

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA CITY COUNCIL MEETING JUNE 20, 2000

A meeting of the Fayetteville City Council will be held on June 20, 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 from the June 1, 2000 and June 6, 2000 City Council meetings.
2. **TRACT #3X:** A resolution authorizing the Mayor to sign a 30 foot easement across property designated as Tract #3X containing approximately 3000 square feet for 16 inch high pressure gas lines for the Arkansas Western Gas Co.
3. **SOFTBALL COMPLEX:** A resolution approving a budget adjustment in the amount of \$350,557.00 for Gary Hampton Softball Complex parking lot.
4. **PARKS MASTER PLAN:** A resolution approving a contract with Lose & Associates, Inc. in the amount of \$100,000.00 for Parks Master Plan.
5. **FIRST NIGHT FUNDING:** A resolution approving funding for First Night in the amount of \$15,000.00.

B. OLD BUSINESS

1. **RZ 00-15.00:** An ordinance approving rezoning request RZ 00-15.00 submitted by Bill Helmer on behalf of Clifford and Mary Clevenger and Mary Silvis for property located at 831 N. 54th Avenue. The property is zoned A-1, Agricultural and contains approximately 2.97 acres. The request is to rezone to R-1, Low Density Residential. This Ordinance was left at the first reading on the June 6, 2000 meeting.

2. **PARTIAL PERMIT:** An ordinance repealing Section 156.04, Section 169.03(B)(6), and Section 170.03(A) of the Code of Fayetteville, Unified Development Ordinance, and amending those sections to prohibit non-final, partial and or phased grading and/or stormwater management, drainage and erosion control permits. This Ordinance was left on the first reading at the June 6, 2000 meeting.

C. NEW BUSINESS

1. **URBAN FORESTRY ASSESSMENT:** A report presented by Natural Path Forestry Consultants, Inc.
2. **BEKKA DEVELOPMENT:** Consideration of a claim by Bekka Development for legal expense and lost parking space revenue in conjunction with the Town Center.
3. **ROLLBACK:** Approval of forms regarding the Rollback case Hicks, et al vs. City of Fayetteville, et at, CIV 97-500.
4. **TOWN CENTER PROPOSED RATE SCHEDULE:** A resolution approving the proposed rate schedule submitted by the A & P Commission for the Town Center

JUNE 20.

	Roll.				
DAVIS					
TRUMBO	✓				
DANIEL	✓				
SANTOS	✓				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
MAYOR HANNA	✓				
	H RA minutes removed from Consent.				
DAVIS	Absent				
TRUMBO					
DANIEL	✓				
SANTOS	✓				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
MAYOR HANNA					
	7-0-0.				
	7-0-0.	PASS			
	RZ. 00-15.00.				
DAVIS	Absent				
TRUMBO	✓	✓			
DANIEL	✓	✓			
SANTOS	✓	✓			
YOUNG	✓	✓			
RUSSELL	✓	✓			
REYNOLDS	✓	✓			
AUSTIN	✓	✓			
MAYOR HANNA					
	7-0-0.	7-0-0.			

	Partial Permit.				
DAVIS	Absent				
TRIMBO					
DANIEL	✓				
SANTOS	✓				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
MAYOR HANNA					
	7-0-0.	left on Second reading.			
	Urban Forestry amendment				
DAVIS	absent				
TRIMBO					
DANIEL					
SANTOS					
YOUNG					
RUSSELL					
REYNOLDS					
AUSTIN					
MAYOR HANNA					
	to design w/section Becca	to design w/section K.K. Development	to design w/section K.K. Development	to design w/section K.K. Development	
DAVIS		absent			
TRIMBO		✓	✓		
DANIEL		✓	✓		
SANTOS		✓	✓		
YOUNG		✓	✓		
RUSSELL		✓	✓		
REYNOLDS		✓	✓		
AUSTIN		✓	✓		
MAYOR HANNA					
		7-0.	6-1-0.		

	254 Kollback.				
DAVIS	Absent				
TRIMBO	✓				
DANIEL	✓				
SANTOS	✓				
YOUNG	✓				
RUSSELL	✓				
REYNOLDS					
AUSTIN	✓				
MAYOR HANNA					
	7-0-0. R.A.S. Town Center. Notes.				
DAVIS	Absent				
TRIMBO	✓				
DANIEL	Absent for vote.				
SANTOS	✓				
YOUNG					
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
MAYOR HANNA					
	6-0				
DAVIS					
TRIMBO					
DANIEL					
SANTOS					
YOUNG					
RUSSELL					
REYNOLDS					
AUSTIN					
MAYOR HANNA					

adj. 8:30 pm.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

● Need
Revised
list of AD Hoc
Committee.

FINAL AGENDA CITY COUNCIL MEETING JUNE 20, 2000

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A. CONSENT AGENDA

- Remove 1*
- APPROVAL OF THE MINUTES:** Approval of the minutes from the June 1, 2000 and June 6, 2000 City Council meetings.
- 81-00*
2. **TRACT #3X:** A resolution authorizing the Mayor to sign a 30 foot easement across property designated as Tract #3X containing approximately 3000 square feet for 16 inch high pressure gas lines for the Arkansas Western Gas Co.
- 82-00*
3. **SOFTBALL COMPLEX:** A resolution approving a budget adjustment in the amount of \$350,557.00 for Gary Hampton Softball Complex parking lot.
- 83-00*
4. **PARKS MASTER PLAN:** A resolution approving a contract with Lose & Associates, Inc. in the amount of \$100,000.00 for Parks Master Plan.
- 84-00*
5. **FIRST NIGHT FUNDING:** A resolution approving funding for First Night in the amount of \$15,000.00.

B. OLD BUSINESS

- approved 8249*
1. **RZ 00-15.00:** An ordinance approving rezoning request RZ 00-15.00 submitted by Bill Helmer on behalf of Clifford and Mary Clevenger and Mary Silvis for property located at 831 N. 54th Avenue. The property is zoned A-1, Agricultural and contains approximately 2.97 acres. The request is to rezone to R-1, Low Density Residential. This Ordinance was left at the first reading on the June 6, 2000 meeting.

2. **PARTIAL PERMIT:** An ordinance repealing Section 156.04, Section 169.03(B)(6), and Section 170.03(A) of the Code of Fayetteville, Unified Development Ordinance, and amending those sections to prohibit non-final, partial and or phased grading and/or stormwater management, drainage and erosion control permits. This Ordinance was left on the first reading at the June 6, 2000 meeting.

C. **NEW BUSINESS**

1. **URBAN FORESTRY ASSESSMENT:** A report presented by Natural Path Forestry Consultants, Inc.

2. **BEKKA DEVELOPMENT:** Consideration of a claim by Bekka Development for legal expense and lost parking space revenue in conjunction with the Town Center.

3. **ROLLBACK:** Approval of forms regarding the Rollback case Hicks, et al vs. City of Fayetteville, et al, CIV 97-500.

4. **TOWN CENTER PROPOSED RATE SCHEDULE:** A resolution approving the proposed rate schedule submitted by the A & P Commission for the Town Center,

adjourned. 8:30

CITY COUNCIL MEETING

JUNE 20, 2000

ADDITIONAL MATERIALS:

1. Minutes of the Special City Council meeting held on June 1, 2000. *(Due to the increase of citizen traffic and phone calls, the minutes from the June 6, 2000 City Council meeting will not be approved tonight. Please excuse the delay.)*
2. Urban Forestry Assessment: Executive summary report.
3. Rollback: Millage Rollback Computation and Certification form.

**CITY COUNCIL
FINAL AGENDA**

JUNE 20, 2000

INSTRUCTIONS:

1. Item C.1, First Night Funding, has been moved from New Business and placed under Consent Agenda, A.5.
2. Item C.2, Urban Forestry Assessment, has been moved to the first item under New Business. *(A written report will be available on Tuesday night.)*

From Agenda Session:

3. Bekka Development has been placed under New Business, C. 2.
4. Rollback Forms have been placed under New Business, C.3. *(Forms will be presented during the council meeting on Tuesday).*
5. Town Center Proposed Rates has been placed under New Business, C. 4.

Attached:

6. Final Agenda
7. Minutes will be available on Monday for review.

**AGENDA SESSION
FOR
CITY COUNCIL MEETING
JUNE 20, 2000**

NEW ITEMS:

- New Business*
1. **BEKKA DEVELOPMENT:** Consideration of a claim by Bekka Development for legal expenses and lost parking space revenue in conjunction with the Town Center.
 2. **ROLLBACK:** Approval of forms regarding the Rollback case Hicks, et al vs. City of Fayetteville, et al, CIV 97-500.

ADDITIONAL INFORMATION

1. **TRACT #3X:** Additional information for item A.2. Tract #3X under Consent Agenda.

*Envir 21st
pollution prevention.*

**TENTATIVE AGENDA
CITY COUNCIL MEETING
JUNE 20, 2000**

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C. A. **NEW BUSINESS**

- more
to consent
1. **FIRST NIGHT FUNDING:** A resolution approving funding for First Night in the amount of \$15,000.00. (need packet)?
 2. **URBAN FORESTRY ASSESSMENT:** A report presented by Natural Path Forestry Consultants, Inc.

(Need report from him)

John HARRISON. - Santos.

Chair - Bob Davis.

3. Bekka Development -

4. Rates for Town Center.

Lisa Lee. - LC. manager.

Copy for Heather

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C A.

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**DRAFT TENTATIVE AGENDA
CITY COUNCIL MEETING
JUNE 20, 2000**

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CONSENT AGENDA

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2. **TRACT #3X:** A resolution authorizing the Mayor to sign a 30 foot easement across property designated as Tract #3X containing approximately 3000 square feet for 16 inch high pressure gas lines for the Arkansas Western Gas Co. This property is a lot we purchased due to the widening of Hwy. 265.
3. **SOFTBALL COMPLEX:** A resolution approving a budget adjustment in the amount of \$350,557.00 for Gary Hampton Softball Complex parking lot.
4. **PARKS MASTER PLAN:** A resolution approving a contract with Lose & Associates, Inc. in the amount of \$100,000.00 for Parks Master Plan.

OLD BUSINESS

NEW BUSINESS

FAYETTEVILLE

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*NO INFO
PRESENTED
BY H. DANIEL.*

2. **PARTIAL PERMIT:** An ordinance repealing Section 156.04, Section 169.03(B)(6), and Section 170.03(A) of the Code of Fayetteville, Unified Development Ordinance, and amending those sections to prohibit non-final, partial and or phased grading and/or stormwater management, drainage and erosion control permits. This Ordinance was left on the first reading at the June 6, 2000 meeting.

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Removed from agenda.

**MINUTES OF A SPECIAL
CITY COUNCIL MEETING
JUNE 1, 2000**

Not approved

A special meeting of the Fayetteville City Council was held on June 1, 2000 at 4:30 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 explained a special meeting had been called for Friday, June 2 at 9:00 a.m. by Aldermen Russell, Santos and Young, at the request of an attorney, Mr. Fulcher. Aldermen Trumbo, Davis, and Austin had called today's meeting because they were unable to attend the meeting scheduled for Friday.

Mayor Hanna asked Alderman Russell if he wanted to start the meeting with Mr. Fulcher presentation.

Alderman Russell replied this was not the meeting they had called. It was his understanding that a separate meeting had been called for 4:30 p.m. for discussion of a stay. It was his understanding this was a separate special meeting that had been called. Whoever called it was in charge.

Alderman Trumbo stated he had called the meeting because he had clients scheduled and worked for a living during the day. 9:00 a.m. Friday morning would not be accommodating as well as the other people who have full time jobs.

Alderman Reynolds stated he was scheduled to fly out of Tulsa at 7:00 a.m. Friday morning.

Alderman Austin stated he wanted to open the discussion by stating he thought it was appropriate to consider the value of a suggestion made by Alderman Russell. They had all been thinking about the value and repercussions or benefits of granting a stay. He wanted to know from the City Attorney if there were any real positives to the City Council and the City of Fayetteville, for granting a stay in this issue.

Alderman Trumbo stated he had set in the court room of Chancery Judge John Lineberger, along with Alderwoman Daniel and Alderman Reynolds. He had heard a chancery judge, with twenty-five years experience, say that the City Council did not have any jurisdiction to impose a stay on this kind of ordinance. He questioned the legalities of the City Council making that kind of decision. He asked City Attorney Jerry Rose to elaborate.

Jerry Rose stated he felt like he was saying the same thing over and over again, and this would be his third day for having said it. He stated his opinion has not changed at all over those three days. He had appeared before the Circuit Court in Washington County and told them this. He then appeared before the Chancery Court and told them what he was getting ready to tell the council. Now he was telling the council for the third time. He explained the City was served last Friday with an appeal. The appeal was from the decision of the Fayetteville Planning Commission to grant large scale development approval to the Steele Crossing Shopping Center. As you well know, that large scale development approval was appealed to the City Council. The council rejected that appeal and the large scale development was thereby approved. The appeal that was served to the City on Friday alleges that the granting of the large scale development violates the City Ordinances, specifically the Tree Ordinance by failing to meet what the plaintiffs believe to be a mandatory canopy requirement and by alleging that the City improperly removed landmark and rare trees. In addition, it is alleged that no tree preservation plan was submitted. They met in an emergency hearing this past Tuesday at 11:30 a.m. Judge Kim Smith was there on the plaintiff's application for the stay of the issuing of any permits under the large scale development pending the appeal. In addition, the developers asked at that time to intervene in the lawsuit. That motion was granted, and Argus Properties and Fayetteville Exchange LLC are parties to this action in addition to the City. The Circuit Court did not grant a stay, and instead transferred the proceedings for a stay to Chancery Court on the plaintiff's oral motion for an injunction. They met the next day, Wednesday, at 9:00 a.m. in the morning. That case was before the Chancery Court on a petition by the plaintiff's for a preliminary or temporary injunction. His argument to the Court was and he believed that the Court concurred with his argument. There were only three ways of which he was familiar with that a stay may be granted. One, was through Section 155.03 of the City Ordinances. Section 155.03 reads, "that a stay is granted of any action pending the appeal or pending an appeal." He told the Court, and he told the Council that section has always been interpreted to mean the stay from administrative proceedings within house. In other words, because he believes that a stay when it was on appeal to a Circuit or Chancery Court, transfers jurisdiction to that Court. The provision only applies too in-house, as to appeals from the Planning Commission to the Council, or from an administrative decision to the Board of Adjustments, or from the Board of Sign Appeals to the Planning Commission, those kinds of in-house things. Secondly, he did not believe it applied here because State law is superior to any ordinance that the city may pass. Arkansas Statute Annotated 1455.101 and 102 state that a city cannot make ordinances that are inconstistence with state law. And accordingly they have consistently applied that 155.03 only to appeals to city

boards and city councils, rather than court appeals, which have their own statutes, and that was where two and three occurred. The other way a stay may be granted was under State Law at the Circuit Court which allows a stay under some circumstances but for whatever reason that stay was denied by the Circuit Court and the issue was passed on to the Chancery Court where they met yesterday. The Chancery Court considered it under the third way that stays could be granted. That is Rule 65 of the Arkansas Rules of Civil Procedure. Rule 65 of the Rules of Civil Procedure provides for a stay and could be granted on the basis of a bond being submitted for the cost to any damages that may be incurred as a result of a stay. Accordingly, yesterday, today it was signed as he understood it, and you should have copies of it before you, is an order by the Chancery Court of Washington County that grants Argus Properties and Fayetteville Exchange LLC is herewith enjoined and prohibited from removal of trees for LSD 00-5.00, the Steele Crossing Shopping Center, pending the trial court decision at the lower court. The plaintiffs have until 12:00 noon tomorrow to file with the court a security bond in the amount of \$310,000.00 in order for that to take place. It was his understanding of the law that the court has ruled under Rule 65 of the Arkansas Rules of Civil Procedure. A court has already ruled on whether or not a stay should take place or not and that is contained in the order. And the court has already ruled on the amount of the bond that should be given in that situation, \$310,000.00. He did not believe that you, as a City Council, have the authority to do anything different from what this Chancery Court has already done. He believed that would be contrary to the law. Apparently the Judge had appeared to agree with him.

Alderman Trumbo stated it seemed to him that this was a maneuver on the part of some City Aldermen to get around the plaintiffs coming up with the required bond. He asked if the City Council imposed their own stay would the City have to put up a bond? He asked if it would be prudent for the City Council to vote to impose their own stay, not to issue permits in this case. Would that open up the City to litigation by the developers in any way?

Jerry Rose replied he did not know how to answer questions like that. They are kind of Alice in Wonderland. He did not know how to answer that. The courts have talked about temporary takings for delays and issuing permits, and those kinds of things. Those cases exist. He was not sure on how to analyze them in that kind of bizarre sort of situation.

Alderman Trumbo stated that his degree was in finance, and that is why he relies on Mr. Rose's legal advice. He was under the impression that it was Mr. Rose's legal advice that it wouldn't be legal, after yesterday's hearing in Chancery Judge Lineberger's Court, for this governing body to have the jurisdiction to attempt to do what some aldermen are wanting the City Council to do.

Jerry Rose stated he did not know what they had asked the Council to do. He had not heard that yet. If it was to grant a stay, he had given his opinion and the Court's opinion on that yesterday.

Alderman Russell stated it was his understanding that the aldermen were not asking for anything. It was Mr. Fulcher who had filed the pleading in the lawsuit asking the City for this.

Jerry Rose stated he did not know how you would file a pleading in Circuit Court asking the City to do anything. Pleading in Circuit Court asks the Circuit Court to do something, not the City. Now, if they are asking the Circuit Court to direct this City to do something; he would welcome that. It would take it off of the council's back and off of his back. They are welcome to do that. If these folks believe that they in need to do something that they are not doing, that they have a duty to perform, that they are not performing, that if we have some decision to make, that they are not making, then tell that to the Circuit Court and have them direct the City to do that. There are procedures to make that happen. He did not doubt the passion nor the fervor nor the sincerity of those people who disagreed with the decisions that have been made by the City. He did not doubt that. But in all candor, they have had the opportunity to express their views to the Planning Commission. And they were not able to persuade them. They had the opportunity to present their views to the City Council. And they were not able to persuade them. They had the opportunity, on Tuesday, to present to the Circuit Court of the County of Washington their position. And they did not agree with them. They had the opportunity, yesterday, to communicate to the Chancery Court of Washington County. And they, too, did not agree with them. And now, apparently, we are back here again today. Now that's fine. That's all right. But let's set the record straight on how many opportunities have been presented.

Alderman Young asked Mr. Rose that in the order that the Judge signed if he said in there that the City did not have the right or authority to issue a stay?

Jerry Rose answered, no sir.

Alderman Young stated that is not what the Judge ruled.

Alderman Trumbo asked Alderman Young if he had been in the court and heard what the judge had said?

Alderman Young replied that the order was what he signed. He did not say that. The order was a legal document. The judge had ruled was on state laws and court rules or whatever. He did not say that this ordinance that we have about stays was not effective. Alderman Young stated then he should have said it in his order.

Alderman Trumbo said that was not what the judge had been asked to do. He had been asked to address the stay in Chancery Court, and it had nothing to do with the City Council.

Alderman Young stated that was right. It had nothing to do with that ordinance. The next thing

he wanted to say was that he had sat there many, many times and people have asked about appeals and Jerry Rose has always gone through the spill of various things from appealing to the Planning Commission up to the Council, and every time whenever he would finish, he would finish with the final appeal to the courts. That was an appeal and that is what this ordinance covers. Now they have a different, new interpretation. Alderman Young stated Mr. Rose was saying that an appeal to the courts was not an appeal relative to this ordinance.

Jerry Rose replied on the contrary! Let me be perfectly clear. I can stand exactly with what Alderman Young just said. The final appeal is to the courts and that is where these proceedings are at this time.

Alderman Austin submitted a resolution to the Council for consideration. He asked the City Attorney to read it.

Jerry Rose stated that this was not his resolution. This was Alderman Austin's resolution. He stated this bothered him very much. He had received a phone call yesterday from some man who believed, very strongly and very fervently, that his opinion changed depending on who asks him the opinion. He assured them that was not true. He could assure them that as City Attorney he was obligated to represent the City Council of the City of Fayetteville. That changed sometimes as you all probably well know. He did not choose his client. His client chooses him in the sense that their majority, at any time, is the majority that he represents. Those individuals on this City Council, however fervent and however sincere they are in their beliefs, he did not represent them if their opinion did not represent a majority of this Council. He did not wish and did not want to be crosswise with half of his City Council members, however, he has a duty to this City to represent the majority on that City Council, whatever it happens to be at any given time. Not only is he bound by his ethics, and he would be pleased if they would read them, when he threw out the word "zeal" it was not for comedy effect, it was that he was to represent his clients with "zeal" and he had no choice but to do so. Now then, the man on the phone asked him a very interesting question. He said, "Mr. Rose, is there ever a situation in which you believe the will of the people, who elected you as City Attorney to this City, the will of the people is so strong that by golly you'll buck what the majority is on the City Council and as an elected official by the majority of people, that you'll go against that majority and you will represent the people?" His answer was yes, he would, but he has not been presented with that situation frankly. It would be very heady wine for your City Attorney to tell you or anybody that by golly I am not going to represent what the majority of the people that elected you to this Board believe is true and right. It would be very heady wine for him to do that. So he will continue to "zealously" represent the majority of this City Council. Those individuals who fail to muster a majority do not get the benefit of his representation in court. He continued, he will continue to give his best legal advice to anybody who asks of it and he will not flavor his advice because he didn't happen to agree with them, or because they happen to go to a different church

than he did or because they happen to live in a different neighborhood or believe in something that he did not believe in. He tried to keep his advice as logical and as reasonable as he possibly could. His guess was that most times the folks that don't like what he saying simply tries to use what he said to their favor and find that is not successful. It has been a very frustrating two weeks for him and he was sure it had been for everyone else. He encouraged them to encourage their attorney to do the best he could in Chancery and in Circuit Court on their behalf. Until then, he would continue doing his job that the people elected him to do, which is to represent these good folks up here, the Planning Commission of this City and what he believed to be, until proven differently, the people of this City.

Alderman Young stated that Jerry Rose was in a very difficult position and he hoped everyone appreciated that. A lot of people did not have a lot of experience with lawyers, of what lawyers do, but Jerry had to represent the City, he had to represent sometimes the Planning Commission, and the City Council and whatever. It is like he says, it is the majority. He did not know how the lawyers will battle it out. He doesn't really know what is being appealed. It could be the final action of the City Council or the final action of the Planning Commission. The Planning Commission voted 6-2 or 6-3, something like that, and that would be a majority if you wanted to look at it that way. He did hope that everyone does take into consideration that Jerry is in a very difficult position. The only other thing he would add to was to remember there was a 6-3 vote by the Planning Commission. The vote of the Council was 4-4 which was a tie, and that's the biggest problem Jerry has.

Alderman Russell stated he would second, in a large part of, what Cyrus had just said. He would hope that none of them would have any animosity toward Jerry Rose or Jack Butt because of the legal position they are taking on behalf of their clients. It is their job to try to find a way to defend what their clients have done or failed to do or are being sued over, in our case. Similarly, it is Mr. Fulcher's job and Mr. Kessler's job to represent the interest of their clients and he would hope that no one would have any personal animosity toward them for that either. He thought the request was for Jerry to read the resolution.

Alderman Austin stated he has asked Jerry to write four ordinances or resolutions since he has been on the Council. Every time he has drafted them and sent them to Jerry Rose, who then put them into legal language that fits the ordinances of the City of Fayetteville. That is exactly what happened in this case. Thank you, Jerry.

Jerry Rose read the resolution. (See attached Exhibit a)

Alderman Austin moved for the resolution's adoption.

Alderman Trumbo seconded the motion for the resolution's adoption.

Mayor Hanna stated that the Council had a motion and a second to approve the resolution that was presented.

Alderman Young asked if the Council was going to have public discussion.

Alderman Trumbo stated he thought that since the Council was an inferior court that they should have the two attorneys make their presentations and then the council could vote.

Mayor Hanna addressed Mr. Fulcher and asked if he would like to make his presentation?

Mr. Clay Fulcher addressed Mayor Hanna and the members of the Council, Mr. Rose, and others. He stated he lived at 683 Cliffside, here in Fayetteville. He stated he was one of the attorneys representing the plaintiffs in the case against the Fayetteville Planning Commission and the City of Fayetteville. He wanted to address a couple of points that Mr. Trumbo had brought up. They have never tried to ask the Court or the City Council to stay any ordinance. In their application they filed asking the City of Fayetteville to stay any further proceedings was not an attempt to get around the Court. In fact, that application was filed before they even set down with Judge Smith on Thursday and he sent them over to Chancery Court. The reason they ended up in Chancery Court was Judge Smith said that was the only alternative. He had made an oral motion and they ended up over there. But anybody that was there yesterday and heard the argument that the Chancery Court didn't even have jurisdiction to do what they ended up doing. They ended up issuing a preliminary injunction pending the plaintiffs coming up with a \$310,000.00 bond. His application to the City of Fayetteville was simply on an existing ordinance. You heard Mr. Rose explain his interpretation of it. He didn't even think under his interpretation the City Council had to do anything. They don't have to vote. All they have to do is recognize that under the current situation this appeal to Circuit Court, which is also covered by City Ordinance 155.01, any further proceedings on this development need to be stayed. He did not think this needed to go to a vote of the City Council. It was his understanding, unless the grading permit has been issued, the developer did not have final approval to go out there and start cutting the trees or do any grading, earth moving or any further development until the permit was issued. They made specific application to the City under that ordinance. Their interpretation was that the City had the right and the obligation to stay any further proceedings on LSD 00-5.00 until their appeal was heard. The other thing that came up yesterday was they told Judge Smith when they were sent back to set a trial date that they would be ready to proceed on this thing in 30 days. Obviously, that would have resulted in a considerably lower bond. Both the City Attorney and Mr. Butt argued that motions were going to be filed, discovery would need to be done and the earliest trial date that they could all agree on was October 30. At this point unless they could come up with the \$310,000.00 by noon tomorrow, they were not going to be able to stop Argus,

if they in fact have all the required permits, from going out there and removing at least some of the trees. He knew there was another faction pending on the redbail hawk, but at least they won't have anything in place. That is why they would at least like to ask the City Council and the City Attorney to reconsider their particular opinion on this particular ordinance that states an appeal will stay all proceedings and furtherance of the action appealed. A couple of other things he wanted to ask about was: (1) if his clients can post the bond and they go to trial in October and they win, do they get their money back, which would be great. He was not sure who was going to put it up but it's not going to cost them any money. Obviously if they lose, they have to give that money to Argus for \$3,200.00 a day in damages. That is not a bad return on their investment. They would at least get paid for not being able to develop during that period of time. The second alternative (2) is that his clients are not going to be able to come up with the money by tomorrow at noon, and if they lose at the hearing, both sides are probably going to go home at that point. This is not a statute, but he did not think that anybody was going to have to pay the other side's attorney's fees. They will have to bear their own cost in fees and they will go on with it. If they are able to prevail in October, what were they really going to win? They were going to win a moral victory and that's it. Because by October, if they don't post that bond tomorrow, Argus is going to go out there and cut those trees. As far as he knew the only penalty, he had been able to find in the City Ordinances was a \$500.00 penalty per violation. He did not know if that even applied. Basically, if they win at that point they will have gone out there with the City's blessing and cut several hundred thousand dollars, maybe several millions, depending upon whose evaluation you put on those trees, and they can't be replaced. It may well be a hollow victory at that point. One thing he was curious about was, if somebody could put a value on it. If Argus was going to come forward and say, okay if we are proven wrong in October, we are going to pay the City and the citizens of Fayetteville back several million dollars for cutting those trees wrongly. He was not sure if they will say that or not but he would like to know what they had to say. He got into this thing at a late hour so he hasn't really followed what's been going on with the development except for getting certain bits and pieces. Certain things do stand out to him, and he believes he needs to say them. (1) This property was rezoned from agriculture to commercial. Basically, it was his understanding there was some opposition to it, but CMN was allowed to rezone this to commercial which took \$2,000 - \$1,000 an acre agriculture land and has turned it into \$50,000 - \$100,000 an acre land. The people that owned this land have certainly made out and are going to make millions of dollars off of this particular development. Even though he has not had a chance to go through all the files in the City, there were tree preservation plans by CMN in 1998 that indicate that this entire grove of trees, except for a piece that was going to go through with a road, which he believed was Van Asche Avenue, were going to be preserved. There are documents in the City Engineer's Office that read that they are going to preserve, at least, 14% of the total acreage in the existing canopy and only replace 2% or 3%. As far as he could tell sometime between the middle of 1998 and when Argus bought this property, all of that went out of the window. One thing he was curious about was that Mr. Milholland who has been the engineer on this project and from reading through the Planning

Commission files, Mr. Milholland said that if he had been aware that the City was going to enforce this tree ordinance he would have redrawn these lots. He said it looked like to him they could have been redrawn and CMN could have said, hey, we are going to make lots of money off of this thing. We are going to set aside these trees and anybody that were going to develop around them we are going to let them know they can't touch these trees. He says, first of all, that he didn't even think the ordinance was in place when all of this stuff was going on. It was pointed out to him on March 16 that the thing had been in effect since the early 1990's. The fact that he did not think that this tree preservation ordinance was going to be enforced, was curious because there was a letter from the City of Fayetteville Landscape Administrator, Kim Hesse, on January 4, 1999, to whom it may concern, and one of the people that it was sent to was Milholland Engineering and Survey. In part Ms. Hesse said, "it has come to my attention that little design consideration has been given toward the preservation of rare or landmark trees." As a major section of the ordinance states, "proposed developments should be designed to maximize the preservation of landmark trees." A Landscape Administrator's job is to uphold this ordinance. Therefore, it is suggested that I be included in the review of these projects in the early stages of conceptual design. Many of the projects recently reviewed could easily be revised to save trees. Why he was bringing this up was that everybody was on notice was that she was going to take this thing seriously, regardless of whether it had been taken seriously before. Mr. Milholland was on notice. Whether or not Argus was on notice, he did not know. They should have been told, and if they weren't told maybe they have a complaint against CMN and Mr. Milholland. There was no reason in the world that he could see that these trees should not have been set aside in the first place. Maybe it's too late to do anything about it now but he thought the citizens and the people ought to be aware that Ms. Hesse put people on notice that this was important well over a year before they bought this property and came in with the first design to save zero trees. If it had been up to them there would have not been any trees saved out there. The reason they think they are going to prevail on this, and the reason they think the City ought to reconsider not stopping this development, is right out of the City Council Minutes on May 2, 2000. Alderman Kyle Russell asked Ms. Hesse if it was her opinion that the 10.03% plan, although she felt like she needed to give her okay for it at the Planning Commission Meeting, was it her position that it complies with the Tree Protection and Preservation Ordinance? " Ms. Hesse said it did not comply with the ordinance." In court they called that admission. He thought if they ever got to a jury they will be proven right, the City is going to be proven wrong, all those trees are going to be gone and everybody is going to be going we wish we had done something. Any questions?

Alderman Santos stated he was worried about any damages the City might be liable for if they don't take action to stay the construction. If the majority of four here were incorrect and the minority of four was correct how many millions of dollars were they setting the citizens up to lose here?

Clay Fulcher stated he was not an expert. He believed Mr. Rose could probably answer that better than he could. He was not sure that the City was going to be liable either from Argus if they stop it, or from the citizens if they allow it and it turns out to be wrong. He thought it was within the reasonable discretion and he believed a reasonable attitude would be to stay the thing. They weren't given the final permits after the 6-3 vote by the Planning Commission because the thing went up on appeal. That was all they were asking for now. They have appealed pursuant to the City Ordinance and the City Ordinance, which, in their opinion, says that all proceedings should be stayed until the appeal has been heard.

Alderman Santos asked Mr. Rose if they would be liable, in case the majority of four were correct for the \$310,000.00, if that was the damage that would be caused to Argus by delaying the development by the stay? Could Argus ask them for that \$310,000.00 if legally one of the voters lost the lawsuit? Why were they betting \$310,000.00 against an unknown number of millions?

Clay Fulcher stated the injunction was between Argus and the plaintiffs. He did not believe the City had any part in that. They were asking the Council to look at the ordinance about a stay because the judge had said the preliminary injunction was against Argus. It does not have anything to do with the City.

Alderman Santos replied unless the City was to grant this stay.

Clay Fulcher answered, right.

Alderman Russell stated he believed what Mr. Santos was asking was if the City stays the proceedings, with no bond posted, could Argus then come after the City for \$310,000.00 if they win their lawsuit?

Jerry Rose replied he thought that it could be conceivable. He really did not know because he had not researched it incredibly well. He knew that he and Tim Conklin had talked, today, on the phone about whether or not this constituted or might constitute a temporary taking. There are some temporary taking lawsuits out there. Temporary takings have been compensated. They are rare. It does not occur frequently, but they have occurred. In some cases they have occurred, a temporary has been found in which a delay, a moratorium has been set on permits and they were refused to be granted because of the moratorium or because they were working on something or whatever. It was speculative. There was some risk involved but he was not sure, at this time, t it exactly what it would be. But there was some risk involved.

Alderman Santos asked that since the judge had set that \$310,000.00, \$2,000.00 a day, would that be the damage caused to Argus?

Jerry Rose replied that amount was not set in stone. In a temporary takings the amount would not necessarily be the liquidated damages' amount. It might be less or it might be more.

Alderman Young stated he doubted that would happen. But, he asked, could they appeal to some other court saying the figure of \$2,000.00 a day was excessive or something?

Jerry Rose answered that yes anybody could challenge it. They did run some risk.

Alderman Davis stated he appreciated Mr. Fulcher's comments. And if he would go back to the Planning Commission Meeting minutes, he would find out that Ms. Hesse started out only wanting 11.5%. The papers have yet to report that. During the course of the meeting, she finally agreed, without being brow beaten, to 10.29% of which nobody has reported that either. Next you will find Mr. Odom asked her on page 54 and 55, "Miss Hesse, do you feel you are in compliance?" And her comment was "yes." There was no comma, nothing else afterwards. The word was "yes." That was black and white in his opinion.

Alderman Santos replied to Alderman Davis that was not right and he was kind of tired of hearing him say that.

Alderman Davis asked Alderman Santos if he had the minutes in front of him.

Alderman Santos stated he had read the minutes and had watched the meeting on TV. He asked "do you think this is a good compromise" and she said "yes." She did not say that it complied with the ordinance. She agreed that it was a compromise.

Alderman Davis stated that because of that the Planning Commission had voted 6-3. He believed Mr. Estes, on the previous page or maybe two pages before that, also made a like comment.

Alderman Austin stated he believed the Council had asked them to work on a compromise.

Alderman Davis added he had asked Ms. Hesse, "if she would say yes that you thought it was a compromise and you thought it was something that could be worked with." Her reply was "yes" in that statement too.

Alderman Santos asked if it was a compromise of the law?

Alderman Davis replied Ms. Hesse had thought she could work with that.

Alderman Trumbo stated this whole situation was the interpretation of our existing tree

preservation ordinance. That is the difference of 6-3 and 4-4 of the governing bodies and the presentations of where we are right now. It was just on the interpretation. He had said all along, and they should look at redrafting it. Part of the problem was the interpretation and the discretion of replacement trees to get to the 15% canopy. It has always been that practice.

Alderman Santos stated the only interpretation was the interpretation of the word "cannot." And "cannot" do not mean "don't want to."

Alderman Davis stated they were not arguing that today. That depended upon the design that was brought forward.

Alderman Russell stated he had a question for Mr. Fulcher and a question for Mr. Rose. He understood that the permits had been issued, and Argus could act upon them if the injunction was lifted tomorrow.

Charles Venable, Public Works Director, answered that was correct. The grading permit had been issued. However, there were some things they had to do. They had to have a preconstruction conference. They had to make sure that everything was in place to preserve any trees that were out there. If they did that then, they could begin grading, without removing any trees.

Alderman Russell asked Mr. Fulcher if it was his position or his client's position, that any development, any removal of trees, and any pursuant to any City permit, were in violation of the city ordinance that he had cited us?

Clay Fulcher answered Alderman Russell "yes."

Alderman Russell asked Mr. Rose, regarding the permits that had been issued, if an administrative appeal would stay the proceedings.

Jerry Rose replied he really did not know but that he would look into it.

Alderman Santos stated he wanted to make another comment. He was upset about this meeting being called. He and Aldermen Young and Russell had called a meeting for 9:00 a.m. tomorrow morning, giving more than twenty-four hours notice, so the public would be aware, so the attorneys could be here, so the press could be here. He thought to have called this meeting with only two hours and fifteen minutes notice was an attempt to subvert the democratic process and hide the public's business from the public.

Alderman Austin stated he wanted to respond to that. The media was there. They had TV

cameras operating and it would be shown on public TV. There was nothing being hidden. They were debating this issue in public. He resents Mr. Santos making that implication. He thought if Mr. Santos wanted to talk motive, how about having a meeting at 9:00 a.m. when most of them were employed and working. He added they had agreed a year and half ago that they would not call meetings that required their votes until after 4:30 p.m. in the afternoon. Every alderman had agreed to that. They had violated that trust. It had been an informal agreement.

Now committee meetings, receptions, public recognitions, and things like that were not included in the agreement. He called Alderman Trumbo on this issue when he held the tour of the senior center before 4:30 p.m. He had not been able to make the tour.

Alderman Santos replied he had no memory of that.

Alderman Young stated he did not remember that. He would certainly agree that most meetings, like this needs to be at 4:30 p.m. or 5:00 p.m. If it had come up, that was probably what he said. But he would have also said that occasionally there would be other reasons to do it. The reason for the meeting at 9:00 a.m. tomorrow was because there was a deadline of 12:00 noon.

Alderman Austin replied that 4:30 p.m. had been open. He had checked. This meeting room had been open. As a common courtesy to everyone who was working the meeting should have been held at another time.

Alderman Young stated he worked too. He had left a preconstruction meeting to come here. There was also a courtesy to the press and the public to give twenty-four hours notice. Yes, the ordinance, the rules and the procedures say two hours. I have always said that was too short.

Alderman Santos added that was barely legal.

Alderman Trumbo stated with all due respect when he had been called initially by the City Clerk he had asked her to see if a meeting at 4:30p.m today would be more accommodating because he had a client that was scheduled at 9:00 a.m. tomorrow morning.

Alderman Young stated, that was not what had happened. They called us and said it was set.

Alderman Russell he had gotten a message that three people had called an additional special meeting at 4:30 p.m. today in Room 219.

Alderman Santos stated he would not have gotten that message, if Kyle had known that he was in a meeting and had the front desk receptionist come and find him.

Alderman Trumbo asked Alderman Russell if the whole emphasis for tomorrow's meeting was

whether or not the Council would vote on the stay. He was of the opinion that the people that believed the way that he did would be better served to know today, rather than tomorrow, when they had a 12:00 noon deadline. He was considerate of those facts.

Alderman Russell replied he thought it would be better to know before 12:00 noon. That's why Alderman Young and he decided that 9:00 a.m. would be better than 11:00 a.m. or 12:00 noon tomorrow, but it had to be done.

Mayor Hanna addressed the aldermen and stated that they had gotten off of the subject.

Mr. Fulcher asked if there were any questions.

Alderman Davis said he had a question for Mr. Fulcher. Why was it that his people could not come up with the bond money?

Clay Fulcher answered that most of his people were working citizens and \$310,000.00 was a lot of money to come within 48 hours. He guessed if they had a month to come up with it, they could. If you want to give them a month, they would certainly try.

Alderman Trumbo stated that was Chancery Judge Lineberger's decision.

Alderman Santos stated the Council could make that decision.

Mayor Hanna stated no, the Council could not make that decision.

Alderman Young stated all it was, was a stay.

Alderman Trumbo asked if they had faith in the City Attorney's opinion or if they wanted to go contrary to what he recommends.

Alderman Young stated that was what they were discussing.

Clay Fulcher stated he had one other comment and then he would sit down. This was obviously the 11th hour and by tomorrow there may be some trees removed. He encouraged Mr. Rose and Mr. Butt and Argus and anybody else who might have any influence in this case, if there was any room for compromise, his plaintiffs, clients were certainly willing to sit down. They have one faction that says they have to save them all. Argus says they can't save one more. There was always room for compromise and if something was not done and things stood as they were today, and they go down and cut those fifty-seven trees down, there were going to be bad feelings for a long time in Fayetteville. He hated to see that.

Alderman Trumbo thanked Mr. Fulcher for the way he handled this. He had set on a board at the University of Arkansas for seven years with Mary Alice Serafini, and when she filed her lawsuit he had called to thank her for doing it so they could get it off the streets and into the civil courts. It was okay to debate. He was tired of getting calls at his house and cat calls at Farmer's Market and at concerts. It was okay to disagree. But, the cat calling and the vulgar phone calls and messages on his answering machine were not a part of democracy.

Jack Butt addressed the Mayor and the City Council and audience. It disturbed him that this City had become pulverized. That a board of eight people, whom he believes to be and in some cases knows to be, honest, hardworking, smart, well meaning, well informed, attentive and caring about their jobs, have divided into a four-four split where we, On one side our property rights under the United States Constitution and the Declaration of Independence are as essential as life a liberty. They have to temper that with the police rights that any community has to make sure their citizens are safe and secure and that there is reasonable access to places. In Fayetteville the tension between this police power, which is really more of a quality of life than actual survival, as confronted with property rights has completely polarized the community. He has struggled since the beginning to find and advise his client and, search with his client a compromise, and in some cases there just is not one. And you have to go forward with what you have and keep looking for a compromise, but what happens, happens. He was sorry that it has come to this. He believes that his client's cause is just. He is paid to represent it, but he wouldn't have represented it if he did not believe that. The half full part of this situation is that Argus came to this community with no preconception of what it would take. There are communities in the United States where they say they don't care what you bulldoze down. They don't care what your building looks like. They don't care if you have any access streets or sidewalks, or scenic easements. And in that case, Argus, like any one of us, is out to do a job, to build a store and make some money. Each of us goes to our job and do it our own way, and that is what they do in a community. They are not going to plant three acres of trees, if they don't have to. That community doesn't, by its police power and quality of life except it, and that community is happy with it. Now they come to Fayetteville and their only preconception is that they are going to follow the rules. They come in here and learn through a process, to their surprise and was sure somewhat to their disappointment, that they can't take fifteen acres and bulldoze it flat and build a building. Indeed that is probably the most profitable way to do it from purely an economic standpoint, but they discovered that Fayetteville has significant police authority, that it is converted to quality of life and preserving trees, and in essence he perceives that Argus has at the cost of about \$300,000.00 an acre gifted the City of Fayetteville and it's citizens three acres, three football fields of contiguous old growth trees. They paid a million dollars to buy us all a city park and they are going to build a parking lot so we can go park and go close to it and sidewalks. They are going to put trees throughout that parking lot and along all the sidewalks. There may be one or two people in this audience, and he has lived here practically his whole life. He did not know that grove of trees were there. They added nothing to my life until this became

contentious. Well, now he can drive out there, if he wants to shop or if he wants to sit in the park. He can shop and his kids can. We have a park to sit in. Three acres, a million dollars cost to Argus. He is going to park his car in a tree-covered parking lot. He is going to drive in through trees lined driveways and there is going to be a buffer of trees and plants between that thing and the bypass so they don't look like the northeast quarter between New York and Washington, D.C. He has been out to those trees. He went out and talked to Mary Lighheart. He looked at the trees. He wandered around and looked at them. He loves trees. He doesn't love them as much as his kids, but there is a part of what is going on around here. They are beautiful trees. They are gorgeous trees. And when they fall down that will sadden him. But Argus paid \$300,000.00 an acre for the right to develop that property and nobody else in this room even thought of doing that. He can't go to anyone in this room and say I don't like your Victorian house. It stinks. It destroys my quality of life. I want it to be red brick. That is private property and however you mow your yard and where you put your fences, and whether it is a chain link, and until the community decides at large what the standard is, you get to do what you want to. So Argus said they would meet the standard. The standard proved illusive. And at least eight prior major subdivisions, since 1992, significant variances were given. They cut the trees back to zero back then and that was okay. But Argus said they were going to play by the rules. They come in, and ultimately the Planning Commission approved 6-3. The City Board, under its rules did not overturn the Planning Commission. And what happens is in our society, whether you are arrested for speeding or for your dog barking, or you sue a neighbor for running over your cat, or you get in a car wreck, there is always a due process decision. It might be before a legislative body. It might be before an administrative body. It might be before a court. But every citizen in this country on every contention has a day in court. Once that day in court is accomplished, then you are vested with and presumed to have the rights that process brought you. Argus went to the Planning Commission and it decided for them. Now at that point they were not allowed to cut trees because within the City, which said they wanted to make sure nothing happens until they have looked at this a second time. So they came in here and most of these people, and him, and all of you went through the process of trying to figure out what the Planning Commission had done. This Board, and he understands it is a 4-4 vote, but under the prescribed rules and procedures, the decision was to sustain it. Now at that point Argus had some invested rights. This popularly elected City Board, by it's prescribed rules upheld Argus. They have paid three and a half million dollars for that property and another hundred thousand or more in engineering fees. They have spent, he appreciated what Mr. Kessler was trying to do in saying maybe they ought to go look back at the roots of this, but if we want to that we are talking about thousands of man hours, tens of hundreds of man hours of city staff time, tracking planning time and all that. The final day in court was here. They are vested with the rights and they are saying they want to move forward. Now throughout our system, again, whether it is an appeal from this Board or Municipal Court or the Circuit Court of Washington County or the Chancery Court, once that right is vested there is a basic rule. It is in some kind of law everywhere for every proceeding that says once this decision has been made for or against you, if the person who suffers from that

decision doesn't like it they get another bite at the apple. They get to appeal it somewhere. It happens whether you go to the Supreme Court or Municipal Court or from Circuit Court to the Court of Appeals, everybody has an appeal. But the thing is that once this decision has been made in the primary tribunal, the person that wants to prevent the person that won from collecting their money, or sending them to jail, or developing their property, has a to secure them to make sure that if they win again, because there is a presumption now that Argus is right, they have won twice and the legal presumption as well as the practical presumption, most cases appealed are sustained on appeal, is that Argus is right. So if Argus has to hold up, you say is this going to cost you anything, and if is, whoever is challenging that has to make good on it. They want to make sure if they go forward and they lose that their bankruptcy or their trip to Mexico, or their death or whatever isn't going to keep you from losing all the money that you sustained while this appeal process goes on. Now in this case, all the lawyers would admit that the process prescribed for this is confusing and somewhat conflicting. If you want to get twelve of the best lawyers in this city, or in Arkansas, up here, you'd probably get twelve opinions. But right now this City Board is operating on the opinion of it's elected attorneys, with whom I agree. It is operating based upon the declared decision of a chancery court judge of this circuit who said he didn't think, especially once it's entered its order, that this Board has any jurisdiction. Is Mr. Rose wrong? Is Judge Lineberger wrong? They might be. But they are the guys calling the shots right now. The outcome of that is Judge Lineberger said to his client that they would not cut any trees until the Circuit Court has had a full chance to do this. And they said to them that they were sitting on a three and a half million-dollar investment. Now if I ask everybody in this room to take your money out of savings, out of the stock market, out of your business or take it out of wherever you have it to make some money for you, and you go stick it under your mattress for six months, if it's ten dollars, that is no big deal. If it is three and a half million dollars, Argus is losing between the interest it loses on that money that it could have made, and the rent that it is suppose to make as soon as they finish which is about \$2,000.00 a day. That is what he told Judge Lineberger and Judge Lineberger said they were going to make them wants to stop this tree cutting pay reasonable amounts so if they lose, because right now Argus is presumed to be right, if the people that appeal them lose, they want something to make Argus whole. And that is going to be, as it turns out, \$310,000.00. Now that's just the way the law goes and he didn't care what tribunal you are in and if you lose and you are not happy and you want to appeal it and you don't want the judgement to go into force right then, whether it is to send you to jail or whether it is to collect the judgement, or whether in this case it is to proceed with the development, somebody has to pay to protect the person who has been vested by these duly elected boards with that attorney to move forward. He doesn't think he was telling anybody there anything they don't know, he was just explaining that this is a rational, fair process that is contemplated by the law. The unhappy part, of course are, if the people who don't like the trees coming down can't post \$310,000.00, perhaps the trees will come down. At some point everybody can't be happy about everything and you have to measure and come to hard decisions about rights, property rights vs. city rights of police power and quality of life. That is where it is.

Now he is not going to address whether this Board has the legal authority to enter a stay or not. He does not think they do. Mr. Rose doesn't think they do. Judge Lineberger doesn't think they do. Call in six more attorneys and get their opinions, they may think it does have that right. He doesn't think they are going anywhere with that because nobody is ever going to agree. The law is confused. He thinks Mr. Santos asked an interesting question. What happens if the Council imposes a stay and Argus cannot go ahead? He has cautioned Mr. Kessler that \$310,000.00 is a modest estimate of what Argus will stand to lose. It has a contract with the tenant to go into that space it rent. He has not seen the contract so he cannot tell what the details are but he knows there are outs in that contract, and if construction does not proceed at certain time or does not reach certain levels, then that tenant can go out. Now Argus is sitting on a \$350,000.00 piece of property that it can't find a renter or a buyer for because they don't know when it will be completed. Now if that happens, Argus's damages are at least, or what he believes their damages are going to be, isn't going to be \$310,000.00. It's going to be three, five or six million. He has cautioned Mr. Kessler if this goes to Circuit Court and if his clients, some of whom he knows and respects, and he thinks are good people, if they lose, Argus will be suing them for the millions that they have lost because they have decided to impose their will on Argus. Now if this City Board decides that is going to impose its will on Argus and take the risk that the Board is right and Argus is wrong, and imposes a stay, he doesn't know what the law is, but he is sure his client will say to him they are not going to happily sustain the loss of a five million-dollar client, and if you can bring a civil rights action or a condemnation or constitutional action against the City because they have cost us this client, because they have told us to stop when their action was to tell them to go ahead, he thought that this was a very fair possibility. They are playing with really big chips here and he knows once those trees are gone, they are gone forever. To the extent these trees are lost what you have already gained, you have gained the promise of the Mayor that has already been put into effect through two ordinance proceedings and inquiry, he believed the City will come up with several hundred thousand dollars to buy conservation easements and tree forests. He believed that the City was going to clarify this ordinance so that these kind of unhappy polarizations will not happen again. He believes Fayetteville will go forward looking for trees that it can get contributed to it or it can buy out of these tax monies and save. And to him, win, lose or draw, he thinks trees have had a major, major victory in Fayetteville as a result of these discussions and confrontations, and he believes there is something productive to it. As it stands now, my client's position is they paid for the property, they paid a lot of money for the property. Nobody else could or would buy it. They followed all of the rules set forth for them. They have the decision of two boards delegated to make it about what they should save or not that they should save it. They are obliged to go into court on appeals and defend that. If they win; they are going to have lost a lot of money by virtue of not having done anything on these trees. That is what the judge openly said, you can't cut the trees but he was going to give them some protection. That is how we cut the baby into. Nobody is happy with two half babies. But that is what they have in this case and his client feels he has followed the rules, obeyed the law, and has done everything that the duly appointed boards and

agencies of Fayetteville have asked them, and they are ready to proceed. He believes that not only is it wrong for this city to attempt to set a stay, he believes it is financially dangerous for it to do so. He is unhappy to make this speech because he wants Argus to have their property rights. They have paid for them. Those are lovely trees out there but he doesn't tell everybody in the room whether or not they can cut their dandelions or shrubs or bushes because he likes them or don't like them. To a certain extent the City has told Argus they cannot cut at least three acres of trees, you have to plant four more acres. There are going to be more trees out there when it ends then when it was when it began. That is not perfect but that, he believes is the compromise that the law directs. So he guesses in concluding he thinks it would be illegal, inappropriate and subject the City to a high degree of financial liability if it were to impose a stay. He believes the court has already reviewed that and said here is the stay, here are the conditions. He didn't think the City of Fayetteville said that the judge has the right to do any more. He would be glad to answer any questions.

Alderman Young stated that Mr. Butt had stated that when Argus came in they wanted to abide by the rules, but the first plan they submitted the buildings had been crammed together and they were virtually eliminating all the trees, which did not comply with the ordinance. He felt the larger issue that Mr. Butt mentioned was the property rights issue. He said Mr. Butt was dead right. He feels that the people of Fayetteville owned property in this City. This City was the property of the citizens. He believed that no one from out of state, who didn't live here had the right to come in here and tell the people of Fayetteville how their City was going to be. He believed they don't have the right to come in and say this city was going to be a desert rather than have trees all over it. And that was what you were arguing.

Jack Butts said, Cyrus, excuse me. The developer has the right.

Alderman Young replied Mr. Butt had stated that they did not have the right to tell somebody about their dandelions. The developers, especially the ones from out of state, did not have the right to come in and tell the citizens of Fayetteville how their City was going to be.

Jack Butt told Alderman Young that he had misunderstood him. The developer had come in and started submitting plans and submitted and submitted until finally the City of Fayetteville said to them this was the way it was going to be.

Alderman Young stated he understood there were compromises. There were also proposals. All they had to do was give up an out lot and they would be building right now, but they kept saying no, no, that they had a better idea of how Fayetteville should be without trees.

Alderman Russell asked Jack Butt an unrelated question. Is your client Argus the property owner of record here?

Jack Butt replied no, Fayetteville Exchange LLC which is a Georgia Limited Liability Company registered to do business in Arkansas as the property owner of record. They have hired Argus and given them written authority to develop the property in their behalf.

After discussion the council agreed to hear public comments.

Mary Lightheart, 2119 Ledford Road in Goshen, stated she paid Fayetteville taxes. There are legal questions that must be resolved in the courts surrounding these 81 trees. If the courts in the end determine that these trees are to be saved and the trees have already been cut down, they cannot be put back into the ground. How will you, City Council members and you, Mr. Mayor, be able to live with yourselves and face the people of Fayetteville if you allow this to happen?

Dan Coody, 1422 East Rodgers Drive, stated I just wanted to address the resolution that is before you right now. Fayetteville, of course, is in crisis and this community is bleeding like he has never seen it bleed before. We have been through the incinerator crisis and everything up to date, and this is bigger than most issues that we have seen come before the City Council. You know that with the incinerator crisis, we had and still have ill will and hard feelings about that ten years later. This to me is much larger than that. To say that this community needs to get past this and go on, and take all of the complaints to the court, he believes is skirting the City's responsibility here because this crisis is a City of Fayetteville crisis born some part within the City government, on City laws, on City time, with City taxpayer paid folks, staff, elected officials. This is a City crisis. If there is anybody that has the power and the responsibility and the obligation to resolve this crisis, it is the City Council. It shouldn't be sent to the court to be resolved. This community deserves better than what we have been getting as far as people trying to come back to the table and resolve this issue in an amicable way as possible. As long as these trees are still standing there is still a chance, Mr. Mayor or you, City Council, to try to get folks to come back to the table and resolve this for the good of the community because if this situation persists and the trees come down regardless of how you feel about the 81 trees, this situation will be a heartache in this community for years to come, and Fayetteville simply cannot afford another heartache like we have had in the last several years. I would hope you would not wash your hands of this and send this to the courts for them to sort out the City's problem. I think the City has an obligation and a responsibility to do that for us and soon. Thank you.

Alderman Trumbo asked Dan, if he was saying that the City Council should go against the recommendation of the City Attorney on this issue?

Dan Coody replied I am not worrying about details. About who works and who doesn't work, the times of the meetings. That to me is trivializing the entire issue. The issue is that we have a massive crisis in our town here that needs to be addressed. As far as what Jerry has said, I am sure Jerry could find a way . . . if you found a way to say Jerry we want to sit down and discuss

this and try to resolve this issue, I don't think would say no. Would you, Jerry?

Jerry Rose answered no.

Alderman Trumbo stated Jerry's legal opinion was that the Council does not have the jurisdiction to impose a stay based on our city ordinances.

Dan Coody stated he would hate to use that as an excuse to do nothing.

Alderman Davis said he asked the question earlier to Mr. Fulcher about why can't the people raise the funds that are required. He explained an injunction bond was only going to cost them somewhere between \$7-10,000.00, somewhere in that area. It was not \$310,000.00 at this point. In time if you can find somebody in the surety business to issue that, you are not really looking at possibly \$310,000.00 at this point depending upon what surety company you can get to write this bond for you.

Dan Coody said he was afraid that Alderman Davis misunderstood his comments. He was not really dwelling on the courts and what was legal and what was the letter of the law right now. He was more concerned about what is right. What was fair and what was just and what was good for this community. And what we were doing right now was not good for this community. This should have been resolved months ago. It had not been resolved and that was what has brought to this critical crisis stage, and to continue to ignore this was going to be a generated long term problem, much longer than these 81 trees coming down is going to do. These 81 trees represent more than just a few trees out there at CMN Business Park. This was the focal point of a lot of things that have gone wrong in this town and a lot of folks have just . . . This is a focal point of a lot of rage. Obviously this community is in crisis and we need to deal with the root core problem.

Alderman Trumbo stated he respected Mr. Coody's views but he looked at it as though it had gone to court, a stay had been issued. They have until noon, so the only legal thing for him to do, he believes, was to try to keep the City out of court and not have to pay a lot of money. He gave a lot of credibility to Jerry's recommendation that if the City Council were at this point after it had been to the Planning Commission, City Council, Chancery Court, and where they were today with a deadline of tomorrow, that if they voted to impose a stay, that they would be opening up the City to a lot of liability.

Dan Coody stated he was not asking them to oppose the stay. Basically, what he was asking them and Jerry to do was to listen to the majority of the City Council. The majority of the City Council did have the power to ask Jerry to please get in touch with Argus and with Kohls and with everybody else involved, and say as a last ditch effort, can we please come together to

resolve this for the benefit of us all? That is not incorporating a stay that is not saying you can't do anything but the five people on the City Councils, which constitute a majority, could ask in good faith to sit down around the table one last time and try to hammer something out to where this community can start to feel that they matter.

Charles Kessler, 13602 White Oak Lane in Fayetteville, I just want to make a few quick points. I guess I am basically on the same side of this thing as Mr. Fulcher, with the exception that my lawsuit is in Federal Court and it concerns the redtail hawks on the property as opposed to being in State Court and concerning the actual appurverting, regarding the development itself. I do want to correct a couple of mis-impressions that I believe the City Council may be laboring under. The first is to address Mr. Trumbo's comment about what Judge Lineberger did and didn't do in the Chancery Court proceedings, Mr. Rose and Mr. Butt specifically asked Judge Lineberger to rule and order that the City Council did not have the jurisdiction to issue a stay. Judge Lineberger in open court specifically refused to enter that order. That is why it does not appear in the written order. Judge Lineberger left it open for the City Council to go ahead and issue the stay if that is what the Council decides should be done in this case. There has been talk about state law and local law, that sort of thing. Well, in this case there are already two injunctions. Federal Law, State Law, and Local Law. In this case there are already two injunctions, one from the Federal Court. Notwithstanding that fact, there is another one from State Court. And if this City Council acts, it is going to be the same thing. Notwithstanding those two injunctions, the City Council will enter its own. There is no conflict between those. They don't necessarily set a floor saying that you all can't do anything different from this, they just each issue a certain level of protection. This City Council has a complete discretion to go ahead and perform its duties and enter the stay. Now the reason why we are sitting here talking about it and everybody is kind of confused, is Mr. Rose and Mr. Butt has both already informed the Council, and frankly Mr. Fulcher, I can't speak for him but I feel very sure he would agree with me, that this procedure is rather convoluted and difficult. There is basically three ways that a stay can be gotten. One, you can get it from the State Court when you appeal, that's been done. Judge Lineberger listened to the plaintiff's side in that case, the appellants, in that case. He said given the nature of this dispute, I think it is something that I should immediately enter a preliminary injunction on. That's happened. It is also important to note that the Federal court did the same thing when they were presented with the exact same facts. Two different courts have heard this thing. Both of them have said we should do something to preserve the status quo until we get everything sorted out. If this City Council takes the opposite position, this will be the people that have heard this and decided we are not even going to take the minimal step of preserving the status quo while the courts sort it out. And everybody agrees that it needs to be in the courts. All we are asking today is that this City Council preserve the status quo while the courts sort it out. Now the importance of this is basically that as Ms. Lightheart got up here and said once the trees are bulldozed down or cut down or whatever happens to them, once they are gone, they are gone. Given the current lay of the land in Fayetteville, and the way things are

now, there is no way that the trees can ever grow back to the size and diameter and have the characteristics that they have. They are not going to be the same kind of habitat for wildlife. We are going to talk about that over in Federal Court tomorrow at 9:00 a.m. and tomorrow afternoon at 1:00 p.m. If this City Council doesn't act now on this procedural matter, it doesn't matter what your views of this case are, it is a procedural vote, and I suppose specifically to the people that were in the majority at the previous Council Meeting. You all can take the position that all of the merits that the development should go ahead. We may disagree about that but the courts are going to figure it out. But in the meantime, while we sort it out, as a procedural matter, take the step of preserving the status quo so that we don't kill everything off that we can't fix later. Money can shuffle around, but you can't put the trees back later. Any one of you, assuming that the votes were to go the same way that it did at the first City Council Meeting, any one of the four of you that were in the majority at the first City Council Meeting or the Mayor, has the power to stop this from happening, and if you all refuse to do it, any one of you can stop it, and that is something that I think the voters of Fayetteville will remember.

Margaret Mycue, 911 West Hughes, where there is a will there is a way. From my point of view there are four council people and the people who are asking for solution and that are really taking responsibility. If you don't take responsibility, are you attorneys or whatever, if you don't take responsibility, if you are not looking for a solution, you are not going to find one. One is not going to come up. The amount of money that we have seems to be the gauge of our success and the amount of justice that we can afford to buy. We are now consuming fourteen generations worth of stuff in one year. We insulate ourselves and isolate ourselves from nature and bury ourselves alive in our stockpiling, wealth and material possessions. Mother Earth has always been easy pickings. Who defends her and our connection to her? When is enough, enough? When will some City Governments stop developers, stop industry, and become soulful and develop a conscience? In American tradition, all creation has something to teach us. The red-tailed hawk teaches us to rise above the immediate situation and glide somewhat detached, looking down at the larger picture. If we each ask ourselves, what could happen to our Ozark home if growth continues at this rate and in this unconscious, unsustainable manner? We can all learn from red-tailed hawks and we can know what is ours to do. The people know what is theirs to do. Some of us know what is ours to do. Can we all get together on this and know what is ours to do?

Representative Jan Judy, 202 West Maple, stated she always had a strong commitment to the environment and to environmental issues. I think most of you know that. I have been around the community a long time and support environmental issues in protecting what we have here in Northwest Arkansas and our City. Because this has pretty much been a local issue and not really involved at the State level, I more or less have been a bystander watching, reading and keeping up with the issues. It has gotten to the point where I have been getting a lot of phone calls. A lot of my constituents are very concerned about this issue as I have always been about protecting

what we have in Fayetteville and keeping what we love is so dear to us safe. This morning after talking to some of the citizens last night until very late, in the middle of the night, and to some more this morning, I promised to see what I could do. I did make a call to the Attorney General's office and spoke with Charlie Moton and explained as best I could what I did understand. He did have some concerns and agreed to look at these issues for me. I faxed him the information about all of the suits, the injunction and all of that information, and he has agreed to look at that and get back with me tomorrow. I would hope that the City, the Council members, would make every effort to make sure that we don't make irreparable decisions this afternoon that we cannot change in case there is an issue that we need to be careful about. We need to make sure that we are not doing anything that is not exactly right and that there is anything that we could possibly, the City could possibly be in trouble for. I agree with the citizens that once the trees are gone, there are gone. We have to really be careful that we are making every effort to protect what we have and what we feel so dearly about here in Fayetteville. Thank you.

Missy Leflar, 1717 West Center, as far as Attorney Kessler said, I would like to say ditto, so I am no redundant and waste your time. I do believe that concurrent stays. The legal term is concurrent. Courts, Trent referred to this as an inferior court proceeding. Courts can have concurrent jurisdiction oftentimes. I was there, too, when I heard Judge Lineberger's conversation. I was over standing by the door in the courtroom. My take on it was that he was talking in terms of a stay, in terms of an injunction. Of course, this proceeding, this tribunal has no authority to issue an injunction, but it does have authority to issue a stay on grading permits. That is way different from an injunction, which in Arkansas only a chancery court can issue an injunction. That is why the Circuit Judge couldn't do that. It can only be in chancery court. I just wanted to clarify that. Judy has the State Attorney General's office looking at this and the City's financial and legal liability on both sides of the issue. Would there be potential or seriously potential legal liability as to Argus Properties and Fayetteville Exchange, because Mr. Butt got up here and talked about what I took subjectively as an implied threat lawsuit against the City by his client? Could the citizens sue us? Might it make sense? And very little damages and yet preserve some City financial liability to hold off on the grading permit for a period of say one week to give you time for No. 1, get the Attorney General's opinion. No. 2, find out and give Attorney Rose opportunity to investigate as to the City's potential legal liability if Argus or Fayetteville Exchange decided to sue. My understanding from Mr. Butt's earlier argument, he talked about a constitutional taking. Well, you will recall an Eighth Circuit Federal Case I attached to a two-page letter I sent the Council before the May 2 meeting. That circuit, as you know, is a federal court where you appeal Arkansas decisions, and it clearly, clearly stated that the Eighth Circuit considers when a property owner buys property subject to a city ordinance, and it knows about it on the front end when they purchased it, it cannot over claim that what that ordinance prohibits is an unconstitutional taking. I think if Attorney Rose had opportunity, say a week's time to research that, he would find that was the case, and you wouldn't be nearly as

concerned about a potential lawsuit by Mr. Butt's clients. I think that would be the case and as you know, for what that is worth, I'm an attorney. Like he says, you can get six attorneys in a room and come up with six different opinions. It might make sense if you could buy yourself a week's time. What kind of damage could the City incur from anybody in a week? It would give you a week to find out what our Attorney General's going to say and a week to consider these other two side issues. I just wanted to make that suggestion here today.

Joanie Connors, 885 Fritz Drive, I have been listening to you all for an hour and a half talk about money and procedures. Money and procedures. What are the procedures to follow? What does money say? What might it cost us? Who is paying what? And it seems like that is your concern. When are you going to listen to the citizens of Fayetteville? That is what I wonder about. Thank you.

Lou Weiss said she was not really an activist, and it was taking a lot of courage for her to be up here. What I want to ask the people who have voted against to take the trees down, in all my activities that have gone on about this issue, the only people I have met are people who care about not tearing down the trees. Where are the people who are on the other side? Have you had people calling you saying that they want this development and they don't care if the trees come down? Why are you, whoever, I get you all mixed up anyway, the ones who voted to do this development and take down the trees? Are your constituents all calling you and telling you this is what they want because most of the people here that I have met are all for not taking the trees down for various reasons which I will not go into all that? It has all been said. What I want to know is our people asking you to have this development? Do we need another store in Fayetteville? Would you give me an answer, anybody?

Alderman Trumbo answered and said he would just speak for himself. He had a lot of constituents that he saw at church, United Way Board Meetings, University Board Meetings, and various other civic and charitable organizations, that have said they appreciate him listening and hearing the pros and cons, and formulating a decision based on the legal opinion of the City Attorney, and what he believed was the right thing to do. He had heard a lot, and had heard both sides, and he had listened to both sides. He had probably 90% of the people that he had talked to had been in favor, but a lot of them were at home with kids, at meetings and didn't want to come down to a hostile environment to voice their opinion because it had been hostile. He has had calls at his house and at his office and some nasty things said to him walking in and out of City Hall and at different places, so it has just really been a heated debate that a lot of people didn't wish to come down and voice publicly.

Lou Weiss said she had never done this before but she came down here and she didn't know if you would call it picketing or whatever and asked people to sign the petition, and it took all of her courage to do that, but this is so dear to her heart that she has come out and done this. She

has not been feeling well. She has been sick and she came out anyway because she feels so strongly about this. And if the people who have talked to you want this development, want another store, want more money, why aren't they here? How many people here are for taking the trees down? There is not one person. Why aren't the people who feel strongly the other way down here? Why don't they come down here and voice their opinion?

Alderman Trumbo stated they had elected him to take care of Ward 3. He did not want the city to get into litigation. They needed to listen to their City Attorney. They needed to sit down and re-draft our Tree Ordinance and then go forward with a stronger tree ordinance. That was what he is hearing from his constituents in Ward 3.

Alderman Austin stated most of the people that had contacted him were for order and procedure. They wanted us to follow an orderly plan. He had probably twenty-five phone calls or letters, and many of them are out in the audience, and probably eight or nine of those are from Ward 1, and they have let him know that. He added, when you run for office you are going to be opposed. If you get elected, you are going to be opposed more and your judgement will be publicly analyzed and critiqued and sometimes encouraged. That doesn't bother him. He did not lose sleep over that. If they started stopping him in the grocery store and saying ugly things to him, it might bother him. It would bother him if they started saying things to his wife, his family or doing things like that. He has not had any of that.

Lou Weiss stated they have never come to a Council Meeting. She has never met anyone who has come to a Council Meeting that has been on that side and that disappoints her.

Alderman Davis stated that is why they voted for us. He had talked to a lot of people in his neighborhood, his church, and social clubs that he was involved in. For the most part they respected what he had done and they had thanked him for representing them. They could also vote them out of office at the next election. He added, this had been the most difficult issue he had dealt with, he had been able to discuss both sides of that issue with them. This particular issue, the people that have called have been against it and have not wanted to hear what he had to say, whether it was pro or con. All they wanted to do was express their opinion, tell me what they think, and hang up.

Lou Weiss stated she was not saying that everybody for the trees was the most polite, perhaps, I mean, this is a very emotional issue. I just wanted to be sure that you are doing what your constituents want you to do. We can disagree and I disagree heartily because if we keep cutting down the trees, we are not going to have any air to breathe. I assume you all know what happens with trees and the oxygen and all that stuff. I just want to make sure you are doing what your people, that your constituents want you to do because you are the employees and we are the

employers.

David Garcia, 120 North Block, stated I have to confess that I am one of those people that actually said something to Mayor Hanna on the street. I saw him in front of the courthouse yesterday and said hello and shook his hand and I trust I was not too offensive or rude or impolite. He shook my hand back, so I think it was okay. I also have to confess that I am one of the people who got arrested out at the tree site. I have talked to, I think probably most of the people, that were arrested out there, and I think that some of those reasons that people were doing that bear directly on the question before you, the resolution before you this evening. From where I sit, it looks to me like the question of 81 trees, preserving 81 trees, immediately goes to the question of selective enforcement of the law. It looks to me like the question of selective enforcement of the law immediately goes to business as usual in Fayetteville. That is a point that Mr. Butt smeared from ear to ear and I thank you for that if he is still here when he described how many times before this Tree Ordinance has been ignored and bypassed. It looks to me from I sit like the fix is in, like it is a done deal and I hope that I am wrong. This City Council Meeting, the way that it was called, the way the vote will most likely go, looks to me like the fix is in, it is a done deal. I hope I am wrong. I talked to Junior High School girls who got arrested out at the tree site. I talked to great grandmothers who got arrested out at the tree site and they were getting arrested because they believed the way business has done as usual in Fayetteville is wrong. Yes, they believe in the orderly process for everybody. Yes, they believe in the enforcement of law. When I go before the judge I am going to plead guilty because I did break the law. I am not going to try to evade it. I am not going to try to a plea bargain. I am not going to try to get out it. I am going to say Your Honor, I did it and I believe in the rules of the law so I will submit to your judgement, whatever you see fit to do. But there should be equal enforcement of the law for everybody. If the City Fathers selectively enforce the law for the financial benefit of some and the criminal punishment of others, then the rule of law has been broken. The rule of law has been broken and that should strike terror in all of our hearts, if that indeed is what is going on. I hope that I am wrong. If it is not a done deal, if it is really a matter of serious thought concern principle, then a very simple idea was laid out here a little while ago. Let five or more of the City Council people join together and ask Jerry Rose to contact Argus, talk to the folks that have been sitting in trees, talk to folks that have been getting arrested, sit down together and see if we can work something out. If we take the weekend to do that, who loses? If we take until Monday to do that, who loses? If you sincerely, seriously trying to work it out, let's try to work it out. If the fix is not in, and God I hope it is not. I hope it is really serious thoughtful principle, then let everybody set down together, talk it out, lower the temperature for everybody and everything. Thank you again.

David Glasser, 513 North Olive, stated I have just a single point to address relating to Mayor Hanna's request that we address the resolution and not talk about the larger issues. I have heard a lot of discussion about the faultiness of the Tree Ordinance and the fact that you all are going to

contemplate improving it. This is noteworthy and useful activity but it also raises the question that if all of these decisions have been made in the past on something you all have admitted as faulty and ambiguous, I would argue that it would be a very strong case for accepting the motion for the delay. If you are in the process of examining laws which you have already admitted on the record are faulty and ambiguous, and so has Attorney Butt made mention of that, it seems to me prudent regardless of the outcome of this issue for Councilmen and the Mayor to consider very strongly the virtue of the delay at this point, while you in fact reconsider the structure of the ordinance. That's it.

Thomas Morin, 2472 Brothy Circle, stated I just want to address the comments that the attorney for Argus made regarding private property. Sometime ago, not too long ago, maybe a month ago, I think it was either in Rogers or Benton, there was a schoolteacher who was arrested for serving alcohol to junior high and 9th and 10th grade students on his private property. He could not understand why that was wrong and why they had come to arrest him because it was his private property. I think, and I truly believe that when it comes to matters of morals it transcends the private property rights. I am not an attorney but I certainly have to believe that has been proven many, many times. I feel as a fairly newcomer to Fayetteville, I have been here for only three years, and in coming here I have seen a lot of things change in those three years. The rampant development and he have seen it in other parts of the country, and the results of it were not at all aesthetically pleasing. Some places prospered, Portland, Oregon, is a fine example. I mean they have not had one additional parking space since 1971, and yet the city has grown and prospered. They just choose to do it differently. I have lived in cities where they retain a 60% of the tree growth when they put in a development and they prosper. For the 85 trees that are here, I honestly never felt that it was about the tree issue, but it was about the City Council choosing to have to come to a place where they had to negotiate and weaken themselves, that the Tree Ordinance said 15% or 18% or whatever it said, why was that even negotiable? Thank you.

Barbara Moorman, 3450 Finger Road, stated I want to follow up on something that Mr. Austin said about order and procedure. I also want to say first of all that it occurs to me that there has to be a reason why people would want or people would value something they would value nature, more than they would value the law and more than they value the opinion of the people. I am very glad to hear, which I did not know before that the Attorney General is going to look into some of the orders and procedural matters of this particular situation. Mr. Butt referred to the law-abiding homeowner, and he was drawing an analogy with Argus, and I would like to suggest that Argus is not a homeowner in this community. I don't know whether Argus is law abiding or not, I have to assume that they are. But as of a few days ago, they were not registered to do business in the State of Arkansas according to the Secretary of State's Office. I would like to also point out that Argus when they signed their permit for application for a large scale development signed as owner as the property. Well, excuse me, they did not sign as the owner, they signed as the financial interest and that was the only signature for financial interest. The

other financial interest obviously is Fayetteville Exchange as has been pointed out. The City issued the permits, if I understand correctly, or the grading permit, today. A phase permit procedure which is not recognized legally in your ordinance. It is that phase procedure that is costing the plaintiff's \$300,000.00 because if the permit were simply issued without phasing, no work would have been done up until now. I am really curious, although I am really just asking this question of myself, who insisted that the permits be issued today? There was no permit until today. All the work had been done, if I understand correctly, except the issuing of the permit. And why would there be such a rush when there are, is one injunction in place and another one on the way? I would like to point out that when the Department of Environmental Quality in 1999 in Act 147 wanted to change their operational procedure and adopt a modified phase permit procedure, they had to ask themselves what is the record, what is the public record of the facility that is involved in this permit? There is no public record for Fayetteville Exchange. There is one for Argus but not for Fayetteville Exchange, for the simple reason that Fayetteville Exchange came into being in its State of Incorporation Georgia at the end of 1999 and was not registered to do business in the State of Arkansas until March 7 of this year. They had been involved in this LSD process, if I understand it prior to that time. I would like to know, and again I am asking myself this question, why is the public not being assisted in finding out the record of the companies that are involved in this because this is very important? Their environmental record, their financial record, what is their prospect for doing well? One last question, in looking through courthouse documents I kept coming across the name JDN. JDN Development. I would like to know who they are and I think it would be interesting to know if they still have any connection with this project. I hope someone will say something positive after my speaking.

Bill Moeller, 1511 Markham Road, stated before retiring some fifteen years ago, I counseled many managers on major decisions that they had to make. One of the guiding principles that I used in counseling those managers was keep your options open. Don't make a decision that closes off your options if you have an alternative. Now I would like to ask just two questions. I honestly do not the answers. These are really questions perhaps Mr. Rose should answer. Does the City have the authority to fail to issue any permits that are pending at this time? I ask that question because I see us discussing two different things. I see us discussing stays and I see us discussing permits. I perceive from the discussion so far those are two different things. The second question that I have is, does the City Council have the authority to reverse a prior decision? I honestly do not know the answer to that question. These are organizational questions, not legal questions. I am not a lawyer. Thank you.

Jerry Rose replied, "Does the City has the authority to not issue permits?" It depended on how discretionary those permits were. There was at least one case that was very strong to the proposition that the permitting process was non-discretionary. It should be a check list of things and so long as you meet that check list and go down and put a check, a permit should be issued. Does the City have authority to not issue permits? Not unless the ordinance provides for some

discretion, and in most cases very little discretion exists. It was truly a check list or it should be.

Bill Moeller thanked Mr. Rose. He said he phrased his question improperly. He said he should have asked whether they had the authority to delay the issuing of the permits.

Jerry Rose answered no, sir, he did not think so. What was the purpose of the delay? If the delay had a good articulatable reason, than perhaps. For instance, if there was some more information that needed to be garnered. He would think a delay would be proper. They could not simply delay the permit because they wanted to.

Bill Moeller replied the reason that he asked the question was because he heard several people suggest that there was still time to sit down with these folks, figuratively speaking one on one, and work out something where we could come up with a win-win solution instead of four members sitting on one side of the Council being able to say to other four members, we won. This another one of the guiding principles that I always use with my clients was seeing if you can't find a win-win solution where you make a friend instead of an enemy. Then everybody is happy not just the folks who won. That is the thrust of my question. Whether that is possible to employ the permit process in order to achieve a delay that you folks can use to sit down with these people and try to work out something as other people have suggested.

Jerry Rose replied he did not know how to use the permit process in that manner. It was interesting to note that every time the attorneys had met over this issue, in whatever accord they had met, a couple of times this week, at every one of those occasions they had set down and talked among us if there was anyway at all at which a possible compromise might be reached in which everyone might be happy, every one of those conversations, unfortunately, he had left with the conclusion that it was very unlikely that anything could be reached. He was not blaming either side. He was just telling them that the sides are very adamant. He thought the folks that want to preserve the trees, not only want to preserve trees in general but they were very specific about the trees they wish to preserve and were very specific that they didn't want any of those trees destroyed. They wanted the 15% which they believe to be the mandatory limit in that ordinance to be enforced. Now, he understands that fully but it leaves very little room for compromise. Accordingly, they have talked. They have talked about trying to institute the Mayor's ideas about trying to provide money to buy urban forest and preserve it in other areas in the City. They have talked about trying to do that. They have talked about trying other various means. All of those compromises that have been suggested and discussed, at least among the attorneys, because they have not been privy to the other possibilities of compromise, have always been back to the problem that, well, that's all very nice but it won't help these trees that are out there on that property. That has become very important, and he understand that.

Bill Moeller said Mr. Rose answered his question. He heard his answer and he appreciated him

taking the time to answer. The second question was with regard, does the City Council have the authority to reverse a prior decision?

Jerry Rose replied yes, a decision made under our ordinances. There was a provision. If one of the guys that voted on the winning side makes a motion to reconsider at the meeting following the decision that was made, then the decision may be reversed. Those are City Council decisions. It was very normal old Rules of Roberts Procedure kind of stuff.

Alderman Russell asked if in this case, the time for reversal had passed since the meeting following the decision had also passed.

Jerry Rose replied yes.

Fran Alexander, 1946 N. Fox Hunter Road stated I wanted to give you a little history on the enforcement of this ordinance as to pertaining to whether you should stay or not. I think that's what Alderman Austin's resolution and what the discussion is supposed to be about. Sometimes you can't make a decision without a little history. Several years ago while trying to get this City to enforce this ordinance, I had numerous discussions with, well, maybe not numerous but enough, with Mr. Rose about the interpretation of replacement vs. preservation. I took Mr. Rose a xerox copy of Webster's definition of preservation and mature, so we could discuss what preservation is vs. replacement, and we could discuss mature vs. young trees. I did this because becoming involved in urban forestry to the extent that I have served on the State Urban and Community Forestry Council. He at that time was trying to help me understand why this was not being enforced as preservation. I believe, Jerry, that part of that discussion, you told me that you weren't even sure there was an enabling legislation at the State level that would provide the kind of enforcement that I was talking about.

Jerry Rose said it had been a long time ago but yes he did recall this.

Fran Alexander said yes, it had been a long time but she wanted to establish that this effort has not gone unnoticed. I and many other people have tried to get this ordinance enforced for years and years and years. I agree with whoever said today that this may help the trees in the long-run but it certainly won't help this 81. I bring this up because I think it is very important to understand in my involvement with people around the State, they have said, as Mr. Butt said today that he feels that the ordinance does apply to the police ability of the City to enforce its will, essentially, on private property owners. It falls in the opinions of the people I have spoken with about this, once again all over the State under the health, safety and welfare aspects of City law. Now the reason that those trees would apply to health and welfare come under Urban Forestry consideration because we are heating our cities. This has to do with the issue about putting urban forests off on the hill somewhere vs. right there where they are having the impact

on the heating. Cities are heat sinks. We are all having to pay for our skyrocketing utility bills every time a square inch of pavement goes down. So we are subsidizing all new pavement and all new roof tops. We are all subsidizing it because we are raising our temperature. That is what urban forestry is about. It is not just whether they are pretty or whether they are old or whether they are big. This is a health and welfare of the community issue, and this is what urban forestry is based on nationwide. It is a Department of the Forest Service of the United States. This is not just a little ole lady in tennis shoe issue and I think that you need to keep that in mind. You may get very tired of me out there hugging trees but by gosh this is a national issue for a reason. It has all of the commissions, all of the services, and all of everybody out there backing it up. We are just really slow here sometimes to get the news. The other thing I wanted to tell you was in the procedure that I followed and other people followed when there was a proposal on the property at Garland and Wedington to take down those trees for a Mormon church to go in. I argued at the Subdivision level. Mr. Conklin was there. The Staff's decision was to allow replacement of trees. The Staff approval of that was going to go to Planning Commission and it was appealed. And I don't know why but that church pulled the plan and went elsewhere. So there is precedence for the effort to get this ordinance to be followed as it was intended and as it was written. I also wanted to tell you that the Kohl's department store has been answering the E-mails it has been receiving with a form letter that is saying that they have dealt with the Landscape Administrator's plan and the number one trees are being saved and two hundred and more are being replanted. This is neutering the opinion of people about what's happening because when they send out information like that and then they go in and cut those trees, they are in for some really bad business. The other thing I want to say and the last thing I know you will be happy to hear, you were talking about the people who have come up to you and thanked you for your representation of their points of view. I agree with the lady who said where are they? We can't see them. Those of us who are spending hundreds of dollars, hundreds of hours, and God knows how much emotional investment in these issues constantly before this government are down here in person. They can see my face on television. My mother gets to hear about it at bridge club. So by gosh, if I have the courage to be down here somebody else who has a disagreement with me ought to have the courage to be down here and if they don't they are operating in shadow government. I don't know how many phone calls you really received but you know how many people are here. I don't know who really said what to you and that is what I constantly refer to in my articles as shadow government. The other shadow is shadow business. We have Fayetteville Exchange LLC. Who the hell are these people?

Bob Jordan, 280 Ila Street, stated I am the spokesperson for the We've Had Enough. I would like to tell you that we have gathered over 4,000 signatures. At 4:00 p.m. this afternoon we set up an account at the Bank of Fayetteville for people to put money into to start raising money for the bond for this lawsuit. We have, at least \$4,500.00 in that account. I left at 4:00 p.m. to go to work. The citizens of this town care, you know. If the 4,000 people could afford to donate \$100.00 a piece we would have more than enough money to pay the bond for this lawsuit. I

would like to tell you that there is a win-win solution here. There is a win-win solution. I have logged over five hours talking with people at Argus in the last ten days. I can tell you that there is a win-win solution. There is no win-win solution once those trees go down. That's a lose-lose solution for the citizens of the community. It's a lose-lose for Argus. It's a lose-lose for Kohl's department store. I guess you have the right and option here of allowing a win-win solution or allowing a lose-lose solution.

John DuVal, 1131 Eastwood, stated I want to quote something Mr. Butt said last night on television, and if he is here and I am wrong I will let him correct me. There was something that you said, Trent, just a minute ago which is essentially the same thing. Mr. Butt said that he was glad that this issue would be taken back into the courts and you, Mr. Trumbo, said you would be glad it would be taken off the streets and into the courts. I've also been working trying to get an account set up for people to contribute for the bond money so that the \$310,000.00 could be paid for bond. Something you said, Mr. Davis, made me a little bit more hopeful, maybe you could explain this. People are contributing \$25.00 at a time and I am not very hopeful about us being able to raise the money which means that unless you do allow a stay take affect we aren't going to put this back in the courts. We are going to turn it over to the bulldozers. Thank you.

Raymond Johnson, 2610 North Old Wire Road, stated I have lived there for almost ten years. During that time I have cut down eight trees on my little piece property without any problem at all. One of the things that has bothered me about this ever since it started is where do you come up with rare for these trees? Who determined that these trees were rare?

Alderman Trumbo stated it was drafted by a group back in 1993 and it was never determined. That was why it needs to be redrafted.

Raymond Johnson stated something rare is something you have a little hard time finding it. You can go anywhere in Fayetteville and find post oaks. Magnificent! What is magnificent about a post oak? It is the least desirable tree in the oak species. It will only grow on poor ground. It is a miserable tree from any stretch of the imagination. If the elders of that property prior to this development had gone out there and cut every one of them down, I dare say nothing would have been done. They could cut them up for firewood. The only thing they are good for is that use to be used for posts, but they quit using them. They are not good for anything. Unless they are out individually, they don't even make a good shade. When I read about all this magnificent, rare, massive grove of trees out there I went out and took a little look. I bought ten acres out here west of town in the Mt. Comfort community when I came here in 1959. There are post oaks out there that would make these look like saplings. Have you ever heard of anyone buying a sapling post oak and planting it? Anyone? Has anyone ever bought a post oak and planted it? They are worthless trees. (Someone in the audience addressed Mr. Johnson. You have? Where did you get it? I have contacted every nursery and no one has a sapling.

Mayor Hanna said no, we can't have the audience talking back and forth.

Raymond Johnson said he has had his disagreements with the Mayor here. I held his feet over the fire over a project here in our little Gulley Park which I thought was horrible. I called him the other day and I told him I was proud of the way he was handling it. I am. I think you all ought to get along with the job and get this over with, get it off the table and let them go on with their business.

Alderman Santos said to Mr. Johnson in answer to his question about what is a rare and landmark tree. It was defined in the ordinance. It was decided through a public process that any tree over 24 inches in diameter at breast height.

Mr. Johnson asked Alderman Santos if he would agree that they were rare?

Alderman Santos said any tree that big is rare, no matter what the species. That was what was decided through the public process.

Raymond Johnson said he could show Alderman Santos hundreds of them. You need to look in the dictionary and see what rare is.

Elsa Isaacs, 2665 E. Travis Street, stated I believe when I was a young woman and taught U.S. history, Article Four of the Constitution guarantees all states a republican form of government which means an elected representative form of government, you are our representatives, the ordinances are our statues and it behooves no one to supercede the law whether they money corporations or the humblest person in this city.

Mayor Hanna asked if it was correct that they had a motion and a second?

Alderman Austin asked the Mayor if he could make a couple of comments? He stated he realized that it was a late hour but he wanted to comment on his votes on the issue, although it has taken a form of being an anti-tree. This has never been a tree issue with him. It had been an issue of procedure and following what he thought was the best advice they had received when they gave their word that they will serve. That is our City Attorney. In every case, and he had disagreed with him on a couple of things privately, but he had taken his advice. Also, less it be said that he was not a tree lover he has planted several hundreds and cultivated several hundreds, perhaps thousands of planting in his youth, and he was sad to say the media didn't pick up on it. He had sent each newspaper an article about a special tree to him that was blown down in a recent tornado. They chose not to print it. It was a large tree. Lying on the ground, it came up above his waist. He wanted to comment that we had a good government. But Ms. Alexander, they did not have any control over her and many other speakers here tonight, but they were

afforded the right to speak. They did not make laws to govern people that did not live in the City but they did give them the right to speak. He thought that many comments were made about people outside our City, and he did not think they ought to make comments about people outside our City. If they opened it up for speaking, let them speak. Same thing about property owners, whether they were voting citizens or absentee landowners, or absentee homeowners, or whatever, if they owned property or they had a standing then they had the same right as an outsider to speak at a City Council Meeting.

Alderman Russell stated he thought it was fair to say that nine of them sitting up here including the Mayor, believe that they were doing, sincerely believe that they were doing what their constituents wanted them to do. He certainly believes that he was. He thought a lot of it depended upon whom they considered their constituents to be. He could consider his constituents to be everyone who lived in Ward 2. He also took an oath because those were the people who elected him. He could also consider them to be everyone who lived in the City of Fayetteville because that was who we taken an oath to serve. If they all saw their constituents as the people who could vote them in or out, then it's possible that all nine of them were right in saying that they were doing what their constituents wanted them to do because if you noticed no two people who lived in the same district had different opinions. Mr. Young and I, Mr. Santos and Ms. Daniel, Mr. Trumbo and Mr. Davis, Mr. Austin and Mr. Reynolds, all were voting in pairs according to their district. He could tell them with 99% certainty that he was doing what the people of Ward 2 wanted him to do. Even if he weren't so sure, he would still do it because he believed it was the right thing to do. He believed it was in conformity with our ordinances. He was less sure about the whole City, but the only way they really were going to find this out was in November when people exercise their right to vote. He hoped that all of them were exercising their right to be here or exercising your right not to be here and watching at home, like people who were on the other side of this issue, go to the poles in November and let's not fight about it until then. He did believe all of them believed they were doing what their constituents wanted them to do. That being said he respected the opinion of Mr. Rose and of Mr. Butt, that the City did not have the authority to suspend proceedings under permits or not to issue permits, or in effect create a stay. Judge Lineberger did not put that in his order and he was not there in court so he didn't know what he had said. He did have the document in front of him. If any higher court judge, Judge Smith or Judge Lineberger or anybody else ever signs an order saying that the City did not have jurisdiction to issue a stay, he would respect that because they were a court inferior to them and that was what they were bound to do was to follow their decisions. Until then the question was open and they had several attorneys talk and say they believed the City did not have the authority to issue a stay. There were also several attorneys who had spoken and said that the City did not only the authority but the obligation or doesn't even have to issue a stay because the proceedings are already stayed automatically. As he saw it, this resolution basically acknowledges that we don't have jurisdiction. He was not ready to acknowledge that until he heard it from a higher court judge and that was the reason he would be voting against the

resolution. He appreciated the opinions on both sides of the jurisdictional question. Mr. Rose was doing his job by representing the majority, defending the majority will of the City Council. He was doing that.

Alderman Davis asked the plaintiffs if they could go back to Judge Lineberger and ask him if he could give them additional time for the stay to try to accumulate dollars for a surety bond? He didn't know if that was an option for them at all or not. He did not know the legal system but for some reason he set that time limit. He did not know the reason. Was that enough time for them to raise enough dollars to go out and get a surety carrier to back them for \$310,000.00? It was going to depend upon the strength of the individuals that were willing to sign the indemnity agreement. If those individuals had strength in their financials then he thought those people needed to stand up if they believe in this cause and do what they could to help save these trees. He felt like the judge for some reason gave them a time limit and he was not a part of that discussion. If there was a way he could grant them that, he would consider it, but he could not go against what the Chancery Judge had given them as far as time. He would recommend that they go back to the Chancery Judge, Mr. Lineberger, and see if he will grant them additional time, whether it was two days, three days or four to accumulate those funds so that they had enough money for a bonding and in the meantime find somebody if they were successful with that, find someone that writes surety bonds, give them the information so that they may be able to find something for them. There was no guarantee that they would, but there was always that possibility.

**Mayor Hanna called for the vote. Upon roll call the motion carried by a vote of 5-4-0.
Mayor Hanna voting yea.**

Mayor Hanna asked if there was any other business?

Alderman Santos stated that their 9:00 a.m. meeting was no longer needed.

Alderman Russell asked if they forfeited our jurisdiction, the issue was stayed but by passing this resolution he did not think there would be anything for them to consider.

Mayor Hanna said there would not be a meeting in the morning.

Meeting adjourned at 9:40 p.m.

STAFF REVIEW FORM

Tract #3X
A. 2. Page 1

☒ AGENDA REQUEST
☐ CONTRACT REVIEW
☐ GRANT REVIEW

For the Fayetteville City Council meeting of June 20, 2000

FROM:

Jill Goddard
NameEngineering
DivisionPublic Works
Department

ACTION REQUIRED: Approval of Resolution to authorize Mayor to sign a 30 foot easement across property designated as Tract #3X containing approximately 3000 square feet for 16 inch high pressure gas lines for the Arkansas Western Gas Co. This property is a lot we purchased due to the widening of Hwy. 265 for Mr. Harry F. Locke, Jr. at 897 N. Crossover Road on January 14, 1999, and is described as: Part of Lot 5 in Block 3 of Eastwood Subdivision to the City of Fayetteville, Arkansas. The gas company has offered to compensate the City of Fayetteville for this easement in the amount of \$2,340.00, which is 35% of the Arkansas State Highway and Transportation Department appraised value, determined in October, 1998. This easement is in addition to the 30 foot by 80 foot easement granted to Arkansas Western Gas Co. via Resolution No. 63-00 (Deed Reference 2000041529). Arkansas Western Gas Co. is also requesting a 50 foot by 70 foot temporary construction easement across this same property and have offered rental compensation in the amount of \$350.00 which is \$0.10 per square foot.

COST TO CITY:

(\$ 2,690.00)
Cost of this Request(\$ 29,000.00)
Category/Project BudgetMiscellaneous Revenue
Category/Project Name1010-0001-4999.00
Account Number(\$ 27,932.00)
Funds Used To Date

Program Name

Project Number

(\$ 1,068.00)
Remaining BalanceGeneral
Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

[Signature]
Budget Manager

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY: _____

Marilyn Cramer 6-7-00
Accounting Manager Date
[Signature] 6-7-00
City Attorney Date
[Signature] 6-7-00
Purchasing Officer Date

Internal Auditor Date

ADA Coordinator Date

STAFF RECOMMENDATION: Approval of the Resolution.

[Signature]
Division Head

6/6/00
Date

[Signature]
Department Director

6-7-00
Date

[Signature]
Administrative Services Director

Date

[Signature]
Mayor

Date

Cross Reference

New Item: Yes _____ No _____

Prev Ord/Res #: _____

Orig Contract Date: _____

STAFF REVIEW FORM

Description Hwy. 265 Ark. Western Gas Co. Easements (Tract 3X)

Meeting Date June 20, 2000

Comments:

Budget Coordinator

Accounting Manager

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor

Reference Comments:

DEPARTMENTAL CORRESPONDENCE

TO: Fayetteville City Council

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

FROM: Jill Goddard, Land Agent *JG*

DATE: June 7, 2000

SUBJECT: Arkansas Western Gas Co. Easement Requests

Please find attached a Natural Gas Line Easement and a letter from Nancy Roller, Agent for Arkansas Western Gas Co., requesting permanent and temporary easements for 16 inch high pressure gas lines.

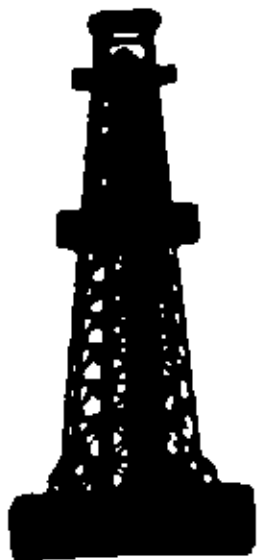
The permanent easement, which is designated as Tract #3X, is a request for an additional 30 foot easement containing approximately 3000 square feet. This easement is in addition to the 30 foot by 80 foot easement granted to Arkansas Western Gas Co. via Resolution No. 63-00 (easement recorded as Deed Ref. 2000041529). The gas company needs additional easement to allow for crossing to the east side of Highway 265. This property is a lot we purchased due to the widening of Highway 265 from Mr. Harry F. Locke, Jr. at 897 N. Crossover Road on January 14, 1999 and is described as: Part of Lot 5 in Block 3 of Eastwood Subdivision to the City of Fayetteville, Arkansas. The combined easements will consist of the South 180 feet of this lot.

Arkansas Western Gas Co. is also requesting a 50 foot by 70 foot temporary construction easement across this same property. This is a 70 foot area adjacent to and west of the northernmost 50 feet of the additional permanent easement area. This is necessary for gas line boring to the east side of Highway 265.

The City has previously obtained a 2643 square foot permanent Water/Sewer Easement and a 10 foot Temporary Construction Easement on this lot in conjunction with the widening of Highway 265 and the relocation of water/sewer lines in the area. The plat attached depicts the location of our easements in relation to the new Highway Right of way and also the location of the 30 foot permanent easements (which overlap our easement areas) and the temporary easement as requested by the gas company.

The gas company has offered to compensate the City of Fayetteville for this additional easement in the amount of \$2,340.00 which is a rate of \$ 0.78 per square foot and which is 35% of the Arkansas State Highway and Transportation Department appraised value determined in July, 1998. They have already compensated the City \$1,865.00 for the 30 foot by 80 foot easement.

The rental compensation for the temporary construction easement is \$350.00 for the 50 foot by 70 foot area which is a rate of \$0.10 per square foot. This amount is based on a verbal quote from Bill Brandt, representative for the gas company with a letter forthcoming.



FIELD SERVICES COMPANY

1610 N. Foxhunter
Fayetteville, AR 72701
(501) 442-8387

May 31, 2000

City Of Fayetteville
P O Drawer F
Fayetteville, Ar.

RE: City of Fayetteville property (Track 3-X) located on Hwy 265
Request for right of way by Arkansas Western Gas

To Whom It May Concern:

Per conversations between Bill Brandt of AWGC and Jill, with the City of Fayetteville, please find enclosed right of way grant for Track 3-X on Hwy 265. We request and additional 100', to adjoin the 80' previously purchased.

This is a permanent thirty foot easement beginning approximately 80' from the Southeast corner; Thence running North approximately 100' and ending. There is a total of 3000 square feet within this additional easement. A consideration fee of \$2,340.00 shall be paid by draft upon signing.

Please feel free to call me at the above phone number should you have any questions regarding this issue.

Thank you for your time and consideration on this matter.

Sincerely;

A handwritten signature in cursive script, reading "Nancy Roller".

Nancy Roller

NATURAL GAS LINE EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the Arkansas Western Gas Company, a Corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement and a temporary construction easement to construct, lay, remove, relay, inspect, enlarge and/or operate a natural gas pipe line or lines, and appurtenances thereto, on, over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION:

See Exhibit "A" attached

PERMANENT EASEMENT DESCRIPTION:

A thirty (30) foot permanent easement beginning eighty (80) feet north of the Southeast corner; thence running North approximately 100 feet, more or less and ending, being parallel and adjacent to the new and improved right of way of Highway 265 and being north of the 30 foot by 80 foot permanent natural gas line easement as recorded in Deed Reference 2000041529 of the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

See attached Exhibit "B"

TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION:

A seventy (70) foot wide temporary construction easement across the above described property, being parallel with and contiguous to the northernmost fifty (50) feet of the above described permanent easement and situated on the west side thereof. This temporary construction easement contains 3500 square feet (0.08 acre), more or less,

See attached Exhibit "B"

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

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

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

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, so long as such pipe line or lines, and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first herein above described for the uses and purposes herein above set forth.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to bury all pipes, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and to pay any damages which may arise to growing crops or fences from the construction, maintenance and operation as determined by three disinterested persons. One thereof to be appointed by the said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

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

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

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

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

WITNESS the execution hereof on this the _____ day of _____, 2000.

**CITY OF FAYETTEVILLE, ARKANSAS,
a municipal corporation**

BY:

Fred Hanna, Mayor

ATTEST:

Heather Woodruff, City Clerk

[SEAL]

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF WASHINGTON) ss.

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

WITNESS my hand and seal on this _____ day of _____, 2000.

Notary Public

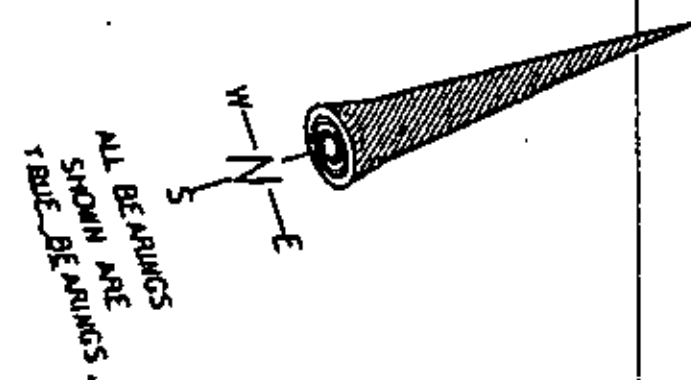
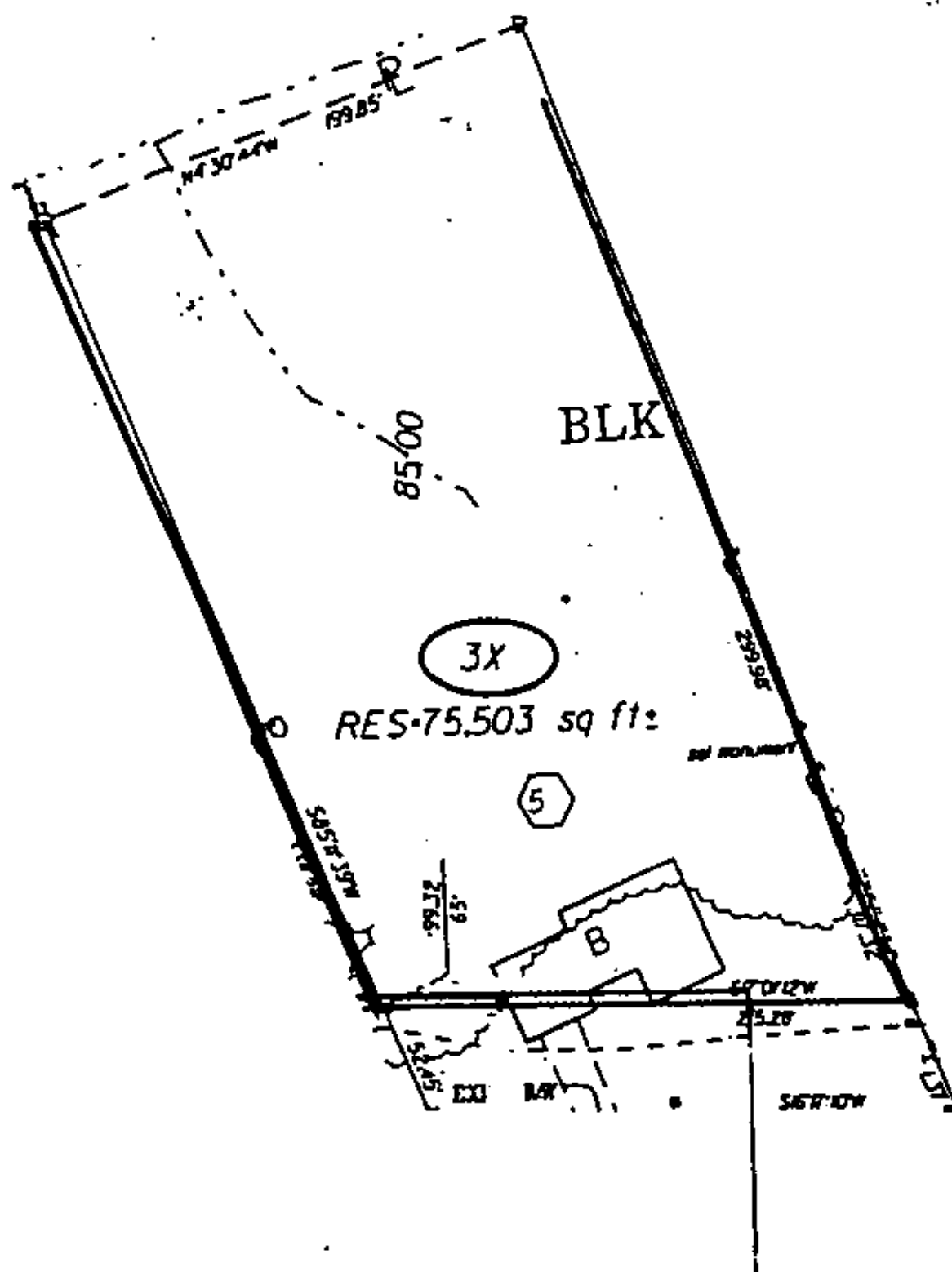
MY COMMISSION EXPIRES:

JOB NO. P-90038-1
TRACK NO. 3-X

EXHIBIT "A"

Lot Five (5) of Block Three (3) of Eastwood Subdivision to the City of Fayetteville, Washington County, Arkansas, LESS AND EXCEPT that portion of said Lot 5 conveyed to the Arkansas State Highway Commission and filed of record in Book 98-100830 with the Circuit Clerk and Ex-Officio Recorder of Washington County, being more particularly described as follows: Commencing at the Southwest corner of Lot 4, Block 3 of Eastwood Subdivision; thence North $85^{\circ} 11' 39''$ East along the South line of Lot 4 a distance of 117.32 feet to a point on the Westerly proposed right of way line of Arkansas State Highway 265 for the Point of Beginning; thence continue North $85^{\circ} 11' 39''$ East along the South line of Lot 4, Block 3 of Eastwood Subdivision a distance of 49.49 feet to a point on the Westerly existing right of way line of Arkansas State Highway 265; thence South $16^{\circ} 17' 10''$ West along said existing right of way line a distance of 214.20 feet to a point on the South line of Lot 5, Block 3 of Eastwood Subdivision; thence South $85^{\circ} 11' 39''$ West along said South lot line a distance of 52.45 feet to a point on the Westerly proposed right of way line of Arkansas State Highway 265; thence North $17^{\circ} 01' 12''$ East along said proposed West right of way line a distance of 215.28 feet to the Point of Beginning, said Less and Except containing 10,186 square feet, more or less, and being subject to rights of way and easements of record.

LOCATION OF THRITY FOOT
PERMANENT EASEMENT:



UTILITY EASEMENT MAP

EXHIBIT "B"

EASEMENT TRACT NO. 3X
CITY OF FAYETTEVILLE

SIZE OF EASEMENT

PERMANENT UTILITY EASEMENT
2,638 SQ.FT. (0.06 ACRES)

TEMPORARY CONSTRUCTION EASEMENT
2,170 SQ.FT. (0.05 ACRES)

KATHERINE C. WHITE

47

LOT 4

SW CORNER
LOT 4, BLOCK 3
EASTWOOD SUBDIVISION

Scale: 1"=40'

PDB

CITY OF FAYETTEVILLE

3X

LOT 5

HOUSE
TO BE REMOVED

LOT 5

LOT 6

LOT 6

JEAN RANDLE

45



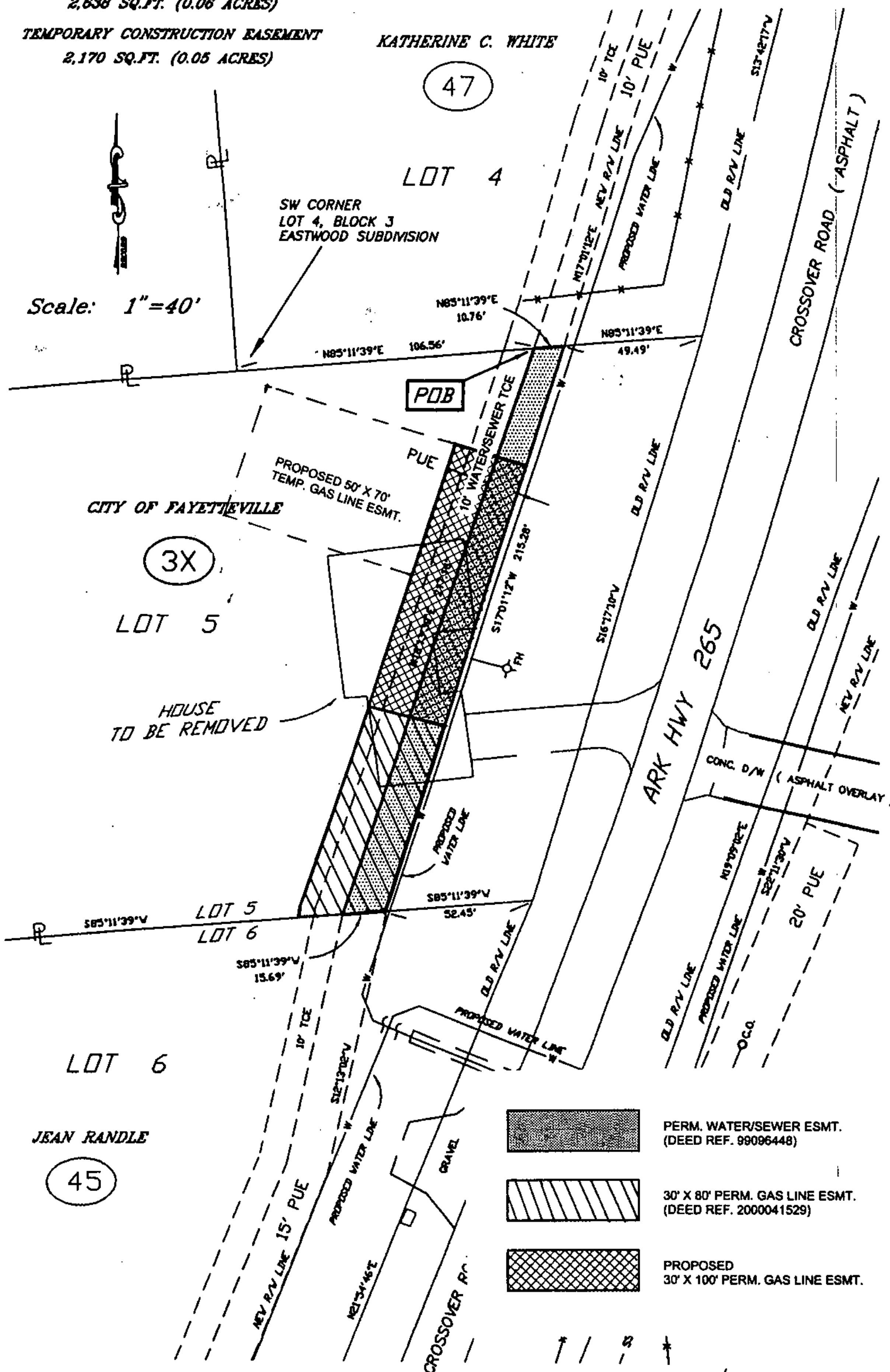
PERM. WATER/SEWER ESMT.
(DEED REF. 99096448)



30' X 80' PERM. GAS LINE ESMT.
(DEED REF. 2000041529)



PROPOSED
30' X 100' PERM. GAS LINE ESMT.



Job No. P-90038-1
Locke Property
Parcel No. 765-05031-000
Tract No. 3-X

NATURAL GAS LINE EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the Arkansas Western Gas Company, a Corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement and a temporary construction easement to construct, lay, remove, relay, inspect, enlarge and/or operate a natural gas pipe line or lines, and appurtenances thereto, on, over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION:

See Exhibit "A" attached

PERMANENT EASEMENT DESCRIPTION:

A thirty (30) foot permanent easement beginning eighty (80) feet north of the Southeast corner; thence running North approximately 100 feet, more or less and ending, being parallel and adjacent to the new and improved right of way of Highway 265 and being north of the 30 foot by 80 foot permanent natural gas line easement as recorded in Deed Reference 2000041529 of the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

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See attached Exhibit "B"

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

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

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

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, so long as such pipe line or lines, and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first herein above described for the uses and purposes herein above set forth.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to bury all pipes, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and to pay any damages which may arise to growing crops or fences from the construction, maintenance and operation as determined by three disinterested persons. One thereof to be appointed by the said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

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

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

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

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

WITNESS the execution hereof on this the _____ day of _____, 2000.

CITY OF FAYETTEVILLE, ARKANSAS,
a municipal corporation

BY:

Fred Hanna, Mayor

ATTEST:

Heather Woodruff, City Clerk

[SEAL]

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

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

WITNESS my hand and seal on this _____ day of _____, 2000.

Notary Public

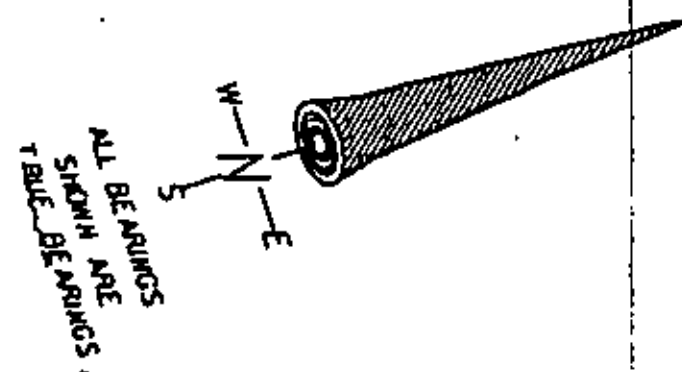
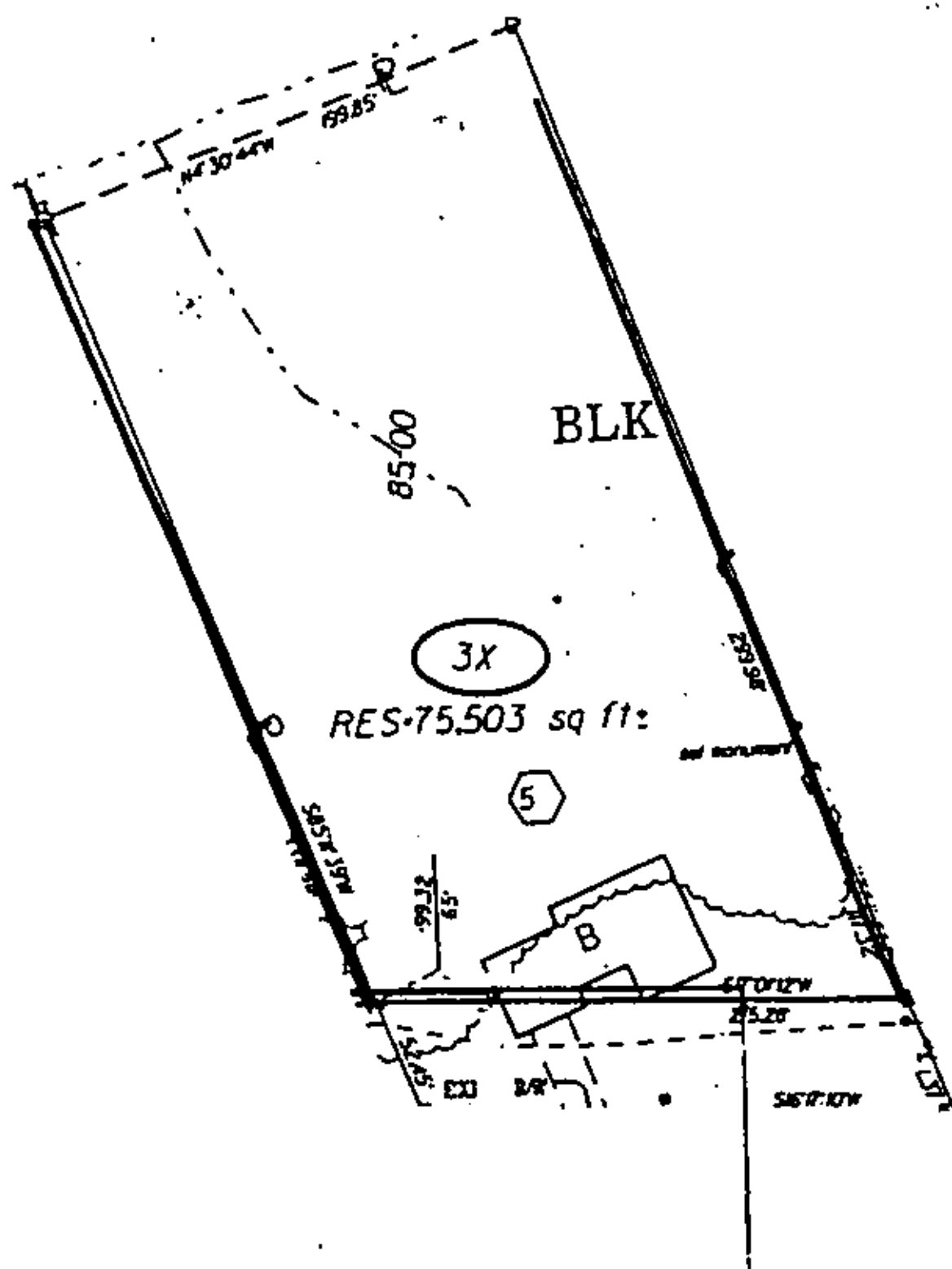
MY COMMISSION EXPIRES:

JOB NO. P-90038-1
TRACK NO. 3-X

EXHIBIT "A"

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LOCATION OF THIRTY FOOT
PERMANENT EASEMENT:



UTILITY EASEMENT MAP

EXHIBIT "B"

EASEMENT TRACT NO. 3X
CITY OF FAYETTEVILLE

SIZE OF EASEMENT

PERMANENT UTILITY EASEMENT

2,638 SQ.FT. (0.06 ACRES)

TEMPORARY CONSTRUCTION EASEMENT

2,170 SQ.FT. (0.05 ACRES)

KATHERINE C. WHITE

47

LOT 4

SW CORNER
LOT 4, BLOCK 3
EASTWOOD SUBDIVISION

Scale: 1"=40'

CITY OF FAYETTEVILLE

3X

LOT 5

HOUSE
TO BE REMOVED

LOT 5

LDT 6

LOT 6

JEAN RANDLE

45

CROSSOVER AND

ARK HWY 265

CONC. D/W (ASPHALT OVERLAY

CROSSOVER ROAD (ASPHALT)

OLD R/V LINE
PROPOSED WATER LINE
10/9/09 12:17

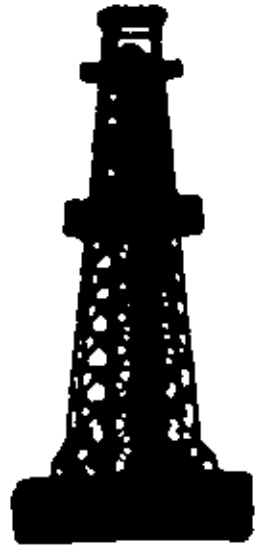
20- PUE

PERM. WATER/SEWER ESMT
(DEED REF. 99096448)

30' X 80' PERM. GAS LINE ESMT.
(DEED REF. 2000041529)

**PROPOSED
30' X 100' PERM. GAS LINE ESMT.**

*agenda Senin
6/20/00*



FIELD SERVICES COMPANY

1610 N. Foxhunter
Fayetteville, AR 72701
(501) 442-8387

June 9, 2000

City of Fayetteville
P O Drawer F
Fayetteville, Ar.

RE: City of Fayetteville property (Track 3-X) located on Hwy 265
Request for temporary construction easement for Ark. Western Gas

To Whom It May Concern;

Per your request for special considerations on the above property, please find enclosed a form that list the special considerations that are to be taken by our contractor during the period of construction.

No trees shall be removed without the approval of the Landscape Administration from the City of Fayetteville.

The footage agreed upon for the T.C.E. is 50x70 for a total square footage of 350 square feet. AWGC agrees to pay .10 per square foot. Upon receiving a signed right of way grant, a draft for \$350.00 shall be authorized.

Thank you;

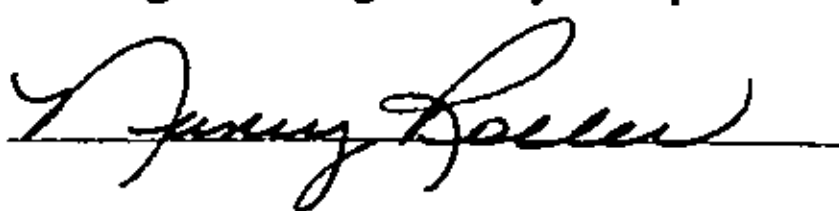

Nancy Roller

ARKANSAS WESTERN GAS COMPANY
Right of Way - Special Considerations

Job Number: P-90038-1 Track No. 3 X
Job Title: HWY 265
Property Owner: CITY OF FAYETTEVILLE
Section: 11, Township 16 N, Range 30 W
County: WASHINGTON

NO TREES REMOVED WITHOUT APPROVAL FROM LANDSCAPE ADMINISTRATION
OF THE CITY OF FAYETTEVILLE, AR.

It is agreed that neither party hereto is relying upon any oral or written information or representations made by the other prior to the signing of the easement unless expressly provided herein, and that the easement constitutes the entire agreement between the parties and same shall not be hereafter amended or modified unless reduce to writing and signed by the parties hereto.

R/W Agent:  Date: June 9, 02
Property Owner(s): _____ Date: _____

(To be completed by Inspector or Construction Supervisor.)

Remarks: _____

Date: _____ By: _____

STAFF REVIEW FORM

xx AGENDA REQUEST
CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council meeting of June 20, 2000
FROM:

Connie Edmonston Parks & Recreation Public Works
Name Division Department

ACTION REQUIRED:

Approval of budget adjustment in the amount of \$350,557 for Gary Hampton Softball Complex parking lot.

COST TO CITY:

<u>\$350,557</u> Cost of this Request	<u>\$ 0</u> Category/Project Budget	<u>Gary Hampton Softball Complex</u> Category/Project Name
<u>2250-9250-5819-00</u> Account Number	<u>\$ 0</u> Funds Used To Date	<u>Program Name</u>
<u>96093-1</u> Project Number	<u>\$ 0</u> Remaining Balance	<u>Parks Development Fund</u> Fund

BUDGET REVIEW: Budgeted Item xx Budget Adjustment Attached

[Signature] Administrative Services Director
Budget Manager

CONTRACT/GRANT/LEASE REVIEW:

<u>Marilyn J. Bramer</u> Accounting Manager	<u>6-1-00</u> Date	<u>Yolanda Fields</u> Internal Auditor	<u>6-1-00</u> Date
<u>[Signature]</u> City Attorney	<u>6-1-00</u> Date	<u>ADA Coordinator</u>	<u>Date</u>
<u>[Signature]</u> Purchasing Officer	<u>6-1-00</u> Date		

STAFF RECOMMENDATION:

Approval of budget adjustment.

<u>Connie Edmonston</u> Division Head	<u>5-31-00</u> Date
<u>[Signature]</u> Department Director	<u>6-5-00</u> Date
<u>[Signature]</u> Administrative Services Director	<u>6-5-00</u> Date
<u>[Signature]</u> Mayor	<u>6/5/00</u> Date

Cross Reference

New Item: Yes No

Prev Ord/Res #:

Orig Contract Date:

Orig Contract Number:

STAFF REVIEW FORM

Description Gary Hampton Softball Complex Parking Lot

Meeting Date 5/20/00

Comments:

Budget Coordinator

Accounting Manager

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor

Reference Comments:

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Hanna and City Council

THRU: Charlie Venable, Public Works Director

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

DATE: May 31, 2000

RE: Gary Hampton Softball Complex Parking Lot Budget Adjustment Request

The Parks and Recreation Division is requesting a budget adjustment in the amount of \$350,557 to construct an additional parking lot at the Gary Hampton Softball Complex. Currently, there are 245 parking spaces located at the facility, which includes the school's small parking lots located in the front and rear of Holcomb elementary. This does not provide ample parking to handle the number of vehicles used by the participants and families utilizing the softball facility. The new parking lot would provide an additional 147 parking spaces. (See parking lot attachment.)

During Parks and Recreation league play when teams are in the process of ending their game and other teams are warming up to play, there is a minimum of 16 teams in our facility. If these 16 teams each have 15 participants, that makes a total of 240 participants in the facility at a given time. This number does not include parents, concession workers, scorekeepers, umpires, grandparents, and friends. Over the last few months, automobiles have parked on the grass and in other undesirable locations. We are working with the school system to extend the lease agreement to build this parking lot. School officials have approved the concept.

Another factor impacting parking is the increased number of families utilizing more than one vehicle for transportation. It is not uncommon to see two or three vehicles per family at the ballfield to watch their child or spouse play a game. On tournament weekends, our parking problem is compounded by the number of participants that stay at the complex the majority of the day.

In comparing other recently developed complexes, the Parks and Recreation staff has learned the City of Russellville installed over 500 parking spots for their new four field complex and the City of Sherwood included 750 parking spots in their five field facility.

The Parks and Recreation Advisory Board held a special meeting on May 23, 2000 and approved to recommend a budget adjustment from the City Council for the construction of additional parking at Gary Hampton Softball Complex. (See attached meeting minutes.)

This project is currently following the City's Planning Office's policies for implementation contingent upon budget adjustment approval. The Street Division has agreed to pave the lot in July at an estimated cost of \$342,433. City Engineers have designed the lot. There is a project contingency of \$8,124 totaling \$350,557 for this project. There is ample funds in the Parks Development Budget for this project. The high cost of construction is due to poor soil conditions which are found in this area. These same poor soil conditions also escalated the cost of building the original softball complex. To obtain an appropriate base, the Street Division will have to remove a substantial amount of dirt and replace it with suitable materials.

Additional justification for this parking lot is the amount of HMR money brought into our city when hosting tournaments. At the Don Glass Charity Classic adult softball tournament held on May 19-21, 2000, there were 82 teams participating, of which 47 teams were from outside of Northwest Arkansas. Based upon the Chamber of Commerce economical multiplier effect of \$175 per person, it is estimated that an approximate 1,117 participants (based on 25 players/fans per team) had an economic impact of over \$205,625 for the weekend. With our new premiere softball complex, we are able to host several prestigious tournaments this summer as outlined below:

- Gary Hampton Youth National Invitation Tournament on June 2-4 with 80 teams anticipated, of which 65 are out of town teams. This is the largest Youth National Invitational in the country.
- Men's Class D National Invitational Tournament on June 24-25 with 60 teams anticipated, of which 25 are out of town teams.
- Women's State Tournament on August 5-6 with 40 teams anticipated, of which 30 are out of town teams.
- Class B and Class E Midwest National Tournament on September 2-3 with 75 teams anticipated, of which 50 are out of town teams.
- Men's 35 and Older World Tournament on September 16-17 with 40 teams anticipated, of which 35 are out of town teams.
- Coed State Tournament on September 16-17 with 50 teams anticipated, of which 35 are out of town teams.

In addition to these premiere tournaments, there are weekend tournaments throughout the summer as listed on the enclosed 2000 Softball Tournament Schedule. The softball season basically operates from March until the first of November every year.

Thank you for your consideration of this request. The additional parking lot will help provide the amenities needed to serve our citizens and provide greater access to our new softball complex. If additional information is needed, please contact me at 444-3473.

Attachments:

Parking lot design

Street Division estimate

2000 Softball Tournament Schedule

Parks and Recreation Advisory Board Meeting Minutes May 23, 2000

Budget Adjustment

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

**Softball Complex
A. 3. Page 5**

Budget Year 2000	Department: Public Works Division: Parks & Recreation Program: Parks Development	Date Requested 06/01/2000	Adjustment #
---------------------	--	------------------------------	--------------

Project or Item Requested:
Funding is requested to construct a parking lot at Gary Hampton Softball Complex.

Project or Item Deleted:
Walker Park Parking Lot and Use of fund balance is proposed for this adjustment.

Justification of this Increase:
Additional parking spaces is needed at Gary Hampton Softball Complex.

Justification of this Decrease:
The funds from the Walker Park Parking Lot project are funds that remain after the project was completed. sufficient cash & investments exist in Parks Development fund to fund this request and comply with City policy.

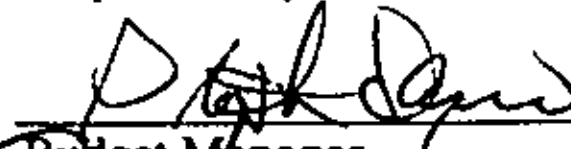
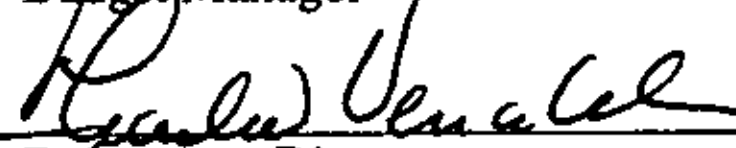
Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number	Project Number
Parking Lot Improvements	350,557	2250 9250 5819 00	96093 1

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number	Project Number
Trailways & Sidewalks	30,034	2250 9250 5814 00	94027 1
Use of Fund Balance	320,523	2250 0925 4999 99	

Approval Signatures

Requested By	Date
	6-1-00
Budget Manager	Date
	6-5-00
Department Director	Date
	6-5-00
Admin. Services Director	Date
	6/5/00
Mayor	Date

Budget Office Use Only

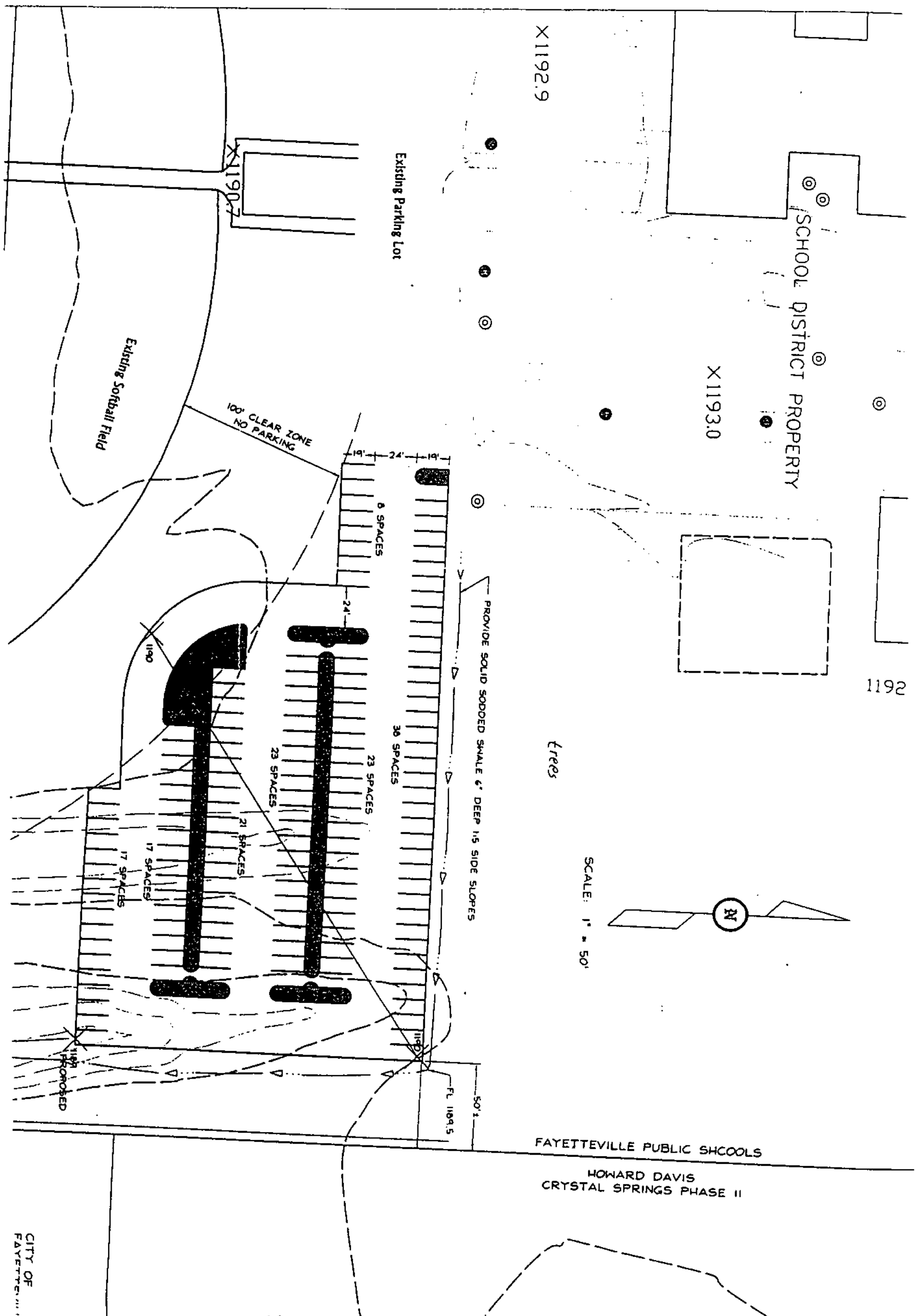
Type: A B C D E

Date of Approval _____

Posted to General Ledger _____

Posted to Project Accounting _____

Entered in Category Log _____



CITY OF FAYETTEVILLE
STREET DIVISION
COST ESTIMATE

JOB: Construct parking lot
LOCATION: Crystal Springs Softball Fields

DATE OF ESTIMATE: May 10, 2000

EMPLOYEE TYPE	# OF EMPLOYEES	HRS.	COST	EQUIPMENT TYPE	# OF EACH	HRS.	COST	TYPE OF MATERIAL	# OF UNITS	COST	TOTAL	
Undercut to remove poor soil												
PWCL	1	256	5,632.00	CREW TRK	1	256	896.00			0.00	0.00	
MW4	2	256	9,216.00	BACKHOE	1	256	2,560.00			0.00	0.00	
MW3	6	256	24,576.00	GRADALL	1	256	0.00			7,680.00	0.00	
MW2			0.00	DUMP TRK	6	256	12,288.00			0.00	0.00	
			0.00	DOZER	1	256	0.00			13,568.00	0.00	
Place 36" surge rock & 24" hillside gravel												
PWCL	1	224	4,928.00	CREW TRK	1	224	784.00	Surge rock	10,300.00	6.00	61,800.00	
MW4	2	224	8,064.00	ROLLER	1	224	6,048.00	Haul	10,300.00	3.80	39,140.00	
MW3	2	224	7,168.00	GRADER	1	224	13,888.00	Hillside	6,500.00	4.00	26,000.00	
MW2			0.00	DOZER	1	224	0.00	Roller rental	1.00	2,800.00	2,800.00	
			0.00	BACKHOE	1	224	2,240.00			0.00	0.00	
Install french drain												
PWCL	1	40	880.00	CREW TRK	1	40	140.00	Filter rock	400.00	11.50	4,600.00	
MW4	2	40	1,440.00	BACKHOE	1	40	400.00	4" perf pipe	1,500.00	0.30	450.00	
MW3	2	40	1,280.00	DUMP TRK	2	40	640.00			0.00	0.00	
			0.00				0.00			0.00	0.00	
			0.00				0.00			0.00	0.00	
Install curb & gutter												
PWCL	1	40	880.00	CREW TRK	1	40	140.00	Curbing	2,400.00	8.50	20,400.00	
MW4	2	40	1,440.00	BACKHOE	1	40	400.00	Grit	100.00	6.00	600.00	
MW3	2	40	1,280.00	DUMP TRK	1	40	320.00			0.00	0.00	
			0.00				0.00			0.00	0.00	
Place asphalt surface coarse												
PWCL	1	16	352.00	CREW TRK	2	16	112.00	Asphalt	750.00	30.00	22,500.00	
MW4	4	16	1,152.00	BACKHOE	1	16	160.00	Haul	400.00	4.00	1,600.00	
MW3	6	16	1,536.00	ASPH MACH	1	16	1,360.00			0.00	0.00	
MW2	4	16	896.00	ROLLER	2	16	864.00			0.00	0.00	
			0.00	DUMP TRK	6	16	768.00			0.00	0.00	
Topsoil & clean up												
PWCL	1	40	880.00	CREW TRK	1	40	140.00	Topsoil	200.00	5.00	1,000.00	
MW4	2	40	1,440.00	BACKHOE	1	40	400.00	Striping	3,500.00	1.10	3,850.00	
MW3	2	40	1,280.00	DUMP TRK	1	40	320.00	Symbols	6.00	750.00	4,500.00	
			0.00				0.00	Arrows	3.00	100.00	300.00	
			0.00				0.00	Crosswalk	65.00	9.00	585.00	
ESTIMATED LABOR COST			\$74,320.00	ESTIMATED EQUIPMENT COST			\$77,988.00	ESTIMATED MATERIAL COST			\$190,125.00	
										TOTAL ESTIMATED COST		\$342,433.00

Fayetteville Parks and Recreation
Programs and Special Events

2000 Softball Tournament Schedule



April 8-9

Gary Hampton: Friends of Youth Softball Tournament. Fayetteville Parks and Recreation. Contact: David Wright 444-3474 or fayettevillesoftball@hotmail.com

Lake Fayetteville: Friends of Youth Softball Tournament. Fayetteville Parks and Recreation. Contact: David Wright 444-3474 or fayettevillesoftball@hotmail.com

April 15-16

Gary Hampton: Sandbagger. Arkansas USSSA. Contact: Brian Choate (501) 442-2440.

Lake Fayetteville: Sandbagger. Arkansas USSSA. Contact: Brian Choate (501) 442-2440.

April 29-30

Gary Hampton: NAGSA Youth Invitational

May 6-7

Gary Hampton: Legends Championships. Contact: Brian Choate (501) 442-2440

May 13-14

Gary Hampton: USSSA Youth Invitational. Arkansas USSSA. Contact: Brian Choate (501) 442-2440.

Lake Fayetteville: Saturday of Champions. Fayetteville Public Schools.

May 20-21

Gary Hampton: Don Glass Charity Classic. Fayetteville Parks and Recreation. Contact: David Wright. (501) 444-3474 or fayettevillesoftball@hotmail.com

Lake Fayetteville: Don Glass Charity Classic. Fayetteville Parks and Recreation. Contact: David Wright. (501) 444-3474 or fayettevillesoftball@hotmail.com

May 27 - 28

Gary Hampton: USSSA State Qualifier. Arkansas USSSA. Contact: Brian Choate 442-2440.

Lake Fayetteville: Youth Tournament. Fayetteville Parks and Recreation.

June 3-4

Gary Hampton: Gary Hampton Youth National Invitational Tournament. Arkansas USSSA. Contact: Billy Lee Yarbrough/Brian Choate

Lake Fayetteville: Gary Hampton Youth National Invitational Tournament. Arkansas USSSA. Contact: Billy Lee Yarbrough/Brian Choate

June 10-11

Gary Hampton: Arkansas USSSA Adult State Qualifier

Lake Fayetteville: Arkansas USSSA Adult State Qualifier

June 17-18

Gary Hampton: USSSA Youth Recreation State Tournament. Arkansas USSSA. Contact: Brian Choate. 442-2440

Lake Fayetteville: USSSA Youth Recreation State Tournament. Arkansas USSSA. Contact: Brian Choate. 442-2440

June 24-25

Gary Hampton: Hooters Invitational Class D NIT. Arkansas USSSA. Contact: Brian Choate. 442-2440

Lake Fayetteville: Hooters Invitational Class D NIT. Arkansas USSSA. Contact: Brian Choate. 442-2440

July 1-2

Gary Hampton: Fireworks Classic. Arkansas USSSA. Contact: Brian Choate 442-2440

July 15-16

Gary Hampton: Fayetteville Parks and Recreation Adult Tournament. 444-3474

Lake Fayetteville: Fayetteville Parks and Recreation Adult Tournament. 444-3474

July 22-23

Gary Hampton: Doc Murdock's Last Chance Dance. Arkansas USSSA. Contact: Brian Choate 442-2440

Lake Fayetteville: Doc Murdock's Last Chance Dance. Arkansas USSSA. Contact: Brian Choate 442-2440

July 29

August 5-6

Gary Hampton: Women's Rec State

August 12-13

Gary Hampton: Industrial/Masters State Tournament

August 19-20

Gary Hampton: Coed State Qualifier. Arkansas USSSA. Contact Brian Choate, 442-2440.

Lake Fayetteville: Tyson Invitational

August 26-27

Lake Fayetteville: Duck Soup. Contact Chad Wolf, 751-7275.

September 2-3

Gary Hampton: USSSA Class B Midwest/New South National Tournament

Lake Fayetteville: USSSA Class E Midwest/New South National Tournament

September 8-9-10

Gary Hampton: Men's 35 and older World

September 16-17

Gary Hampton: Coed State Tournament

Lake Fayetteville: Coed State Tournament

October 28-29

Gary Hampton: Monstersmash Softball Classic. Fayetteville Parks and Recreation. Contact: David Wright 444-3474 or fayettevillesoftball@hotmail.com

Lake Fayetteville: Monstersmash Softball Classic. Fayetteville Parks and Recreation. Contact: David Wright 444-3474 or fayettevillesoftball@hotmail.com

MINUTES OF A SPECIAL MEETING
OF THE
PARKS AND RECREATION ADVISORY BOARD

MAY 23, 2000

A special meeting of the Fayetteville Parks and Recreation Advisory Board was held May 23, 2000 at 12:00 p.m. at the Parks & Recreation Division, 1455 Happy Hollow Road, Fayetteville, Arkansas.

PRESENT: Parks and Recreation Advisory Board members Ackerman, Colwell, Nickell, Shoulders, and Thiel; Staff members Edmonston, Gulley, Nelson, Rogers, Schuldt, and Wright.

BUSINESS

Mr. Wright distributed survey results from the Don Glass Charity Classic adult softball tournament held at Gary Hampton Softball Complex May 19-21, 2000. Based on 47 visiting teams, multiplied by the average amount of dollars each tourist brings to the city (currently \$125 per Chamber of Commerce), it is estimated that the total economic impact for the city for the weekend tournament was \$205,625. The Chevrolet President's Cup youth classic soccer tournament was also held over the weekend at the Asbell, Lewis, and Walker soccer fields. Other important dates for Gary Hampton Softball Complex include: June 2-4, Gary Hampton Youth N.I.T.; June 24-25, Men's Class D National Invitational Tournament; August 5-6, Women's State Tournament; September 2-3, Class B and Class E Midwest National Tournament; September 8-9, Men's 35 and older World Tournament; September 16-17, Coed State Tournament.

Mr. Ackerman requested a year-end report of all activities which bring visitors into the city for the Parks and Recreation Advisory Board, City Council, and Advertising & Promotion Commission.

Ms. Edmonston presented a proposed parking lot design from City Engineering for an additional 147 parking spaces at Gary Hampton Softball Complex. The project will have to be approved by the Planning Commission.

There have been many parking problems which have upset Holcomb Elementary School. Traffic control has been difficult. Ms. Edmonston said Parks has an obligation to correct these problems and be a good neighbor to the school.

Ms. Thiel suggested maximizing the number of parking spaces now instead of later. Ms. Edmonston said the soil was so bad that five feet would be cut and filled with red dirt. The Street Division has estimated a project

STAFF REVIEW FORM

AGENDA REQUEST
XX CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council meeting of June 20, 2000

FROM:

Eric J. Schuldt
Name

Parks and Recreation
Division

Public Works
Department

ACTION REQUIRED:

Approval of Contract with Lose & Associates, Inc.

COST TO CITY:

\$100,000
Cost of this Request

\$100,036
Category/Project Budget

Park Master Plan
Category/Project Name

4470-9479-5315-00
Account Number

\$36
Funds Used To Date

Park Improvements
Program Name

00017
Project Number

\$100,000
Remaining Balance

Sales Tax
Fund

BUDGET REVIEW: Budgeted Item Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

Marilyn J. Cramer
Accounting Manager

5-31-00
Date

ADA Coordinator

Date

[Signature]
City Attorney

5-31-00
Date

Yolanda Fields
Internal Auditor

6-1-00
Date

[Signature]
Purchasing Officer

6-1-00
Date

STAFF RECOMMENDATION:

Approval of Contract

[Signature]
Division Head

5-31-00
Date

Cross Reference

[Signature]
Department Director

6-8-00
Date

New Item: ☒ Yes ☐ No

Administrative Services Director

Date

Prev Ord/Res #: _____

Mayor

Date

Orig Contract Date: _____

STAFF REVIEW FORM

Description PARK MASTER PLAN

Meeting Date 5-20-00

Comments:

Budget Coordinator

Accounting Manager

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor

Reference Comments:

DEPARTMENTAL CORRESPONDENCE

To: Mayor Fred Hanna and City Council

Thru: Charles Venable, Public Works Director *CV*
Connie Edmonston, Parks & Recreation Superintendent *CE*

From: *ESS* Eric J. Schuldt, Parks Development Coordinator

Date: May 31, 2000

Re: Park Master Plan Contract

The Parks and Recreation Division requests the approval of a contract with Lose & Associates, Inc. in the amount of \$100,000 for the development of a Comprehensive Parks and Recreation Master Plan for the City of Fayetteville. The funding for this project was approved in the 1999 and 2000 Sales Tax Fund. Twelve firms expressed an interest in the Master Plan project. A selection committee that included a representative from City Council, the Parks and Recreation Advisory Board, and City staff evaluated applications and interviewed the finalist and decided that Lose & Associates, Inc. was the most qualified firm for our project.

The Master Plan will be a planning document which will be designed to guide the department's growth over the next ten years. Lose & Associates, Inc. will provide Parks and Recreation with the following information and services:

- Data collection and analysis
- Direction of the public input process to determine needs for park facilities and programs, gain an understanding of how the public perceives the current facilities and programs, and formulate goals and objectives for the department
- Organize meetings including a kick-off meeting, interviews with community leaders, steering committee workshops, facilitation of up to 10 public meetings, and presentation of Master Plan to City Council
- Development of a survey to be distributed through the school system
- Assessment and inventory of all parkland and facilities
- Recommendations relating to land acquisition, open space, park development, recreation facilities, and greenways
- Development of an action plan for the Parks and Recreation Division with a detailed summary of expenditures and recommendations for implementation

- Recommendations for facility development, maintenance, risk management, staffing, fees/charges, program standards and park security/vandalism
- An assessment of programs and joint venture opportunities

For a complete listing of the services that will be provided by Lose & Associates, Inc. please see the attached contract. If you have any questions, please call Connie Edmonston at 444-3473 or Eric J. Schuldt at 444-3472.

Attachments: Contract with Lose & Associates, Inc.

CITY OF FAYETTEVILLE
AGREEMENT FOR RECREATION PLANNING 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 LOSE & ASSOCIATES, Inc. with offices located in Nashville, Tennessee.

WITNESSETH:

Whereas, the OWNER is planning to develop a COMPREHENSIVE PARKS AND RECREATION MASTER PLAN and

Whereas, LOSE & ASSOCIATES 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 LOSE & ASSOCIATES in connection with said 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 LOSE & ASSOCIATES

The OWNER agrees to employ LOSE & ASSOCIATES to perform, and LOSE & ASSOCIATES agrees to perform, professional PLANNING services in connection with the project set forth in the Sections to follow; and the OWNER agrees to pay and LOSE & ASSOCIATES 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 City of Fayetteville Parks and Recreation Division has requested qualifications to develop a comprehensive master plan to guide the department's growth over the next ten years. The master plan is to include:

- Data collection and analysis of national standards, a review of the Fayetteville 2020 plan, Northwest Arkansas Regional Planning information, the 1994 Park Master Plan and current city policies and goals relating to open space and parks.
- Direction of a public input process to determine needs for park facilities and programs, gain an understanding of how the public perceives the current facilities and programs, and to formulate goals and objectives for the future of the department.

A. 4. Page 6

- Preparation of a survey to be distributed through the school system. The survey will cover recreational needs, programs, quality of services and availability of facilities. LOSE & ASSOCIATES will tabulate the results based on a random sample of responses.
- Assessment and inventory of all parkland and facilities.
- Review and evaluation of existing parkland ordinances to make recommendations relating to land acquisition, open space, park development, recreation facilities and greenways.
- Opinions of probable cost for recommended facilities and acquisitions, as well as a prioritized list for implementation of facilities and acquisitions.
- An action plan for the Parks and Recreation Division with a detailed summary of expenditures and recommendations for implementing strategies and priorities, developed through public input and staff interviews and assessments.
- Analysis and development of a classifications system for parks and park development guidelines.
- Recommendations for facility development, maintenance, risk management, staffing, and program standards to achieve the goals of the proposed parks classification system.
- An assessment of the relationship of Fayetteville Parks and Recreation resources to NRPA accreditation program.
- An assessment of programs and joint venture opportunities with existing local support recreation providers. Groups to be included in the assessment process include: Fayetteville Youth Center, City of Fayetteville Trails Committee, Fayetteville Youth Baseball, Fayetteville Baseball Association, Fayetteville Public School System, Botanical Garden Society of the Ozarks, and various sports associations.
- Review of current fees and charges policies.
- Review of current programs for special populations and recommendations to increase services, incorporating public input and interviews.
- Identification of natural resources that should be made a part of the park system.
- Review of current security concerns and recommendations to reduce vandalism or other nefarious activities in the parks.

During the master planning process, the OWNER requires LOSE & ASSOCIATES to work closely with recreation staff members to gain an in-depth understanding of the department and the community. LOSE & ASSOCIATES will contact other city departments, including the planning and community development divisions, the office of the mayor, and police department officials to gain their insight on parks and recreation. The information gained through the planning process will be illustrated and documented in a bound master plan report. Graphic material and maps as necessary

to convey findings for both the final report and public meetings will be provided as part of the master planning process. Graphics will be coherent in both color and black and white formats.

The final master plan will be presented to the general public, City staff and the Parks and Recreation Advisory Board for review and discussion. The plan will also be presented to the Mayor and City Council for their review and official adoption. Forty (40), bound and one (1), unbound copy of the Comprehensive Master Plan final draft will be provided, along with a digital file of the plan.

SECTION III - INFORMATION & SERVICES

The OWNER will furnish site plans of all parks, or if site plans are not available, site topographic mapping or aerial mapping that is currently available on the City's GPS system. This mapping will be provided, free of charge, to LOSE & ASSOCIATES on magnetic media.

The OWNER will provide the following reports or inventories to LOSE & ASSOCIATES

REPORTS AND LANDUSE DATA

- Fayetteville Zoning and Land Use Manual.
- Fayetteville 2020 Plan.
- Northwest Arkansas Regional Planning Manual.
- 1994 Park Master Plan.
- All Regulations Pertaining to Park Land and Open Space.

INVENTORIES AND LISTINGS

- Listing of all Existing Parks and Community Centers.
- Listing of all Recreation Programs and Special Events.
- Listing of all Agencies with Joint Use or Provider Agreements.
- Listing of all Athletic Associations.
- Listing of all Employees.
- Inventory of Maintenance Equipment "large equipment, trucks, mowers, etc."
- Inventory of Office Equipment "computers, fax, recreation software, etc."
- Inventory of Recreation Equipment "major cost items to operate programs"

- Copy of all Operation Manuals.
- Copy of all Recreation Policies.
- Copy of Current and Immediate past Budget.
- Copy of all Job Description.

When available, the City will provide the aforementioned documents in a digital format.

SECTION IV - SERVICES TO BE FURNISHED BY LOSE & ASSOCIATES

The tasks required to complete the planning process consist of the following:

Task I: Kick-off Meeting, Steering Committee Formation, Interviews and Data Collection

A. KICK-OFF MEETING

LOSE & ASSOCIATES will conduct a kick-off meeting with Parks and Recreation Division staff and the Parks Advisory Board. At this meeting, we will review the schedule for the development of the master plan and establish dates for various public meetings and the steering committee workshop. This meeting will also allow staff and board members to pose questions to the master plan team or express areas they feel should be looked at closely during the planning process. The kick-off meeting is generally a two-hour meeting. Following the meeting, our team will meet with staff to review the inventory and mapping available for the project and identify additional information that will be needed.

The next day, our team will begin the interview process. We like to interview advisory board members, elected officials and parks and recreation staff as early in the process as possible. We like scheduling a full day of interviews on a one-hour rotating basis. While some team members are conducting interviews, other team members begin the site visit process.

B. STEERING COMMITTEE FORMATION

LOSE & ASSOCIATES will help the city develop a steering committee of Fayetteville residents. LOSE & ASSOCIATES will also prepare a list of criteria for inclusion on the committee, prepare and mail an invitation, along with task descriptions, to the chosen candidates. Committee members will be asked to commit to attending a project kick-off meeting, public meetings, a two-day workshop and a city-wide presentation of the final recreation master plan. It is understood that the committee shall have twenty to twenty-five members representing as wide a variety of recreational interests as possible.

C. FACILITATION AND WORKING MEETINGS

LOSE & ASSOCIATES will prepare an agenda for all project meetings. The agenda will clearly outline each meeting component and a timeframe for completion of individual elements. It is understood that the City of Fayetteville will provide host facilities for all meetings—LOSE & ASSOCIATES will provide all requisite materials such as presentation aids, flip charts, etc. Project meetings to be facilitated include, but may not be limited to, the following:

- Individual interviews with recreation board members, and selected city staff members, elected officials including council members, members of the Board of Education and other recreation proponents. The purpose of these interviews is to further refine project needs and desires and to identify issues and concerns that may impact the final plan.
- Facilitation of a kick-off meeting with the steering committee, including an overview of the project, as well as participant expectations.
- Facilitation of up to 10 public meetings in Fayetteville.
- Facilitation of a staff meeting or working session to summarize the results of interviews and public meetings, and to discuss the agenda for a two-day steering committee workshop.
- Facilitation of the steering committee workshop to identify department strengths and weaknesses, goals, and parks and recreation facility and program needs.
- Facilitation of a staff meeting or working session to summarize the results of public input, including the steering committee workshop.
- Presentation to a joint meeting of the Fayetteville City Council and the Fayetteville Parks and Recreation Division summarizing the results of public input, including the steering committee workshop.

Task II: Preparation of Recreation Survey

A written recreation survey is an established tool for gathering public input. Written surveys allow individual concerns and desires to be expressed without attending public forums.

A. SURVEY PREPARATION

Lose & Associates will prepare a written survey on recreation opportunities and facilities. The survey will include questions relating to facility distribution, facility desires, program participation, desired programs and correct use patterns.

B. SURVEY DISTRIBUTION

Lose & Associates will print 6000 surveys for distribution. Working with the Fayetteville Parks & Recreation Department staff, we will determine the best method for distribution and collection of the surveys. It is anticipated that surveys will be distributed through the school system, community centers, libraries and other public facilities.

C. Lose & Associates will review written surveys collected by the Fayetteville Parks & Recreation Department. Survey totals will be included in the summary of public input following completion of Task III.**Task III: Public Input Process**

The input of the community is a fundamental part of the comprehensive planning process. A parks and recreation system is not effective unless it caters to the needs of all members of the community. Therefore, eliciting input from the people is a significant part of the planning process. There are several ways in which input is sought from the community. These are as follows:

A. PUBLIC MEETINGS

These forums are advertised throughout the community and offer opportunities for large groups of people to come together and express their opinions about the parks and recreation system and offer ideas for its improvement. The public meeting serves as a point of interaction between the planning team and the people, making the planning process a collaborative effort of planning professionals and the population served by the plan. The public meeting is widely advertised throughout the community and provides an opportunity to discuss the planning process and to generate enthusiasm among the people for whom it is being developed.

In Fayetteville, we propose to use the boundaries of the eight census tracts as public meeting boundaries. We will hold public meetings in two districts per meeting night and complete the public meetings in a total of four evenings. We will also hold two community-wide public meetings for those who may have missed their neighborhood meeting.

B. STEERING COMMITTEE WORKSHOP

The opinions of special interest groups are heard through all of the public input forums. Representatives of those groups are included on a citizen steering committee. The steering committee workshop is a full-day event held on a Saturday to maximize the number of people who can attend. By bringing together all of the special interest groups, such as soccer associations, baseball enthusiasts, environmental clubs, senior citizens' organizations and greenways proponents, a group dialogue develops, which serves to educate all groups on the

overall needs of the system and foster discussion about each separate group's needs. We also find out perceived strengths and weaknesses within the department. By the end of the workshop, we find that we have arrived at a balanced set of priorities reflecting the needs and interests of all park user groups, from the individual who uses facilities on a casual recreational basis to the large organized groups who make regular use of the facilities. These priorities, along with priorities established by team members, are used to guide the Master Plan Recommendations.

Task IV: Master Plan Development

A. INVENTORY EXISTING FACILITIES AND PROGRAMS .

LOSE & ASSOCIATES, utilizing a written inventory of existing recreation facilities and programs supplied by the Parks and Recreation Division, will prepare a color base map (reproducible in black and white) delineating school zones, city limits, commission districts and facilities. Facilities will be identified as one of the following:

- City of Fayetteville Parks and Recreation facilities.
- Publicly owned park and recreation facilities.
- Public school recreation facilities.
- University of Arkansas recreation facilities.
- Commercial or private major recreation facilities.
- Church or athletic association facilities.

Program inventories will be identified in a table format. The table will identify the type of program and the location where the program is offered.

The City will provide LOSE & ASSOCIATES with a map of updated school zones, recreation districts, council or commission districts and the specific portions of the city road system required to develop base mapping. All maps created throughout the planning process will be reduced to 11" x 17" in the final master plan report and will be reproducible in both color and black and white.

B. GOALS AND OBJECTIVES

1. *Analysis of prior goals and objectives:* LOSE & ASSOCIATES will review existing goals and objectives within the Parks and Recreation Division and determine the extent to which those goals have been achieved.
2. *Incorporation of new goals and objectives obtained through the input process:* LOSE & ASSOCIATES will incorporate the consensus results of public input and personal interviews via a narrative report and graphic images as required. Goals and objectives for the upcoming ten-year planning period will be developed and prioritized.

C. ANALYSIS OF EXISTING PLANNING AND DEMOGRAPHIC DATA

1. *Analysis of existing planning documents:* LOSE & ASSOCIATES will review relevant documents and where appropriate, incorporate existing data into recommendations and action plan for the Parks and Recreation Division.

Documents to be reviewed include:

- 2020 Plan.
- 1994 Park Master Plan.
- Northwest Arkansas regional planning data.
- Current city park and open space guidelines.
- Greenways and trail plans.
- Proposed park master plan.

Additionally, LOSE & ASSOCIATES will incorporate the results of the needs assessment, public input and personal interviews. LOSE & ASSOCIATES will utilize national park and recreation standards published by the National Recreation and Park Association (NRPA) as a basis for developing recommendations. However, the NRPA standards will, if necessary, be modified in order to achieve the consensus goals, objectives and needs identified in the planning process—it is understood that local trends and desires are critical to this planning process. Additionally, LOSE & ASSOCIATES will analyze all existing facilities to determine their carrying capacity and if they have reached, or are near to reaching, that capacity.

2. *Cross-referencing of demographics, national standards, inventory of existing facilities, needs analysis, and public input:* LOSE & ASSOCIATES will review all relevant demographic data, current and projected through the year 2010. This information will then be compared to NRPA standards to determine to what extent recreational facilities, acreage and programs meet per capita national standards. The information will also be compared to needs identified via public input and personal interviews to determine to what level existing facilities and programs satisfy local expectations. The extent to which local expectations deviate from nationally accepted standards will be identified and expressed in the written planning document via narrative and, if appropriate, charts and graphs. The information will also be expressed graphically on a city map distinguishing between service area coverage provided by county, city, or federal recreation facilities.

D. PARK SYSTEM CONCEPT

Analyze the existing park system concept: LOSE & ASSOCIATES will review the park system concept and will analyze the extent to which that concept has been achieved. At the same time, LOSE & ASSOCIATES will determine to what extent the previous concept meets current community desires identified in this planning process. Other planning efforts will also be studied to determine what concurrent or planned development may impact parks and recreation. LOSE & ASSOCIATES will then propose a park system concept that best satisfies current community desires and needs and complies with NRPA accreditation guidelines.

E. REVIEW OF PARK SYSTEM MANAGEMENT TECHNIQUES

LOSE & ASSOCIATES will analyze current park system management techniques and procedures relative to issues and concerns identified via personal interviews and public input. LOSE & ASSOCIATES will then develop recommendations focusing on system modifications, if required, to resolve identified concerns. This analysis will include assessment of:

- Compliance with ADA and consumer Product Safety Commission guidelines.
- Current fees and charges policies.
- Departmental policies.

- Athletic association and joint programming policies.
 - Land dedication policies.
 - Special population service policies.
1. *Joint-use options with City of Fayetteville public schools, athletic associations, semi-private associations, advocacy groups and the University of Arkansas:* LOSE & ASSOCIATES will review all joint-use agreements currently in effect with allied providers. The goal of this assessment is to determine how these agreements might be enhanced, and to identify additional opportunities to provide the highest quality and most efficient delivery system possible. As part of this analysis, LOSE & ASSOCIATES will review successful joint-use agreements in comparably sized communities to formulate recommendations for Fayetteville.
 2. *Revenue production and fee structures:* LOSE & ASSOCIATES will analyze current fee policies, program costs, and revenue generated. This process will include an assessment of youth association agreements relative to maintenance and operating costs and revenue generated. Additionally, LOSE & ASSOCIATES will use its knowledge of comparable communities to determine the type of programs that should be expected to produce revenue and those which typically are underwritten. LOSE & ASSOCIATES will then develop strategies for the ongoing monitoring of program subsidies, revenues, and participation necessary to achieve effective and efficient delivery of recreation services. Particular attention will be paid to developing recommendations for continued and future coordination with youth associations and allied recreation providers; these recommendations will also focus on achieving the highest degree of efficiency and effectiveness possible. It is also understood that LOSE & ASSOCIATES will identify potential opportunities for revenue generation in addition to those already in place.
 3. *Planning, design and construction guidelines:* LOSE & ASSOCIATES will review existing standards and guidelines. Issues of cost, maintenance, and aesthetics will be critiqued and recommendations developed for modifications based on recent developments in technology, materials, and construction methodology. If no guidelines exist, recommendations will be developed to guide park development to a standard established during the master plan process.
 4. *Security and vandalism guidelines:* Through the interview and site visit process, LOSE & ASSOCIATES will review security concerns and issues of crime and vandalism in the parks. An interview with the Fayetteville Police Department will be conducted to ascertain the number of reported arrests in the parks and their perspective on park crime. Recommendations will be developed to reduce crime and vandalism in the parks.
- F. SYNTHESIS—POLICIES, STRATEGIES, AND CAPITAL IMPROVEMENTS
1. *Policies and strategies:* LOSE & ASSOCIATES will prepare an action plan for achieving identified public goals and desires. LOSE & ASSOCIATES will also develop an action plan for all recommendations developed via research, analysis and comparisons to similar departments and communities with which the LOSE & ASSOCIATES team is familiar.

2. *Facilities and programs needs list:* Prioritization strategies will be prepared for implementation of recommended facilities and programs. The strategy will include recommendations for improvements and renovations to existing facilities, as well as new facilities required to meet the identified public need. Priorities will be illustrated via a chart, which includes descriptions of the anticipated impacts on the cost of operations and maintenance. At a minimum, the chart will include the following data for each recommendation:
 - Capital expenditure opinion of probable costs.
 - Opinion of probable cost of additional staff.
 - Opinion of probable maintenance costs ranging from 1 (least maintenance) to 10 (highest maintenance).
3. *Ten-year development plan:* LOSE & ASSOCIATES will prepare a ten-year plan, including prioritization and opinion of probable construction costs for recommended capital improvements. The ten-year plan will also include recommendations for the next phase of development and land acquisition or easements. The written master plan report will describe the entire planning process, and will summarize all research and gathered input, as well as final recommendations, strategies and priorities. Graphics will be developed as needed to illustrate specific facility recommendations and modifications on either a city-wide or park scale. Graphics will be reproduced in color in the document; however, it is understood that all images must be equally legible when reproduced in black and white.

Task V: Presentation of Final Master Plan

A. FINAL MASTER PLAN PRESENTATIONS

LOSE & ASSOCIATES will present the final plan at a city-wide meeting attended by the Parks and Recreation Division and the Steering Committee, and at a meeting of the Fayetteville City Council. Selected graphics developed during the planning process will be used in these presentations to illustrate the results of the needs assessment survey, public input and the final recommendations.

The Master Plan will be developed using NRPA recreation facility standards, Americans with Disability Act, and Consumer Product Safety Commission guidelines as reference documents in making recommendations to improve the park system.

SECTION V - COORDINATION WITH OWNER

LOSE & ASSOCIATES shall hold conferences throughout the design of the project with representatives of the OWNER to the end that the Master Plan, as written, shall have full benefit of the OWNER'S knowledge and input.

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 office.

SECTION VII - PROJECT SUBMITTALS

- A. Document Presentation and Preliminary Plan Presentation
1. LOSE & ASSOCIATES will deliver 15 preliminary and 40 final copies of the master planning documents, including all elements described in the Request for Proposals and in this response to that request. One unbound original and a digital copy of the Final Master Plan will be provided. The chronology for submittal will consist of the following:
 - Submittal of preliminary narrative and graphic master plan report to City staff for review
 - Review and comment by City staff
 - Revision and incorporation by LOSE & ASSOCIATES of comments and suggestions prepared by the City staff
 - Final review by City staff
 - Final revisions by consultant, if required
 - Presentation of preliminary master plan to the Parks and Recreation Division
 - Presentation of preliminary master plan to the Steering Committee
 - Presentation of preliminary master plan to the City Council
 - Final revisions by consultant, if required
 - Submittal of one digital copy containing all master plan narrative and tables prepared in Microsoft Word, one unbound original and 40 final bound copies.

SECTION VIII - SUBCONTRACTING

SECTION IX - TIME OF BEGINNING AND COMPLETION

LOSE & ASSOCIATES shall begin work under this Agreement within ten (10) days of notice to proceed and shall complete the Master Plan for the construction contract within 10 months.

The above completion time is predicated upon the fact that the OWNER will process review comments and requests for data on the parks system in an expeditious manner: 15 days per submittal or request for data.

SECTION X - FEES AND PAYMENTS

A. "Design" Phase Services:

For, and in consideration of, the services to be rendered by LOSE & ASSOCIATES, the OWNER shall pay LOSE & ASSOCIATES a fixed cost not to exceed \$100,000.00, including reimbursable expenses not to exceed \$12,200.00 for the development of a Comprehensive Parks and Recreation Master Plan, as outlined in Section IV, Services to be Furnished by LOSE & ASSOCIATES.

NOT TO EXCEED FEES BY PROJECT TASK ARE AS FOLLOWS:

Task I:	Kick-off meeting Steering Committee formation, and data collection.	\$16,990.00
Task II:	Preparation of Surveys	\$ 6,040.00
Task III:	Public Input Process Ten public meetings, Steering Committee workshops, interviews and site visits.	\$37,670.00
Task IV:	Master Plan development text preparation, presentation of preliminary master plan.	\$21,075.00
Task V:	Presentation of final master plan, revisions to master plan text and final presentation.	\$ 6,025.00
	Reimbursable expenses	\$12,200.00

Staffing participation breakdowns for this project are provided by task on Attachment A, and hourly rates for additional services are provided on Attachment B. These rates will be used to develop monthly billing. Monthly invoices will indicate the percentage of the project completed based on the judgement of LOSE & ASSOCIATES.

LOSE & ASSOCIATES shall invoice the OWNER monthly.

SECTION XI - 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 LOSE & ASSOCIATES for adjustment under this clause must be asserted with thirty (30) days from the date of receipt by LOSE & ASSOCIATES 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 assessed 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 XVII MISCELLANEOUS PROVISIONS,

(1) Dispute Resolutions. However, nothing in this clause shall excuse LOSE & ASSOCIATES from proceeding with the contract as changed.

Changes requested and authorized by the OWNER will be billed hourly at the rates listed in Attachment B, Hourly Rate Schedule.

SECTION XII - OWNERSHIP OF DOCUMENTS

All documents produced in the development of the Master Plan are and remain the property of the OWNER. LOSE & ASSOCIATES may retain reproduced copies of all documents. The OWNER agrees not to distribute the Master Plan to other communities without compensating LOSE & ASSOCIATES for the work.

SECTION XIII - 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 LOSE & ASSOCIATES, 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 cancelled as hereinafter provided.
- B. Cancellation - Should the OWNER, for any reason whatsoever, decide to cancel or to terminate the use of "LOSE & ASSOCIATES" service, the OWNER will give written notice thereof to LOSE & ASSOCIATES, who will immediately terminate the work. If the OWNER so elects, LOSE & ASSOCIATES may be instructed to bring a reasonable stage of completion to those items whose value would otherwise be lost. LOSE & ASSOCIATES 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 "LOSE & ASSOCIATES" services, LOSE & ASSOCIATES shall be paid on 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 XIV - MISCELLANEOUS PROVISIONS

- 1. 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.
- 2. Responsibility for Claims and Liability - LOSE & ASSOCIATES shall save harmless

the OWNER from all claim and liability due to its (LOSE & ASSOCIATES) activities, or those subcontractors, its agents, or its employees during the time this contract is in force.

3. General Compliance with Laws - LOSE & ASSOCIATES shall comply with all federal, state and local laws and ordinances applicable to the work. LOSE & ASSOCIATES shall have be a professional landscape architect, licensed in the State of Arkansas.

SECTION XV - SUCCESSORS AND ASSIGNS

The OWNER and LOSE & ASSOCIATES 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 LOSE & ASSOCIATES 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 XVI - COVENANT AGAINST CONTINGENT FEES

LOSE & ASSOCIATES warrants that it has not employed or retained by company or person, other than a bonafide employee working solely for LOSE & ASSOCIATES, 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 LOSE & ASSOCIATES, 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.

CITY OF FAYETTEVILLE

LOSE & ASSOCIATES

By: _____
Mayor

By: Chris Camp
Authorized Representative

ATTEST:

City Clerk

Fayetteville Park Master Plan 6-6-2000

ATTACHMENT A

Comprehensive Park Master Plan
Fee Breakdown

	Principal Landscape Architect	Associate	Recreation Planner	Land Planner	Research Coordinator	Office Manager	Graphic Designer	Administrative Assistant
Task I:								
Kick-Off Meeting,								
Site Visit								
Data Collection and Interviews								
Sub-Total	\$625.00	\$4,940.00	\$4,465.00	\$5,940.00	\$500.00	\$0.00	\$400.00	\$30.00
Task I Total	\$16,990.00							\$120.00
Task II:								
Survey Preparation	2	8	8	54	20			10
Survey Tally								
Sub-Total	\$250.00	\$760.00	\$760.00	\$2,970.00	\$1,000.00	\$0.00	\$0.00	\$300.00
Task II Total	\$6,040.00							
Task III:								
Workshop, Complete Interviews, Public								
Meetings, Site Investigations								
Public Input Summary								
Sub-Total	\$875.00	\$11,685.00	\$9,405.00	\$14,685.00	\$500.00	\$0.00	\$400.00	\$120.00
Task III Total	\$37,670.00							

ATTACHMENT A

Comprehensive Park Master Plan Fee Breakdown

Comprehensive Park Master Plan Fee Breakdown			
Principal Landscape Arch.	5	\$125.00	
Associate	30	\$95.00	
Recreation Planner	60	\$95.00	
Land Planner	160	\$55.00	
Research Coordinator	17	\$50.00	
Office Manager	10	\$35.00	
Graphic Designer	40	\$40.00	
Administrative Assistant	10	\$30.00	

Task IV:
Preliminary Master Plan Development
Cost Estimates
Facility Recommendations
Staff Review & Edit Preliminary

	\$625.00	\$2,850.00	\$5,700.00	\$8,800.00	\$850.00	\$350.00	\$1,600.00	\$300.00
Sub-Total								
Task IV Total	\$21,075.00							

Task V:
Final Master Plan Development
Final Deliverables

Task V:	2	10	19	39	0	5	10
Final Master Plan Development							
Final Deliverables							
Sub-Total	\$250.00	\$950.00	\$1,805.00	\$2,145.00	\$0.00	\$175.00	\$300.00
Task V Total	\$6,025.00						

TOTAL FEE for PROFESSIONAL SERVICES

\$87,800.00

Reimbursable Expenses Estimate

Lodging	2,780.00
Travel	2,200.00
Meals	1,550.00
Printing	4,750.00
Office Supplies	200.00
Workshop Supplies	120.00
Shipping	150.00
Telephone/Data Transmission	450.00
Total Reimbursable Expenses	\$ 12,200.00

TOTAL PROJECT FEES

ATTACHMENT B

HOURLY RATE SCHEDULE (Not to exceed) (for use with all hourly agreements and for Additional Services)

Professional Services

Principal Landscape Architect	\$ 125.00 / hour
Associate	\$ 95.00 / hour
Recreation Planner	\$ 95.00 / hour
Registered Architect/Civil Engineer	\$ 90.00 / hour
Project Manager	\$ 75.00 / hour
Registered Landscape Architect	\$ 70.00 / hour
Intern Architect	\$ 65.00 / hour
Engineer in Training	\$ 60.00 / hour
Land Planner	\$ 55.00 / hour
Engineering/Architectural/Landscape Technician	\$ 50.00 / hour
Research Coordinator/Communications Specialist	\$ 50.00 / hour
Graphic Designer	\$ 50.00 / hour
Drafter	\$ 35.00 / hour
Office Manager	\$ 35.00 / hour
Administrative Assistant	\$ 30.00 / hour

Reimbursable Expenses

Consultants' Services	cost
Prints	cost
Mylars, Vellums	cost
Long Distance Telephone Charges	cost
Postage and Shipping	cost
Mileage and Travel Expenses	cost
Copies	cost

January 1, 2000

NOTE: All the above stated fees and expenses are to be billed monthly, and the invoices are due and payable upon receipt. Other reimbursable expenses not shown hereon will be invoiced at our cost.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Heather Woodruff

COPY: Charles Venable

FROM: Kim J. Hesse, Landscape Administrator *KJH*

DATE: June 8, 2000

SUBJECT: City Council Agenda - June 20, 2000

The City of Fayetteville's urban forestry assessment that is being prepared by Natural Path Forestry Consultants, Inc., is nearing completion. Included in the scope of the project, Mark Duntemann, consultant, is to present his findings to the public and the council during a public council meeting. Charles Venable and I had decided to keep the presentation date flexible until we had confirmation from the consultant. Mark spoke with me late on Wednesday the 7th and stated that he will be prepared to present at the June 20th meeting and has made travel plans to do so. I am requesting that this urban forestry presentation be put on the June 20th agenda if possible. I hope that adding to the agenda will not inconvenience yourself or the council. I do appreciate your assistance.

Please contact me at ext. 308 if you have questions, or need additional information.

SECTION 1.0 EXECUTIVE SUMMARY

1.1 INTRODUCTION

In the fall of 1999, a grant was awarded to the City of Fayetteville by the Arkansas Department of Natural Resources to conduct an assessment, with recommendations, of the City's urban forestry program. Over the course of five months the assessment was carried out by interviewing staff, assessing the street tree population health, and reviewing City policies. This report is the culmination of that assessment.

The foundation of the assessment and recommendations were developed by using an Urban Forestry Sustainability Model developed by Dr. James Clark and Nelda Methaney. A sustainable system is one which survives or persists. In the context of urban forests, such a system would have continuity over time in a way that provides maximum benefits from the functioning of that forest. Clark and Matheny developed a working model that defines nineteen specific criteria to evaluate sustainability. These nineteen criteria are separated into three types of resources: vegetation resource, management resource, and community resource.

At the core of understanding the importance of a sustainable urban forest is the attachment that people have for the community as a whole. The appreciation people hold for the community in which they reside is developed, in no small part, by the physical surroundings which they come in contact with every day. Urban vegetation plays an important role in determining how a person feels about their community.

The following brief narrative summarizes our recommendations within the nineteen criteria defined by Clark and Matheny. Our recommendations are tempered by what we feel is achievable by the City of Fayetteville within limited and potential resources. The narrative for each criterion begins with a problem statement.

1. Vegetation Resource

The improvement in health of the individual trees and the collective urban forest is the general goal of any sustaining system. To that end the following four criteria were evaluated and recommendations for enhancing the overall vegetation resource are made.

Canopy cover

Canopy closure is a key element to a sustainable urban forest. Its most important role is that of a climate control mechanism. Burgeoning development on the urban fringe and the minimal amount of plantings occurring in the City core are dramatically impacting the amount of canopy cover in the City. We recommend that a progressive

planting initiative be implemented in all areas of the City were site limitations are not restrictive.

Age distribution of trees

As trees mature and senesce, the cost of maintenance substantially increases. A sustainable system tempers plantings over time to allow a mix of ages so that the maintenance burden to the City is not excessive. We recommend that, while a strong planting program is recommended, the number of trees planted per year be of an amount that can be uniformly sustained over decades.

Species mix

The sample inventory identified six species that dominate the streetscape. Disease problems, such Dutch Elm Disease, have shown us that the potential for catastrophic tree loss can occur with monoculture plantings. We have identified over sixty species that appear to do well on the streets and neighborhoods of Fayetteville. We believe this planting pallet can be expanded to over 100 species. We recommend that a concerted effort on the part of the City to diversify species should be made.

Native vegetation

The presettlement landscape of Fayetteville was rich in native oak woodlands. The introduction of farming and eventual development has seriously reduced the landscape to remnant pockets of native trees. In addition very few trees being planted appear to be native species. We recommend that as part of the City's planting program, an emphasis be placed on replanting native species.

2. Community Framework

The second key element of a sustainable system is the interaction of all of the partners that play a role in maintaining or impacting urban vegetation. The following seven criteria address this community framework.

Public agency cooperation

The various departments within the City have very defined responsibilities. In regards to trees and their maintenance these responsibilities may actually cause conflict between departments. First and foremost it is imperative that tree policies are uniformly adhered to by each Department. We recommend that an interdepartmental task force be created to define what these policies will be in regards to planting site restrictions, training, responsibility, etc.

SECTION 1: EXECUTIVE SUMMARY

Involvement of large landholders

Institutions such as the University, corporate landowners and medical facilities manage large portions of vegetated space within the City. Dialogue between the City and these landholders will guarantee a uniform direction in tree maintenance and education.

Green industry cooperation

A number of poor tree maintenance procedures on both public and private lands were observed over the course of this project. Cooperation and professional enhancement with local green industry companies is an important enhancement to the sustainable urban forest. Not only certification, but also increasing and facilitating training opportunities for local contractors will allow a healthier forest to be developed.

Neighborhood action

In our brief time, we have noticed substantial community involvement in maintaining urban vegetation. The opportunity for positive education and outreach in this area is limitless. The focus by the City should be on increased plantings and improved arboricultural care.

Citizen/Government/Business interaction

A mechanism exists through the Landscape Advisory Committee to allow dialogue and cooperation to exist between all of the players involved with urban vegetation. The Committee should be encouraged to act as that liaison.

General awareness of trees

Community education and outreach are probably the number one mechanism for improving the overall health of Fayetteville's urban forest. Over 70% of the trees in the community are on private property. We strongly recommend an outreach program to the general populace to improve the general awareness of trees.

Regional cooperation

Maintaining the urban forest is not restricted to the confines of the City limits. State cooperation will allow much needed technical and financial support to be directed to Fayetteville. In addition, as the City expands unincorporated high-quality areas under private stewardship should be identified.

SECTION 1: EXECUTIVE SUMMARY

3. Resource Management

The most difficult element of maintaining a sustainable urban forest is having the resources and tools available to manage. The nine criteria listed under this component detail the resources required to implement a moderate sustainable community forestry program.

Citywide management

The basis of any future policy development should be derived from this report. It is our intent that this plan plays the role of outlining the infrastructure from which to proceed. Review and modifications are encouraged as information and resources change.

Citywide funding

The current funding is inadequate to conduct even nominal maintenance on all the public trees maintained by the City. Whether the work is contracted or conducted in house funding needs to be increased.

City staffing

Current staffing is inadequate to maintain the trees under the City's responsibility. Besides the other tasks the crew must carry out, the maintenance of street trees appears to be on a strictly service request basis. This policy guarantees that only 10% of the City's trees will ever be even looked at. A large portion of the resource is deteriorating because of the lack of care. In conjunction with this recommendation is an increase in equipment for staff use.

Assessment tools

The best way to identify health and risk issues in the population and also allow the City to develop an economically feasible pruning program is with a tree inventory. We recommend that a complete vegetation inventory and mapping of all publicly held street and parks trees take place as soon as possible.

Protection of existing trees

Recent events point to a number of issues with the tree preservation ordinance as written. We recommend that the current tree preservation ordinance be enhanced to remove any ambiguity and focus on preservation.

SECTION 1: EXECUTIVE SUMMARY

Species and site selection

As mentioned in the first component discussion, a real need for identifying a broader range of acceptable species to plant exists. We recommend a review of the current planting list and be diversified even more.

Standards for tree care

Maintain a high level of standards both with city staff and contracted personnel by requiring compliance with American National Standards Institute (A300). In addition, require International Society of Arboriculture Arborist Certification for city staff and contracted personnel.

Citizen safety

No clear hazard tree risk management policy exists in the City. Develop a hazard tree risk management program that incorporates a policy statement and annual action plan.

Recycling

While the City has an excellent recycling facility, a number of features can be enhanced to improve public and private sector participation.

The overall rating for the City in the nineteen criteria evaluated fell into the Poor to fair range. There are number of enhancements that can be explored by the City that have minimal financial burden associated with them. However, a number of important elements such as implementing a cyclic pruning program and increasing city-wide tree plantings will require a greater budget to meet theses recommendations.

A sustainable urban forest is founded on community cooperation, quality care, continued funding and personal involvement. It is created and maintained through a shared vision and cooperation between individuals and both public and private sector. The ever-present focus is on maximizing benefits and minimizing costs. Taken together, they acknowledge the need for shared vision and responsibility, for direct intervention with the resource and programs of care that are on going and responsive.

The remaining narrative in this report describes in each of the nineteen criteria listed above.

Acknowledgement

As the President of Natural path Forestry Consultants I would like to gratefully acknowledge the assistance and support I received from City staff, elected officials, the Landscape Advisory Committee, and individuals from the City of Fayetteville in developing this report.

-Mark Duntemann

SECTION 1: EXECUTIVE SUMMARY

agenda Semin
C.C. 6/20/00

STAFF REVIEW FORM

XX AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council meeting of June 20, 2000

FROM:

<u>Mayor Hanna</u> Name	<u>Mayor</u> Division	<u>Executive</u> Department
----------------------------	--------------------------	--------------------------------

ACTION REQUIRED:

Consideration of a claim by Bekka Development for legal expenses and lost parking space revenue in conjunction with the Town Center. If the claim is approved, approval of a budget adjustment to fund the approved claim is also requested.

COST TO CITY:

<u>\$14,545.35</u>	<u>10,627.00</u>	<u>Services & Charges</u>
Cost of this Request	Category/Project Budget	Category/Project Name
<u>5600-9600-5314-01</u>	<u>10,500.00</u>	
<u>5600-9600-5308-00</u>		
Account Number	Funds Used To Date	Program Name
	<u>127.00</u>	<u>Town Center</u>
Project Number	Remaining Balance	Fund

BUDGET REVIEW: _____ Budgeted Item X Budget Adjustment Attached

<u>[Signature]</u> Budget Manager	<u>[Signature]</u> Administrative Services Director
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CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

<u>Marilyn G. Cameron</u> Accounting Manager	<u>6-8-00</u> Date	Internal Auditor	_____ Date
<u>[Signature]</u> City Attorney	<u>6-8-00</u> Date	ADA Coordinator	_____ Date
<u>[Signature]</u> Purchasing Officer	<u>6-12-00</u> Date		

STAFF RECOMMENDATION:

Division Head	_____ Date
Department Director	_____ Date
Administrative Services Director	_____ Date
Mayor	_____ Date

Cross Reference

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

Prev Ord/Res #: _____

Orig Contract Date: _____

Orig Contract Number: _____

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

To: City Council
From: Mayor Fred Hanna
Date: June 8, 2000
Subject: Settlement with Bekka Development Co.

Bekka Development Co. is requesting reimbursement of legal expenses incurred in conjunction with the Town Center construction and for revenue shortfall on their rental parking spaces. Their invoice number 2561, dated May 25, sets out the costs as follows:

Legal Costs - Davis, Cox & Wright 8/99 thru 4/00	\$ 8,410.35
Parking Costs - 8/99 thru 6/00	<u>\$ 6,135.00</u>
Total Cost to the City	\$14,545.35

Based on their interpretation of the lease signed between Bekka Development Co. and the City on October 22, 1998, they are requesting consideration of the above claim.

BEKKA DEVELOPMENT CO.

**One West Mountain Street
Fayetteville, AR 72701**

Invoice

DATE	INVOICE NO.
5/25/2000	2561

BILL TO
City of Fayetteville 113 W. Mountain Fayetteville, AR 72701

P.O. NO.	TERMS	MONTH
	Net on receipt	

DESCRIPTION	AMOUNT
Legal Costs-Davis,Cox & Wright 8/99-4/00	8,410.35
Parking Costs 8/99-6/00	6,135.00
Total	\$14,545.35

Davis, Cox & Wright PLC

Customer Balance Detail

<u>Type</u>	<u>Date</u>	<u>Num</u>	<u>Account</u>	<u>Class</u>	<u>Amount</u>
Bekka Corp.					
Williams, et al v city of Fayettev & Bekka					
Invoice	8/31/99	1474	2021-A/R	WJB	811.50
Invoice	9/30/99	1655	2021-A/R	WJB	836.00
Invoice	10/26/99	1813	2021-A/R	WJB	1,012.40
Invoice	11/29/99	1998	2021-A/R	WJB	480.00
Invoice	12/30/99	2212	2021-A/R	WJB	2,670.25
Invoice	1/31/00	2361	2021-A/R	WJB	1,220.20
Invoice	2/29/00	2525	2021-A/R	WJB	450.00
Invoice	3/30/00	2722	2021-A/R	WJB	345.00
Invoice	4/27/00	2892	2021-A/R	WJB	585.00
					<u>\$8,410.35</u>

RECEIVED

MAY 31 2000

BDC

BEKKA DEVELOPMENT CO.

CITY OF FAYETTEVILLE
MAYOR'S OFFICE

EXECUTIVE SQUARE, ONE WEST MOUNTAIN, FAYETTEVILLE, AR 72701
(501) 442-7672 FAX (501) 442-4580 May 25, 2000

City of Fayetteville
Attn: Hon. Fred Hanna, Mayor
113 W. Mountain
Fayetteville, AR 72701

Dear Sir:

Thank you for the opportunity to meet with you on Monday, May 8, 2000. I believe that we were able to clarify some issues concerning our Lease to the city of the Town Center Plaza site. These issues are of great concern to us and I appreciate your willingness to discuss them with candor.

It may help to refresh our memories as to how we got to this point. You will recall that under threat of condemnation and our desire to help the City of Fayetteville by cooperating to the extent we reasonably could, we signed a Lease Agreement on October 22, 1998. It was always our intention that once the Lease was signed (a perpetual lease), the city would assume all costs and expenses associated with the Lease Premises thereafter. This part was discussed and agreed upon several times during the negotiations. I call your attention to the following lease provisions:

"Whereas, Bekka Development Company recognizes that its property is much more valuable than indicated by the terms of this lease agreement;... (3rd "Whereas" clause page 1)

"All costs,....and liability of and for the plaza...shall be borne by the lessee." (paragraph 6 page 2)

"Lessee shall bear all costs and expenses, directly or indirectly associated with the leased premises...and shall defend, indemnity and hold lesser harmless therefore." (paragraph 13 page 3)

"Lessee shall pay any and all costs and expenses associated with, directly or indirectly,...to or for the leased premises." (paragraph 14.D. page 3)

"All risk and loss to the Leased Premises during the term or any extended terms hereof shall be borne by the Lessee." (paragraph 14.D. page 3)

I hope that upon reflection as to how we got to this point and review of the above provisions of the Lease, you will agree that it was never the intent of either the Lessor or Lessee that the Lessee would lease the premises on a perpetual basis for less than its market value and retain any liability for costs or expenses associated

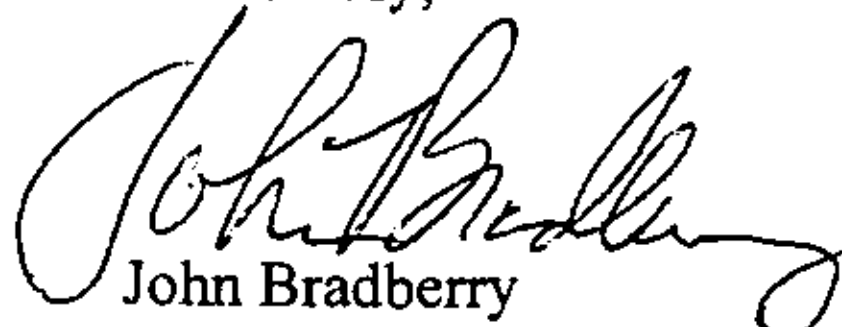
therewith. We are submitting to you the Davis, Cox & Wright PLC legal costs incurred to date associated with the Lease Premises. We would appreciate the City reimbursing us promptly for these costs. As you know the suit against us has been dismissed and we are petitioning the court for reimbursement by the Plaintiffs. We of course, would reimburse the City if this ruling should be favorable. The City's attorney, Mr. Rose, has expressed to us that it is his belief that these legal fees are not "costs and expenses associated with the lease premises." We strongly disagree with this position. We understand however, that both Mayor Hanna and the City Attorney believe that the original intent of the Agreement was for the City to bear all costs connected with this Lease and will support reimbursement to BEKKA based on that intent.

With regard to parking relocation losses suffered by Bekka, I have submitted a second schedule. These losses were anticipated and discussed in great detail prior to the execution of the Lease Document. Mr. Rose assured us at that time that a special clause was unnecessary and that parking costs could be aggregated with other potential cost items in section 14A of the lease. (A copy of the lease is attached for your convenience). We anticipated that BEKKA would suffer damage from lost parking of approximately \$20,000 depending on the length of time we were deprived of parking. At the time the lease was negotiated the City could not guarantee us any alternate parking however, we agreed to use any such arrangement to offset our damage and have done so with the off-square parking the city provided. Accordingly, the schedule outlines actual damages to date and future estimates. It was our understanding at this meeting that these costs should also be submitted to the City with the positive support of Mayor Hanna and Mr. Rose.

As we discussed and as is outlined in my letter to Mr. Richard Alderman dated January 13, 2000, we feel that Mr. Alderman is responsible for the City violating their contractual agreement with us concerning construction of the Town Center Plaza by designing and constructing the Plaza in a manner that was not approved by us. We await the completion of the Center to determine damages, if any, from this breach.

Your prompt attention to the attached invoice is appreciated. Again, thank you for your help in this matter and in future matters of equity and fairness regarding our long-term lease.

Yours truly,



John Bradberry

Vice President-Bekka Development Co.

cc: Mr. Jerry Rose, City Attorney

Mr. E.G. Bradberry, President Bekka Development Co.

Mrs. Dianne Boyd, Secretary Bekka Development Co.

BEKKA DEVELOPMENT CO.

PARKING PROFIT AND LOSS SCHEDULE August 1999 through June 2000

DATE	AUGUST 1999	SEPTEMBER 1999	OCTOBER 1999	NOVEMBER 1999	DECEMBER 1999	JANUARY 2000	FEBRUARY 2000	MARCH 2000	APRIL 2000	MAY 2000	JUNE 2000	ESTIMATED LOSSES ** JULY 2000 JUNE 2001	TOTAL
PARKING COSTS FOR 32 SPACES AT \$35.00 EACH	\$1,120.00	\$1,120.00	\$1,120.00	\$1,120.00	\$1,120.00	\$1,120.00	\$1,120.00	\$1,120.00	\$1,120.00	\$1,120.00	\$1,120.00	\$12,320.00	\$24,640.00
* ACTUAL COSTS RECOVERED	\$1,015.00	\$ 495.00	\$ 675.00	\$ 550.00	\$ 600.00	\$ 525.00	\$ 500.00	\$ 450.00	\$ 475.00	\$ 450.00	\$ 450.00	\$ 4,950.00	\$11,135.00
UNRECOVERED COSTS; I.E., LOSSES	\$ 105.00	\$ 625.00	\$ 445.00	\$ 570.00	\$ 520.00	\$ 595.00	\$ 620.00	\$ 670.00	\$ 645.00	\$ 670.00	\$ 670.00	\$ 7,370.00	\$13,505.00

* For August 1999 the parking spaces were all rented, but we had to give credit to the Tenants for changing parking during the middle of the month due to construction. For years, we not only had all 32 parking places rented every month for \$35.00, we had a waiting list of 5 to 10 Tenants that wanted parking when spaces became available. Because of the location of the substitute parking lot, we had to lower the charge to \$25.00 per month, because almost every Tenant was going to drop their parking space. Even with the reduction, most of the Tenants will not pay for parking in the substitute parking lot. They are told that the Tenant's who have parking now, will be the ones who have parking under the plaza when it is finished. Many of the Tenants have tried the parking lot and then discontinued parking there. The loss will likely remain the same through the rest of the construction time. ** We will bill actual future losses on a quarterly basis.

Dianne C. Boyd, Manager

LEASE AGREEMENT

Agreement made this 22nd day of October, 1998, by and between BEKKA Development Company, an Arkansas Corporation, with offices at One West Mountain Street, Fayetteville, Arkansas 72701, (hereinafter called "Lessor"), and the City of Fayetteville, Arkansas, a municipal corporation, with offices at 113 West Mountain Street, Fayetteville, Arkansas 72701, (hereinafter called "Lessee").

WHEREAS, the City of Fayetteville desires to revitalize its Downtown by building a Town Center with a Plaza connected to the Fayetteville Square; and,

WHEREAS, BEKKA Development Company is also interested in revitalizing Downtown Fayetteville; and,

WHEREAS, BEKKA Development Company recognizes that its property is much more valuable than indicated by the terms of this Lease Agreement; nevertheless, is willing to lease the hereinafter described property, under the terms and conditions specified herein; and,

WHEREAS, the plans contemplate the conversion of an entire tract of Lessor's property to use as an entrance plaza to the Town Center, which may materially and adversely impact Lessor's adjacent developed lots to the east and west of the intended plaza, and will preclude integrated development of Lessor's combined tracts fronting the Fayetteville Square; and,

WHEREAS, while the City could exercise its power of eminent domain to acquire Lessor's property, both parties wish to avoid the uncertainties and potential expense of condemnation proceedings, as well as the threat such proceedings could hold for either the project itself or the value to Lessor of this and its adjacent lots.

NOW, THEREFORE, IN CONSIDERATION of the rents, promises, recitals and mutual covenants contained herein, the Lessor and Lessee hereby agree as follows:

1. LEASED PREMISES. Lessor hereby lets, leases and demises unto Lessee, without representations as to physical condition or suitability, subject to the terms and conditions contained herein, the following described property situated in Washington County, Arkansas:

Lots Two (2) and Three (3) in Block Thirty (30) in the Original Plat of the Town (now City) of Fayetteville, Arkansas, and part of Lot 4 West of Lot 3 to the existing walkway edge, a distance of approximately 15'.

To have and hold said premises unto the said Lessee for and during the term herein stated, subject to the covenants, terms and conditions contained herein.

2. TERM. This lease shall commence upon the effective date hereof and shall extend for a term of twenty-five (25) years. Lessee shall have the option to extend said lease in five (5) year increments, on an Evergreen basis, rent to continue as set forth in paragraph 7, if Lessee is not in default. It is the specific intent of the parties that this lease be one of perpetual renewal at the option of the Lessee so long as Lessee is not in default.

BA
SH

3. **DESIGN.** Lessor agrees to allow Lessee to construct a Town Plaza in substantially the same design as shown in the architectural drawing attached hereto as Exhibit "A". Before and after initial construction, any substantial changes to the design as shown in Exhibit "A", must be approved by the Lessor in writing prior to construction. Lessor shall not unreasonably withhold such approval.

4. **ASSIGNMENT.** Lessee shall not assign this lease or sublet the leased premises or any part thereof without prior written consent of the Lessor.

5. **POSSESSION.** Lessee may take possession of the leased premises when Lessor has given final approval of Lessee's plans for the improvements to be made to the Leased Premises as set forth in paragraph 3 above and, when a construction contract for the Town Center Project, which will be located south of the Leased Premises, has been entered into.

6. **COSTS, UTILITIES AND LIABILITY.** All costs, utilities, and liability of and for the plaza and connecting areas, steps, and tie ins shall be borne by the Lessee.

7. **RENT.** As partial consideration, in addition to the terms, conditions and covenants hereof, Lessee agrees to pay Lessor the sum of one hundred twenty thousand dollars (\$120,000.00) upon possession and one dollar (\$1.00) per year during the term or any extended terms, hereof.

8. **TAXES.** Lessee shall pay any and all ad valorem taxes, fees and assessments levied against said premises during the term of this lease; including, but not limited to, real estate taxes, personal property taxes, sales taxes and off-street parking district taxes.

9. **PARKING.** Lessee shall at no cost to the Lessor provide and maintain a paved area adjacent to the Executive Square Office Building, underneath the Town Plaza, sufficient to accommodate 32 parking spaces. Said area shall be for the exclusive use of the Lessor and/or Lessor's Tenants and guests; however, when not in use by Lessor, said spaces may be utilized by the Lessee for public purposes. Lessee shall provide and maintain reasonable access which is satisfactory to the Lessor from the parking area provided to Lessor hereunder, to the premises to the east and west of the Leased Premises; and shall provide and maintain lighting, ventilation and upkeep of said parking area in a manner which is satisfactory to Lessor.

10. **USE.** Lessee shall use the Leased Premises for the purpose of building and operating a Town Plaza, which shall be the entrance from the south side of the Fayetteville Square to the Town Center, and for no other purpose or purposes without the written consent of Lessor.

11. **DEFAULT.** Lessor may declare a default by Lessee upon the following:

A. Lessee failing to pay any installment of rent and the failure continues for a period of 60 days after written notice to the Lessee.

B. Failure to comply with any other terms of this Lease Agreement, and not curing such failure within 60 days after written notice to the Lessee.

12. **REMEDIES.** Upon the occurrence of any default by the Lessee, which is not timely cured after written notice, Lessor may terminate this Lease Agreement and immediately enter upon



and take possession of the leased premises. Pursuit of said remedy shall not preclude pursuit of any other remedies herein provided, or provided by law. No waiver by Lessor or any violation or breach of any portion hereof shall be deemed or construed to constitute a waiver of any other violation or breach of the same or otherwise. Lessee shall pay any and all costs and expenses resulting from an event of default hereunder or incurred in the collection of any past due balances hereunder, including reasonable attorney fees, whether said attorney is in-house or not, and whether or not suit is brought.

13. CONTINUING OBLIGATIONS. Lessee shall bear all cost and expenses, directly or indirectly associated with the Leased Premises, including, but not limited to, any and all improvements, maintenance, up-keep, lighting, utilities, insurance, accidents, taxes, fees, assessments, cleaning, snow removal and trash removal, and shall defend, indemnify and hold Lessor harmless therefore. Lessee shall maintain the Leased Premises in a clean, attractive, healthful condition, and in accordance with all laws and ordinances. Lessee's obligations under this agreement shall continue and shall survive the expiration or termination hereof, until all obligations of the Lessee incurred hereunder have been met. Nothing herein is to be interpreted or intended as a waiver of the tort immunity granted Lessee under the law of the State of Arkansas.

14. MISCELLANEOUS PROVISIONS.

A. Lessee shall pay any and all costs and expenses associated with, directly or indirectly, the removing, relocating, replacing, providing, etc., any and all utilities, electrical service, heating and air-conditioning, water, sewer, steps, entrances, driveways, parking, etc., to or for the Leased Premises. Said removal, relocations, etc., shall be subject to Lessor's prior approval and shall be done with minimum disruption of services.

B. Lessee shall provide and maintain reasonable access from the Leased Premises (plaza and parking) to the premises east and west of the Leased Premises, to Lessor's satisfaction, including at least three (3) walkways from the plaza to the premises located to the west of the Leased Premises.

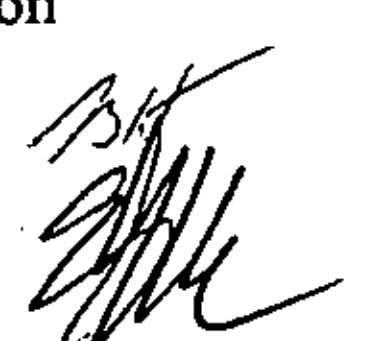
C. The rent provided in this lease shall not be used directly or indirectly in determining fair market value in any subsequent condemnation action regarding this property.

D. All risk and loss to the Leased Premises during the term or any extended terms hereof shall be borne by Lessee.

E. Upon termination of the lease, Lessee shall continue to provide Lessor reasonable ingress and egress to and from the Leased Premises across Lessee's property lying south of the Leased Premises. Said access is currently being afforded by a driveway/alley along the south edge of the Leased Premises from both East and Block Streets.

F. Lessee shall provide, at no cost to Lessor, during the term and any extended term hereof, reasonable space for trash/garbage disposal and pickup for use by Lessor and the occupants of the premises lying east and west of the Leased Premises.

15. SUCCESSION. This lease agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and permitted assigns.

A handwritten signature in black ink, appearing to be "B. H. H.", is located in the bottom right corner of the page.

16. **SEVERABILITY.** Each provision of this lease agreement is severable from all other provisions. In the event any court of competent jurisdiction determines that any provision is invalid or unenforceable for any reason, all remaining provisions shall remain in full force and effect and shall be construed to best effectuate the intent of the parties.

17. **INTERPRETATION.** This Lease Agreement shall be deemed to have been made under and shall be governed by the laws of the State of Arkansas in all respects, including without limitation, matters of construction, validity, performance and venue. Venue of any legal actions shall be in Washington County, Arkansas and the parties specifically waive any and all other.

18. **AUTHORIZATION.** The persons executing this agreement covenant and represent that they are duly authorized and empowered to do so on behalf of the party they purport to represent.

19. **LIABILITY.** Lessor shall not be liable to Lessee or any other party, person, or entity for damage, injury or loss of any kind arising from or associated with the Leased Premises, directly or indirectly, and Lessee shall defend, indemnify and hold Lessor and its officers, agents, employees, directors, and shareholders harmless therefrom. The Lessee shall be liable for any and all damages from their construction, development, and use of the Leased Premises. Nothing herein is to be interpreted or intended as a waiver of the tort immunity granted Lessee under the Law of the State of Arkansas.

20. **TIME OF ESSENCE.** Time shall be of the essence in this Lease Agreement.

21. **ALL RIGHTS NOT SPECIFIED.** All rights not specifically granted under this Lease shall remain with the Lessor.

22. **ENTIRE AGREEMENT.** This Lease Agreement including Exhibit "A" contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This Lease Agreement supersedes all prior agreements, contracts, and understanding of any kind between the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this 22nd day of October, 1998.

LESSOR:

BEKKA DEVELOPMENT CO.
An Arkansas Corporation

By: [Signature]

President

ATTEST:

By: [Signature]

Secretary

LESSEE:

CITY OF FAYETTEVILLE, ARKANSAS
A Municipal Corporation

By: [Signature]

Fred Hanna, Mayor

ATTEST:

By: [Signature]

Heather Woodruff, City Clerk

[Signature]

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss:
COUNTY OF WASHINGTON)

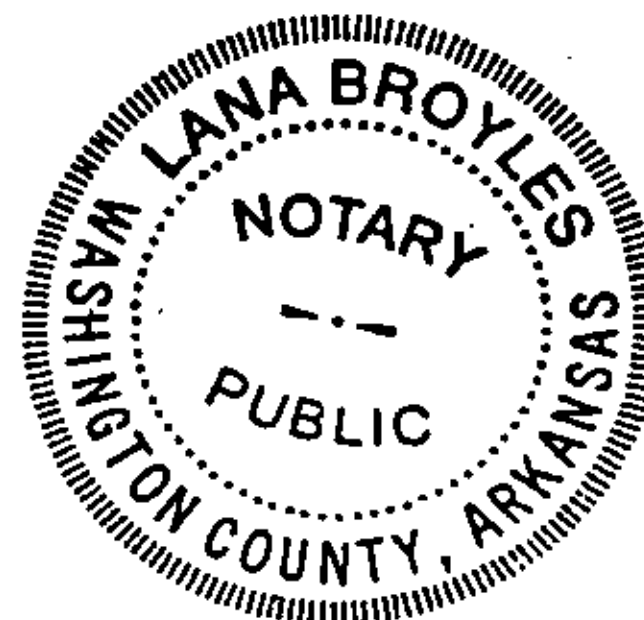
Before me, a Notary Public duly commissioned, qualified and acting within and for the County and State aforesaid, appeared in person the within named, Fred Hanna and Heather Woodruff, Mayor and City Clerk, respectively, for the City of Fayetteville, Arkansas, a municipal corporation, to me personally known, who stated that they were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of the municipal corporation, and further stated and acknowledged that they had so signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal on this 22
day of October, 1998.



Notary Public

My Commission Expires:
4-1-2008

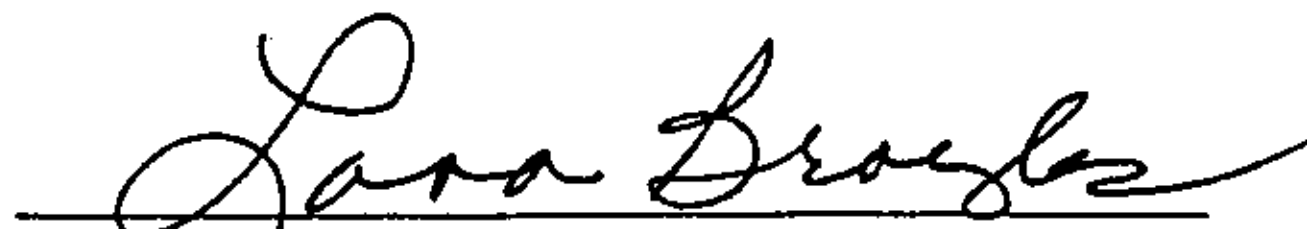


ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss:
COUNTY OF WASHINGTON)

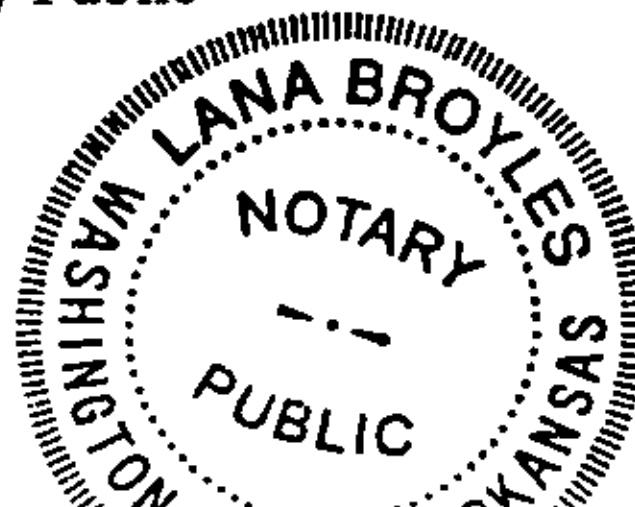
On this day before me, a Notary Public, duly commissioned, qualified and acting within and for the State and County aforesaid, appeared E. G. Bradberry, known to me to be the person and officer whose name is subscribed to the foregoing instrument for and in the name and on behalf of BEKKA Development Company, and further stated that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this 22
day of October, 1998.



Notary Public

My Commission Expires:
4-1-2008



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

Budget Year 2000	Department: Division: Town Center Program:	Date Requested 06/08/00	Adjustment #
---------------------	--	----------------------------	--------------

Project or Item Requested:
Funding of \$14,546 for the settlement with Bekka Development for legal fee reimbursement and for parking space lost revenue.

Project or Item Deleted:
None. Recognition of interest income.

Justification of this Increase:
Claim submitted by Bekka Development.

Justification of this Decrease:
Sufficient cash and investments exist to fund the request.

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number				Project Number
Legal Services	8,411	5600	9600	5314	01	
Rent	6,135	5600	9600	5308	00	

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number				Project Number
Int.-CMT-A&P Transfer	15,546	5600	0960	6708	98	

Approval Signatures

Requested By 	Date 6/8/2000
Budget Manager	Date
Department Director	Date
Admin. Services Director	Date
Mayor	Date

Budget Office Use Only

Type: A B C **(D)** E

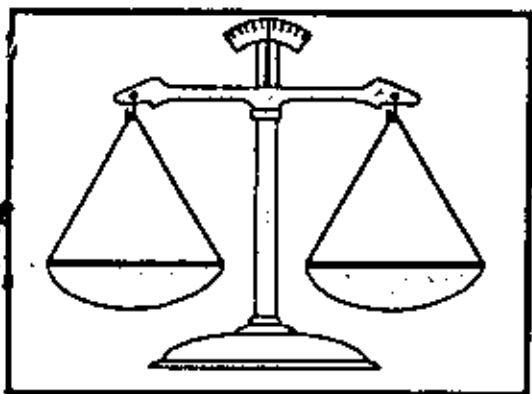
Date of Approval _____

Posted to General Ledger _____

Posted to Project Accounting _____

Entered in Category Log _____

Blue Copy: Budget & Research / Yellow Copy: Requester



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: June 9, 2000

Re: **Bekka claims for legal expenses and lost parking**

John Bradberry's letter dated May 25, 2000 asks for the City to pay attorney fees and lost parking revenue under the terms of Bekka's lease dated October 22, 1998 which is attached as part of the agenda packet. I thought these comments may be of some assistance to you in your decision.

1. Attorney fees: Since the filing of what is commonly referred to as the Town Center lawsuit in mid-1999, I have been asked by Bekka on a number of occasions as to what my position was on paying Bekka's attorney fees incurred as a result of their being named a party to the suit. I can recall two conversations with Dianne Boyd and one with Jack Butt. On every occasion I expressed my belief that the City was not legally obligated under the terms of the lease to pay Bekka's attorney fees, but that I thought that the City Council may well feel that in fairness they should pay some or all of those fees and I encouraged them to make a claim.

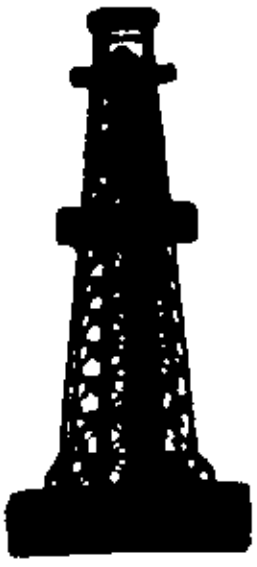
I do not believe that attorney fees for Bekka's defense of the Town Center suit are covered under the lease agreement. Bekka is accused in the suit of entering into an illegal contract with the City and the suit seeks to void Bekka's lease and requests Bekka refund the money paid under the terms of the lease. I don't think that fits under the lease provisions which are cited by Bekka because I don't believe the defense of the suit is directly or indirectly associated with the leased premises. Instead I believe it is associated with the money Bekka received for the lease which has no relationship whatever with the leased premises. For what it's worth, I readily concede that reasonable legal minds may differ. I also readily concede that Bekka's defense assisted the City in its position and that Jack Butt's able and highly competent legal skills were welcomed by all who supported the City's position. Accordingly, I would have no objections to the City resolving this matter by paying this claim. I just want you to know that I don't believe you are legally obligated to. Remember that this case is likely to be appealed and I assume more attorney fees may be incurred by Bekka as a result.

Page 2
Mayor/City Council
June 9, 2000

2. Lost Parking Revenues: I recall talking to Dianne Boyd and John Bradberry about the City providing alternate parking to Bekka without any additional clause in the lease. I also recall that we were not sure we could find such alternate parking and told Bekka that if they could find alternate parking that the City may compensate them for that cost. I have no memory of nor do I believe there was a discussion of any compensation that was to be made to Bekka under any circumstances for loss of parking revenue. Section 14A of the lease provides that the City pay for relocating and providing parking. We've done that by providing Bekka alternate parking. The lease does not say nor was it intended to say that if Bekka couldn't convince its tenants that they should pay for the use of the alternate parking that the City would compensate Bekka for a loss of revenue. Again, if you wish to settle this claim you're more than welcome to but I can't think of any legal obligation to do so on this one.

If I can provide anything further, just let me know.

/cbp



FIELD SERVICES COMPANY

1610 N. Foxhunter
Fayetteville, AR 72701
(501) 442-8387

June 9, 2000

City of Fayetteville
P O Drawer F
Fayetteville, Ar.

RE: City of Fayetteville property (Track 3-X) located on Hwy 265
Request for temporary construction easement for Ark. Western Gas

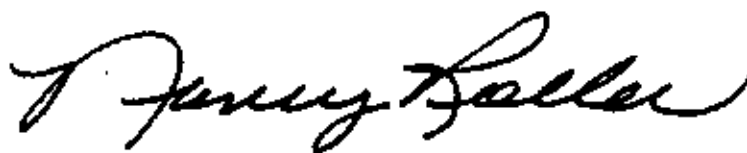
To Whom It May Concern;

Per your request for special considerations on the above property, please find enclosed a form that list the special considerations that are to be taken by our contractor during the period of construction.

No trees shall be removed without the approval of the Landscape Administration from the City of Fayetteville.

The footage agreed upon for the T.C.E. is 50x70 for a total square footage of 350 square feet. AWGC agrees to pay .10 per square foot. Upon receiving a signed right of way grant, a draft for \$350.00 shall be authorized.

Thank you;


Nancy Roller



FAYETTEVILLE

LEGAL DEPARTMENT
CITY ATTORNEY DIVISION

agenda item
6/20/00

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: June 12, 2000

Re: **Rollback - Hicks, et al vs. City of Fayetteville, et al,
CIV 97-500, Washington County Circuit Court Case**

Judge Danielson in the *Hicks* case (commonly referred to as the Rollback case) issued a Writ of Mandamus requiring the County to furnish the City certain figures in order for the City to fill out forms that are required by statute and are necessary to determine the amount, if any, of the City's rollback. These figures have only recently been made available to the City, and Steve Davis, the Budget Coordinator for the City, is in the process of completing the forms required to be completed by the judge's order. The judge has ordered the forms to be completed, approved by the City Council and filed with the court no later than June 30, 2000. Accordingly, I am asking that you place the approval of these forms on your June 20th City Council meeting. If for any reason these forms are not ready for your approval I will ask that you have a special meeting following the June 27th agenda meeting for their approval.

/cbp

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS

JEANNE M. HICKS, et al.

PLAINTIFFS

v.

CONSOLIDATED NO. CIV 97-500

THE CITY OF FAYETTEVILLE, et al.

DEFENDANTS

WRIT OF MANDAMUS

Now on this 25th day of February, 2000, comes on for consideration of Plaintiffs' motion for writ of mandamus and from the arguments of counsel presented and other matters before the Court, the Court finds:

1. For the reasons previously stated in the Court's findings of fact and amended findings of fact, this Court finds that the writ of mandamus should issue compelling each tax unit to perform the tasks enumerated herein consistent with the statutes discussed herein.

2. That pursuant to Ark. Code Ann. § 26-26-403, the county clerk shall report to the governing body of each taxing unit listing the required data on each line of the form found in § 26-26-403. For purposes of filling out the form contemplated by § 26-26-403, the total assessment listed on line 1 shall be for the base year of 1997. This certification may be performed by the official of Washington County being deemed appropriate by the County; however, the failure of any other official to provide the named certification shall not relieve the county clerk of her statutory duty as required by this writ.

3. That the governing body of each taxing unit shall complete the form contained in Ark. Code Ann. § 26-26-404 and file it with the county clerk. The governing bodies shall use the certified data provided by the county clerk. This certification may be performed by the official of Washington County being deemed appropriate by the County; however, the failure of any other official to provide the named certification shall not relieve the county clerk of her statutory duty as required by this writ.

4. The form described in Ark. Code Ann. § 26-26-404 shall be signed by the officers of the governing body of each taxing unit.

5. The completed form shall be filed with the county clerk and a copy of the record of the completed form shall be forwarded to the Assessment Coordination Department (formerly the Assessment Coordination Division of the Arkansas Public Service Commission.)

6. The governing bodies of the taxing units shall also complete the forms contained in Ark. Code Ann. § 26-26-405. Upon the completion of the forms so mentioned, the taxing units shall deliver the completed forms to the county clerk for filing and a copy of the record of the completed form shall be forwarded to the Assessment Coordination Department.

THEREFORE, IT IS THE ORDER OF THIS COURT, that this writ of mandamus is issued compelling the defendants as enumerated herein to perform the specific tasks as provided herein.

IT IS SO ORDERED.

Entered this ____ day of March, 2000.

Honorable Paul Danielson
Circuit Judge on Assignment

ASSESSMENT OF TAXES

Base Year Millage Rollback Computation and Certification Form

COUNTY: Washington
 TAXING UNIT: city of Fayetteville
 DATE: June 16, 2000 (1997 payable in 1998)

1. Compute the following to discover total of reassessed property:

a. Total base year assessments	<u>\$382,798,143</u>
b. Less newly discovered, new construction properties	<u>19,210,941</u>
c. Equals total reassessed properties	<u>363,587,202</u>

2. Compute the following to find the zero-increasing millage adjustment:

a. Base-year taxes certified for collection	<u>\$364,176.32</u>
b. Divide by reassessed properties	<u>363,587,202</u>
c. Equals zero-increase millage	<u>0.0010</u>

3. Compute the following to find the percentage of newly discovered property:

a. Newly discovered, new construction properties	<u>19,210,941</u>
b. Divided by total assessed properties	<u>363,587,202</u>
c. Equals percent newly discovered	<u>5.28%</u>

4. Millage adjustment option:

a. Maximum increase option	<u>10.00%</u>
b. Minus newly discovered property percentage	<u>5.28%</u>
c. Allowable optional millage increase	<u>4.72%</u>

5. To compute millage adjustment options if applicable:

a. Rolled back zero-based millage	<u>0.0010</u>
b. Times allowed optional millage increased percent	<u>4.72%</u>
c. Equals indicated overall millage of	<u>0.0010</u>

6. Each tax source or levy shall be adjusted by applying the following computed multipliers and adjusting to the next highest one/tenth (1/10) mill:

a. Overall millage from 5.c. above	<u>0.0010</u>
b. Divided by previous millage prior to base year	<u>0.0010</u>
c. Equals multiplier	<u>1.05</u>

ASSESSMENT OF TAXES

Base Year Millage Rollback Computation and Certification Form - (continued)

7. Compute each tax source or levied millage in the following table:

Tax Source	Previous Millage	x	Multiplier	=	Adjusted Rounded Millage / Millage
Fire Pension	0.5000	x	1.05	=	0.5244 / 0.5000
Police Pension	0.5000	x	1.05	=	0.5244 / 0.5000
		x		=	/
		x		=	/
		x		=	/
		x		=	/
		x		=	/
		x		=	/
Total Millage					= 1.0000
Minimum Millage Required by Amendment 74					= N/A
Minimum Millage to be Levied (Greater of above)					= 1.0000

CERTIFICATION Signatures

8. Proration of minimum millage by tax source if applicable:

a. Millage to be levied	0.0010
b. Divided by total previous millage	0.0010
c. Equals multiplier	1.0489
d. Compute each tax source or levied millage in the following table:	

Tax Source	Previous Millage	x	Multiplier	=	Adjusted Rounded Millage / Millage
Fire Pension	0.5000	x	1.05	=	0.5244 / 0.5000
Police Pension	0.5000	x	1.05	=	0.5244 / 0.5000
		x		=	/
		x		=	/
		x		=	/
		x		=	/
		x		=	/
		x		=	/
Total Millage					= 1.0000

9. TOTAL MILLAGE TO BE LEVIED

1.0000

CERTIFICATION Signatures

RECEIVED

MAY 24 2000

CITY OF FAYETTEVILLE
MAYOR'S OFFICE

FILED

'00 MAY 23 AM 11 21

MARILYN EDWARDS
CO. & PROBATE CLERK
WASHINGTON CO. ARK.

Base Year Certification of Assessment Data on Real Estate

COUNTY:	WASHINGTON	
TAXING UNIT:	Fayetteville City	
DATE:	1997 payable in 1998	
1	Total Assessment	382,798,143 -
2	Total Newly Discovered Property List	19,210,941
3	Total Taxes Certified For Collection	\$364,176.32
4	Millage Levy for General	0.0000
5	Millage Levy for Fire and Police Pension	0.0010

Collector Certification

Mary B. Zann 5.18.00
Signature

Prepared by Lee Ann Kizzar, Chief Deputy, Washington County Assessor

received
5-30-2000 AD

TO: Members of the City Council

FROM: Marilyn Johnson
Director, Convention and Visitor Development

RE: TOWN CENTER PROPOSED RATE SCHEDULE

In compliance with the Lease and Agreement between the City of Fayetteville and the Advertising and Promotion Commission for the Town Center (Section 503), I am presenting to you the rate schedule which was approved by the A & P Commission on May 8, 2000.

The proposed rates were developed by examining rate structures from comparable facilities, local facilities' rent charges, and proposed operating budget of the Town Center.

In order to operate the Town Center in a prudent and financially responsible manner, we feel that the rates are fair and should ensure financial stability for the Town Center in its first year.

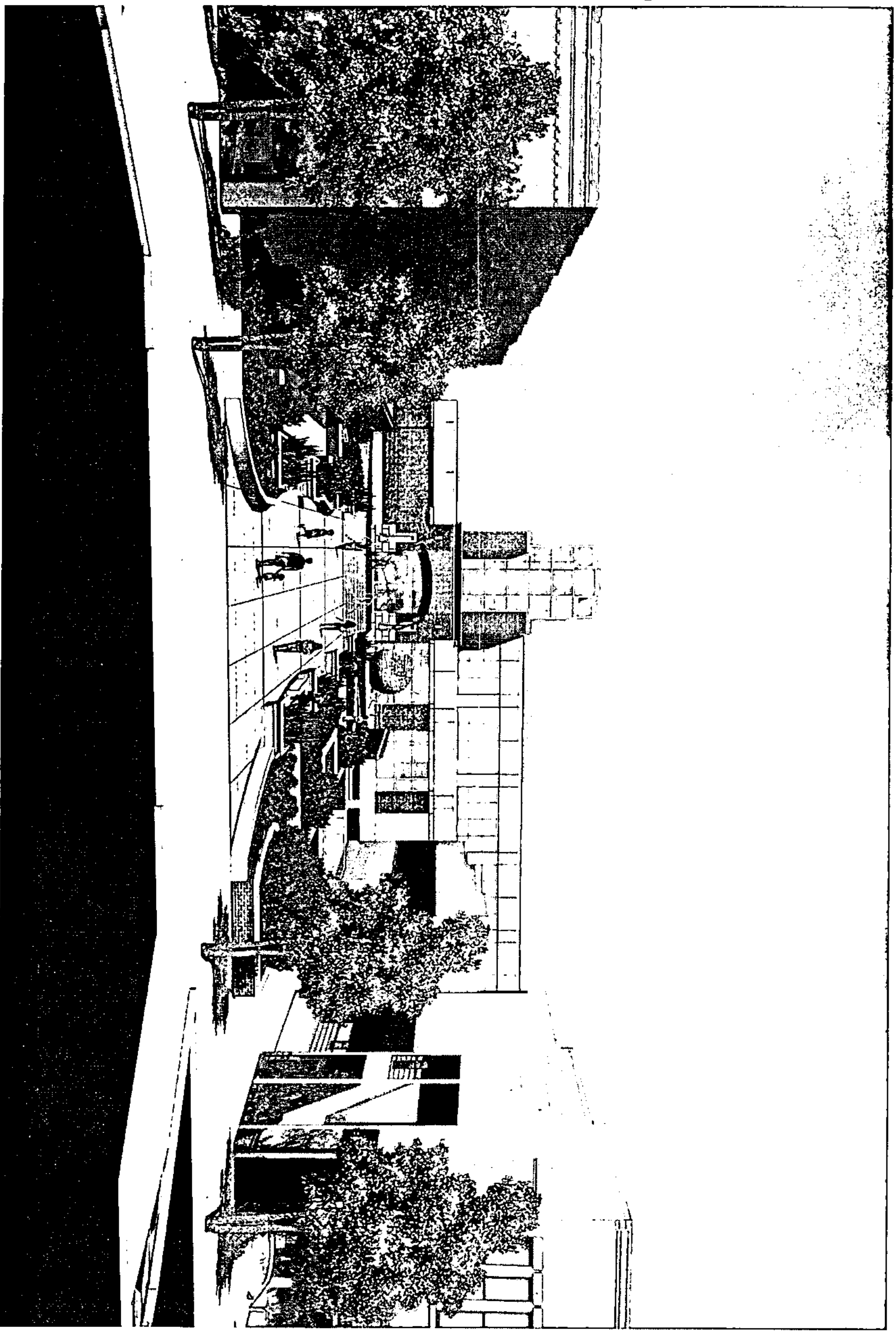
In accordance with provisions in the contract, I am asking that you approve the non-profit rate.

TOWN CENTER PROPOSED RATE SHEET

Yearly Convention Sales Rates:			
Rates	High	Shoulder	Low
Room 1: 118 x 115 (13570 sq. ft)			
Flat Rate per day	\$7,200.00	\$2,500.00	\$2,000.00
Government Rate	\$3,500.00	\$2,500.00	\$2,000.00
Social Rate	\$3,000.00	\$2,500.00	\$2,000.00
Non Profit Rate	\$2,300.00	\$2,200.00	\$2,000.00
Special Incentive Rate	\$2,200.00	\$2,100.00	\$2,000.00
Room 2: 66 x 120 (7920 sq. ft)			
Flat Rate per day	\$4,200.00	\$1,450.00	\$1,100.00
Government Rate	\$2,000.00	\$1,450.00	\$1,100.00
Social Rate	\$1,750.00	\$1,450.00	\$1,100.00
Non Profit Rate	\$1,250.00	\$1,250.00	\$1,100.00
Special Incentive Rate	\$1,250.00	\$1,200.00	\$1,100.00
Room 3: 52 x 62 (3224 sq. ft)			
Flat Rate per day	\$1,700.00	\$600.00	\$450.00
Government Rate	\$800.00	\$600.00	\$450.00
Social Rate	\$700.00	\$600.00	\$450.00
Non Profit Rate	\$525.00	\$525.00	\$450.00
Special Incentive Rate	\$525.00	\$475.00	\$450.00
Room 4: 33 x 48 (1584 sq. ft)			
Flat Rate per day	\$825.00	\$300.00	\$250.00
Government Rate	\$400.00	\$300.00	\$250.00
Social Rate	\$350.00	\$300.00	\$250.00
Non Profit Rate	\$250.00	\$250.00	\$250.00
Special Incentive Rate	\$250.00	\$250.00	\$225.00
Conference room 1: 22 x 17 1/2 (385 sq. ft)			
Flat Rate per day	\$200.00	\$70.00	\$50.00
Government Rate	\$100.00	\$70.00	\$50.00
Social Rate	\$85.00	\$70.00	\$50.00
Non Profit Rate	\$60.00	\$60.00	\$50.00
Special Incentive Rate	\$60.00	\$50.00	\$50.00
Conference Room 2: 16 x 13 (208 sq. ft.)			
Flat Rate per day	\$115.00	\$30.00	\$30.00
Government Rate	\$50.00	\$30.00	\$30.00
Social Rate	\$45.00	\$30.00	\$30.00
Non Profit Rate	\$30.00	\$30.00	\$30.00
Special Incentive Rate	\$30.00	\$30.00	\$30.00

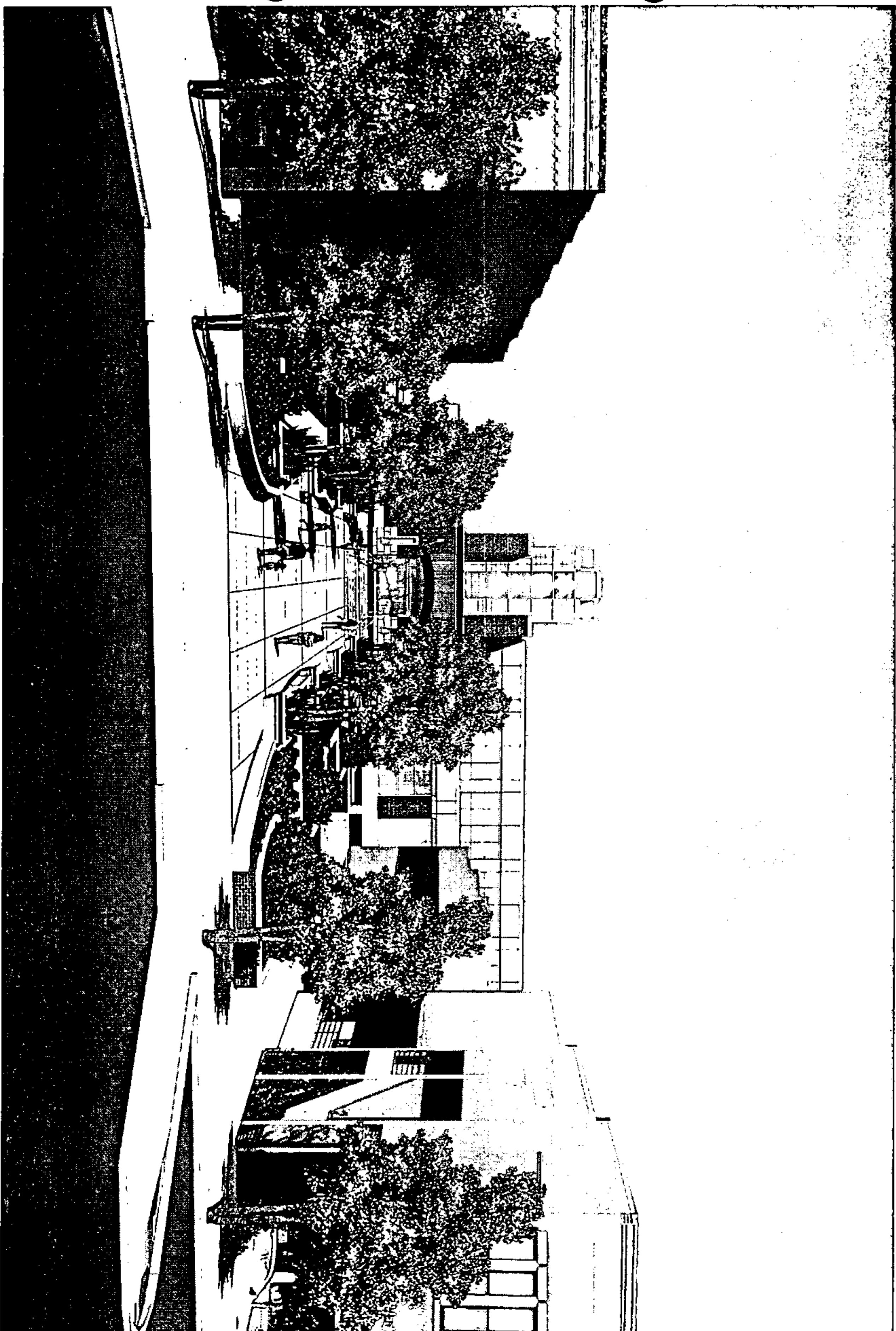
D.C. 6/20/00

FAYETTEVILLE TOWN CENTER EXHIBITION HALL



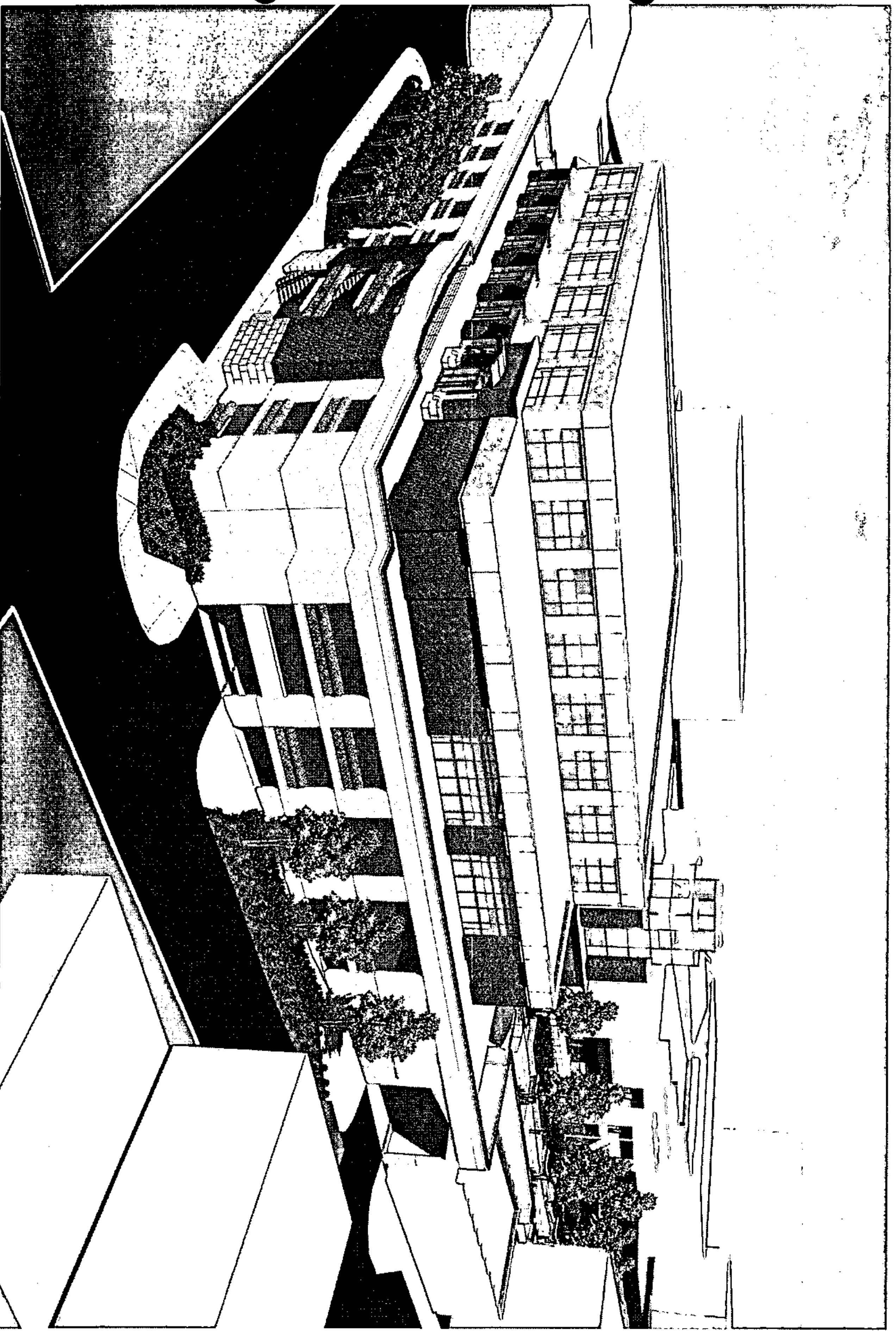
PERSPECTIVE LOOKING SOUTH

FAYETTEVILLE TOWN CENTER EXHIBITION HALL



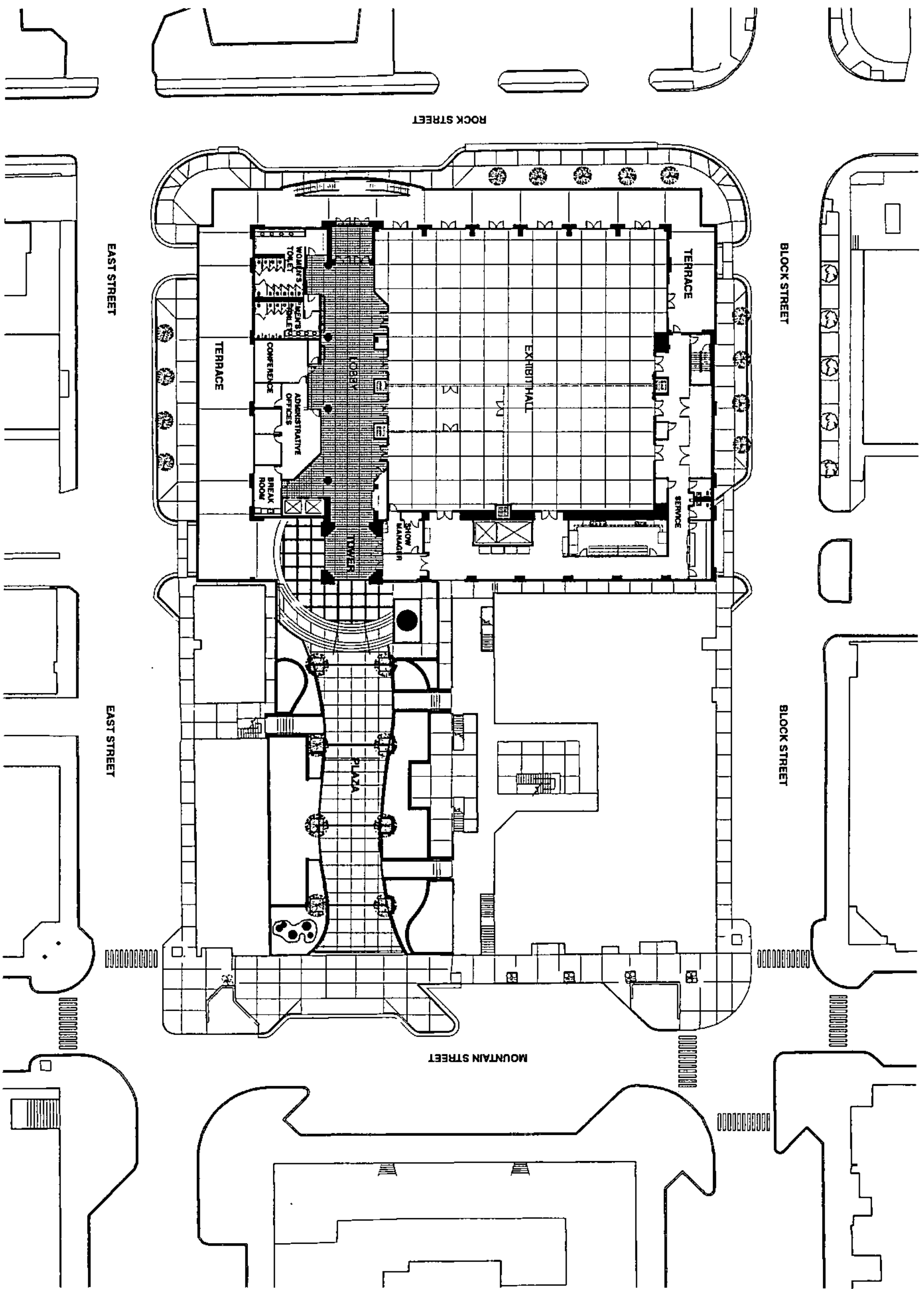
PERSPECTIVE LOOKING SOUTH

FAYETTEVILLE TOWN CENTER EXHIBITION HALL



PERSPECTIVE LOOKING NORTH-WEST

FAYETTEVILLE TOWN CENTER EXHIBITION HALL

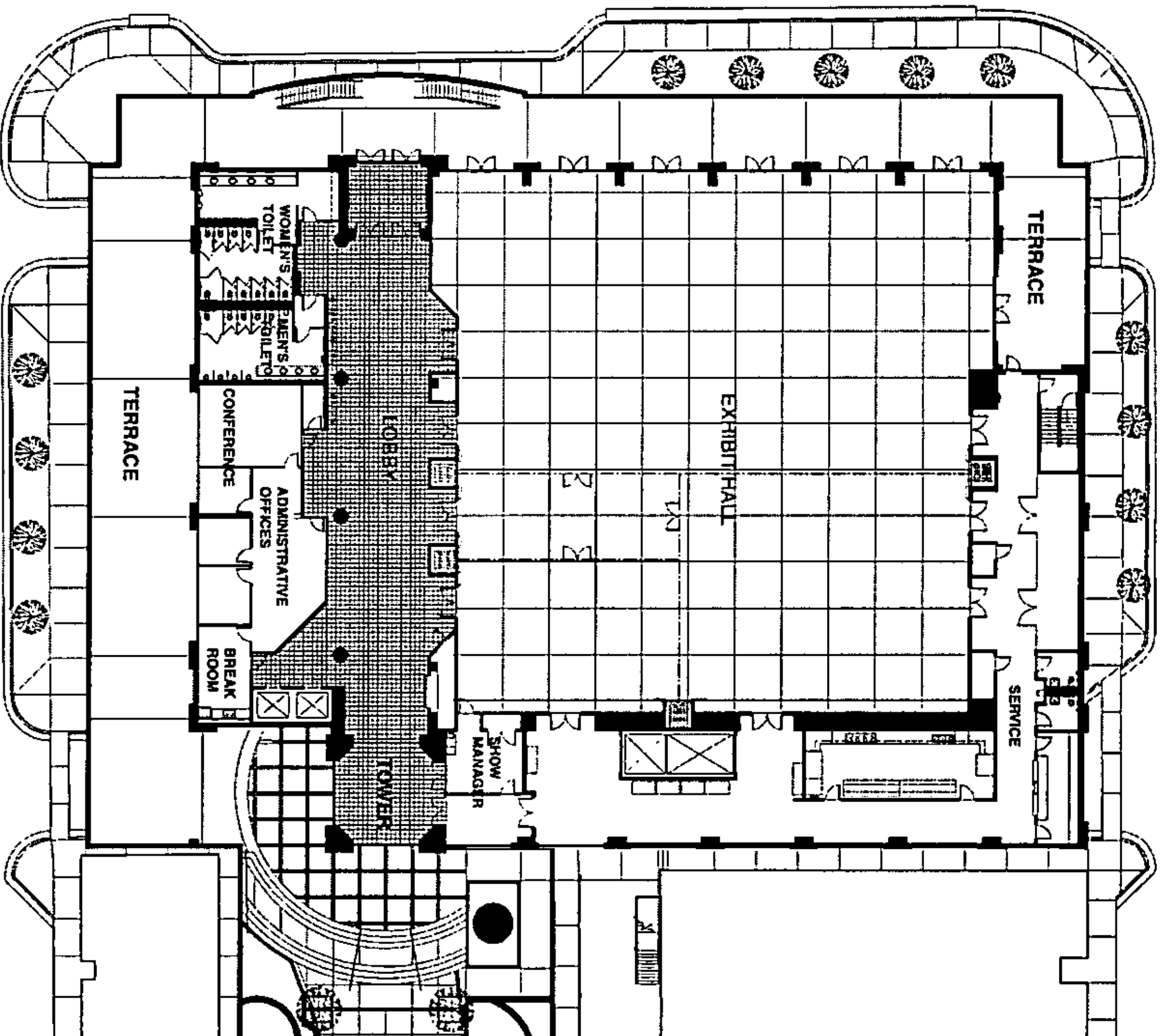


EXHIBITION HALL - PLAZA

FAYETTEVILLE TOWN CENTER EXHIBITION HALL

BLOCK STREET

ROCK STREET

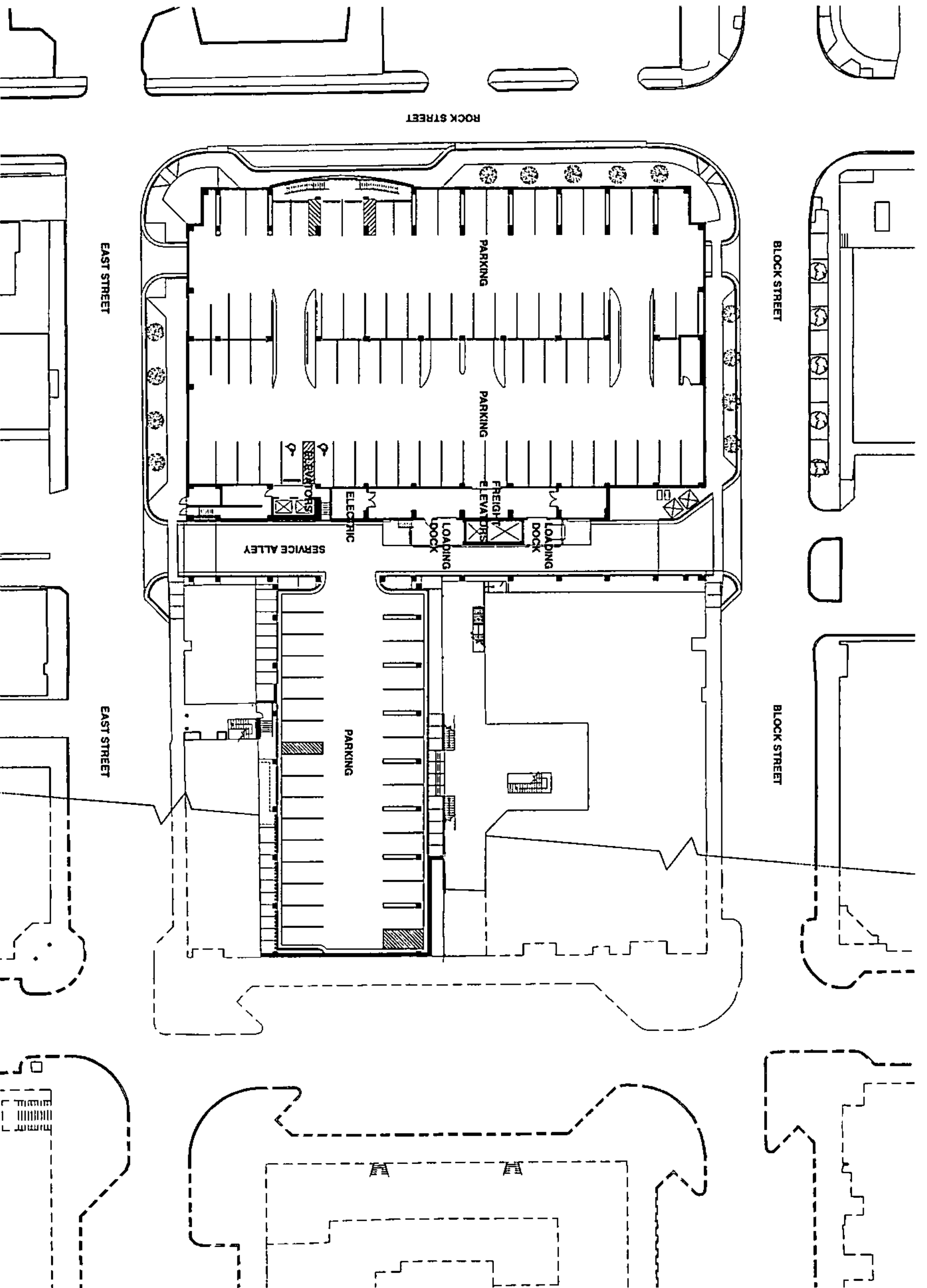


EAST STREET



EXHIBITION HALL

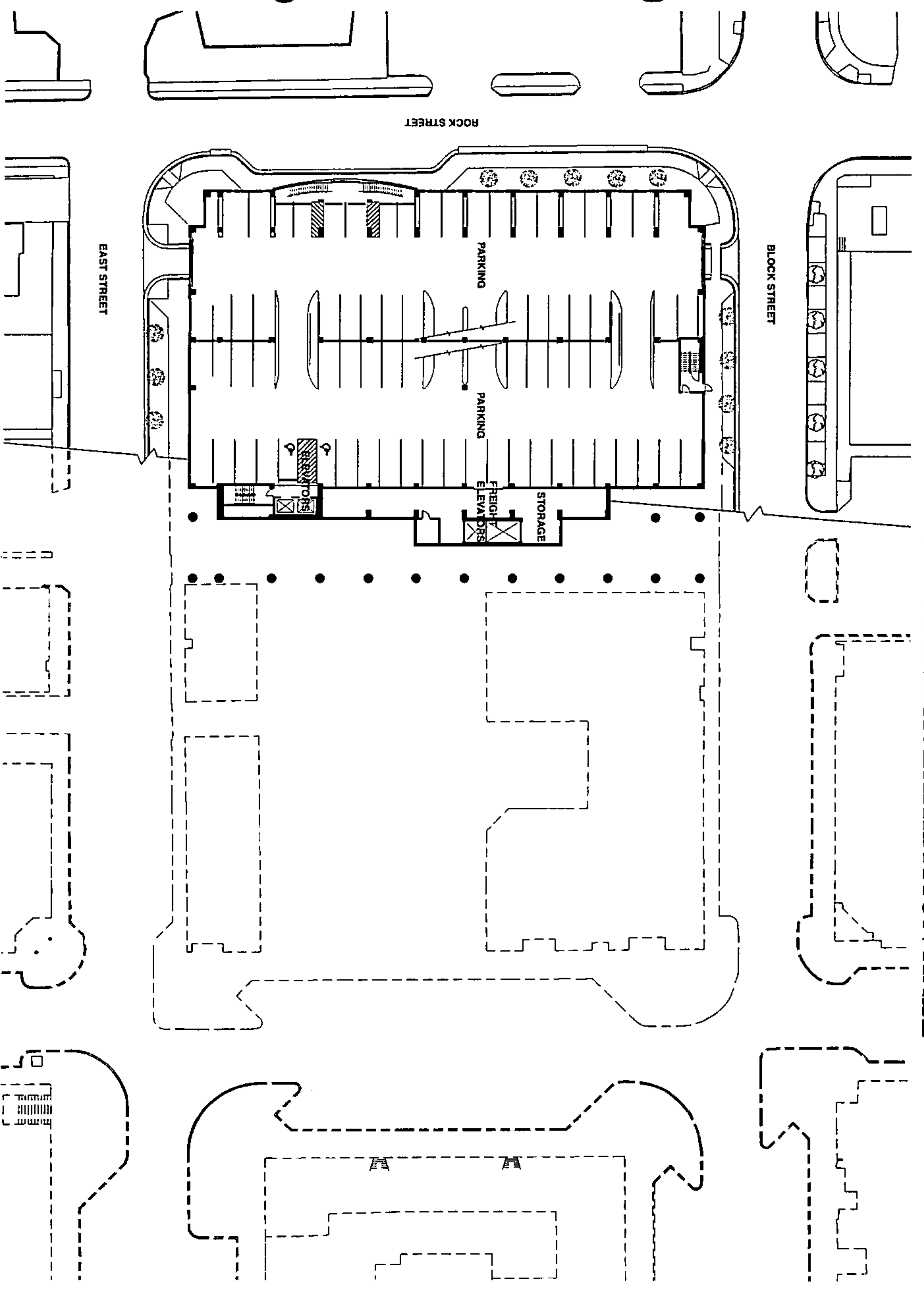
FAYETTEVILLE TOWN CENTER EXHIBITION HALL



PARKING DECK LEVELS 3A - 3B - 3C

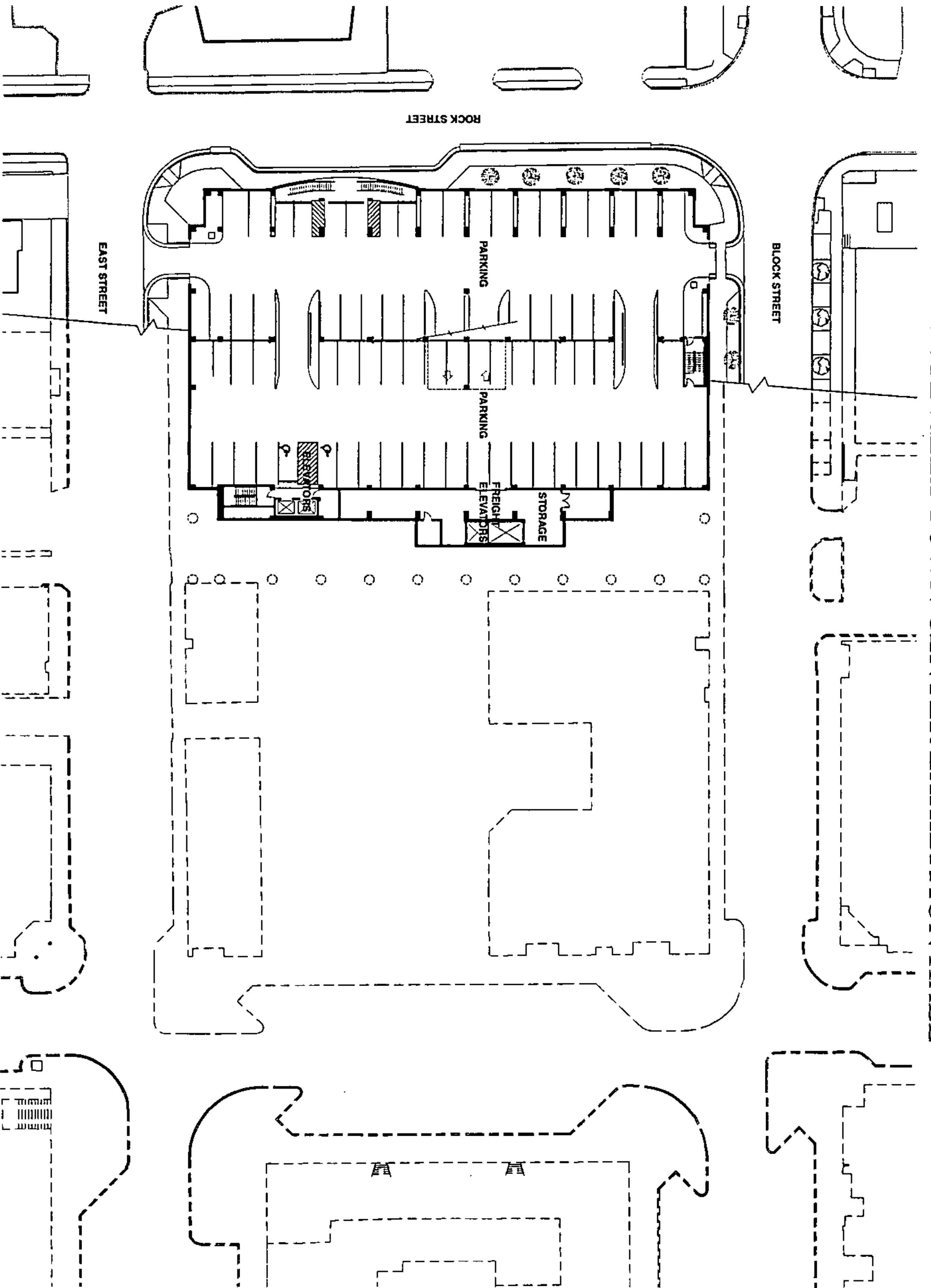


FAYETTEVILLE TOWN CENTER EXHIBITION HALL



PARKING DECK LEVELS 2A - 2B

FAYETTEVILLE TOWN CENTER EXHIBITION HALL



PARKING DECK LEVELS 1A - 1B

