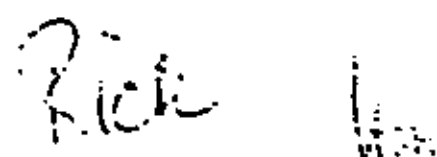
I have reviewed the Kisor's plan for the Auto Oil & Lube Facility and notice that the grade is to be elevated. Undoubtedly, there will be even more storm water and rainwater coming across these concrete or paved lots and there will be even less vegetation and soil left to handle the run-off before it hits the Ricker property. There is no indication on the site plan of any measures to be taken to prevent the run-off of water over the Kisor's land onto the Rickers'. This needs your immediate attention.

Mr. Key was kind enough to listen to Ms. Gallman's concerns about the water drainage Friday afternoon and promised he would discuss them with you at your meeting today. She did mention to him that it would help if the City could clean the gutters along Lee Avenue (which have filled in with the gravel washed off the "tar & feather road" which became Lee Avenue north of the Ricker property). That would probably help some of the water wash down the street rather than onto the Ricker property, but they have tried with pick axe and shovel to remove the same, but can't do it without a grader or bulldozer.

The Rickers are not trying to stop the Kisor project. We are all friends. They just want to be assured that the drainage situation is adequately addressed in order to prevent costly damage being done to their home and its foundation.

I am scheduled to be in trial this Monday morning, but should be available by mid-morning to visit with you either in person or on the phone. Ms. Gallman will also be available by mid-morning at her telephone number of 444-7777 to speak with you regarding her concerns, if you cannot get in touch with me. I look forward to hearing from you regarding your impressions.

Sincerely,


Richard P. Osborne

RPO/4jpgr

cc: Gallman & Ricker

VIA FAX TO: (501) 444-7829

P.S. An afterthought is that the Kisor project could move all the runoff water west, then south, avoiding the Ricker property altogether.

A:\09299701.wpd

JANET P. GALLMAN
ATTORNEY AT LAW
28 EAST CENTER STREET, SUITE 201
P.O. BOX 4248
FAYETTEVILLE, ARKANSAS 72702-4248

TELEPHONE
(501) 444-7777

FAX (501) 444-7829
e-mail: jpgatty@nwark.com

September 21, 1999

Mr. Tim Conklin, City Planner
Planning Division
City of Fayetteville
113 West Mountain Street
Fayetteville, Arkansas 72701

Re: CU-99-3 & Permit #9900899

3274 N. Lee Avenue— Nibbles Office Facility (Lot 28, Maple Crest Addition)
3290 N. Lee Avenue — Nibbles Restaurant (Lots 30 & 29, Maple Crest Addition)
[Parcel Numbers — 765-07701, -07702, -07703, -07704]

(Owners/Operators — C.S. "Suzie" Stephens; AICDI, Inc.; Jim Hatfield)

Dear Mr. Conklin:

My husband, William G. Ricker, and I own and have resided at the residential (R-1) property located at 3255 North Lee Avenue for almost twenty years. Our property is located southwest and diagonally across the street from Cafe Nibbles (3290 North Lee Avenue) and its related office facility (3274 North Lee Avenue). The Nibbles property is zoned R-O.

In the past, a conditional use was granted for use of the premises as a gourmet food & gift retail store and catering business to operate on Monday through Friday, 10:00 a.m. to 6:00 p.m., subject to certain requirements. A new conditional use was granted in February of this year for a restaurant and related office facility to operate Tuesday through Saturday, 12:00 p.m. to 10:00 p.m., again subject to certain requirements. Later, Nibbles applied for a building permit to add an additional 468 square feet to the southwest corner of the existing building at 3290 N. Lee Avenue "to provide a different access and make it a holding room while people wait for their table."

As you are aware, the restaurant business has been operating since approximately July 4, 1999, without a Certificate of Occupancy. The owners apparently have failed to comply with numerous requirements for the conditional use and the office facility has not been inspected by the City Inspection Department.

The purpose of this letter is to provide comment regarding the conditional use requirements which have not been met and to relate the numerous and objectionable activities of the business. The requirements for conditional use should be enforced. Additional requirements should be imposed for

the conditional use as a commercial enterprise in order to abate and prevent the objectionable activities and ensure compatibility with adjacent properties and other properties in the district, by and large, single-family residences.

Please note that we were not given notice of the current conditional use, presumably because we are not "adjacent" landowners, a position with which we disagree, especially when owners of clearly "non-adjacent" residential property on Bertha Street, Wayman & Bobbie Jo Halbrook, were given notice. (See attached City mailing labels & map). Our property has more of a view of the commercial use of the Nibbles property and is more directly affected by its business parking and commercial traffic than does or is the Halbrook property. We ask that you keep us informed and give us notice of any and all matters concerning the Nibbles property arising in the future.

I happened to be at the Planning Commission meeting on February 8, 1999, on another matter, when the matter of this conditional use was also on the agenda. I did not have the benefit of having reviewed the application, but nevertheless spoke about my concern for appropriate street improvements and curb and guttering. I also talked about an incident regarding parking problems when Nibbles Food & Catering business hosted a "business-after hours" event (with live outdoor music) that attracted a 85+ people and there were cars parked two deep in the street and our front yard. I didn't elaborate about past violations such as excessive employee parking in the area since that had been largely eliminated by the development of the Auto Magic Car Care Center and Ms. Stephens represented should would be curtailing the catering business. I chose to be a good neighbor, not gripe about the business expansion for eat-in dining, and take a "wait and see" attitude since this was merely a conditional use. I've waited long enough to realize that the requirements are not going to be met unless prompt and appropriate action is taken by city officials and to realize that the restaurant activities are not compatible with the residential neighborhood, create a safety and security concern, and interfere with the use and enjoyment of my home during practically all of the hours I have to enjoy the sanctity of it and also while I am trying to sleep.

1. Curb & Gutter. The site plan which was approved by staff (see March 11, 1999, revised drawing) provides for curb & gutter along the street in front of the restaurant building. The curb as built is not located along the street, but along the spot on the site plan marked "future landscape." This allows parallel parking directly in front of the building. Thus, the actual curb cut runs all the way to the north line of the property and is much wider than the 24' curb cut approved on the site plan.

2. Dumpster. There is no concrete pad for the dumpster nor it is screened from view.

3. Landscaping. Except for the ornamental grass sprigs in the flower bed in front of the building, the landscaping in front is not permanent: flower pots with annual flowering plants and animal critter topiaries which are readily moveable and don't have much of anything growing on them. There are a few short pine trees at the northwest corner which, incredibly, screen the

restaurant from Liquor World to the north (which has no windows through which to view the Nibbles property). There are pine trees to screen the property from the residents along Bertha Street to the south. Some are now dead and have not been replaced. There aren't any bushes, trees, shrubs, or other plant material in the "floating island" amid the concrete expanse or along North Lee Avenue to screen the property from our residence or to give it any curb appeal. In short, there is no landscaping or screening, appropriate or otherwise, from our viewpoint.

4. Commercial & Semi-Trailer Traffic. There has been a steady increase of commercial traffic before and after normal business hours (8:00 a.m. to 5:00 p.m.). During the past eight weeks, traffic begins as early as 6:00 a.m., when a refrigerated semi-tractor truck & trailer rig drives down North Lee Avenue (fair to poor condition street noted by your office), pulls up in front of the restaurant and sits there with the diesel engine idling and the separate diesel refrigeration unit running at full tilt to make a delivery by simply off-loading a (perishable??) shipment and leaving it to remain outside on the parking lot in summer morning temperatures near 85° or 90° and unattended until kitchen employees retrieve it later in the morning. Wait staff arriving in the early afternoon and patrons coming and going throughout the evening hours is not out of the ordinary; however, business does not yet appear to be booming. Employees leaving the premises after hours of operation are a problem. They leave at 10:45 p.m. or later on Tuesday through Thursday evenings, and at 12:30 a.m. and as late as 2:00 a.m. on weekend nights/mornings. The business hours of operation are supposed to end at 10:00 p.m. There is virtually no other traffic in the area at these late hours. Even the traffic on North College Avenue has died down to an occasional car or two at these times.

5. Parking & Shared-Parking Agreement. The parking area south of the restaurant was paved all the way over to the office building leaving a "floating island" between the beginning of the restaurant curb cut and the curb cut for the driveway at the office facility. The gravel parking area behind the restaurant for employees shown on the site plan in the northeast corner is no longer used for employee parking nor is it accessible because a new storage building has been placed beside the end of the restaurant building adjacent to the paved parking lot, and blocks the access to the employee parking area.

The applicant represented that there were approximately 400 parking spaces available for her employees and additional customers on the parking lot in the Liquor World shopping center owned by Joe Fred Starr. The employees of Athletic World Advertising in that shopping center leave work starting at 4:30 to 5:00 p.m. and there is plenty of paved, well-lit parking available in front of that business. To date, however, there is no shared parked agreement with Mr. Starr.

There was also some suggestion that the restaurant employees and customers might park at the Auto Magic Car Care & Oil Lube Center concrete parking lot located directly across North Lee Avenue from Cafe Nibbles. To date, there is no shared parking agreement with Auto Magic. There probably won't be one from that business because it does not have access onto the Liquor World

parking lot and it does not permit commercial traffic to enter or leave its facility through the service entrance located on North Lee Avenue — instead, it has a locked gate which is opened only for a short while in the morning for its employees to come to work and in the evening for them to leave. In the summer months, the car detailers are often there working until dark. So, the parking lot is often in use by Auto Magic during the restaurant's hours of operations.

The Nibbles Food Emporium retail business was moved to the old K-Mart shopping center at the south end of North Lee Avenue. It closes in the early evening as do other tenants on the northeast end of the center. There is plenty of well-lit and paved parking which is not used in the evenings or at night by the other businesses in the shopping center and could be used for Nibbles employee parking. To date, there is no shared parking agreement for using that property. There probably would even have to be a separate agreement since Nibbles already rents and has parking spaces at that center.

Instead of parking at the existing parking in the area which the applicant represented as being available or at other nearby & available parking, the Nibbles restaurant employees (average of seven on week nights; nine or more on weekend nights) and occasional over-flow customers are parking on the unimproved grass lot immediately north of and located within 20 to 30 feet of our bedroom, living room, and family room windows. This lot does not meet the criteria for the city's parking lot ordinance and the parking outside our bedroom this late at night is a nuisance. We have been awakened repeatedly and several times a night in the eight short weeks of operation — week nights shortly after going to bed at 10:45-11:00 p.m.; weekends around 12:30 a.m. and as late as 2:00 a.m.). When the employees leave, we can hear their conversations, car doors shutting, and engine noises, and actually have their car headlights shining into our bedroom despite the use of mini-blinds and room-darkening curtains.

The unimproved property along our north property line is part of three lots collectively known as 3287 North Lee Avenue. Most of 3287 North Lee Avenue was developed as part of the Auto-Magic Car Care & Oil Lube Center whose elevation was raised eight feet more above its elevation over our property. The property that remains at or slightly above our elevation does not appear to be a full eighty foot wide lot, but is a partial lot.

The present owners, the Kisors, have been very hospitable, considerate, and worked well with us on their development of the car care center. When our attorney Richard P. Osborne (*see attached copy of his September 29, 1997, letter*) wrote Mr. Jim Beavers, the Assistant City Engineer about the runoff problem. The Kisors, their architect and contractor, Mr. Beavers, Mr. Mark Jordan, Public Works Project Inspector, quickly met with us to review the situation and propose the solution of constructing a dirt berm north of us to divert the run-off away from and around our property into a drainage area to the west. The vegetation also absorbs some of the water. We were assured that the area would be left in better condition than before the dirt work and be seeded & strawed (there is now

grass growing there), and would remain like a park. In addition, the AAMCO Transmission business had a little dirt road running east from their parking lot west onto Lee Avenue between the grassy area and the elevated Kisor property. Recently, that dirt road was graded or compacted and gravel laid down so that the road now takes up approximately half of the space remaining between us and the Kisors' developed property.

There are already ruts showing up in the grassy area north of us which channel the water toward our property. If parking is allowed to continue upon the dirt berm, it will become further rutted out and compacted so that it will no longer function effectively to prevent water from flowing onto our property from the elevated Kisor property to the north.

We respectfully request that the Kisors, by copy of this letter, make any and all users and potential purchasers of the property aware of the runoff and drainage concerns and that they impose appropriate covenants running with the land to require the permanent maintenance of the road and of the dirt berm (which is also in their best interests, since it is the runoff from their elevated improvement which will flood and damage our property).

As to security and safety concerns, on weekends one Nibbles employee parks so close to the road, i.e., between the telephone pole and the road, that we cannot see to back out of our driveway. Vehicles have been parked alongside our house long-term, i.e., not just overnight, but for almost two weeks at a stretch. We have often seen Mr. Hatfield and Ms. Stephens with three vehicles between them, one parked on the grass beside us, the other two at the restaurant. Often, only one vehicle is driven home. Why have three cars for two people when parking is limited? Why have two cars if only one person intends to drive home?

Please require that Nibbles discontinue use of this unimproved property as off-site parking to satisfy the requirement of shared parking for its conditional use of the 3290 & 3274 North Lee Avenue properties as a restaurant.

Further, Mr. Hatfield states he intends to purchase this property and construct a parking lot on our property line. Current zoning requirements impose a 25' setback for development of commercial property which is adjacent to residential property. Anything closer than that requires special permission of the Planning Commission. There are also numerous other requirements for grading, drainage, retaining walls, storm drains, and screening which might protect us if they are imposed and followed.

The problem is that the present situation, namely Nibbles' failure to comply with the requirements for the conditional use when coupled with the purposeful lack of notice to us in this case and Mr. Hatfield's stated intent to build a parking lot on the property line, gives us justifiable concern that there will be no meaningful effort to comply with applicable zoning procedures and ordinances

in the development of the unimproved area as a parking lot. We do not want to come home one day to find that the dirt berm has been removed and a gravel or chip-and-seal asphalt parking lot put in its place. We, of course, want prior and meaningful notice of any and all plans or proposals for development of the property immediately to our north and assurances that city codes and planning procedures will be followed.

6. Occupancy Load in Light of Required Parking. The conditional use application indicates that the restaurant will seat 50 people. However, the general notes on the site plan and/or plat for the commercial alteration indicates an occupancy load of 85 people. Does this mean there are 35 employees? Are 17 parking spaces adequate for 85 people? When 85 people showed up at the "business after hours" they parked up and down Lee Avenue, Bertha Street, and in my front yard.

7. Exterior Lighting. The lighting surrounding the former entrance on the west side of the restaurant building was moved 30+ feet closer to our property when the new entrance was constructed. This has become a problem since the exterior lighting is left blazing all night. The lighting at the Auto Magic Car Care Center immediately next door doesn't cause as much light and glare as Nibbles which is not minimized, directed downward, or so situated to minimize its impact on our or other existing single-family residences. There is also an additional light on the exterior of the building which was not approved.

8. Office Facility. We have seen liquor and other boxes being moved from the office facility to the restaurant and wonder if an office facility is the appropriate place for restaurant and alcohol storage. Mr. Hatfield states they intend to use the north-south wing of the "office facility" as a private dining room and for private parties. This facility is even closer to our house than the restaurant and hasn't been approved for such uses.

9. Activities outside of Hours of Operation — 12:00 p.m. to 10:00 p.m., Tuesday — Saturday. Semi-tractor trailer deliveries at 6:00 a.m. Employees leaving as late as 2:00 a.m. There was a function held on Sunday, but that event has not been repeated. There are customers parking at the restaurant as late as 10:46 p.m. last Thursday. In short, the commercial activities should not begin before nor should they last after the permitted hours of operation: 12:00 p.m. to 10:00 p.m. A few minutes are understandable. A couple of hours or more are not.

10. Activities outside Permitted Uses. Contrary to what the applicant represented, the entry area is not just for holding people while they wait to be seated — it is a bar which serves mixed drinks and other alcoholic beverages. This is supposed to be a conditional use in an R-0 zone as an "eating place, other than drive-ins, which does not provide dancing or entertainment" (my old copy of the zoning ordinance refers to this as Use Unit 13). It does not fall into the use unit consisting of hotels, motels, and amusement facilities such a night clubs and taverns (old Use Unit 14) because

Mr. Tim Conklin, City Planner
Planning Division, City of Fayetteville
September 21, 1999
Page 7 of 7

those are not permitted in R-0. There are also the other problems regarding private dining and private parties in the office facility and the long-term parking of vehicles.

We object to the continued use of the subject property as a commercial enterprise without compliance with the city's planning and zoning requirements and without proper authority (Certificate of Occupancy). We object to the use of the property outside our bedroom windows for parking at all. We also request that appropriate restrictions be placed upon the owners/operators to abate and remedy the objectionable practices and problems mentioned in this letter before the conditional use as a restaurant is allowed to continue. We also request notice regarding any and all future plans for development or use of the Nibbles property and the property immediately north of us.

Thank you for your kind consideration and prompt attention to this matter.

Highest regards,



Janet P. Gallman (- Ricker)

enc: Labels & Map
RPO 9/29/97 letter to City

cc: Jerry Rose, Esq., City Attorney
Mr. Brent Vinson, Associate City Planner
Mr. Jim Beavers, Assistant City Engineer
Mr. Bert Rakes, Inspections Department
Mr. Brian Swain, Assistant to the Administrative Services
Director, Parking Enforcement Program
Mr. Randy Allen, Street Maintenance
Mr. Perry Franklin, Traffic Superintendent
Ms. Phyllis Hall Johnson, Esq., Chair, Planning Commission
Mr. Donald Bunch, Planning Commissioner
Mr. Bob Estes, Planning Commissioner
Ms. Lorel Hoffman, Planning Commissioner
Ms. Sharon Hoover, Planning Commissioner
Mr. Conrad Odom, Planning Commissioner
Mr. Don Marr, Planning Commissioner
Mr. Loren Shackelford, Planning Commissioner
Mr. Lee Ward, Planning Commissioner
Ms. C.S. (Suzie) Stephens, Mr. Jim Hatfield, & AICDL, Inc. d/b/a Nibbles
Messrs. Bill, Bob, Jeff, & Eric Kisor
Richard P. Osborne, Esq.

ary Harvey

01 Martin Avenue
Fayetteville, AR 72703

Nathaniel Hays

3295 Martin Avenue
Fayetteville, AR 72703

Perry Scott

3273 Martin Avenue
Fayetteville, AR 72703

udgie Harris

261 Martin Avenue
Fayetteville, AR 72703

Viola Jackman

101 Bertha Street
Fayetteville, AR 72703

Elsie Sexton Trust

P.O. Box 4275
Fayetteville, AR 72702

Wayman & Bobbie Jo Halbrook

476 Oliver
Fayetteville, AR 72701

Joe Fred Starr

210 Ravenwood Lane
Fayetteville, AR 72701

Auto Magic Car Wash

% Jeff Kaiser

3274 North College

Fayetteville, AR 72703

PLAN (N↑)

CONSEILER

15741

AND MUSIC CARWASH

AVENUE

33 07107

36 07110
MANY HANDS

30 07104
37 07111
NORTHAMPTON

29 07102
38 07112
SCOTT PERRY

28 07101
39 07113
BUDIC HANDS

MARTIN

44 07141

07117 43 07128
43 07154

07116 42 07129

07115 41 07130

07114 40 07131

NOLAN

62 07135

07135 61 07133

07134 60 07132

07133 59 07131

07132 58 07130

STREET

BERTHA

07100
VIA
07199
ELISE SECTION
07198
HALLWAY
07197
Wagon

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STREET

15742

STAFF REVIEW FORM

☒ Agenda Request
☐ Contract Review
☐ Grant Review

For the Fayetteville City Council meeting of May 2, 2000.

FROM:

Tim Conklin

Planning

Public Works

Name

Division

Department

ACTION REQUESTED: To approve an ordinance for VA 00-2.00 submitted by The City of Fayetteville on behalf of property owners Albert and Mary Pennington for property located at 3 Wallin Mountain Road, West Fork, Arkansas. The request is to vacate a 30 foot utility easement.

COST TO CITY:

\$0

Cost of this request

Category/Project Budget

Category/Project Name

Account Number

Funds used to date

Program Name

Project Number

Remaining balance

Fund

BUDGET REVIEW:

Budgeted Item

Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

Accounting Manager

Date

ADA Coordinator

Date

City Attorney

Date

Internal Auditor

Date

Purchasing Officer

Date

STAFF RECOMMENDATION: Staff recommends approval of this request which is being forwarded directly to City Council for consideration.

Division Head

4-14-00

Date

Cross Reference

Department Director

4-16-00

Date

New Item: Yes No

Administrative Services

4-17-00

Date

Prev Ord/Res#: _____

Director

4/17/00

Date

Orig Contract Date: _____

Mayor

ORDINANCE NO. _____

AN ORDINANCE APPROVING VA00-2.00 TO VACATE
AND ABANDON A PORTION OF AN EXISTING 30 FOOT
UTILITY EASEMENT LOCATED AT 3 WALLIN MOUNTAIN
ROAD, WEST FORK, ARKANSAS, AS SUBMITTED BY THE
CITY OF FAYETTEVILLE ON BEHALF OF PROPERTY
OWNERS ALBERT AND MARY PENNINGTON.

WHEREAS, the City Council has the authority under A.C.A. §14-54-104 to vacate
public grounds or portions thereof which are not required for corporate purposes, and

WHEREAS, the City Council has determined that the following described utility
easement is not required for corporate purposes.

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

Section 1. That the City of Fayetteville, Arkansas hereby vacates and abandons all of
its rights together with the rights of the public generally, in and to the following described utility
easement:

See Exhibit "A" attached hereto and made a part hereof.

Section 2. That a copy of this Ordinance duly certified by the City Clerk shall be
filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

PASSED AND APPROVED this _____ day of _____, 2000.

APPROVED:

By _____
Fred Hanna, Mayor

ATTEST:

By _____
Heather Woodruff, City Clerk

EXHIBIT "A"

Property Description

A part of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) AND a part of the Northeast Quarter (NE 1/4) of the Southeast (SE 1/4) of Section Sixteen (16), Township Fifteen (15) North, Range Thirty (30) West, Washington County, Arkansas, as described in Deed Record 92-44369 of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

said Easement being more particularly described as follows, to-wit:

Utility Easement Description

A permanent easement of thirty (30) feet in width, being fifteen (15) feet on each side of the centerline of an underground electric transmission cable, as constructed, said centerline being more particularly described as follows, to-wit: Beginning at a point which is North 89°49'55" West 679.47 feet from the southeast corner of the SE 1/4 of the NE 1/4 of said Section 16; thence South 12°50'37" East 306.67 feet; thence North 49°53'35" East 268.85 feet to a point on the most southerly north line of the above described property, said point being South 125.00 feet and North 89°49'55" West 405.67 feet from the southeast corner of the SE 1/4 of the NE 1/4 of said Section 16.

PETITION TO VACATE AN EASEMENT LOCATED IN GREENLAND SCHOOL DISTRICT, WASHINGTON COUNTY, ARKANSAS.

TO: The Fayetteville City Planning Commission and
The Fayetteville City Council

We, the undersigned, being the sole owners of the real estate on which the said easement pertains hereafter sought to be abandoned and vacated, lying in Greenland School District, Washington County, which is described as follows:

Property Description

A part of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) AND a part of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of Section Sixteen (16), Township Fifteen (15) North, Range Thirty (30) West, Washington County, Arkansas, as described in Deed Record 92-44369 of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

said Easement being more particularly described as follows, to wit:

Easement Description

A permanent easement of Thirty (30) feet in width, being Fifteen (15) feet on each side of the centerline of an underground electric transmission cable, as constructed, said centerline being more particularly described as follows, to wit: Beginning at a point which is North 89° 49' 55" West 679.47 feet from the Southeast Corner of the SE 1/4 of the NE 1/4 of said Section 16; thence South 12° 50' 37" East 306.67 feet; thence North 49° 53' 35" East 268.85 feet to a point on the most southerly north line of the above described property, said point being South 125.00 feet and North 89° 49' 55" West 405.67 feet from the Southeast Corner of the SE 1/4 of the NE 1/4 of said Section 16.

The petitioners contend that, with the upgrade of the Low Obstruction Lighting System servicing Fayetteville Municipal Airport, Drake Field, City of Fayetteville, approximately 3 years ago, during which all elements of an operational system were removed from said property, the City of Fayetteville has abandoned the use and intent of said easement.

The petitioners draw attention to the verbiage of the Electrical Utility Easement Agreement with the City of Fayetteville which states, in part, "*The Grantor agrees that all poles, wires, and other facilities, installed on the above described real estate at the Grantee's expense, shall remain the property of the Grantee, and shall be removed by the Grantee should the intent of this instrument no longer be valid.*" At the time of the upgrade mentioned above, all utility poles supporting the outdated lighting system were removed from said property. While some electric transmission cables remain deeply buried underground, that is of no interest or concern to the petitioners in the process of vacating or abandoning said easement.

Wherefore, the undersigned petitioners respectfully pray that the governing body of the City of Fayetteville, Arkansas, vacate and abandon all of its rights together with the rights of the public generally, in and to the above described easement.

Dated this 12TH day of APRIL, 2000

ALBERT N. PENNINGTON

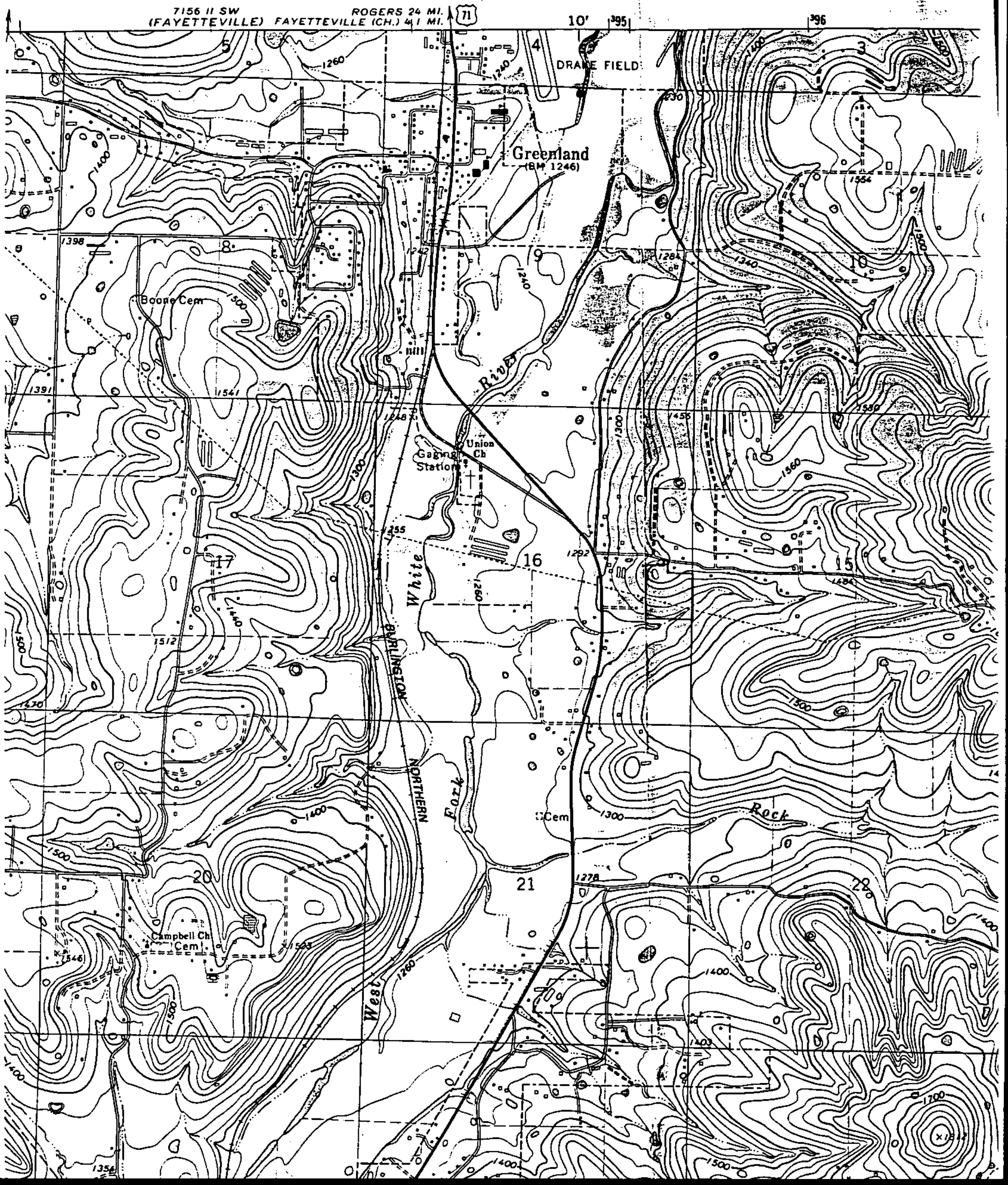
Albert N. Pennington

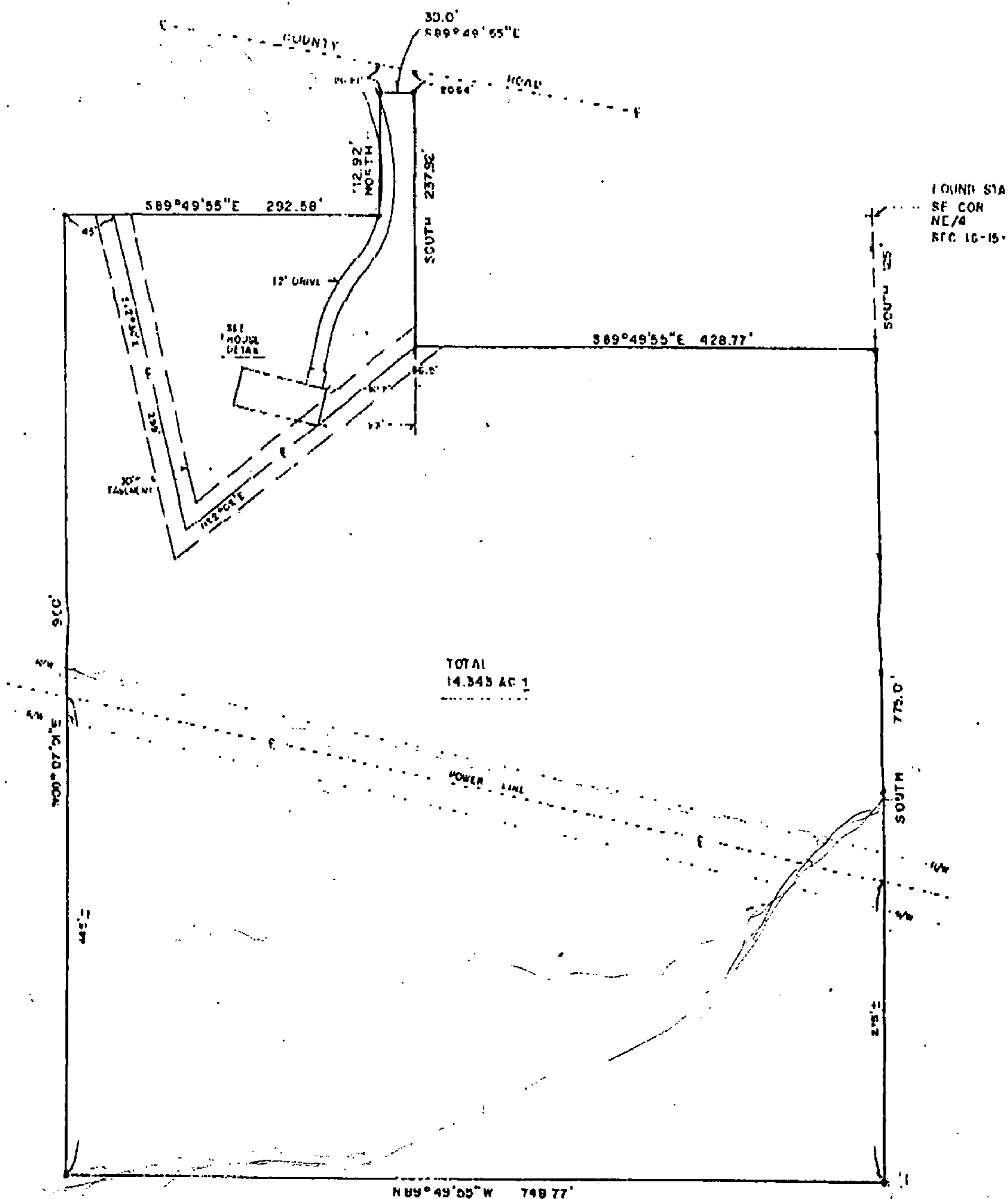
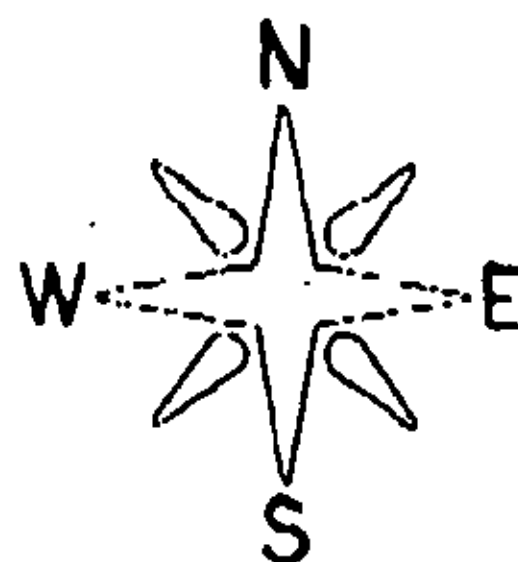
MARY A. PENNINGTON

Mary A. Pennington

There are no utility company easements or adjacent property owners involved in or affected by the vacating and abandoning of this easement


Petitioner





J.P. Pennington
Eng.

ELECTRICAL UTILITY EASEMENT
FILED FOR RECORD
'93 APR 7 PM 12 18

STATE OF ARKANSAS)
COUNTY OF WASHINGTON)
WASHINGTON CO AR
BE IT KNOWN BY THESE PRESENTS

That for and in consideration of the sum of One (\$1.00) Dollar, and other valuable consideration to the undersigned, Albert N. Pennington and Mary A. Pennington, husband and wife, paid, the receipt of which is hereby acknowledged, the Grantor (herein so styled, whether one or more), does hereby Grant, Sell, and Convey, to the City of Fayetteville, Arkansas, a Municipal Corporation (herein styled Grantee), its successors and assigns, the perpetual easement and right to enter upon and to erect, operate, survey, maintain, repair, rebuild and patrol on or over the real estate hereinafter described, buried electric power lines, communication lines, signal circuit lines and appurtenances across, over, and under, together with the right of ingress to, from, and over said real estate for the enjoyment of the easement herein granted, to-wit:

PROPERTY DESCRIPTION:

A part of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) AND a part of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of Section Sixteen (16), Township Fifteen (15) North, Range Thirty (30) West, Washington County, Arkansas, as described in Deed Record 92-44369 of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

said Easement being more particularly described as follows, to-wit:

EASEMENT DESCRIPTION:

A permanent easement of thirty (30) feet in width, being fifteen (15) feet on each side of the centerline of an underground electric transmission cable, as constructed, said centerline being more particularly described as follows, to-wit: Beginning at a point which is North 89° 49' 55" West 679.47 feet from the Southeast Corner of the SE 1/4 of the NE 1/4 of said Section 16; thence South 12° 50' 37" East 306.67 feet; thence North 49° 53' 35" East 268.85 feet to a point on the most southerly north line of the above described property, said point being South 125.00 feet and North 89° 49' 55" West 405.67 feet from the Southeast Corner of the SE 1/4 of the NE 1/4 of said Section 16.

TO HAVE AND TO HOLD, said easement and rights unto the said Grantee, its successors and assigns forever.

The Grantee shall have the perpetual right to remove all obstacles that interfere with the operation of said buried electric power lines and appurtenances thereto, and to clear all brush, timber, fences, structures, improvements, and fire hazards, located within fifteen (15) feet either side of the center line of, and which restrict access to, said buried electric power lines and appurtenances thereto. Grantee agrees to restore to as near original condition as possible any disturbed or damaged area within the above described easement as a result of maintenance or repair of said buried electric power lines and appurtenances thereto.

The Grantor agrees not to erect any permanent buildings or structures in said easement other than fences.

The Grantor agrees that all poles, wires, and other facilities, installed on the above described real estate at the Grantee's expense, shall remain the property of the Grantee, and shall be removed by the Grantee should the intent of this instrument no longer be valid.

The Grantor agrees to forever warrant and defend the title to said easement and the quiet possession thereof against the lawful claims and demands of all persons.

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 grant on behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

By City of Fayetteville

CC: ENG'G, AIRPORT, SID, FILE

NE-SE 16-15-30 991

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ELECTRICAL UTILITY EASEMENT
Albert N. Pennington and Mary A. Pennington
Page 2 of 2

WITNESS the execution hereof this the 5 day of April, 1993.

Albert N. Pennington
Albert N. Pennington

Mary A. Pennington
Mary A. Pennington

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss
COUNTY OF WASHINGTON)

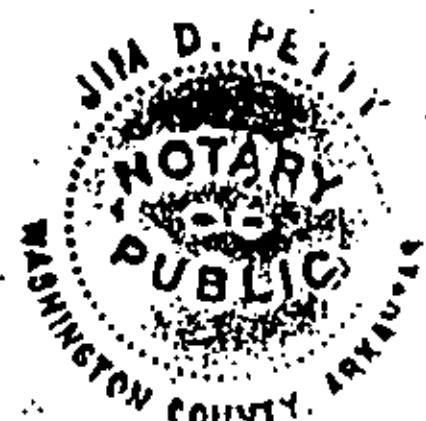
BE IT REMEMBERED, that on this date, before me, a Notary Public within and for said County and State, duly commissioned and acting, personally appeared Albert N. Pennington and Mary A. Pennington, husband and wife, to me well known as the persons who executed the foregoing document, and stated that they had executed the same for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 5 day of April, 1993.

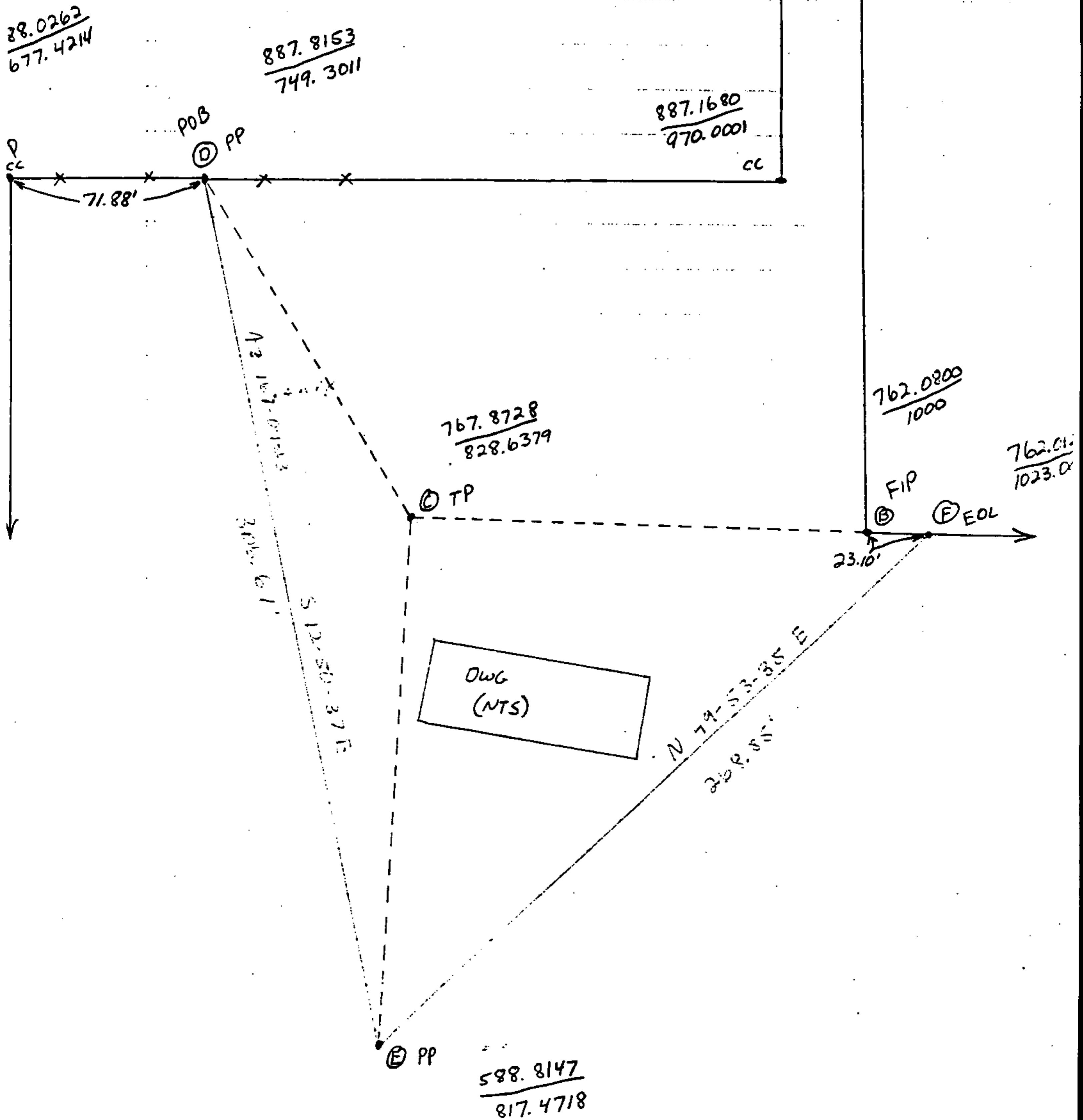
Jim D. Petty
Notary Public

MY COMMISSION EXPIRES:

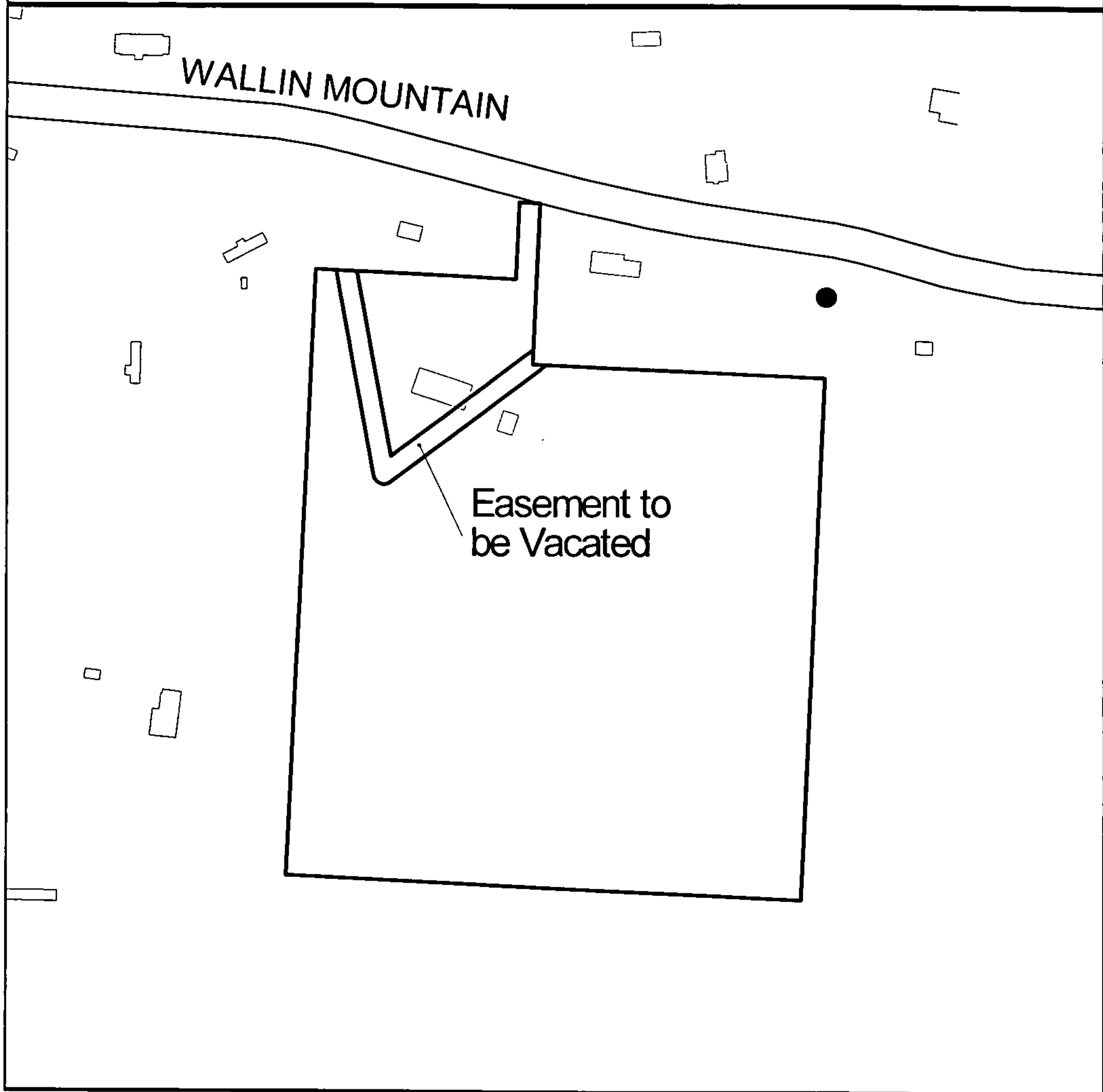
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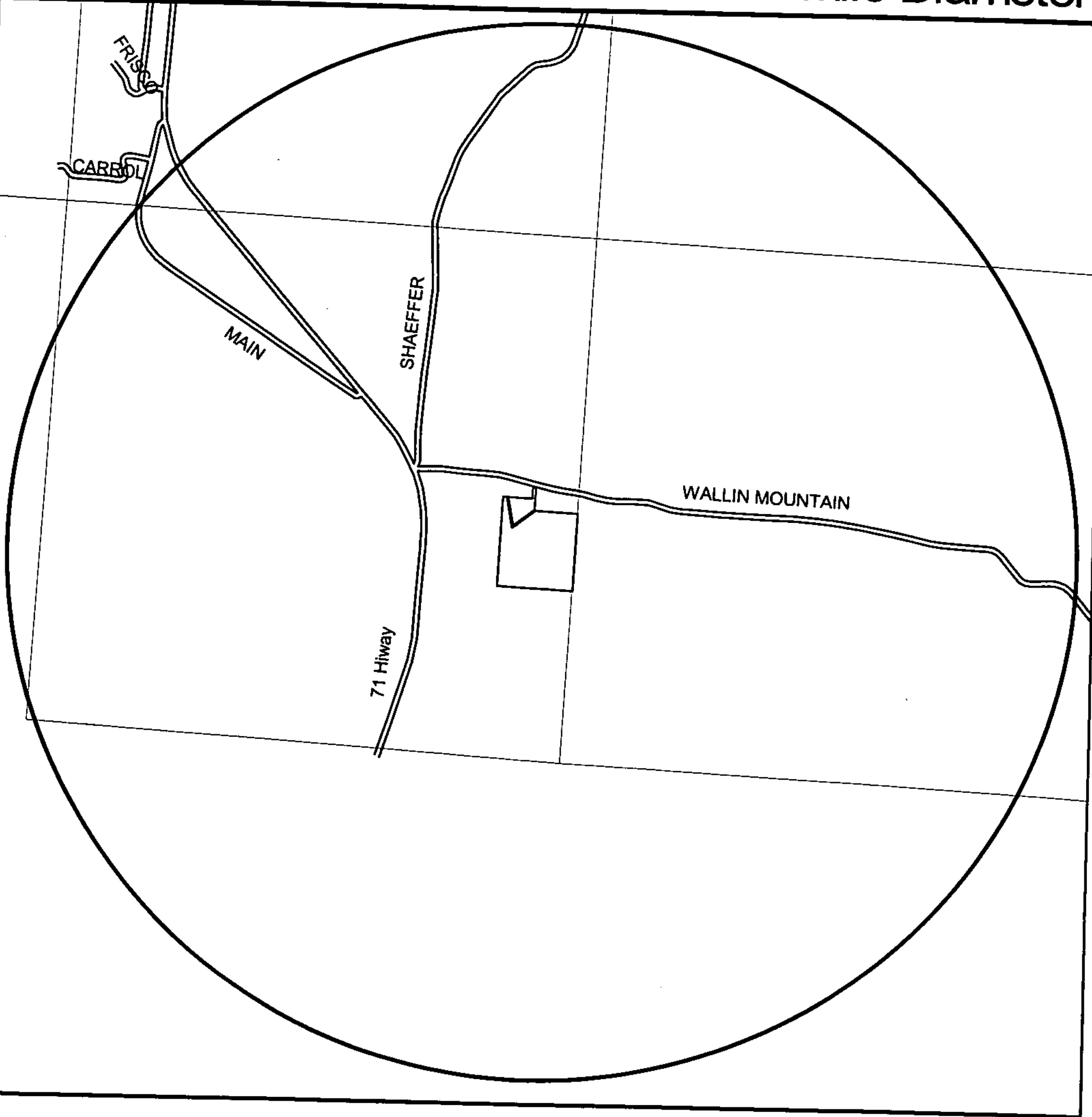
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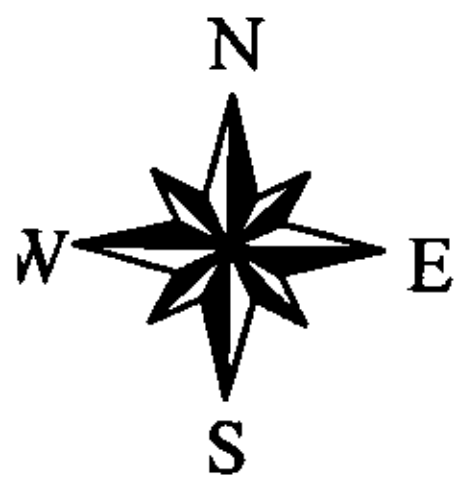
City of Fayetteville - VA00-2 - Close Up



City of Fayetteville - VA00-2.00 - One Mile Diameter



1400 0 1400 Feet



MEMORANDUM

TO: Heather Woodruff, City Clerk
FROM: Kyle Russell, Alderman
DATE: April 25, 2000
SUBJECT: Appeal of Planning Commission approval of LSD 00-5.00 on April 24, 2000

Pursuant to Fayetteville Code of Ordinances (hereinafter F.C.O.) section 159.54(F)(1), I hereby appeal the decision of the Planning Commission of April 24, 2000, to approve LSD 00-5.00 (Steele Crossing Shopping Center) on the ground that I believe the applicant's plan clearly violates the Tree Protection and Preservation Ordinance, section 162.11(C)(1). In the interest of expediting the process of the appeal, I request that it be placed on the agenda for the City Council meeting of May 2, 2000.

Our ordinances state that in the event of an appeal to the council, "The city council shall hear all persons desiring to be heard on the question of whether the findings and decisions of the planning commission were in error. . . . The city council may refuse to approve a large scale development for any of the reasons specified in division (D) of this subsection." F.C.O. section 159.54(F)(2).

Among the reasons for which the council may reject a LSD plan is that "the proposed development would violate a city ordinance, a state statute, or a federal statute." F.C.O. section 159.54(D)(2). Although 29.59 percent of the property in question is currently covered in tree canopy, the plan submitted by Argus Properties, as I understand it, would preserve canopy that covered between 10 and 11 percent of the property. Under F.C.O. section 162.11(C)(1), "In all new subdivisions, large scale developments, and commercial developments, trees shall be preserved as outlined below under the percent minimum canopy: The square foot percentage of 'canopy area required' for preservation in new development is based on the total area of the property. . . . C-2 Thoroughfare commercial -- 15%." As dissenting Planning Commissioner Nancy Allen said during the commission's meeting of April 24, "10 percent is not 15 percent." Therefore, I believe, as does Landscape Administrator Kim Hesse judging from her comments at the Planning Commission meeting, that the plan is not in compliance with the ordinance.

I have heard three arguments from the public, from planning commissioners, and from fellow City Council members, in favor of approving this plan. First, the developers have made a reasonable effort to compromise in this process. This is a true statement. To the credit of the applicant, the tree preservation level has risen from 2.3 percent in the initial plan, to above 10 percent in the most recent plan. However, I believe the critical compromising occurred in 1992 and before, when the citizens drafted and the City Council passed the Tree Protection and Preservation Ordinance. The 15 percent "*minimum* canopy" requirement in C-2 zones *was* a compromise. It seems to me that these minimum canopy requirements were enacted so that there would be bright-line minimum standards that developers would have to meet. If all plans simply met that requirement, it would not be necessary for us to go into the details of each plan on a case-by-case basis. I believe it was a major purpose of this ordinance to avoid this kind of dispute by setting forth the rules clearly. Now all we have to do is follow them.

Second, the developer claims to have been surprised by the ordinances, or that his company bought the land in question relying on previous "variances" or "waivers" which the city has granted to past developers with regard to the Tree Protection and Preservation Ordinance and other city ordinances. In my opinion, it is unfortunate if Kim Hesse's predecessor as Landscape Administrator interpreted and enforced the ordinance as if it were a tree *replacement* ordinance. It is equally unfortunate if city staff and/or the Planning Commission have been granting waivers to an ordinance's *minimum* requirements.

However, I believe it is the duty of the City Council members, whenever they have a chance, to enforce the laws they have enacted rather than tolerate them being waived or ignored left and right. If we do not put our collective foot down with regard to this, the first development in a major commercial district, and require these developers to abide by the law, it will be very difficult to require future developers to abide by it because of the precedent we would be setting. I also believe if we fail to require compliance in every case, it would be unfair to the many developers in this city who understand the ordinance's existence and purpose and comply with it. As dissenting Planning Commissioner Bob Estes stated during the commission's April 24 meeting, all applicable ordinances were on the books when the developer bought the land. If the developer bought the property anyway, either oblivious to the ordinances or relying on future waivers, he should have known that he was taking his chances on getting his non-complying plan approved.

Third, and finally, I have heard much talk about the number of jobs, sales tax revenue and property tax revenue that this business would create in Fayetteville if the plan were approved. I find these arguments to be completely irrelevant to a discussion regarding compliance with the Tree Protection and Preservation Ordinance. If the citizens who drafted the ordinance, or the City Council members who voted to pass it, had wanted to, they could have inserted a provision that allowed the Landscape Administrator, the Planning Commission, or the City Council to approve otherwise non-complying plans if, in their judgment, the number of jobs or the amount of tax revenue that the development is projected to create outweighs the importance of the trees in question. But there is no such provision in the ordinance. If anyone believes there *should be* such a provision, they are welcome to propose it, and I would be happy to discuss its merits or demerits at that time. Until then, I believe we should stick with the law as it exists.

Thank you for your consideration in this matter. Regardless of the outcome, I hope this appeal provides a productive discussion among the applicant, the City Council, city staff and interested members of the public.

cc: Fred Hanna, Mayor
City Council members
Kirk Rankin, Argus Properties
Tim Conklin, Planning Director
Kim Hesse, Landscape Administrator
Planning Commission members
Media

MEMORANDUM

TO: Heather Woodruff, City Clerk
FROM: Kyle Russell, Alderman
DATE: May 1, 2000
SUBJECT: Corrections to my appeal memo of April 25, 2000

As I believe you are aware, Jerry Rose pointed out at the April 25, 2000, City Council agenda session that my memo appealing the Planning Commission approval of LSD 00-5.00 contained citations to some sections of the Fayetteville Code of Ordinances that have been superseded by the passage of the Unified Development Ordinance (hereinafter UDO) in June of 1998. I am sending this memo to clear up any confusion that might have resulted. As Mr. Rose stated, parts of the appeal process have changed, but the UDO did not alter any of the substantive provisions on which I have based my appeal.

1. The section of the UDO which authorizes aldermen to appeal decisions of the Planning Commission to approve or deny a large scale development (LSD) is now numbered 155.05(A)(2).
2. Former F.C.O. section 159.54(F)(2), which required the city council to "hear all persons desiring to be heard" when it hears an appeal, and which referenced the specific grounds on which the City Council could deny a LSD plan, has been repealed in the UDO. However, section 157.01(C) of the UDO states that "any person desiring to be heard at a public hearing may appear in person, by agent, or by attorney."
3. The 15 percent minimum canopy requirement for C-2 property in the Tree Protection and Preservation Ordinance has not changed but is now UDO section 167.05(C)(1).
4. Here are some other provisions in the UDO on which I am not *directly* basing my appeal, but which may be relevant to tomorrow night's discussion:

--Section 167.05(B)(6), dealing with the removal of landmark or rare trees

--Section 167.05(E)(1), authorizing the Landscape Administrator to allow replacements in lieu of preservation "in the event a tree cannot be preserved as required"

--Section 167.01, listing the purposes of the Tree Protection and Preservation Ordinance

--Section 150.07(B), providing that "where a conflict arises between one section of the UDO and another section of the UDO, the most stringent section shall apply."

I apologize for any confusion that my previous memo caused. If you have any questions about these corrections, please feel free to contact me.

cc: Fred Hanna, Mayor
City Council members
Kirk Rankin, Argus Properties
Tim Conklin, Planning Director
Kim Hesse, Landscape Administrator

JERRY ROSE.

MINUTES OF A MEETING OF THE PLANNING COMMISSION

A regular meeting of the Fayetteville Planning Commission was held on April 24, 2000 at 5:30 p.m. in Room 219 of the City Administration Building, 113 W. Mountain, Fayetteville, Arkansas.

ITEMS CONSIDERED

Approval of Minutes
LSD 00-7.00 Indian Springs, Phase II, pp 372
LSD 00-8.00 McDonald's, pp 401
LSD 00-5.00 Steel Crossing, pp 212

ACTION TAKEN

Approved
Approved
Approved
Approved

MEMBERS PRESENT

Nancy Allen
Don Bunch
Bob Estes
Lorel Hoffman
Sharon Hoover
Don Marr
Conrad Odom
Loren Shackelford
Lee Ward

MEMBERS ABSENT

None

STAFF PRESENT

Tim Conklin
Kim Hesse
Diana Varner
Ron Petrie
Sara Edwards

STAFF ABSENT

None

Planning Commission Minutes
April 24, 2000
Page 2

APPROVAL OF THE MINUTES

Odom: The first item that we have tonight is the approval of the minutes from the April 10, 2000 meeting. Do we have any corrections or changes to that? Seeing none they will stand corrected as they are.

LSD 00-7.00 Indian Springs, Phase II, pp 372

Odom: The first on tonight's agenda is Large Scale development 00-7 submitted by Dave Jorgensen of Jorgensen & Associates on behalf of Sweetser Properties for property located south of Hwy 45 and west of Madison Drive. The property is zoned R-1, Low Density Residential and contains approximately 3.20 acres with 18 units proposed. Staff's recommendation is for approval of this subject to twelve conditions of approval and I would ask that the applicant please come forward at this time. Staff, do we have any additional conditions of approval?

Conklin: There are no other conditions of approval.

Odom: Do we have a signed conditions of approval?

Conklin: We do not have a signed conditions of approval.

Odom: Then I will bring forward the applicant to identify yourself.

Henley: I am Tom Henley of Jorgensen & Associates. We don't have any objections to any of the conditions of approval. I believe they are as were stated at the Subdivision Committee Meeting.

Odom: Okay. Do you have any presentation you would like to make?

Henley: Other than what you already know that is in your packet. 3.2 acres that's a continuation of Indian Springs Phase I which was done back in the 70's which is adjacent to this property. The Sweetser's did that and they are doing this one as well.

PUBLIC COMMENT

Odom: Alright. What I will do now is ask if there is any member of the audience that would like to address us on this large scale development. Any member of the audience that would like to address us on this issue? Seeing none I will close the floor to public discussion and bring it back to the Planning Commission and applicant, for questions to the applicant or motions.

Shackelford: Mr. Chairman?

Odom: Commissioner.

Planning Commission Minutes

April 24, 2000

Page 4

Shackelford: I make a motion to approve LSD 00-7 prior, or taken upon the twelve conditions of approval.

Hoffman: Second.

MOTION

We have a motion by Commissioner Shackelford, second by Commissioner Hoffman to approve the Large Scale Development with conditions of approval. Any further discussion?

ROLL CALL

Upon roll call, the motion carries unanimously. Thank you.

LSD 00-8.00 McDonald's, pp 401

Odom: The next item on the agenda tonight is the large scale development 00-8 submitted by Ben Aguirre on behalf of McDonald's's's Corporation for property located on lot 1R of Wedington Place Addition, Phase II. The property is zoned C-2 and contains approximately 1.996 acres. The request is to build a McDonald's Restaurant with a convenience store and gas station. Staff's recommendation is approval subject to twelve conditions of approval. Staff are there any other conditions of approval?

Conklin: There are no further conditions of approval.

Odom: Do we have a signed condition of approval?

Conklin: We do not have a signed conditions of approval. There are some issues the Planning Commission will need to address that include the color of the mansard roof on the McDonald's and the E.F.I.S. that is proposed on the side of the building. Those are two of the issues that need to be addressed. We also have three wall signed being proposed. The Planning Commission determination of some request for variances with regard to curb cuts within 250 feet of the driveway, a variance of our parking lot design standards for aisle and a variance for the actual driveway width. Therefore, those issues will need to be addressed this evening.

Odom: Thank you staff. I'll bring it forward to the applicant

Estes: Mr. Chairman?

Odom: Yes, Commissioner Estes.

Estes: Before the applicant's presentation, I have offered to recuse on this item. The reason for my recusal have been disclosed to the applicant and it is my understanding that they do not desire that I recuse. With that said, I would like my remarks to be made part of the record and I would like a response from the applicant.

Odom: Okay, before the applicant makes a response, is there anyone else that wants to make the same recusal?

Hoffman: Mr. Chairman?

Planning Commission Minutes

April 24, 2000

Page 6

Odom: Yes Commissioner Hoffman.

Hoffman: I as well will recuse unless released by the applicant.

Ward: Mr. Chairman?

Odom: Commissioner Ward.

Ward: I also have a conflict of interest with this particular piece of property and so I have the same problem.

Odom: Okay. Are these of a conflict that would not allow the three that have spoken, is there anybody else? Anybody else eat too many cheeseburgers at McDonald's? Are these conflicts of interest such that would require your abstention to these votes or are these conflicts of interest that would allow only notice to the applicant of their, of your interests and would allow them to waive the conflict? Are you going to abstain from voting?

Ward: I will if I have to.

Odom: I think we need a little bit more on the record to make the matter clear so we don't have any appearance of impropriety that you have made a conflict of interest known and aware to the applicant but at the same time it's not something they can't say let's go ahead and waive it.

Estes: Mr. Chairman?

Odom: Yes Commissioner Estes.

Estes: The nature of my offer to recusal is that I have had previous litigation with this applicant and have had previous litigation with the franchisee of this applicant. This litigation is resolved and is not now pending.

Odom: Okay. Commissioner Hoffman.

Hoffman: I have a business relationship with McDonald's in Illinois and I understand that, that's different, and I guess I should ask you all is that a completely different business entity than your group in Oklahoma City?

Fullerton: We are all McDonald's, I'm Chris Fullerton, the real estate rep from McDonald's and we are all McDonald's Corporation. We're based out of Oakbrook, Illinois.

Planning Commission Minutes

April 24, 2000

Page 7

We have 37 regional offices and we are one of those regional offices which is under the office in Oakbrook. But we wish to waive the recusal if at all possible.

Odom: Commissioner Ward, do you have anything you want to add to that or do you just want to abstain from the vote?

Ward: I think I want to abstain from the vote.

Odom: Alright. Commissioner Hoffman?

Hoffman: Since I don't know much about recusing I think since I have an active relationship with McDonald's I should go ahead and err on the conservative side and recuse.

Odom: And abstain. Okay, Commissioner Estes you don't have anything that's active and not only that, it's typically detrimental to McDonald's's and not to their benefit and therefore I would not think you have a current conflict of interest. Do you have any reason to believe that he should abstain from the vote?

Fullerton: No there are no conflicts of interest currently pending.

Odom: For the approval of the large scale development, Tim, how many votes do they have to have for the approval of a large scale development?

Conklin: It's a majority of those voting.

Odom: Does that count the abstentions?

Conklin: No it doesn't.

Odom: Let's go forward. Would you like to make a presentation at this time, after you identify yourself for the record.

Fullerton: I'm Chris Fullerton, real estate rep for McDonald's.

Gary: I'm Ben Aguire, construction project manager for McDonald's.

Fullerton: A couple of the items were colors that were in question and we wanted to present you pictures of what currently is what we are trying to get back to with McDonald's and then pictures that will show the concessions that we are making to fit in with the development at Wedington. This is what we are trying to get back to. We have waived the color of the roof beams for those to be the same

Planning Commission Minutes

April 24, 2000

Page 8

color as the roof.

Odom: If you could, and I'm sorry this is sort of cumbersome sometimes, but there are members of the audience that, and for the record if you could make your comments from the podium, just leave the photographs up here.

Fullerton: I've also included some photos of Sonic, of what their colors are. And the color that we're using is the Amarillo White. Now in the photos the color on the building is the China White, which is not what we are proposing and is required by the development. The Amarillo White is what's required by the development and it's kind of a light tan. For the E.I.F.S. of the building.

Aguire: Just for clarification, our intent is to use that Amarillo White. That's pre-approved for this development. My understanding is that's pre-approved by the Council? Is that correct?

Conklin: That was a material list that was presented as part of Wedington Place.

Odom: Now Tim, it's my understanding the material list are lists of material items that may be utilized. It does not in and of itself make it approvable to meet the commercial design standards?

Conklin: That is correct. We do ask that when the development does come thru the process that they provide us with a list of materials that other development would be utilizing within the shopping center area. Just reviewing the Amarillo White, I'm not as concerned anymore with regard to how white it was shown on the elevation drawing. It's actually more of a tan color and I'm not opposed to that material being used at this time.

Odom: You are not opposed to the Amarillo White material being used?

Conklin: No. That will be passed down to all the Commissioners. That's the first time I've seen it this evening. It's more of a tan color than what's been shown on the elevation drawings.

Odom: Let me ask just a quick clarification. This here that you handed to us to view, what is this?

Fullerton: That is the design that we are trying to get back to. McDonald's went thru a phase where we allowed the buildings to be all different colors, different colors of brick and we want to get back to what McDonald's branding is all about. In recognition

Planning Commission Minutes

April 24, 2000

Page 9

and that is what we are trying to get back to. Of course, in this building, I mean, we've got to have good brick and the tan E.I.F.S., the Amarillo White and then the roof beams we would paint those red as well. The city has requested we do that. And then those photos also include the Exxon sign which was in question. There is a smaller picture of his sign so you can see what that looks like. But we felt like the red roof tied in with Sonic's red cones and then there is also a red band on the grocery store.

Odom: What I want you to do is finish making your presentation and then what I'm going to do is I'm going to open it up to public discussion. Then I'm going to close public discussion and bring it back to you and we will kind of go thru these regulations.

Fullerton: Okay. We do have some, two brick colors that were options and there were also comments regarding lighting for our roof beams. We wanted to stay consistent within the market. The City and the Subdivision Committee felt that lighting should be consistent. And at the time it was in question whether those roof beams are lighted, which they are and we provided photos of the other stores in town with the lighted roof beams. And our newer roof beams are not as bright.

Aguire: Right. You will see in the photographs, although the photographs themselves are dark, they were taken at night showing the existing stores in town, one of them has an entirely lit roof beam which is our older style. And the newer style shows a lot less lumination just by it's inherent design. That's the one that was built in Crossover Place if you're familiar with that one.

Odom: Staff do you want to comment on that? I don't know that you were actually leaning consistent with other McDonald's.

Conklin: That's correct. When we did review this McDonald's proposal at this sight we looked at what the city required of McDonald's in the Glenwood Shopping Center. At that McDonald's they required the same roof color to be used on the roof beams and no lighting of those roof beams. Trying to be consistent here with how we apply our design standards and it was Staff's recommendation that we not use such a bright red color mansard roof try to match what's being proposed in this development. The other developments you've mentioned do have some red in them but it's not a large architectural feature that's being utilized within those buildings. That's basically what we're trying to do with our recommendation is try to bring it closer to compliance with our commercial

design standards and how do we show compliance with a unifying identifiable theme within this development with this red roof color.

Odom: Any other presentation that you want to make at this time?

Aguire: The only other comment I would make in terms of large architectural features, I would probably argue the point that the Sonic cones are just that. They are not structural members but they are a brand image, identifying architectural features which are real similar, you'll see from the photographs we had, from another Sonic. That's a standard image they use. There was a Sonic as you see rendered here that was approved for Wedington that has a similar color red. You'll see in those photographs that Chris gave you.

PUBLIC COMMENT

Odom: What I'd like to do now is just go ahead and ask if there is any member of the audience who would like to address us on this particular large scale development? Seeing none I will close the floor to public discussion and bring it back to the applicant.

COMMISSION DISCUSSION

Odom: Now we can get back into the questions and answers with regard to Commercial Design Standards and the waiver requests that you have. I'll turn it over to the Planning Commission now for questions and comments.

Estes: Mr. Chair?

Odom: Commissioner Estes.

Estes: Tim, the roof color that has been proposed this evening, is that acceptable?

Conklin: I believe it is not acceptable.

Estes: What would you like to see done? Does it need to be more earth tone? What are your recommendations?

Conklin: I asked them to look at the other red colors that have been used in the development with regard to the brick colors.

Estes: And the example that has been passed around, Commissioner Hoover, can I have

Planning Commission Minutes

April 24, 2000

Page 11

that back, is that what's being proposed this evening?

Aguire: Yes.

Estes: And this is not acceptable to Staff?

Conklin: No it's not. I really believe that the red brick color that's being used on the grocery store, the reddish brick being used on the Bank of Fayetteville directly to the west of this sight, that it should be more in keeping with those colors. Once again, Commercial Design Standards we are trying to have a unifying, identifiable theme within this development.

Estes: Where are we with regard to the roof beams? Are you proposing that subdued lighting or no lighting? I'm not clear. We had some photographs passed that showed lighted roof beams.

Fullerton: It's subdued lighting. The picture that shows, there's just one triangle, or rectangle that's lit.

Estes: Is that the photograph that's taken at night that is dimly lit?

Aguire: Yes. Yes, that's the one. And I might add that our intent is to paint the roof beams to match the roof of whatever color and our thinking, red, but we would still request the light.

Estes: Tim, does Staff recommendation remain the same that the roof beams be unlighted?

Conklin: I have not seen those photographs. I would be concerned about not allowing them to be lighted in Glenwood Shopping Center and allowing them to be lighted at this location, with consistency.

Odom: On that issue I think the Sonic had lighting that comes out the top of the cones that we did not allow for in that instance. Is that correct Tim?

Conklin: The lighting on the cones at Sonic, I do believe they do probably have the neon tube lighting around the cones that does not change color. We did not allow I believe the lighting that shoots out the top.

Odom: That's what I was asking about. We did not allow that?

Planning Commission Minutes

April 24, 2000

Page 12

Conklin: No.

Odom: Okay.

Estes: Tim, the third Commercial Design Standard issue I have is the E.I.F.S. Is the Amarillo White E.I.F.S. that's being proposed this evening acceptable to Staff?

Conklin: Based on the sample board that they presented, yes it is.

Estes: Mr. Chairman, I have no other questions regarding the Commercial Design Standards.

Marr: Mr. Chair?

Odom: Mr. Marr.

Marr: I have a question for the applicant. On the second elevation here on the left, on our drawings it showed signs for the oil company I think on either side. Is that in fact happening or is it as shown on that board?

Fullerton: It's shown as on the board. I brought a picture that we were going to be able to present to you that showed that sign on the building, but it didn't come in yet. So you see the blank space on that existing restaurant of that picture, but the plan is to have the sign in that space. It's, the picture of the sign within another picture so you could try and imagine what it really looks like. But, to actually show the actual colors.

Marr: So there will be two additional signs, one on each side of the existing one shown today?

Fullerton: No. Just how it's drawn.

Aguire: The final product will look as shown in this elevation drawing.

Marr: Okay. Thank you.

Bunch: I'm confused on the drawing. It says oil partner's sign is to be located this area. It calls for one. To the left as you are looking at the elevation it's to the left of the sign. Is that, am I correct that you are deleting that?

Fullerton: This is all one sign.

Planning Commission Minutes

April 24, 2000

Page 13

Bunch: Now look immediately to the left of that.

Fullerton: Here?

Bunch: Yes. Look at the description...

Aguire: I can clarify that. What our drawings do is they dash in an entire piece of the elevation that gets support structure so anywhere in that zone a sign can be mounted and on our particular one it's going to be mounted as show. There will not be an additional sign.

Bunch: There will not be one.

Aguire: Right. It's an architectural notation.

Bunch: Thank you.

Marr: Has the applicant considered any other roof color other than this red at the City's recommendation?

Fullerton: Well, we went thru our book and thought there were a couple of options but there weren't. I mean the red is the red that we brought you so, any other color would have to be painted and maintenance on painted metal, I mean, it's not going to be as long lasting and it may not look as well, it may not hold up as well as the metal that comes in the red is our only concern.

Odom: Staff? Commissioner Marr are you finished with your questioning?

Marr: I am I guess except maybe one other question for the city. Were there any, did we offer any other color choices when an applicant comes in with one and we don't approve that? Do we give them color choices other than these particular buildings? I'm just curious what the process is.

Conklin: Sure. I encouraged them to look at what's been approved by this Planning Commission in this development and what color reds have been approved with regard to the brick color and asked if they could look at toning down the red color and have some more earth tone color that would match what's proposed for the grocery store that's been proposed for Bank of Fayetteville. I did not give them samples but I did encourage them to offer other options regarding color. Keep in mind the Commission needs to keep in mind that the red color is being proposed for the actual carwash also. And you will have red on the gasoline canopy pumps

so this red color will be on three structures on this sight.

Hoover: Tim, what color roof is the Bank of Fayetteville?

Conklin: That's gray.

Hoover: And is it galvalin metal or is that a painted gray, enamel gray?

Conklin: I am not sure how they are placing that color on that roof system.

Hoover: I'm just not familiar with painted roofs. They come in colors from the factory that are guaranteed for many years so I don't get the explanation that they would have to be painted if they didn't use this red.

Conklin: I don't know how to answer that question.

Aguire: For clarification, I might add the MBCI panels are pre-made manufactured metal panels come in certain color spectrums. The reds are limited to what we have proposed.

Hoover: There is a rustic red.

Aguire: My understanding is to get a different hue of the red you have to paint the metal after the manufacturer has already provided one color. At least from the supplier that we use.

Hoover: Did you look at others besides MBCI? Other manufacturers?

Aguire: I have not personally. We do have specifications that allows a substitute material for our contractors if it's available and I'm not aware of it being available. We do build facilities in this area quite often. I say this area, I mean Northwest Arkansas and the red that you see is the red that we, typically is available to us.

Shackelford: Is the Glenwood Shopping Center McDonald's painted or is that enamel?

Fullerton: The teal?

Shackelford: The teal.

Conklin: The teal is I believe, I think it's painted.

Planning Commission Minutes

April 24, 2000

Page 15

Fullerton: Painted.

Bunch: Commissioner?

Odom: Go ahead.

Bunch: I have a question for Staff. On this Wedington Place Shopping Center monument sign there's a red boarder on the bottom, would that, looks like a good compromise between red on McDonald's roof and the red in the stores, is that an approved color?

Conklin: I have asked them to match their colors towards what their using in this shopping center. Yes, I would approve that. I would recommend approval to the Commission of that color.

Bunch: The one on the horizontal bar between the two uprights, right below where it says shopping center.

Aguire: That color is actually misleading in the rendering. It's on that exhibit of bricks that I showed you. It's actually a brown I believe. I think it was called to be Acme Park Avenue. It would be color 150 on that sample board. Second from the bottom on the left.

Odom: I'm going to ask that Commissioner Estes discuss the variance requests. There are three of them and they were discussed at Planning, at Subdivision.

Estes: Mr. Chairman, at Subdivision the three requested variances were discussed. The first variance being a variance from section 161.21 (D)(6) of the Design Overlay District requirement of one curb allowed per 200 feet of frontage and to allow a driveway within 250 feet of an intersection. This applicant proposes to install a driveway approximately 130 feet from the intersection of Steamboat Drive and Wedington Drive and then the second driveway approximately 130 feet to the north of the first driveway. The first driveway is proposed to be constructed across from the driveway that was approved for the Bank of Fayetteville. The second driveway is a one way, one lane egress drive. The Subdivision Committee was in favor of this variance. There is a memo in your packet from Perry Franklin which supports this request. The thinking was in part that the first variance, the driveway of approximately 130 feet from the intersection of Steamboat Drive and Wedington drive was to allow ingress and egress into the project. This is going to be a dual branded project, McDonald's and Exxon. There's going to be the traffic that is normally associated with a fast food delivery system such as McDonald's

and then the self service of gas, Exxon, and a wider ingress and egress. A 130 foot variance, it was thought, was needed for free flow of traffic in and out and for circulation around the building, that is, the McDonald's store and the Exxon store. The second driveway to the back being a one lane egress drive, the thinking was to be able to get service vehicles in and out. It was explained to us that the inventory will be provided by moving an 18-wheeler in which will park parallel to the east side of the building across the handicap spots and will unload to the back of the building. And then can exit thru the one, the second driveway to the rear. The second variance, should I stop there and allow discussion or do you wish me to go forward with the variances?

Odom: Go ahead and address all three.

Estes: The second variance was a variance from section 172.01 of the Parking Lot Design Standards requirement for an internal drive aisle width of 24 maximum for aisles with spaces at 90 degree angles and 18 feet maximum for aisles with spaces at 60 degree angles. This applicant is requesting a drive aisle width of 33.3 feet on the east side and 41.4 feet on the south side and 22 feet on the north and west side. The applicant has provided a parking and loading numbers for our consideration and we have in our packet an enclosed table from Chapter 172 of our Parking and Loading Ordinance. The third variance was a variance from section 172.01 (C)(5)(b)(1)(a) of the Parking Lot Design Standards for a one way out drive width of 12 feet. The applicant is proposing an 18 foot width. The Subdivision Committee was also in favor of this variance. Simply stated, Mr. Chairman, the consensus of opinion and the thinking of Subdivision was that with the high volume of traffic coming in and out of this the need to protect pedestrians moving from their cars into the building and out of the building and back to their cars, the requirement to have a free flow of traffic around the building that these variances were necessary both in terms of the safety issue and second in terms of being able to move patrons in and out of the project in a timely and expedient manner.

Odom: Commissioner is there any other questions or comments of either the Subdivision or of Staff with regard to those three particular variance requests? Then what I would like to do is come down to item number six which is also for conditional use to allow 20 additional parking spaces for a total of 52 parking spaces. The development is required to have 27 parking spaces and is allowed 32 spaces with the additional 20 percent allowance. And Staff, do you want to comment on that since we commonly have problems with restaurants and parking.

Conklin: Our ordinances currently allow parking spaces at one space per 200 square feet.

Typically that is not enough for restaurants. You're typically looking at one parking space for three seats plus employees. With this McDonald's at this location staff is in favor of this additional parking. This is also a convenience store, gas station that will also have additional traffic into this facility, therefore, staff is in support of this. We've granted parking conditional uses for additional parking for other types of restaurants and overall parking will probably be needed at this site.

Odom: Commissioners, are there any questions of Staff or the Applicant with regard to the conditional use number six? Then all that is left is for a motion or some additional discussion on the Commercial Design Standards.

Marr: Mr. Chair, based on the Staff's recommendations I do believe that the roof color that there are other options other than red that are in compliance with our ordinances here in the City of Fayetteville and certainly with Staff's recommendations here. I'm going to move for approval of LSD 00-8 based on these twelve conditions that the applicant must meet.

Hoover: I'll second.

MOTION

Odom: We have a motion by Commissioner Marr and seconded by Commissioner Hoover for approval of Large Scale Development 00-8 with the conditions of approval including that the roof color be revised to coordinate with other approved developments in Wedington Place Addition and that the roof beams remain the same color as the roof and be unlighted and that the waiver requests in item number two be granted and that the conditional use in item number 6 be granted. Have I stated that motion correctly?

Marr: Yes.

Aguire: I believe, was there a concession on the lighting on the roof beams?

Odom: That was item number two, was that the roof beams remain the same color and be unlighted.

Aguire: Did you allow the beam light?

Conklin: No, I recommended that they not be lighted.

Planning Commission Minutes

April 24, 2000

Page 18

Odom: Item number 3 that was on there was that Staff recommended in place of the Amarillo White E.I.F.S. the brown be used but that was what was removed and the Amarillo White was what Staff had agreed to. So that condition number 3 was taken out. Any further discussion?

ROLL CALL

Upon roll call, the motion carries on a vote of 7 yea and 2 abstain.

LSD 00-5.00 STEEL CROSSING, PP 212

- Odom: Staff, do you have additional conditions of approval on the next item that we have before us? I did not bring mine with me from Subdivision today. Do you have a copy of the staff report that I can review while we are going over the next item?
- Conklin: I have an additional copy
- Odom: Okay, the next item we have on tonight's agenda is Large Scale Development 00-5 submitted by Mel Milholland on behalf of Milholland Engineering or on behalf of Argus Properties for property located at lot 15 of CMN Business Park. The property is zoned C-2, Thoroughfare Commercial and contains approximately 18.48 acres. The Staff's recommendation is approval contingent upon the Planning Commission determination of compliance with the eleven conditions listed below. There are eleven, it looks as though there are actually twelve.
- Conklin: We added one additional condition.
- Odom: Twelve conditions?
- Conklin: Twelve conditions.
- Odom: Staff, has there been any additional additions made since this report?
- Conklin: No there has not.
- Odom: What I would like to do now, I'm going to give a brief overview of the procedure we will follow. We are going to get a quick Staff report first on update of this issue and then we are going to go to the Applicant for a presentation from the Applicant after the Staff presentation. After the Staff presentation we will allow for public comment. Now after we have public comment we will close public comment and go onto the questions from the Planning Commissioners to the Applicant and Staff. Now during the portion of the public comment, I know we have some good people here that want to speak. We have already had a lot of public comment on this issue and I would ask your cooperation in when you do speak you address the issues that are before us, which is the new Application that we don't have a repeat, I think we spoke everyone did a very good job of articulating new ideas and concerns and there was not a lot of repeat or overlap. We appreciate that very much. That's kind of the same format we want to follow again tonight. We just want to make sure that we don't repeat the same information. So now moving on, Staff you gave us a detailed Staff report this

morning and I would kind of ask that you kind of give an overview of that at this time.

Conklin: Yes. This Large Scale Development has been revised. It includes ten tenant spaces as shown on the sight plan. A total of 127, 884 square feet, 611 parking spaces. Two separate structures are proposed in Phase I. The first larger structure will have the two major tenants and four small shops. There is a second structure that's been proposed and it's detached from the principal structure. It contains four shops with 5,600 square feet. Phase line has been drawn on this project for Phase I of Steele Crossing and Phase II. Overall development is a combination of lot 15 and lot 7. With regard to this mornings special Subdivision Committee meeting that was held, it started at 8:30 and we met until 12:30 this afternoon. From that meeting we did discuss and actually had consensus on three items. There was a consensus on preserving two additional trees to the south. Those trees would be extended beyond south in front of the Kohls building. This would result in the parking lot shifting to the south into the 25 foot green space along Shiloh Drive. There was an agreement to grant a variance for 11 foot green space along Shiloh Drive. If you're looking at your plans these are the two trees that we talked about when we went on tour out to the site. Because of that this access drive in front of the stores, that's been shifted to the south which shifted the parking lot down further to the south which is requiring this 11 foot green space. There was also a consensus to require planting 4" caliper trees along the back behind the Kohls building, major tenant A, within this green space area. Every other tree would be replaced from the 2" caliper to the 4" caliper. That was discussed and agreed to, to help mitigate the loading docks on the north side of the building. The Committee also added a condition to screen all utility equipment on the ground and on top of the building. So those are the three items that were discussed and agreed upon today. It has been quite a bit of time talking about tree preservation, the role of the Landscape Administrator and her making a recommendation to this Commission and the Commission having to decide the issue with regard to approving or denying the tree preservation plan as a part of this Large Scale Development. That's all I have at this time.

Odom: Is that all from Staff?

Conklin: Yes.

Odom: Kim, are you prepared to make your presentation at this time? Would you please come forward.

Hesse: First I would like to recognize everyone's hard work and it's been a long road.

That includes the Mayor, the Public Works Director, City Council, this Planning Commission, Planning Staff. Everyone has spent a lot of time including the developer and his representatives, representatives of CMN Business Park. Like I said it's been a long hard road and I think we are getting much closer to a meeting of the minds. I think it's warranted to mention the implied intention of these Ordinances. I feel that like the Commercial Design Standards, the Overlay District, our stricter Grading Ordinances, Tree Preservation Ordinance, I think that all says, I mean most of these ordinances are brought up under public request and I think that says something of the City of Fayetteville's residents. They want their city to stay in it's, remain in it's unique character. To hold onto some of it's heritage and culture and it's natural beauty. I think that, that is worthy of mentioning and considering during these discussions. This ordinance, the Tree Preservation Ordinance is a very difficult ordinance to read, to understand, interpret, to review. I think there is many reasons for that. One of them is as you know, most ordinances are written in a general sense. To generally meet all sites. And certainly Tree Protection Ordinances is very site specific. Not only do you have the site limitations of grading, utilities, easements where you can flow your sewer to, such like that, but you also have all the criteria of the canopy, whether it's rare trees or whether it's just in canopy. Often times we find heavily forested sites that really have no trees 24" or larger but they are so dense that you know those trees are eighty to a hundred years old just like a rare tree but our ordinance does not cover them. There's a lot of issues like that, that are very gray with this ordinance. That causes a lot of confusion. Confusion for Staff, confusion for developers and for engineers. I think there's one thing this whole conflict has brought to light is a couple of what I think are shortfalls in the ordinance. First of all I need to complement the committee that created this ordinance. There is a lot of very competent people writing this ordinance. I think the intent of the ordinance was excellent in theory. It's a very good ordinance. But it took years to write. It took a lot of compromise. Again it's difficult to be site specific. I think a couple of these shortfalls adds to the confusion. One when you look at subdivisions, whether residential or commercial. Taking residential subdivisions for example, we spend hours with developers and engineers designing around trees, designing the horizontal alignments of the streets and where the sewer and water lines will lie. We spend I don't know how much time with contractors and the contractors just bend over backwards trying to work around some of these trees and all of us can stand there and realize as soon as that subdivision reaches final plat, the city steps back. The homeowners, homebuilders come in and often times, even to their best intentions, most of the trees we were able to preserve are removed during construction of the home. And that's very frustrating for everyone that's involved. So it becomes difficult. Commercial subdivisions are the same way. We have the same conditions for commercial subdivisions where

you have to save that 15% canopy, 15% of the site in existing canopy. Well you do so and then the Large Scale Developments of each site also falls under the ordinance so how do you look at those? Do you take a percentage of the subdivision? I mean when we approve these preservation plans for the subdivision we don't put those trees in easements. We don't protect them in any other way. So that adds to the confusion as well. And I think in this particular case that confusion has come forward. When I make my recommendation I try to look at all sides. I am not, my opinions do not come from a tree hugger. I'm not an active environmentalist. My background, I have a degree as a Landscape Architect which is a five year accredited course. That education takes us thru years of designing developments just like this. Designing subdivisions. We go thru several semesters of sight design where you analyze the site. And often you are analyzing the natural resources on the site and trying to determine how to best utilize those, work with them and have that complement your development. So that's where my education background comes. Immediately after graduation I went to work for CEI Engineering and did work for their local development team where I worked with several developers much like Argus Properties, developing large commercial developments, residential developments in the communities throughout Northwest Arkansas. I, for one can contest that or state that Fayetteville is a difficult city to develop in. It was one of the most difficult to have to come before Planning Commissions and City Council. I used to represent, I used to design as well as represent the project and I know how difficult it is. There are more ordinances, more staff, more committees. It's that much more difficult. As far as the engineering side, unless you have done this kind of work yourself, you don't realize how much time it takes before a development is even turned in. So much work has brought, so many hours are spent before the city staff even looks at a plan and oftentimes after forty, fifty, sixty hours of work you take it to the planning department, you get a better idea of what they want, you go back to the drawing board, you go back, this and that, finally you submit your plan. I realize that when I first came here that's why I sent a letter explaining why I'm reviewing this ordinance differently because I didn't think it was fair to require them to make changes when they didn't see it coming. It is a very difficult thing to do. Developers take a lot of risk ahead of time. I have experience with a small subdivision that we were a developer within the Northwest Arkansas area and I know developers put all the money up front. I mean, it's their risk strictly. They buy the property, they pay the cost for infrastructure. Almost always you have overruns. There are almost always situations that you don't foresee that cost more money. And most, I would say probably, most developments, the developer at some point or other just is praying at night that he brakes even. And it is a high risk. It's a risk taken because the rewards are higher but they are not always there. And you have to step lightly and

you have to know what you're doing to be profitable at this business. Then there is the public point of view. I found some people could stand up here and give you thousand different reasons why those trees should be preserved. There is the environmental aspects. There is the cultural, historical, emotional and there are economical reasons for saving trees. Like I said, I came from an engineering and architectural background. I had to take 18 months to really learn what tree protection is really all about, to understand what urban forestry was. After 18 months I feel like I have a good understanding and I think it's very important that not only are we adding more trees to our community but we are preserving what we have. In a community like Fayetteville where there are so many trees and you are so close to the Ozark National Forest, it's easy to just see all the trees and not really pay attention to what's there. There were other communities that are much bigger than us that started out very much like us and those communities are wishing that they had had stricter ordinances because they find themselves now in a sea of concrete and asphalt. They find their heating bills raised, their cooling bills higher in the summertime. They realize the benefit to storm water and air quality abatement. And that is why this ordinance is important and those viewpoints are very important. These are the issues, basically, I took into account when I developed this recommendation. It is my opinion as Landscape Administrator I have the responsibility of upholding and enforcing the Tree Protection and Preservation Ordinance. It is my opinion as to whether a piece of property can be feasibly developed and the existing tree canopy preserved. The property must remain developable in it's current zoning designation. Steele Crossing is zoned C-2. For this reason it is my opinion that it is too much to ask the developers of this project to preserve all of the rare and landmark trees on the site. Though, again, I would like to point out that a large percentage of these trees were submitted as tree preservation at that preliminary plat approval. But, again we do have recommendations for the individual lots and that is where we find ourselves today. From the beginning of this project I took the stance that we should apply the 15% requirement in this type of situation. In an attempt to prove to the Planning Commission that this development could be developed in kind and the trees preserved I developed a concept that kept the intent of the original design while preserving what I estimate to be half of the existing canopy. I made this recommendation at the March 27, 2000 Planning Commission meeting and this remains my recommendation tonight, April 24, 2000. By adding the calculations of the latest plan and I believe they are the same, that was just turned in today, 23% of the entire site is covered in existing tree canopy. Half of this canopy would represent 11.5% of the entire site. I recommend that the developers be asked to preserve 11.5% of the entire 29.9 acre site in tree canopy. The proposal before us is for just over 10%. I feel that the developers have demonstrated good faith in their efforts to meet the requirements that were established at that 27th

Planning Commission Minutes

April 24, 2000

Page 24

Planning Commission meeting. I think in a perfect world we could save all 81 of these rare trees. Ideally, we should preserve 15% of the existing canopy. But in all fairness my previous recommendation was to preserve half of the canopy and that remains my recommendation today. I feel that recommendation can be satisfied with the preservation of 11.5% of the 29.9 acre site.

Odom: Thank you Kim. Before we do questions, because we are going to have them, I want to do that and then we come back. Now what I'd like to do is bring it to the Applicants for their presentation.

Rankin: Ladies and gentlemen, I'm Curt Rankin with Argus Properties. We are again focusing I think primarily, unless I'm confused, solely on the tree preservation as the presentation here before Commission. There are other issues. Is everybody okay with all the other issues and that this is the only thing that remains or are there any questions about any of the other design standards, any of the other issues that have been discussed this morning or previously about the project before we launch into just this one single issue?

Odom: What we are going to do is you are going to make your presentation now with regard to this Large Scale Development. If you want to state some stuff about Commercial Design Standards I urge you to do it at this time. I also urge you to touch on the tree canopy thing. Then I will take public comment, then we will come back and address specific issues and so forth and you will be given the opportunity to answer those questions at that time. Make any presentation that you care to right now with regard to the approval of this subdivision, whether it's trees or Commercial Design Standards or variance requests. Or you can preserve that until afterwards if you want to. That's your call.

Rankin: Well, I just was trying to understand exactly where we were going.

Odom: The trees are not the only issue. We are going to focus on the entire thing. Obviously the trees are going to be the main thing.

Rankin: Well, it's certainly an issue. With respect to the overall development we have made numerous changes since our initial submissions to comply with various requests by the Staff. We've increased, on the rear of the store for instance we've had several different comments about what we needed to do with the rear of the stores, how we needed to provide additional articulation and screening and so on and so forth and we've made those changes. I believe that we have, with all those have complied. That was one of the reasons that I was certainly willing, subsequent to this, to address any specific questions but, because I'm not aware of

any issues outstanding with respect to that. If there are I'm certainly willing to listen to those. As a part of our adjustments and so on as we have gone thru this project we started off with the usual prospects or process rather, of getting comments at the Subdivision Committee level and moved forward to the previous discussions before the Planning Commission here and most of you were here at that time. I see there are some new faces that were not here at that time. I think, and we have further refined most of the questions with respect to the architectural designs of the buildings and so on. One of the standards, guidelines that was issued to us at the time of our initial presentation that we have made and spent, I think that everybody has spent a great deal of time on is the issue of tree preservation. In the first thing that I want to clarify, and maybe it's clear in all of your minds but, that at no time have we believed that we was submitting a plan that was inconsistent with the overall ordinances and in particular with Chapter 167 of the City Ordinance. This ordinance provides for a combination of preservation and replacement of the tree canopy. And to achieve an overall canopy area equal to 15% of the total site. The ordinance has been in existence, I don't know, I've heard different numbers, 1992, 1993, I'm not sure, but it's been in existence at least seven years, and other commercial developments have been completed in this jurisdiction under this very same ordinance and they have utilized the replacement provisions extensively. I had three examples that I spoke to this morning and I want to reiterate them here that have been done since this ordinance has been adopted. The National Home Centers development site canopy area was achieved thru 100% replacement trees. The Wal-Mart site on Joyce Avenue was a 25 acre site which had prior to development 2.5 acres of existing canopy. The canopy that was ultimately preserved with this development based on the plans that were submitted thru the City was 0% and for some reason 11% replacement canopy area was approved. This plan was produced by CEI at the time the Tree Administrator was an employee there. The third example is the Washington Regional Medical Center which prior to development had 14.7% tree canopy and 7.9% preserved and approved in 1998 after the Tree administrator was here. I think these few examples demonstrate the replacement is not only a permissible method of achieving required canopy coverage but was and is consistently utilized for achieving canopy replacements requirements of the ordinance. Since the initial study of this project started a little over 18 months ago, and one of the questions was asked why had we, is this only become an issue now, what we looked at in terms, with regard to this was the ordinance and how it was interpreted and what consistently utilized based on the previous rulings and trying to come up with a plan. I admit our initial plan required, got us to the required canopy area almost totally with replacement trees as provided in section 167.02 e2 in the ordinance. We have made some rather huge adjustments to try to bring this into compliance, however we have had sort of a consistently moving

target to deal with. At Subdivision Committee we were told both verbally by the Tree Administrator and per written instructions that she thought we ought to be able to preserve 15% of the existing canopy. Now that is totally different from 15% of the total site area. But the instructions were 15% of the existing canopy. The plan that we submitted at the agenda session exceeded that. Then we were told, well, that's not what it was and we should have been sufficiently omniscient to know that, regardless of what's written in the instructions that we should have known better than to that, that was not what was meant by that regardless of what it said. So, not with standing that, we moved forward again and we had a long meeting to try to come up with a plan with the Tree Administrator, with Director of Public Works, and spent a long time hashing out a plan and we came up with a plan that at the end of that meeting was agreed upon by all parties in the meeting. We presented that plan and that was the plan that was presented this morning. Now we are told that, not with standing the agreement at the time we came up with that, that is not good enough either. So, I can't, I feel like I'm in a track meet or something trying to do the high jump. You clear this hurdle, well we are going to raise the bar again and we are going to keep raising it. That becomes very difficult to work with from my standpoint. Where we are now with the plan we produced this morning, we went out on site, it was requested we make an additional modification to try to pick up another two rare trees, which we have done by putting a slight kink in the road. We have reduced some of our parking islands, landscape islands on the end of the parking rows to be able to have a minimum twisting and turning for vehicular traffic thru there. We were able to increase our percentage up to the level where we are now at 10.29, 10.3% of the total site in preserved canopy. Our replacement numbers added to this and would not reduce the replacement trees that we planted takes us way over 25% total canopy requirements for the entire site. So, we are not skimping by. We are far exceeding the minimum standards set forth in the ordinance. In addition, it was requested that, and we agreed to plant, in addition to the 2" replacement trees, diameter replacement trees that are called for in the ordinance, along Van Asche and that we replaced every other of our previous 2" trees, we will replace with 4" trees to give that sort of a jump start and to provide additional screening from the back of the stores on Van Asche. So we have done that. I think that we have shown that we are willing to make huge changes. We have made huge changes, and the other thing is well, why can't you move a little bit more?, which you know essentially we have pushed the buildings as far as we can reasonably. There is one issue that I would like to point out, and I'm not sure I know the exact difference between the two, but the Tree Administrator's presentation she said we had to do whatever was feasible. The ordinance does not use the word feasible it uses the word reasonable and that is in 167-05 b 6. The best way we thought to preserve the trees on the site for numerous reasons, the ones that we are

preserving, because they are clumped so close together there, is to separate the buildings and let them stay in a group as they have managed to grow over the years rather than scatter around. So as we have separated the buildings we have moved the potential tenant in lot 7 to the west to the point where we have cut, and they have agreed to cut the back corner off of their building to stay out of the setback requirements, we have pushed the other tenants to the east to achieve the separation between the major tenants. We started off with the buildings, with the walls side by side with over 200' of separation between those two major tenants. We have restraints on further movement to the east and in that we have an existing sewer easement running thru the property. We have not moved the buildings all the way to that level, to some extent, is it physically possible to do it, yes, but as we go that direction and with the angle, depending on how you look at it, the angle of Shiloh or the angle of Van Asche relative to Shiloh, it means bringing the buildings further forward. We have had, and I have mentioned and everybody seems to think that I'm focusing 100% on parking lot, but trying to satisfy the tenants essential for this development, we have to meet certain parking ratios for those tenants. The Kohls building for instance, Kohls has agreed to begin with this, to let you know that they, it's not a question of not making any concessions, this plan is shown, they have come off over 100 parking spaces from their standard criteria. The tenant to the west is willing to cut off part of his building to let us move him as far to the west as we can, Kohls has reduced their standard parking requirements by essentially 20% to try to make this work. We have a third tenant that we have shown these various plans, this major tenant A which is our furthestmost western tenant that we have got a couple of people we are talking with but we have grave problems in dealing with them with such a restricted parking field in front of them. One other thing we focused on the 23, 25 trees that we are saving, those are the mature trees, they are an additional, in that preserve area, they are an additional, I think the number is 60 trees that are not in the status of the rare tree status but they are above 4" in diameter, 18", 19", 16" of a variety so, what you see there represents what we are required to show and that is the rare trees that are referred to as mature trees and certain other submissions, but that does not show all that's being saved as far as an absolute tree count but our concern is trying to put additional charts of other counts and we have counts of counts and so on and we get so balled up in numbers and percentages that it almost becomes unintelligible and I'm not trying to continue to go that route at this point. I believe we have made monumental efforts to get to this level. I request that we approve this level. I think that it is significantly more than any of the other retail sights that I have seen in this town in terms of preservation and replacement. This I'm willing to do but I think I am pushed pretty much to the limit on this. There is not a whole lot of wiggle room left in this at this point and time. Again we have been chasing a rainbow in terms of trying to find out exactly

what it is we needed here, this number tonight, I would ask you to give favorable consideration to this.

PUBLIC COMMENT

- Odom: Thank you Mr. Rankin. What I would like to do now is ask members of the audience who would like to address us, come on up and line up behind the podium so we don't waste too much time. Go ahead and line up behind him whoever else wants to speak.
- Emenegger Hello. I was very moved by that speech he made. My name is Bob Emenegger and I'm representing the Board of Directors of Friends for Fayetteville which has a membership, paying membership of over 300 people. And by the way, three out of the four who are running for Mayor are members of Friends for Fayetteville. Interesting. The Friends for Fayetteville Board has unanimously agreed to stand in support of the decisions of the Landscape Administrator, Kim Hesse, and her recommendations and any other environmental ordinances that might be applied to this Kohls development. Now, I would like to very briefly read you and e-mail that came to me and I think that it's very pertinent after what I've heard. It's written by a man named Scott Gruenwald, do you know who he is? Some of you? Anyway, he wrote, " My name is Scott Gruenwald. From 1987 to '94 I was staff architect for Wal-Mart stores in Bentonville. I designed many stores all over the country and worked with Planning Commissions and Review Boards. I would take a store design and modify it to fit each site and restrictions imposed by the local authorities. We had to abide by building aesthetic review boards, landscape review boards, EPA reviews and many other public interested groups. Granted the big boys didn't care for our changes but they were made in order to be a good citizen and good neighbor in the community. The press was always important to good relations as they influenced the higher ups. Let me say that very rarely did we ever give up on a community if the economics were there. We would always modify our design to accomplish what was required, even though we, even though we protested to the very end, yes, we threatened to pull out and we, but we always, was mostly just a bluff. Certainly this real estate firm knows about your landscape ordinance and has tried to convince the buyer that they would get around it if they would, you know, if they, if they could. And to put these people on watch. - I think they were referring to the real estate people - And I'm sure an architectural site engineer staff could provide some alternate solutions to the submitted designs. Yes it will cost them more money. But they are gambling on the sight without the ordinance. Kohl is a, has a building in Rogers. They will not give up building in Fayetteville market if they have one in Rogers. If this sight does not pull thru, they will pick another one. They will not pull out

because, of a lucrative market. Believe me, trees do not kill their presence if they lose this one battle. A landscape ordinance is a necessary part of the responsibility and sustainability in the development and the smart thinking that can result from that. In fact it could solve their development woes if they would just abide by this, your ordinance. Finally, this will be a test case for your ordinance. It is imperative that this case be upheld. If it loses, your ordinance will be useless and many court cases will follow if others do have to abide by the ordinance and Kohl does not". He added with his own personal note which was, "Save the trees for the next generation. It takes 100 years to grow those trees and only about an hour to destroy them". And that's about what I'm, as a matter of fact somebody handed me, not that it would be that much of interest to you, but somebody handed me like 600 signatures just now to also uphold the ordinance and Ms. Hesse's recommendations. And that's all. I think you guys should know that it's sort of like a peek behind the scenes about developers and real estate and all of that. Thank you.

Odom: Thank you Bob.

Nicholson: My name is Patricia Nicholson. Last, it was about a month ago and I spoke to the children. I was in tears before you. I had never been to a meeting like this before, speaking in front of you. You're human beings but your kind of scary to me. That, within the last I have learned a lot about politics. I've learned a lot about how this city works. I'm not going to give you the tour that I was given because that's not pertinent right now. And maybe people have been biased in their views. What I do know is that we have a law. What I understand is that it says no landmark or rare tree shall be removed from commercial land to be developed unless there is no reasonable way the property can be otherwise developed, improved or properly maintained and the trees saved. I would like to propose and the gentleman over here said that reasonable was the word. I would like to propose that we sincerely look at what is reasonable and that we get citizen input that we get your input, we get the administrator, the Landscape Administrator's input and we can get the, actually I don't think we need, and we'll get the developer's input, excuse me, a little prejudices. We need everybody sitting down and figuring out what is reasonable because we can't, with creative thinking all things are possible. I think that we are limiting ourselves when we say we can't figure out a solution. My recommendation is 15% of the canopy is saved, my recommendations is that every single one of those rare trees or 24" trees are saved. And I think that, the feeling that I get from the hundreds of people that I'm sending out e-mail to and communicating with and people come up to me, I'm not saying I've had hundreds of people speak to me, but the sense I get from the care of the people is that is what they want too. I've had people come up to me with

stories. They have been practically in tears. I know I've been told, don't look like a tree lover. Do you know how many times I've been told that? People don't listen to tree lovers but I'm not a tree lover. I'm a person. I'm a mother. You are all people and I'd just like to ask you from the standpoint of the law, please as my sign on the front page of the newspaper said, uphold the law. And thank you.

Odom: Thank you Patricia.

Crider: Good evening. I am Jim Crider, Director of Economic Development with the Fayetteville Chamber of Commerce. I want to emphasize the economical development part because I need to allay perhaps the concept that being with the Chamber of Commerce and in charge of Economic Development that I would be in favor of clear cutting everything. But that's not the case at all. And I want to commend Argus in their efforts to meet with the standards set by this community as best they can. And I think they have gone the extra mile in all their efforts. And on behalf of the Chamber of Commerce I would encourage you to let common sense prevail and come out with a win-win situation for everyone. We think that an attempt has been made, an earnest attempt to come out with a good and solid plan, an earnest attempt. And also I can speak as a bit of an authority as a professional tree climber, I grew up within two and a half blocks of where I stand right now. I've climbed most of the trees as a child in the downtown area and along College Avenue, many of which are gone now. And so I experienced what happened along College Avenue, the depletion of the canopy there and it's for that reason, the witness of what happened along College early on that I really appreciate what Argus is offering to do to save trees. In fact the last figures I saw you got a net gain of 167 trees out of this project. That doesn't sound like clear cutting to me at all, and salvaging some existing trees and bringing in some other nice size of which you all know. I went out with you at the site this morning and had the pleasure to be there along with you and to see up close the beauty that we have here in Fayetteville and I would encourage you, as I say again, to let's use common sense as I know you will. I appreciate this Planning Commission and all that you have had to go thru in particular. I know the heat's on and you have had a lot to deal with and we would encourage you to support this project as it has been submitted by Argus after so many times here. Thank you.

Odom: Thank you Mr. Crider.

Erf: Hi my name is Jeff Erf. I'm a resident of Fayetteville. I have a question about, it's something different, I was wondering if the applicant had submitted a storm water management plan?

Planning Commission Minutes

April 24, 2000

Page 31

Odom: Staff?

Petrie: Yes he has submitted a preliminary storm water management plan that meets the criteria. It's specified in the drainage criteria.

Erf: Will there be detention on the site? Do you know?

Petrie: No detention is planned for this site. Nor is it required.

Erf: Okay so the flows off the parking lots then will go where?

Petrie: At this time it's proposed to drain to the east towards the, one tributary to Mudd Creek. One requirement.....

Erf: Will it go directly into Mudd Creek?

Petrie: One requirement from the engineering department is it has to be addressed, the flows going directly into the creek will have to be addressed by the Corps of Engineers that they meet our ordinance. It specifies the storm water quality draining into wetlands has to be addressed.

Erf: What about quantity?

Petrie: Quantity is based upon the effects of peak flows. That information has been submitted and they are not effecting the peak flows in Mudd Creek.

Erf: Is the storm water management plan something that the Planning Commission deals with?

Odom: That's something that we rely on Staff to help us with.

Erf: Do you, but is there not, is there a final approved storm water management plan? Is that how it works?

Petrie: Are we talking about CMN or are we talking about this project?

Erf: This project.

Petrie: No.

Planning Commission Minutes

April 24, 2000

Page 32

Erf: So you are referring to the whole subdivision?

Petrie: I'm referring to the preliminary information that has been submitted for this project.

Erf: Okay. Is that subject to change then?

Petrie: Yes sir.

Erf: Okay.

Petrie: And additional information is required to be submitted.

Erf: Okay. Is there a final grading and drainage plan?

Odom: I don't mean to interrupt you but part of the conditions of approval is that Staff approval of final detailed plans, specifications and calculations for grading, drainage, water, sewer, fire protection, street, sidewalks, parking lots and tree preservation.

Erf: Right. Does that happen before or after approval by the Planning Commission? I guess my concern is that, for example, if there was, if the project required detention that it could impact where the parking lots are for example.

Odom: If something is that major, then it has to come back before us.

Petrie: That is correct. They have submitted the preliminary calculations showing that it does not effect the peak flows. They are not increasing the peak flows in Mudd Creek.

Erf: But they have not addressed then the water quality?

Petre: That's correct. There is adequate space where they are planning to discharge this.

Erf: Okay. Is that indicated on what they submitted? That is before the Planning Commission now?

Odom: To the Engineering Staff I would imagine.

Petre: Yes.

Planning Commission Minutes

April 24, 2000

Page 33

Erf: Okay. So, I'm just trying to understand the process then. Planning Commission really relies on Staff to approve final plans.

Odom: That's correct. None of us are trained engineers in that regard which is why we have Staff to rely on.

Erf: And the final approval for the storm water management plan can come after the Planning Commission makes a decision on whether or not to approve a project?

Odom: Yes. And it's based upon them having to ok it before they are allowed to do their stuff.

Erf: And is the same true for the grading and excavating ordinance?

Odom: That's right. It's standard, one of the standard recommendations, or conditions of approval that we have is that the final detailed plans on all of that, whether it's grading, drainage, water, sewer, fire protection, streets or tree preservation, that those final ones have to be approved by Staff.

Erf: Okay. Thank you very much.

Odom: You're welcome.

Hienselman: My name is Pete Hienselman. I've been a resident of Fayetteville for about 24 years now and I'd like to make some comments just about what I consider the big picture of this issue. I've taken the opportunity of walking thru this grove on two occasions since this question came up and I was impressed by not just the trees but the place where the trees are, the park that the trees are actually in. It's too bad really that it can't be a city park. But those trees have been there, as I understand it, many of them at least 100 years, some of them perhaps 150 years. They probably were in existence when the first settlers came to this community. And for whatever reason they survived. If we lose them, we certainly can not replace them. We can't replace the place or the trees. I was talking to Gerald Klingaman who is a horticulturist at the University. It was his feeling that there's only three places where we have a grove of trees like that in Fayetteville. This is one. One is at the agri park and the other one is by the Farm Bureau building on Hwy 16. It's not so unique to have a couple 150 year old around but it certainly is to have 98 of them around. I think we have to look at what the value of this place is and what we are possibly replacing it with. We are replacing it with essentially a lot of asphalt and a big box which is actually a building. A store. There is a longevity on those things, that store. I don't know how long people from the

business community consider these stores to last but would you think they would last 40 years? I don't think they last much longer than that. Then you have to think what are you going to do with that place that you have changed. I think you also have to look at the grove in it's, for it's economic value. To me it has a lot of economical value for what it will give to things that are around it. It would be a wonderful center for a group of businesses or surrounding businesses to use as a focal point. It would draw people to that area where they could enjoy this park are and in turn would enhance the businesses. So I would like you to consider those kind of big picture thoughts about this place. Thank you.

Odom: Thank you.

Easton: Hi, my name is Terry Easton and I have the very great pleasure of spending the morning with the sub committee and going out and seeing this site. I do believe that Argus Properties has made a valiant attempt to preserve this canopy as much as possible given the scale of the development. I also was overawed by this Commission's desire to set a new standard in our community, or start more closely upholding the ordinances as they read. I liked Argus' presentation, the problem that I have is that when someone stands before me and says well you ought to let me do it because you let everybody else, that doesn't hold water here. I charge you all very, very deeply to find a compromise. I'm not sure from Ms. Hesse's presentation whether she is telling all of us that we are within a point and a half or a percentage point and a half of saving this canopy, and if we are that close can we not go ahead and do that? Are we charged with a 23% canopy which is my understanding will be preserved or will be viable once the new facility is up and running or are we talking about a 10.23% of the canopy that is actually only the old portion of the existing trees? It's not in my understanding and in my mind clear yet exactly what all these numbers represent and I hope that it is to you all because you are setting a standard. Economics for our community is a big part of that standard and I applaud Argus' position and willingness to work with the community. But I do not applaud their standing up here and saying, you ought to let me do it just because you let everybody else. That's the only point I wanted to make. I know your decision is tough. I would hate to be in your chair, but I hope that you will remember that these trees are a valuable asset to our community and whatever decision that is made should not be made lightly. Thank you.

Odom: Thank you Terry. Is there any other public comment?

Coody: I'm Dan Coody from Fayetteville and a lot of folks want to back away from being an environmentalist but I readily admit that I'm an environmentalist and I'm also a capitalist. You wanted to know if there are any new ideas and I have one. I

wish that this had come out about a year and a half ago and there was more time to discuss ideas like this. In extreme circumstances, sometimes we need to think outside the box. What I would suggest, I know there is not much time on this, it's probably too late for this particular project, but if another example like this ever comes up, maybe something that could be applied then might be something along the lines what we could have used here, is that if we use 15% as the number and 30 acres as the number of acres here, 30 acres, then that would roughly be 4.5 acres of canopy to be preserved. Once the buildings get built and the, if we use the 15%, the 4.5 acres of trees canopy are preserved and that 4.5 acres makes no money for Argus or Kohls, it's just basically to them, it's land they have to pay taxes on and maintain. Maintain liability on if somebody goes out there and hurts themselves they will be liable for it. They have to pay property taxes from them on as long as they own it in perpetuity. What I would do if I were in a position to do so, I would look at designing a situation like this to where the 4.5 acres could be made into an oasis there in the scenic business park to where it could be tied in with the trail system, actually donate it to the city as a park thereby relieving the department store and the property owners of maintenance of the land, relieving them of any liability as far as someone hurting themselves and suing and relieving themselves of all future property taxes and getting roughly a million dollar tax benefit from it. So instead of being 4.5 acres of land they can't do anything with, it's not a liability to them and it becomes a big tax benefit. That way the citizens get the preservation they are interested in and the business could get the money concentrated where they can get the best use out of it. And I hope that one of these days we will be able to start thinking like this because in extreme circumstances like this, I think that may be a viable alternative. I don't know if it would work, but it certainly worth the research to see if it would. Thank you very much.

Alder: Hello, my name is William Alder and I come to you today bearing a, uh informal message from the International Anti-Development Collective of Organizations. I just returned from Washington, D.C. where you may have seen myself and a few thousand of my friends on television. We had a couple thousand people get arrested. Last fall we shut down Seattle and, forcing the Chief of Police to resign. Took the covers of all the news magazines around the world. I just wanted to let you know that Fayetteville is now in the spotlight, at least as much as a community this size can be internationally. There are a lot of people watching this region of the country and there are a lot of developers who seem to feel that they can come to this part of the country scott free and get away with a lot of things that they would never be able to get away with in California or New York or, in many cases in, you know, places like Canada. This is something that really concerns a lot of people at an international level, that there are areas like this that

set bad precedents. We have an example of the developer talking to us, you know, if you let Wal-Mart do it you should let us do it? If your rules are meant to be broken then why can't I brake them also? This is where many, many thousands of people around the world are getting very angry at elected officials and at developers, is because number one the rules aren't strong enough and number two they are not respected when they are there. If you look around Fayetteville I wonder how many people have been out protesting in the streets because they feel they are going to loose some tax revenues because Kohls is delayed for a few weeks or the developer loses a couple hundred thousand dollars having to redesign the center to meet the community's demands. I haven't heard any of those voices. I mean, maybe there's a few, but it seems to me that people in Fayetteville are pretty happy with the economy that they've got and they like the standard of living here. That's what brings people here as residents, because they like all the green. That's why they are not living in Springdale. And that's why we have a high quality standard of living and it's why we have a reputation around the country as an attractive place to live. Right now, we have before you all an issue that's confronting you which basically is being watched throughout this country and within certain circles around the world to see what's going to happen. What's going to be done and where is Fayetteville going to stand. And this is going to, if Fayetteville stands the right way on this, this could impact this community in terms of many millions of dollars of revenue of people interested in moving here and doing good things. Doing things the right way. Bringing those people to town. If the decision comes down that we are not going to respect the rules then probably the option is going to happen is that a lot of those people are going to start feeling like they would rather move to someplace where the rules are respected. Our economy is going to be hurt as a city even though Kohls economy may be doing fine. So what I'm asking you to consider here today is where caving into this developer and keeping the growth restrictions we have as lenient as they are is worth the possible repercussions that come along with that. Which many of you might not know what's been going on around the world but, we just made Starbucks start buying free trade coffee from small farmers as a large percentage of their coffee because they have been buying very cheep coffee where they are spraying DDT on the workers in the fields. People didn't feel that was right. Starbucks caved into us. We just took on the nations largest developer of suburbs, Cyntax. Basically, I don't know the details of it, but a week ago, just said that they were going to meet 100% the demands of the environmental community even though that exceeded what they felt they were legally required to do because they understood what was going to happen to them otherwise. And the same with Lowes and Home Depot. All these companies are changing the way that they do business because they have no choice. Because they are being forced to respect the communities that they are coming to. And Kohls is no

different from these guys. If they think they can get away with this, it's not just the Fayetteville Planning Commission that's going to be held accountable, it's citizens everywhere and the corporations involved. There are a lot of people watching this to see what happens from other states willing to come here on busses to look down, to really cost this city and this area major, major in its reputation and also in the cost of handling this situation. It's not just about a few trees the developer is talking about ten trees here, ten trees there, to meet the different criteria. It's about where do we stand on our development policy. And that is something that you need to think about not only in this case but also in the future, how much more of this is going to happen and how many more trees are we going to lose and still be the Fayetteville that people are in love with. Thank you.

McKinney: Good afternoon. My name is Tom McKinney representing the Arkansas Sera Club and our members here in Fayetteville. Many folks before me have talked about the value of trees and done it very eloquently so I will bypass that and go straight into a couple of things I think that have not been asked or addressed as of yet. First of all I want to make sure I understand, I talked to Ms. Hesse earlier and trying to understand exactly what this proposal is. This is two separate lots that are being considered as a single unit basically. If the eastern most lot was considered by itself the plan would save, the store on that plan would actually save I believe 14.5% of the total canopy area. That's basically almost meeting the 15% canopy retention requirement. But however the building for the eastern most lot, being built the way it is would only save one tree. I think that came down to maybe 3% of retention if that much. The total, since we are considering both lots, both lots still are only going to save I believe 10.5% under the developer's proposal right now or close to that. Again that's 10.5% of the canopy area of both parcels. Is that correct?

Odom: 10.29%.

McKinney: It's .29. I'm sorry. I guess I'm going to be up here asking you all to uphold and defend the Tree Preservation Ordinance particularly since unlike other developments where replanting has been used, there has never been one with such a large number or such a large are of what is defined under the city ordinances as rare or landmark trees. First of all being their size, second of all being the type of remnant habitat that used to be here in Northwest Arkansas. Basically an old savannah prairie. I looked up Kohls web site today and they are engaged in a very aggressive building campaign across the United States with their stores. According to their site they were supposed to have put in forty to forty-five stores around the country last year. They are shooting for fifty stores this year. So, this

is not a mom and pop operation. They don't have what I would consider limited resources. This is happening in other communities and the same process. I have not yet heard anybody ask the question what is happening in other communities that also may have tree preservation ordinances and specifically, ordinances that define a rare and landmark tree or habitat. Maybe they have complied with no problem in other cities, maybe they haven't. Maybe they have asked for variances, maybe they haven't. I don't know. I would like to see that question answered before we approve this project. One of the commission members this morning, I'm afraid I can't remember who it was, asked why not build a two story building such as Kohls has done in other places. That was never answered so I would like to possibly have that question answered, asked and answered. There certainly is no limit of sky out there and it would certainly reduce the footprint and possibly help meet the requirements of the Tree Preservation Ordinance. Also I have not heard a comparison, we keep throwing percentage points around but one percent doesn't sound like a whole lot. It all depends on what kind of area you are talking about. As in the difference in the actual canopy retention's square footage between 10.29% what the developer is asking for as opposed to 11.5% which Ms. Hesse is willing to settle for and then that difference between those two numbers and the 15% that the Tree Preservation Ordinance actually calls for. Converting that into a square footage or some sort of area we can picture in our mind, I think, might give us a better idea of what we're talking about. I would like to ask you all to please uphold this city's Tree Preservation Ordinances. I know that Mr. Conklin and Staff have been working with the developers to compromise in changing the plan. They have compromised, they have changed some things, but it's not really gotten us to where we want to go. It's gotten us from being grossly in violation of the Tree Preservation Ordinance only now to be in drastically in violation of the Tree Preservation Ordinance. We are not there yet. I would ask you all to please uphold all ordinances. They were put in place by volunteers in this city, enforced by volunteers in this city, including you all and it has been a long and drawn out process to put what a lot of people consider restrictive planning regulations to, and I've heard this term used, to make it really hard for businesses to move here or as a Chamber, as some of the Chamber members I've talked to said, it really chases them away. This city, the folks of the city of Fayetteville are not chasing anybody away. We have set standards. We've set guidelines. They should be enforced. It should be up to a developer to want to be a participant in the economy of this city and these regulations and preservation ordinances are actually going to enhance their ability to do that rather than decrease it. I would like to close real quick by quoting from today's, the great liberal newspaper The Democrat. They had a nice editorial comment in the paper this morning and it says, "The Tree Ordinance has set down a minimum and it can be met by a little more redesign work on Steele Crossing. Fear not. If the

shopping center's developers decide it's not worth the trouble there will be another development for that site soon enough. It's prime territory. The rules and the ordinances are plain. This city just needs to stick to them and make sure everybody else does too". Thank you very much.

Odom: Thank you Tom.

deNoble: My name is Tim deNoble. I was recently before you on a separate request. I just wanted to point out a couple of things not necessarily specific to this Large Scale Development. I do want to point out that the 300 acres development is approximately 263 times the size of our downtown square and what worries me in the future is that when, and I know that many of you weren't on the Commission that voted for the rezoning, but just in the future when we vote to rezone something maybe we need more than a simple request or at most a preliminary plat that we have some idea in the future about what may go into a sight that has such ramifications in that this probably, at least half the size of the original plat of Fayetteville. I would also say that as a fisherman that spends a lot of time, or used to, out on Clear Creek it's not quite as clear anymore. I hope that the Mudd Creek, which now has its appropriate name, will eventually clear up enough that the small mouth bass return to Clear Creek. Thank you.

Monique: I'm Marquette Monique and I wasn't going to say anything today and I'll make this really quick. If we keep exchanging information and energy and keep talking, keep dialog and keep building bridges between each other I think we are going to figure out who we are and what we are and put our roots down and stand to it. It feels really good. Let's just keep on talking, keep on working with this. Maybe we will beef up that ordinance that probably isn't serving us like it needs to and maybe folks will come to a park that's right near Kohls Department Store and maybe they will come so often they'll go thru the doors and spend some money there.

Farrell: Mr. Chairman, Commissioners, my name is Robert Farrell. I live at 2413 Twin Oaks Court in the city limits of Fayetteville. I've lived here off and on for about 52 years. It seems to me like we have been following this thing pretty close and my hope was that we would find common ground and it seems like we have found some common ground. It seems like we are so close right now and ultimately the decision is going to be on your shoulders. I think that this business development will fair well for Fayetteville and it's future. I urge you to make a decision and vote in favor of the development. Thank you.

Odom: Thank you Robert.

Morman: My name is Barbara Morman. I live just outside the city limits in the growth area. My property spans the county and the city. I have about 45 acres in the city and about 40 outside. I may misunderstand the Tree Ordinance. My understanding is that canopy, percent of canopy, is not the same thing as rare tree and that the city, that is the Landscape Administrator has made a concession by agreeing to consider rare trees in the same context as percent of canopy. So when we talk about, I believe the man used the term having been pushed pretty much to the limit and Mr. Crider used the term the heat's on. I think we need to stand back somewhat from those menacing words and think in terms of concessions that have already been made to these people. I would hope that you would think of these trees and this area in the terms that for one Dr. Hienselman used rather than percentage and canopy think of them as tree. As very old trees that have been here since maybe the first settlers that create an atmosphere and ecosystem of their own that could be a park and that will never come back again if you let these people cut them down. Thank you.

COMMISSION DISCUSSION

Odom: Thank you Barbara. Anybody else like to address the Commission on this issue before we close the floor to public discussion? We will close the floor to public discussion and bring it back to the Applicant for questions and comments of the Planning Commission to the Applicant or to, and Staff if you wanted to make another presentation you are welcome to at this time.

Milholland: Mr. Chairman, Commissioners. Number one there have been several statement made regarding Argus' request here tonight to you and being treated fairly. In their investigation and in their meeting today with some of the Commissioners and again tonight he related to several projects, in discussing this situation with Mr. Tim Conklin, the Planner for City of Fayetteville, it is my understanding that what is being offered here is canopy in relation to the existing canopy and correct me if I'm wrong is beyond what is normally required to reach the 15% required by the ordinance. Most of the time, a large portion of the time replacement of trees, tree planting, has been the means by, whereby the canopy has been met. Just for some numbers, I don't happen to have given these to you before, so I'll give them to you now, the whole site is 29.9 acres, both lots 7 and 15 together. Our plan shows to you that the existing canopy is 23% and Ms. Hesse referred to that, and some of those trees of course are not real important but that is included in there. Just a comparison, the preserve proposed is 10.29%. These percentiles are of the entire 29.9 acres, not of canopy. Ratio of preservation of existing canopy is 44.16%. That is nearly half of the canopy has been preserved on these two tracts as far as percentage of existing canopy preserved. She is asking for

50% and we've gone to this, the plan you have in your hand is about number fourteen that we have gone thru in trying to reach a goal that we weren't sure what was the goal other than 100% which we knew we couldn't do. Even as of today we revised it. As of Friday we revised it. Asking for waivers to do these revisions. So, which means if additional is done for this to be economically feasible for Argus it's going to take additional waivers. But, just to give you the figures, The total of canopy that's there is proposed to be preserved is 44, over 44%. Also, as far as the large number, large trees over 24", 81 trees exist. 24 proposed to be preserved. That is 29.6% of existing trees over 24". I asked my crews go out today, I have two crews there working, flagging and so forth so you could see it, but I also asked them to count the total number of trees 4" and larger on these sites. On the site that is preserved, where we have been talking about 24 trees, there will be 91 trees in excess of 4" that's living today that will be preserved on that site. 91 trees that's out there. Total on the whole project including both lots is 200 trees. That's a round number but that's what it was. You would take the 91 as far as preservation of trees on this entire site it is 45.5% preservation. That's quite a number. That's a large percentage of preservation. I don't recall any particular project that's been in this town that's come thru that can come up with the same figures and percentage of preservation of existing trees nor canopy. I would like to also say in addition to that Argus plans to plant in addition, not counting the three out lots, over 240 other trees on these two Large Scale Developments. Of course, the three out lots will take care of themselves and carry themselves. The total figure, you're looking in the neighborhood of 350 plus trees including the existing 91 trees. That's going to be a lot of trees. Close to 400 counting the out lots. So we just ask you to give us your favorable consideration of Argus' efforts to bring a successful business to our community. And it will also be a very positive impact to this community. Thank you.

Odom: What I would like to do now is bring it back to the Planning Commission and the first item I would like to address is item number one on the Staff's recommendations.

Hoover: Commercial Design Standards and Design Overlay District Standards, you want to do those right now I think. I guess one of the large issues I have and I'm still not convinced about, I know the Overlay District line goes right thru these buildings and Staff has assured me that, that means that one side of the building must conform to the overlay district and the other side then conforms to the Commercial Design guidelines. I still find that hard to believe that when it goes thru an actual building that it doesn't, all the building does not have to respond to the Overlay District. I can understand if you had a raw piece of land and you had 40 acres and it was going thru, it divided it into 20 acres, I wouldn't expect you to

Planning Commission Minutes

April 24, 2000

Page 42

have to follow that on the other 20 acres. But this is a one monolithic building and I don't see how you can not apply those to the entire building. And I guess I'd like, I know, I don't know if Staff has more information about that, the legality of the whole issue?

Odom: Staff why don't you go ahead.

Conklin: Sure. During the adoption of that ordinance the public was informed that those district boundaries only applied within the 660 feet. Also, when the City of Fayetteville was sued with regard to that ordinance and it went to trial, that question came up at trial. And we sat in that courtroom and we told people that were suing the City of Fayetteville that those regulations only applied within the 660 feet. It is a zoning ordinance. It's part of our zoning. It has a described boundary, 660 feet from the highway right of way.

Hoover: But, specifically was it a building used as an example or a piece of raw land?

Conklin: It's a boundary line. It's a described boundary line that is on a map. And within that boundary, like all zoning, you apply those regulations within that district boundary. I don't believe that we can apply them outside that boundary. There is no authority that states that we can apply those standards. If you had a 40 acre tract of land and it was only partially in there, we could apply those outside that boundary. Wedington Place, we did look this afternoon and it did include part of that grocery store shopping center. Part of that building was inside and outside.

Hoover: Which one was that? I'm sorry.

Conklin: The IGA at Wedington Place Subdivision. Part of it was in and part of it was out. I believe that you can not apply zoning district standards outside of a described boundary. The City Attorney and Assistant City Attorney were not available this afternoon to get a written legal opinion on that but sitting thru that adoption process and sitting at that trial and having those questions asked and listening to the response from Alett Little, former Planning Director, we clearly stated and have been enforcing that ordinance that we can not apply those standards outside that 660 foot boundary.

Hoover: I just find that on a case like this it's a significant factor in that we have a rear of a building facing a collector street. And I hate to keep harping on that, the rear of the building, but we don't have, I mean we have one building on a collector street that does this same street but it's on a dead end street that is not used as a collector street. And frankly I'm worried about the whole development. I mean,

I'm thinking that the development across the street on Van Asche, when the new tenants come in and they are trying to sell this development they are not going to want to be facing the back of the building either would be my guess on the whole thing. I think that the whole issue comes back to my overall problem of the development is the master plan. And I think Mr. Erwin was helping today when he was starting to give me some conceptional ideas of what they have planned for the rest of the acreage. I'm starting to get in my mind how this whole thing is going to work together. But I think that if I actually knew what the layout might be across the street, I might better understand that maybe the back of the building is not going to be a significant factor. I just don't have a clue so at the moment I don't see it addressing the street or responding to the adjoining neighbors which goes back to, now I've forgotten it, that's in our Commercial Design Guidelines and it needs to respond to the adjoining development. And I guess I read the adjoining development's not just this one 30 acre site but the whole 300 acres. How does it respond to that? Accessibility is an issue. I know that we have got some pedestrian accessibility now but for instance, looking at it today is if I park in front of Kohls directly and I want to get to the development back here on Van Asche that will be some other stores, I'm going to have to go all the way out the parking lot to the west and loop around or else I could take this little driveway that is actually the truck road back around behind the building that will be about half the distance and probably a lot quicker. And I guess that's the issues. I still have issues with that and I think it all comes back to having a grand master scheme. I think that's all the issues I have on Commercial Design Guidelines.

Odom: Did you want to make another comment there?

Conklin: Yes. Just with regard to the back of the back of the building. Staff has worked hard to try and mitigate many of your concerns with having quote a back of a building along Van Asche. And if you will refer to the elevation, I know I went over this at Subdivision Committee, but for those that were not there, we have added columns. We have changed the material from smooth face concrete block to split face concrete block. Added color bands. Added blue canopies. We have tried to make this not look like a back of a building and stay within our Commercial Design Standards also. I look at that elevation which is the far one over here and I believe it's not your typical back of your building. I went out yesterday and I looked Wal-Mart Super Center facing Joyce. I looked at Barnes and Noble, Toys R Us, Circuit City, Old Navy. This elevation in my opinion is better, has a better design than those elevations that I reviewed yesterday.

Hoover: And I appreciate that. And I agree. It is better than a lot of those but none of those face a collector street. One other issue I have on the elevations here is they

are not showing the topography and actually the road is something like, I don't know eight feet lower than the actually loading docks. And I'm thinking when you're approaching from Van Asche again, you'll actually be able to see into some of the loading docks and that kind of thing. It just, yes I think they have done an improved job on having loading docks designed and all that, but I'm just not convinced that, that is what should be on a major street. Now maybe this street is not going to become the kind of collector street that I have visioned. I don't know.

Conklin: I always try to have the best project we could have to improve upon the elevations. Now Wal-Mart Super Center does not face a collector street, it faces a principal arterial. It's all one color split face block. We have more than one color. We have bands. We have columns. I think it's better than that one. Once again I'm trying to meet our Commercial Design Standards. It's talking about having an articulated building. No precision block, unpainted concrete block walls. And I think we are meeting those standards.

Hoover: I have no other comments.

Odom: Commissioner?

Bunch: I have a question for the applicant concerning the smaller building on the site. Is this planned to be built at the same time as the main building or would it be built at the same time as Phase II? We don't see any elevations.

Rankin: With respect to the 5,600' of shop that is on the boundary line I guess between lots 7 and 15, the answer is I don't know yet. Probably it would be built with Phase I but there is a chance that it may be delayed where that work can all go on in concert right adjacent with each other but I would think that the likely hood is it would be built in conjunction with Phase I.

Bunch: That brings in the question if it was built in conjunction with Phase I then the west wall of it which later would be attached to Major Tenant B, I don't know if we have any depictions of what that wall would look like and also the back area. Any elevations that would tell us?

Rankin: As far as what that side wall? The side wall would be the west wall?

Bunch: Right, because it, you know, if there is substantial time between the time that is built and Phase II comes into being there will be walls there that are visible from the roads and we have ordinances that address those.

Planning Commission Minutes

April 24, 2000

Page 45

- Rankin: Well we have, that's a reasonable concern I guess, that I have neglected to think about actually. Technically I guess, that wall, while it does face the street it is not, does not have street frontage. We are several hundred feet from Steele Boulevard. So this is not, also the other thing that I would point out that when we build the Phase I and if this is included with Phase I we would not be, since we do not own, grading the land on lot 7. So those trees in the interim would still be there which would provide additional screening from the right of way.
- Odom: Any other questions or comments regarding the Commercial Design Standards?
- Rankin: The wall by the way, I mean, one thing I noted in the design standards, we will paint the wall, for sure. We are not going to leave it unpainted. We are not going to leave raw block there in the event that happens so we will paint it with the color scheme that goes with the rest of the design.
- Bunch: That brings up the question about can we do that, or can that be done under the current property lines? Is it too close to a setback line?
- Rankin: I believe that I can get permission to put a ladder up to paint the wall.
- Bunch: No, I mean the location of the building itself and it relative to the property line before there are lot splits and adjustments?
- Odom: You want Staff to address that issue?
- Bunch: Yes.
- Conklin: There are no setbacks, side setbacks in C-2 zoning.
- Bunch: Okay.
- Odom: All right. I'm going to move on.
- Estes: Mr. Chairman, one other thing, briefly, I believe the Commissioners at one time raised the issue of mechanical equipment on the roof and screening. Without full complete architectural drawings, we don't know if there is going to be mechanical equipment on the roof. Could we have some discussion regarding if there is mechanical equipment on the roof how it would be screened to comply the Commercial Design Standards?
- Rankin: Well, I guess the first answer to, the answer to the second question is yes, there

Planning Commission Minutes

April 24, 2000

Page 46

will be mechanical equipment on the roof. Weather it will be visible or not is one part that I can't answer. To the extent it's going to be visible, as we get the final layouts for the mechanical equipment I have no problem in agreeing that we will comply with whatever screening requirements are necessary under the ordinance. I'm not asking for some sort of variance of that. I know that I've got to screen them and I will comply with that and if you need to make that a condition in addition to what the ordinance says, I am certainly willing to provide the screening as required.

Estes: Thank you Mr. Rankin.

Odom: One of the other items was with regard to the monument signs. The Applicant is requesting a waiver to allow two ground monument signs to be located on Shiloh Drive. The Applicant would like one for each of the major tenants. Staff supports this request with the condition that both signs comply with the monument signage area requirements of the Design Overlay Ordinance. Any comments on that variance request? All right. The item number D was the Applicant is requesting the Planning Commission grant a variance to allow 21.15' of green space where 25' is required along the south property line in front of the property line. Staff is in support of the variance since it is related to the preserving more of the rear trees on the site. This variance only applies to Phase I of Steele Crossing. That's, correct me if I'm wrong, but that's with regard, when we were out there today and got two more trees to be saved but they needed to move the parking lot in order to comply with the Parking Lot Ordinance?

Conklin: Right. And actually, I think that 21' is 11'. They were requesting 21' before we saved those two additional trees.

Odom: Now it's down to 11'?

Conklin: 11'.

Odom: Okay. The next...

Hoover: Mr. Chair, were we going to discuss that one?

Odom: Sure, go ahead.

Hoover: I appreciate saving those extra trees and I am in favor of this 11' but I think it would be appropriate if they get with the Landscape Administrator and perhaps the trees should be larger here, some kind of berm. I know in one of the

Planning Commission Minutes

April 24, 2000

Page 47

ordinances somewhere they make suggestions if this space were reduced that you would have larger shrubs or some kind of more obscuring method of the parking lot. I think the Applicant had made reference that they would be willing to do that.

Hoffman: Bigger trees in the back or the front?

Hoover: In the front too. Where this, this space is reduced, but of course, you better hear from the Applicant. I mean, that was earlier today.

Odom: Applicant, you want to make comment on that? Mr. Rankin or Mel?

Rankin: There are two, we have asked for, I guess since this morning's plan with this save are for a reduction as planners pointed out. However one thing I would like to try, I hope I'm not mudding the waters, this reduced area really only comes into play in the event that Kohls expands and we need the additional parking. So, we have future parking that is currently going to be grassed area out of the box. What I would agree to do, and I think we need to do it to, I know we have got a site line or two, but to move that, those, that planning from where it is now in the event that it is, this variance actually comes into play if and when Kohls expands which won't be in the first ten years, they are precluded from doing so in the first ten years of their lease. To move that closer to the road so that we wouldn't be in a situation of having, in the event it did expand, to come in and tear out what's there and put in, start all over again. To move those out of the parking area. The proposed future parking area I think would make a great deal of sense and the going of our initial development we've got, we meet the guidelines in terms of setback, but I would certainly agree to and recommend that we, some of this we just didn't have time to fine tune all of it between this morning and this evening. We would move those plantings closer to the property line or the right of way line on Shiloh so that they would not have to be removed subsequently. And by that time they would have ten years growth on them and I see no reason to plant something that we know going in is a possibility that it's going to have to be taken out. Does that answer ...

Hoffman: Thank you. Yes, yes.

Odom: Item C, well I guess we can just cover it, with regard to Item C Site Coverage the applicant is requesting that the Planning Commission consider both Phase I and Phase II together when determining compliance with the green space and site coverage requirements. The outlots will be required to meet site coverage independently of this large scale development. Please see attached letter from

City Planners. Staff, you want to make a quick comment on that?

Conklin: Yes, with regard to site coverage they do have in their tables calculations for site coverage in the overlay district and outside the overlay district for each Phase of Steele Crossing. If the Planning Commission decides to act on this I think the variations in site coverages that have resulted from saving the additional trees and granting the variances from the green space along Shiloh Drive need to be reflected on the plan and in this table. I guess what I'm saying, I can't give you an exact number with regard to Phase I and Phase II, but what they are proposing on their plan is what you will be approving with regard to site coverage.

Odom: Mr. Bunch did you have a comment?

Bunch: No, that's sufficient, thank you.

Odom: Okay. Anybody else? Item number two deals with the compliance with the Tree Preservation Ordinance, actually we are going to come back to that one because that is the one that we are going to talk about the most I suspect. With regard to the determination of the waiver request to allow a 60' truck entrance with no islands off Van Asche Drive. Staff supports the waiver due to the fact that a large radius will be needed by the delivery trucks. Anybody have questions or comments with regards to that specific waiver request?

Conklin: Commissioner or Chairman, we do need to include that 36' drive. The second 36' drive, truck drive to the west.

Odom: 60' truck entrance and a 36' drive to the west.

Conklin: A 36' wide drive without landscaped island.

Odom: A second truck entrance with no islands off Van Asche Drive?

Conklin: That's correct.

Odom: Okay.

Hoffman: I have a question.

Odom: Yes.

Hoffman: Is it necessary to put in and out arrows on those driveways since they are so wide?

Planning Commission Minutes

April 24, 2000

Page 49

Conklin: We do require all driveways to be marked based on the uniform traffic control manual. So they will have to be marked.

Hoffman: Thanks.

Odom: The remaining items of approval are standard items of approval that do not require Planning Commission action with regard to waiver requests and so forth so I would now bring it back to item number two. Which is Planning Commission determination of compliance with the Tree Preservation Ordinance and approval of a tree preservation plan. Under Section 167.05 of the Unified Development Ordinance, a tree preservation plan shall be submitted and approved by the Planning Commission as a portion of the large scale development plan. The tree preservation plan approved in CMN Phase I and II at the preliminary plat stage required each development to have individual tree preservation plans. The applicant is requesting both lot 15 and lot 7 be combined when determining the tree preservation requirements for the development of both lots (including any future out lots that may be created from those two lots). The applicant has proposed to preserve 10 to 11 percent tree canopy and is requesting approval to utilize the tree canopy created from the tree plantings as required by the Parking Lot Ordinance, Commercial Design Standards, and Overlay District Standards. Any trees located on the designated outlots which are included in the preservation canopy for this large scale development shall be preserved and protected in perpetuity and shall be reflected on future development plans. The Landscape Administrator has provided her recommendation regarding the proposed plan in a separate report, which we heard earlier. So I will now bring it to the Planning Commission for questions and comments of the developer or Staff or Kim.

Hoffman: Mr. Chair?

Odom: Mr. Hoover, Hoffman.

Hoffman: That's okay. I have, I'll have more to say about it later but I do have a question of the applicant, Mr. Milholland. When we had our site tour this morning it was with, and let me preface this by saying this has been the most difficult process to go thru to try to get our two sides closer and closer together and we are really close. I want everybody to know that I am just in awe about how much work has gone into this and how each side has tried to come closer and closer to the middle. When we were at the site and I asked you if there were any other trees that could be saved and you agreed that the two that have been added to the plat today could be saved and still gain the approval of both large buildings. I have to ask you one

more time in this public meeting, there are some trees located in the parking lot in front of the shops between Kohls and major tenant A on the site plan. Trees, I think, I can't read, there is one tree 12 and above that there would be another tree, those are located really close to a parking lot island. It would seem to me that we can come closer to meeting our percentage recommended by our Landscape Administrator if we just tried to get another tree or so included and saved and preserved in this plan. So, I want to ask you in this meeting if there is another way to preserve any additional trees in the parking lot, by and large in the islands, and then adding some additional parking as shared employee parking in one or more of the outlots as a result of the space that you would lose from preserving those trees. And I'm not talking about a whole bunch of trees, I'm just talking about, I think one or two trees and they are located, if you can see on your plat in the area in front of the shops between Kohls and major tenant A. And I do not like doing design in a public meeting but it may come down to that.

Rankin: I believe that is uh, and I'm not arguing with you, I'm just trying to clarify.

Hoffman: That's okay.

Rankin: I believe that is tree T2. Tree 12 is in the middle of the Kohls building. Part of, in order for preservation and to meet the terms of the ordinance, it's not a situation where we can come in for a variety of reasons, and put an island around the base of the tree and hope that it will survive because the chances of it surviving I think, would become slim and none. We would have to essentially, to give you, take out that whole area that's shown, or shaded in as the whole boundary of the canopy line there.

Hoffman: But then we have these irrigation methods that I think have been successful in some applications. Not, I'm not really talking about the permial, pavers, but I am talking about a sub grade irrigation type of a system to help augment that. And I'm not trying to set up a situation where we cost you a bunch of money and kill a tree either. That's not the point. But I'm saying if we have to lose a certain number of parking spaces can they be recouped? Like outlot area one is pretty close to Kohls. If you take the north side of that lot and just add a few more spaces that you would lose, would that not be something that could be accomplished?

Rankin: Well, in one of the issues, and unfortunately I can't describe exactly what's going on these outlots, and sort of by definition they are out of, other than overall tree canopy, they are not part, technically of the rest of the LSD that we are dealing with here. And each one of those is going to have to meet its own coverage, green

space coverage area and canopy requirements on its own so the effective area, albeit shown as 1.1 acres in this particular case the real true usable area is already squeezed down by virtue of these other...

Hoffman: And I'm not talking about eliminating any of that with shared parking. If it's a restaurant you have an opportunity for a share of use based on different times of operations or employee parking or something. So, and I don't mean to put you on the spot but I did. And I, okay, I have asked the question and I know there are other Commissioners that have other very specific issues that they wish to discuss and I can wait, if you don't have an answer for me, so be it.

Milholland: I can state this, that we have endeavored on many occasions in the last three weeks to look at these trees and try to figure a way we could not put asphalt under their canopy and save them. That one tree there you are talking about is taking about probably 8 or 10 spaces plus a two way driveway which would block the thru traffic going into the almost thru the, it would be almost the east door of Kohls, really at the front door. In all reasonableness I'd have to say right now I don't see how you can. I really don't.

Hoffman: Or any other tree, because there are others scattered throughout that...

Milholland: Yes, but those other ones, almost any of these here cause, to save those trees, to make them really live an extended amount of time you're going to have to leave the area under canopy almost, at least 90 to 100 % without asphalt. And each time you do one you're looking at anywhere from 8 to 12 spaces plus driving surface. And in some, most cases you're looking at driving surface that's being blocked..

Hoffman: And the shared parking is also not an option? Am I hearing that? The shared parking for the loss of those spaces would not be an option either?

Rankin: I'm not sure I understand the question.

Hoffman: I'm just trying to determine if the development can share spaces.

Rankin: I'm not giving you a blank stare, I just don't understand.

Hoffman: No, that's okay.

Rankin: It's not because I disagree.

Planning Commission Minutes

April 24, 2000

Page 52

Hoffman: You may want to skip over this and go on and let some other people talk because this is a, this is something I almost really prefer not to discuss in a full Planning Commission meeting because it's almost like Subdivision Committee work, but that's what we have been doing for the last week, so I guess I'm used to it. Anyway.

Milholland: Mr. Rankin, has informed me, way back, I don't know it was three weeks ago, four weeks ago, when this was drawn, the very first time, let's look and see what we can do. We tried. Even with that configuration, that would, probably eight or ten past that one, and everything to move spaces over, up and down, up and down, I really don't see a lot of hope in that without going thru a great extent of waivers or cutting something else short. And I don't know how long the tree would live. I mean, they are large trees. Kind of like old men. The older, they say they are past the midterm of their life. They are used to a certain nature and I don't know how long it would live. My experience is that it won't live at all.

Rankin: I'm going to let him speak about the old men.

Hoffman: Thank you all.

Hoover: Mr. Chair?

Odom: Yes.

Hoover: I have a question for staff about the parking landscape ordinance, which, you know, I'm totally confused by now. Tim, on this new one I'm looking at, am I correct that every twelve parking spaces you need to have a tree? Or am I reading from the wrong ordinance again?

Conklin: There are three options. Kim Hess probably can better explain those options. We do what's called a tree lawn. We don't have any tree lawns in here. A tree island which is I believe 1 for 12 and then we have something for small trees which is a diamond. Make a 5x5 diamond that's allowed in parking lots. Those are what you see in front of Service Merchandise. Those diamonds.

Hoover: The tree pits.

Conklin: Tree pits. Yes.

Hoover: So what size is this particular configuration?

Planning Commission Minutes

April 24, 2000

Page 53

Conklin: It is an option that the developers are allowed to utilize one of the three options, a tree pit, a tree log, or one of these tree islands. It seems like the trend is for these tree islands. Most developers use tree islands.

Hoover: But they can have 15 parking spaces and a tree?

Conklin: Where are you referring to?

Hoover: Looking at their plan and I guess I didn't count them but it says a total of 30 spaces. Maybe I'm not looking at this correctly. I have 15 spaces on the majority of this.

Hesse: I think I can help you. Overall I have the numbers. What they are showing furthest to the north plus Kohls they show 10 spaces contiguous then a tree then 15 spaces contiguous and a tree. They could break them up more evenly and meet it to the word. The important thing is to have the number of trees, you know, shown throughout the parking lot at the right numbers. We can move an island around just a little bit to get the exact word of the ordinance.

Hoover: So you take the overall. I guess I was reading it the maximum you can have.

Hesse: They show three trees, no they show more than that. They show six trees, so they have met the ordinance.

Hoover: Okay, I see.

Odom: Thank you Commissioner Hoover. Come on, we've got to have more questions than this.

Estes: Mr. Chairman?

Odom: Commissioner Estes.

Estes: For a point of clarification, Kim in your remarks to us this evening and in your written memo, you informed us that your previous recommendation was to preserve half of the canopy and does that recommendation remains your recommendation and that this can be satisfied with preservation of 11.5% of the 29.9 acre site? Does this applicant's proposal this evening satisfy this recommendation?

Hesse: Awfully close. I mean, they have, what I can say and we all saw that this

Planning Commission Minutes

April 24, 2000

Page 54

afternoon or this morning is that the representation of that full canopy, they are preserving a real prime chunk of that. And I think that says a lot. You know, if we hadn't gone and looked at each individual tree it may be they are meeting they are meeting half of the healthy, you know, oaks out there. I mean, there are other trees mixed in that are also important, but we haven't looked at each individual and just trying to stick what I've stated in the past.

Estes: Thank you

Odom: Kim, do you feel that what they have proposed is a reasonable plan or compromise?

Hesse: Yes.

Odom: Okay. Anybody else have questions for Kim while she is up here?

Bunch: While Kim is up here and also apply to the applicant, this question was asked after we came back from the tour and it applies to brush, vegetation in general in the tree preservation area. Do you have any recommendations there or any, not necessarily official recommendations but just concerns of security, also sidewalks, security lights, security for patrons of the store and employees, that sort of thing? You know, an idea of how the rest of this tree preservation area would be handled as shrubbery brush, grasses, that sort of thing.

Hesse: When I brought consultants out there to really look at the health of these trees we discussed that and what it would mean to put this type of preservation among commercial development. And we talked about I'm sure that the developers would want to mow and maintain that and how would that effect the health of the trees. We felt that, that would not effect the health of the trees as long as you don't do grading. I think as far as security, you don't really want to trench for lights but there is options for low voltage lighting where you aren't really trenching very deep. You could actually put lighting either within the trees shining up in the trees or somehow produce a, some sort of security lighting in there.

Bunch: I guess this may also be for Staff. Sometimes when we put, we say where there is lighting on the sides of the buildings we don't want them pointed away from the buildings and with Phase II not being built, if this area were lighted from the side, from the west side of the Kohls building, the light would be shining away from the building. Follow me Tim?

Planning Commission Minutes

April 24, 2000

Page 55

Conklin: I understand. In this commercial area I envision that there will be lights in the parking lot. It's going to be a very lit up area at night. We normally recommend that they be shielded and directed downward away from adjoining properties. We could add that as a condition. Overall this is zoned C-2. I expect that there will be more commercial development in that they will be lighting up the back of their dock areas also.

Bunch: This is approximately 100 yards long from the front parking lot to the back parking lot and truck dock area so it's an opportunity for a less than secure area. I was thinking another thing that we haven't looked at is a sidewalk along the west side of Kohls building to be able to get people over across Van Asche. And since we have a park to have a trail or you know, in the tree preservation are to provide some sort of access and, you know, show it off.

Conklin: I'm not the Landscape Administrator, but when I look at preserving these trees I think we would want to minimize or avoid doing anything underneath that canopy. I'd even be concerned about putting lights up there. I'm not sure what effect they have, having lights or light 24 hours a day in the trees but I think trying to preserve it in its natural state would be my recommendation.

Odom: One of the problems that we have is that for everyone that has wanted to save the grove of trees they have had their own idea on what we should do with them. Weather it be a park like setting or weather of not it should be a natural preserve. It's difficult issue.

Marr: Chair?

Odom: Yes Commissioner Marr.

Marr: I had a question too. I understand from the meeting earlier today we had talked about planting larger trees on the back, I think it was the Van Asche drive. I don't know if this is appropriate but I would like to see a designation of those trees to be something other than Bradford Pears. To be canopy trees that offer coverage since I believe that we have enough Bradford Pears in Fayetteville.

Rankin: I agree to that stipulation without any problem.

Odom: Well, why don't you ask the Landscape Administrator. She's the one that approves it and so forth. Do you have a recommendation as to what type of tree it ought to be?

Planning Commission Minutes
April 24, 2000
Page 56

Hesse: We have a list.

Hoffman: Mr. Chair

Odom: Yes.

Hoffman: I have a question about those trees. On your legend you've got big and little trees alternated. When I was thinking about that compromise I kind of had envisioned big trees all along the back. So, would you be willing to go with the big designation for all of those trees behind Kohls where you have the alternated big and little?

Rankin: In general, I'm more than willing to do that with, I guess I'm willing if this is the only additional request. I would like to reserve the right to refuse this if there are additional requirements.

Hoffman: I understand that. I understand that, but you are not meeting the tree preservation ordinance.

Rankin: You have asked for several compromises. 50% seems to have been agreed upon.

Hoffman: And I said some trees. I didn't say all the trees. But I feel that I really want to approve this development and as a personal comment that since we are losing some very big trees in this big grove that I thought that if the development is going to be a sustainable and attractive development for many years, fifteen, you know, you have a spacing and fifteen more trees is not something that I felt like was unreasonable to bring up. So, maybe you feel that it is.

Rankin: I want to say yes I'll do that but, provided, how much longer is the list going to be?

Hoffman: You want me to stop there? Believe me, I would like to, too.

Rankin: If we have ended the list, yes. If this is the beginning of a list then I want to reserve the right to comment on and see how long the list is.

Hoffman: I understand that. That's pretty much all I had to say about that.

Estes: Mr. Chairman?

Odom: Yes, Commissioner Estes.

Planning Commission Minutes

April 24, 2000

Page 57

Estes: My overall concern is that when this applicant purchased this property and began the development process these ordinances that we are talking about this evening were spread of record. They were available for study. If they were not included in a feasibility study or marketing plan, they should have been included in a feasibility study and a marketing plan. We have learned today that what this applicant did was chose to rely on various waivers and variances and not on the ordinances. If that in fact is the case, then that was the applicant's decision. These ordinances were available from the conception of this project. I am concerned that we are being asked to do something that is not in compliance with an ordinance. Regarding accommodations made to this applicant, accommodations have been made. Both Phase I and Phase II have been combined to determine site coverage, green space and, the, requirements. I just don't feel like that I can vote for this large scale development until the ordinances are complied with. And I don't think that, that is an onus or unreasonable request.

Allen: Mr. Chairman:

Odom: Good luck, Commissioner Allen, in venturing into your first public comment. Go right ahead.

Allen: Not the one I'd want to jump into first. I feel that Fayetteville and Kohls has an opportunity to create a beautiful shopping center that hopefully would be emulated all over the area. That people could have something that we could point to with pride. I know that the applicants worked hard and spent a lot of time and money to try to reach the goals so that we can work together and that they can be good neighbors with us. I think that we're worth the effort of making, of being good neighbors. But, it seems to me that the onus of being a good neighbor falls upon the applicant not on Fayetteville. I looked in the dictionary to see if there was a difference between a law and ordinance and it says that an ordinance is a law that is set forth by a government authority. So, therefore, I see that 10.29 is not 15%, consequentially it doesn't abide by the law so I couldn't vote for it.

Shackelford: Mr. Chairman?

Odom: Commissioner go ahead.

Shackelford: I'll go ahead and give a speech on the other side of the coin. Obviously I'm on record for being in favor of this development. I think it's very beneficial to the city. I think it will provide hundreds of full time jobs, hundreds of thousands of dollars of tax revenue that will improve the quality of live in the City of Fayetteville. I think that we can look, we've heard the terms a lot, common sense

and compromise. I think we can use common sense and compromise in this situation. I think we have the ability to compromise due to the way the ordinance is written. The Landscape Administrator's interpretation is opinion as to whether or not property can be reasonably developed and existing canopy can be preserved. If not replacement trees are an option. I feel that the applicant has compromised. They have split the building in half to save trees. They have done away with one complete outlot at tremendous economic cost to them. They have done this to get the canopy preservation up to 11%. And I think anymore would be unreasonable and I think that we should allow replacement trees. I think that replacement trees are a viable option. I think with replacement trees we can get the overall canopy up to 26 % which does satisfy the regulation. I think that the net gain of over 100 trees to the overall development is something that we should look at. I think that replacement trees have shown to be very successful. I think if you look at development on the end of Joyce Street and 71 Bypass, I think that the replacement trees have really looked good there. I think that Northwest Medical Park is another great example. The replacement trees have really taken off there and it looks fine. So, I think that is an option. I think we do have that opportunity the way that the ordinance is written. I think that we do have precedents in place of not enforcing the tree issue. I think there are many examples of developments that have been done to where we have saved zero percent of the existing canopy. I think by compromising you're requiring partial preservation we are setting a positive precedents going forward in the city. I'm also concerned by not compromising we're setting a dangerous precedents being impossible to work with. I've heard developers in the area talk about this ordinance and the fact that if we get to where we won't compromise that maybe they want to develop they will cut down all the trees before they even come and talk about rezoning. I think we will end up hurting more trees, costing more trees that what we are out to save. So, I think that since the tree ordinance was passed there has been other ordinances passed, parking lot, landscape, overlay district going to add another additional 125 trees to this development. I think that the net gain of over 100 trees to this development is something that is very beneficial. I'd like to see us use some common sense and compromise and get this thing thru. Thank you.

Odom: Thank you Commissioner Shackelford.

Hoover: Mr. Chair.

Odom: Yes Commissioner Hoover

Hoover: Well, talking of money, which I was just thinking about, how to use this opportunity of these trees and its park like setting, this whole development is

starting to remind me of Central Market in Austin and of a similar situation where there is a large grove of existing trees. They have a restaurant on that side of their building. They have a deck that's open air for eating outside and then they even have play equipment for the children in the existing grove of trees. I don't know if the applicant thought about this and I know that this whole plan has been shifting around so quickly in the last week, but I was just curious if the applicant had considered switching the outlot and Kohls Department Store and actually putting Kohls up next to the street and having a whole side, while with Kohls on it they would still have their front parking but have the restaurant where Kohls is in the park area. I'm sorry. This was a design thought. I don't usually have these but I thought I would share it. And I don't mean to slow things down.

Odom: Does the applicant wish to address that?

Rankin: The footprint of Kohls is essentially twice the size of the outlots and I sure haven't compressed that onto one of those lots.

Hoover: I'm just saying the location, not necessarily, that things would have to move around some but I was just trying to take the opportunity of those trees rather than just making a solid wall right there not having any relationship to the building.

Rankin: And I understand that, and then we will be trying to do commercial activities under the canopy of these rare trees and I'm not sure I can do that anyway. You know, I think a massive redesign at this point is out of the question.

Odom: I think the answer is no, you didn't consider it. Thank you.

Bunch: Mr. Chairman?

Odom: Yes, Commissioner Bunch.

Bunch: I have a question of Staff. We reached, on the item before this, the application before this on our agenda we included a conditional use for parking for a restaurant, is there any sort of conditional use for additional parking on this lot 15 and lot 7 of CMN II of total Steele Crossing, is it over the allowable limit?

Conklin: No. They are meeting the ordinance requirements. There actually are fewer spaces than what the maximum would allow per square footage.

Bunch: And there is no way to increase it over the maximum? Is there a conditional use that could be applied?

Planning Commission Minutes

April 24, 2000

Page 60

Conklin: We could. I'm not following you why we would want to increase the parking.

Bunch: One of the questions has been put forward, I've asked this question several times and one of my, the responses I got was is this is never done in Fayetteville therefore the outlots were not considered as potential parking spaces and we've gotten to the point that we're looking at compliance with Tree Preservation Ordinance vs. acreage in outlots and one of the reason outlots were not considered supposedly because we never gave, Fayetteville never gave conditional uses for additional parking over the stated maximum in our ordinances. I just wanted to have an answer on that situation. I know there has been no application for a variance or for a conditional use for additional parking.

Conklin: We have in the past granted approval for additional parking over, beyond what the maximum allowed is. We also have in our ordinance the authority, City Planner, myself, has the authority to allow 25% less parking. We have a minimum, we have a maximum. We have a method to allow more than the maximum and we have a method to allow less than the minimum.

Bunch: So, in other words, additional tree canopy could be gained by utilization of one of these outlots as parking and that Fayetteville's ordinances are not the limiting factor in the ability to utilize those outlots as parking.

Conklin: If you preserve more trees and you provided more parking with outlot it would probably be a wash. I mean, you'd probably end up with the same amount of parking that we are proposing right. I'm not sure if we would need to approve more parking.

Odom: It's my understanding it's not a parking issue it's a money issue. You have to have the lots to sell.

Bunch: I was also told that it was also a parking issue because a comment was made that Fayetteville never grants additional parking and the various tenants have all made severe concessions over having less parking. That this is one of the compromises that has been given up is to deal with less parking. I'm making a question of are we, have we forced the issue of less parking or can it actually, can there be more parking? I just want to be on record that there can be more parking. So, it's not necessarily the City of Fayetteville that is not allowing this compromise.

Odom: I understand. That makes sense. They typically grant those waivers, we're talking about restaurants.

Conklin: Restaurants are typically where we grant these waivers.

Odom: Like Cracker Barrel, that kind of stuff. Yes, Mel.

Milholland: I want to clarify the record for his, my record for him. I have requested additional parking beyond 124 and never got it. I have not been aware that they have done this. I know in large parking lots they have contracts where they crossover and share parking but I personally have never had a request to get it more than 120% and I think that my client, may can speak for himself, but I know my conversation would be, with him would be the same thing I told you, I think his whole economic package the last eighteen months has been around with this clients who wanted more than what your 120% allow, they made their decision to them ever offering the money based on what you required. It had nothing to do with not using the outlot for parking. That wasn't the case. The outlots were an economic benefit to make the thing work. So, it's not outlot vs. parking. My personal experience, I've never had the City grant more than 120%.

Bunch: Well, the applicant did make a study of how the tree preservation ordinance was enforced other than your personal experience. We've put other engineering companies had done and other developers had done on the Tree Preservation Ordinance and I just, was kind of curious if the same diligence to research had been done on the parking.

Hoffman: Mr. Chair?

Odom: Commissioner Hoffman.

Hoffman: Before we go on with motions or whatever I'm going to say something real shortly about this. Again this was a most difficult project and I think that we are clearly experiencing growing pains in Fayetteville and we will continue to do so for a long time. I think that we are not all the way grown up yet in enactment and enforcement of these ordinances. I don't feel like we are diluting this ordinance by voting for a lesser percentage if we do vote for that, than 15, because we have I believe, some agreements in place for some pretty strong replacements and so forth. As shopping centers go, I think this will go much beyond the typical mediocre big box that you see in Tulsa and else where. So, for that reason, I don't even want to say reluctantly, I want to say that it's just a hard decision but I will vote for the project but with the understanding that this is not something that I give up, I don't give up large landmark trees easily. I do think that they need to be preserved. And just a footnote, on Washington Regional there were a couple of great big landmark trees that were preserved. There was another smaller

canopy grove that couldn't be because of the need for a retaining wall for the ambulance traffic. So, yeah, we look at all that and it's very important to us but I think we have a delicate balance that we need to maintain between environmental responsibility and economical viability. And that's my speech.

Odom: Thank you. Commissioner Marr.

Marr: Well, I feel like I should make a comment considering that I was the Commissioner at the last meeting that made the motion to deny the development. I thought a lot about it, I've done a lot of research. I, too, have pulled out the dictionary and looked at things myself. I will say the initial development I thought was also a gross attempt at neglecting trees. I don't consider 2.14% considering our ordinance. I will tell you that what I heard in the last meeting was that there should be a cooperative environment. That there should be an effort of compromise and that we need to be held accountable to our actions here as a Planning Commission. I've spent the last few times when I am in town driving around looking at developments that I too know had no trees on it when it was started or was used by replacement canopy and I feel very good that we have trees (*tape turned over*)...the fact that we need to consider reasonable. I think the question was asked to Ms. Hesse at the very end, did she consider the development offer reasonable and her answer was yes. Did it meet 11.5%? No. Did it meet 15%? No. But is it considered reasonable? Yes. Is it a long way from 2.14%? Yes. And so for that, for those reasons I will move for approval of LSD 00-5 based on the conditions of approval as stated.

Shackelford: I'll second.

MOTION

Odom: Ok, we have a motion by Commissioner Marr, second by Commissioner Shackelford to approve Conditional Use 00-5 based upon my understanding of the motion which you stated in agreement, I am going to assume, so please listen carefully to make sure I am not wrong. That incorporated in that motion you are supporting the request that the applicant receive a waiver and allows the two ground monument signs, further on C that they are allowed to consider both Phase I and Phase II together when determining compliance with the green space and site coverage requirements but that the outlots would be required to meet site coverage requirements independently of this large scale development. That they are granted the variance to allow 11.15' of green space along the south property line in front of the parking lot. That they comply with the Tree Preservation Ordinance and that there's the approval of the preservation plan. That you are

granting the waiver of the 60' truck entrance and the 36' wide entrance along Van Asche drive with no islands. That any mechanical items on the top will be screened in accordance with the Commercial Design Standards and approved by the Staff, which is item number 13.

Marr: Yes. And I did understand I think from the developer that the alternating big, large, big, large would be all big assuming we had nothing else on the list which I didn't recommend anything else so I'm accepting that as a condition.

Rankin: Yes. They will all be 4".

Odom: Item number 14 is that all big, all big will become big, big.

Shackelford: I'll accept that in my second.

Bunch: Mr. Chairman?

Odom: Yes Commissioner Bunch.

Bunch: On item 2 the last part of it where it addressed, item 2 of the conditions, starting on page two and continuing on page three where you are talking the trees, designated trees on outlots, are any trees on designated outlots which are included in the preservation canopy for this large scale development shall be preserved and protected in perpetuity and shall be reflected on future development plans, is it appropriate at this time that we designate what those trees are? They are listed in the tables but they are not necessarily, it's questionable, two trees are shown on the drawing as being preserved but one tree is shown on the table as being preserved. Similarly, I believe this is on the outlot or undeveloped area three, I'd just like a clarification on that if we could.

Odom: That is an important point. If there is a discrepancy we need to be sure we are all clear and on the same page with regard to those on the outlot that are being preserved.

Marr: I'm understanding that to be tree 32 at this site, T32 and T31 maybe?

Odom: Mel can you give us a clarification on that?

Milholland: The intent on the trees that are preserved are in the legend. They are the trees that have the heavy colored, or heavy ink on them. On the area preserved all the trees

Planning Commission Minutes

April 24, 2000

Page 64

larger than 24" are shown there and they are the ones preserved. I guess that's what we are talking about right. What trees are preserved?

Odom: I think the biggest concern is with regard to the outlot because it shows, Don are you saying in the table it says only one will be preserved and on the site plan it shows two.

Bunch: In the summary of the tree canopy for outlot three shows one tree is being preserved and there are two on the plat.

Conklin: And you are showing two on your plat.

Rankin: The site plan shows one tree on lot 3 being preserved the other tree is not in lot 3.

Milholland: One tree on outlot 3 should be saved.

Bunch: And one tree in Phase II?

Odom: And one tree in Phase II. Is that correct Mel?

Milholland: Yes

Odom: Okay. Thank you.

Ward: Mr. Chairman?

Odom: Yes Commissioner Ward.

Ward: Since everybody else said something I'll go ahead and say something. It's past eight o'clock and I'm usually on my couch by this time so, but uh, I feel this development has come a long ways. I voted against it originally because I thought there was a lack of trying to save the tree canopy out there and I had some, few things about the Commercial Design Standards that I didn't think had been met. But I really feel like this development now would be a real asset to our community. I think there will be a positive economic impact will be brought here. And I think they did some things by dividing the buildings up and so on that our Landscape Administrator had asked for to preserve these particular trees, that they have done. They have gone out of the way to do that type of thing. So, I think there has been a lot of compromising made and this is workable now for everyone.

Planning Commission Minutes

April 24, 2000

Page 65

Odom: I guess since I am the only one left I will say something. I am very proud to live in a community where these are the kind of issues we deal with and that we do what we can in saving the trees with the ordinances we have. I don't know how it's been addressed in the past but I think Kim Hesse has done a wonderful job in her interpretation of the ordinance and has gone the extra mile to make sure that the spirit of the ordinances is met and that we save some of these historical trees that those in Fayetteville care very much about. By that same token I think it's also very important that we remember the economic considerations. This land was designated to be commercial in nature by the City Council. That's our boss. This is going to be the commercial hub and how a commercial hub can function in a city like Fayetteville is something that is going to be a struggle. Something that we are going to have to deal with on a case by case basis. Something that makes the decisions up here tough, but the decisions up here if they were easy it wouldn't be worth our while to sit up here. So, I'm going to sit in support of the ordinance, or of the proposal and vote in favor of it. I'm going to do so proudly. I think as we put more and more of these ordinances on the books, which I was in favor of, I think I helped a little bit on the Tree Preservation Ordinance, I think I helped on the Parking Lot Ordinance, I think I helped in the Commercial Design Ordinance, I think I helped in the Overlay District Ordinance. So, I'm proud to see these all come to play. But when you put that many regulations together we are granting more and more variances because we have to. Otherwise, we are doing nothing more than condemning property that we have already rezoned. It's a struggle but it's a struggle that's worth our time and effort. And that's why I'm in support of it.

Allen: Mr. Chairman?

Odom: Yes Commissioner Allen.

Allen: Can I make one other comment?

Odom: Certainly.

Allen: I just wonder if there is a tree ordinance, what kind of a precedent we are establishing. That is a concern I have.

Odom: Just to follow up comment on that, I think we are setting a very good precedent. And that's the Tree Preservation Ordinance does allow for replacement but that we aren't going for just replacement any more. That we are going for preservation and that if in fact it is shown that a piece of property can not be developed in a reasonable nature under that ordinance that we will work and do

Planning Commission Minutes

April 24, 2000

Page 66

what we can to save all that we can and put the replacement to fulfill those that are lost. So, I think it's a very good precedent. Anybody else? Call roll. I'm sorry. Wait, wait, wait. Did you have something?

Bunch: Have we had a response from the Landscape Administrator since we determined the additional 4" trees. The comment was made that we were very, very close in her estimation, I wondered if the 4" trees made it even closer?

Odom: What I will do Kim, I'll give you the opportunity, if you want to respond with regard to the additional 4" trees that all will be big along Van Asche, did that influence your decision in any way? She is nodding her head no or just don't care to comment on that?

Hesse: Yes, I think larger trees will help.

Odom: Thank you

Bunch: Can I make another comment? I'm looking at a drawing that Kim submitted some time back and is one of her suggestions as required to offer alternatives, and then I'm looking at the drawing that we see from the applicant. They are starting to be very close. And I too, voted against this earlier. Some of my concerns were other than the tree ordinance, they were commercial design issue as well as Design Overlay District issues. Thru asking a lot of questions and getting a lot of answers and clarifications on many things, most of my concerns have been allayed so I too will support this?

Odom: Any further comments? I didn't mean to cut you short there, I apologize. All right. Call the roll

ROLL CALL

Upon roll call the motion carries on a vote of 6 to 3. Thank you very much.

Russell: Mr. Chairman, excuse me if I may address the Planning Commission and developers for a moment to go on the record?

Odom: I don't think it's appropriate.

Russell: What?

Odom: It's not appropriate.

Planning Commission Minutes

April 24, 2000

Page 67

Russell: Well, I would like for the record, my name is Kyle Russell, I'm on the City Council. As I understand it our ordinances give the developer or an alderman ten days to appeal decision to Council. I'd just like to put everyone on notice so that the chain saws don't go out there tonight. I will sleep on it tonight and decide weather I disagree with this decision enough to file an appeal and if I do so I will do it tomorrow. Thank you

Odom: Thank you Mr. Russell. Staff do we have any further items on the agenda tonight?

Conklin: There is no other business.

Odom: All right, we are adjourned.