

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

---

## FINAL AGENDA CITY COUNCIL JULY 5, 2000

A meeting of the Fayetteville City Council will be held on Wednesday, July 5, 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 City Council minutes from the meetings of June 1 and June 6, 2000 minutes.
2. **BID 00-48:** A resolution awarding Bid 00-48 to Chris King Electric for electrical services for the remainder of the year 2000 with five one-year renewal options.
3. **BID 00-49:** A resolution awarding Bid 00-49 to Synthetic Designs Stucco for the Engineering Building at 125 W. Mountain Street in the amount of \$45,900.00 plus a 10% contingency of \$4,590.00.
4. **BID 00-50:** A resolution awarding Bid 00-50 in the amount of \$26,860.00 with a 10% contingency to Airworks a Division of Multi-Craft Inc. for the installation of Phase II HVAC System, City Prosecutor's Office and the Jail.
5. **DICKSON STREET:** A resolution approving Change Order No. 2 (Final) in connection with the Dickson Street Water and Sewer Relocations in the amount of \$46,279.00 and a budget adjustment.
6. **T-HANGARS:** A resolution awarding a contract to Harrison Davis Construction, Inc. in the amount of \$489,865.50 with a 15% contingency for the construction of two eight-bay T-Hangars at Drake Field and approval of a budget adjustment.
7. **J.D.G. TELEVISION:** A resolution approving a lease agreement with J.D.G. Television, Inc. to lease an area that contains thirteen parking spaces in the Fayetteville Municipal Parking Lot located west of the Campbell Bell Building between Mountain, Church, and Center Streets. This lease agreement will allow J.D.G. Television, Inc. to construct a covered parking canopy for thirteen employee parking spaces and will be designed to incorporate and screen three proposed satellite 'receive only' dishes.



## **B. OLD BUSINESS**

1. **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 second reading at the June 20, 2000 meeting.

## **C. NEW BUSINESS**

1. **CITY TRAILS:** Presentation from Chuck Rutherford on the city's trails.
2. **CENTER PRAIRIE TRAIL:** A resolution approving the purchase of an abandoned railroad right-of-way in the amount of \$50,000 with the intent to build a multi-use trail within the abandoned railroad right-of-way between Prairie Street and the Walton Art Center parking lot.
3. **VA 00-4.00:** An ordinance approving vacation request VA 00-4.00 submitted by Henry Kelly, Jr. of Millsap Road Investments for property located at 665 Millsap Road, Lot 19 of CMN Business Park Phase I. The property is zoned C-2, Thoroughfare Commercial and contains approximately 2.58 acres. The request is to vacate a portion of an existing water line easement within lot 19.
4. **VA 00-5.00:** An ordinance approving vacation request VA 00-5.00 submitted by Harvey Luttrell on behalf of Wiggins Memorial United Methodist Church for property located at 205 W. 6<sup>th</sup> Street. The property is zoned R-2, Medium Density Residential and contains approximately 0.18 acres. The request is to vacate a portion of the City right-of-way.
5. **VA 00-6.00:** An ordinance approving vacation request VA 00-6.00 submitted by Joe and Angela Stevens for property located on Old Farmington Road between Beechwood and Eastern. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately .23 acres. The request is to vacate a portion of Old Farmington Road.
6. **AD 00-8.00:** An ordinance for AD 00-8.00, Administrative Item Amendment to Chapter 162 "Use Units" of the Unified Development Ordinance, Section 162.01 "Establishment and Listing" to allow additional retail uses in the C-1 Neighborhood Commercial District.
7. **RZ 00-16.00:** An ordinance approving rezoning request RZ 00-16.00, submitted by Arden Gale for property located at 1530 Albright Road. The property is zoned A-1, Agricultural and contains approximately 4.21 acres. The request is to rezone to R-1, Low Density Residential.



8. **RZ 00-17.00:** An ordinance approving rezoning request RZ 00-17.00 submitted by Northstar Engineering on behalf of Emad Damen for property located at 2323 Deane Street. The property is zoned R-1, Low Density Residential and contains approximately 1.47 acres. The request is to rezone to R-2, Medium Density Residential.
9. **RZ 00-18.00:** An ordinance approving rezoning request RZ 00-18.00, submitted by Richard Grubbs on behalf of Tommy and Jodi Holland and Richard and Mary Osborne for property located on east Appleby. The property is zoned R-1.5, Moderate Density Residential and contains approximately 2.5 acres. The request is to rezone to R-O, Residential Office.
10. **AD 98-8.00:** An ordinance approving AD 98-8.00, Administrative amendment to Chapter 172 "Parking and Loading" of the Unified Development Ordinance, Section 172.01 (D)(1) "Standards for the Number of Spaces by Use-Off Street Parking" to revise the required parking for eating places (restaurants).
11. **SHILOH DRIVE:** 1) An ordinance approving a bid waiver with McClinton-Anchor, to allow the reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the new Shiloh Drive extension at the CMN property line, including the radius and intersection of Northwood Avenue; 2) Approval of a construction contract with McClinton-Anchor in the estimated amount of \$43,300.00 for the above described street reconstruction; 3) Approval of a 15% project contingency of \$6,495.00 for material/construction testing and variations in final quantities.
12. **SHILOH DRIVE:** A resolution approving a letter contract in the amount of \$5,000.00 with Milholland Company for engineering design, construction staking, construction management, and as-built drawings for the reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the CMN property line and the intersection with Northwood Avenue.
13. **SALES TAX FOR LIBRARY:** Consideration of an ordinance levying a one cent sales tax for a period of eighteen months for the consideration of a new Fayetteville Library and setting an election therefore.
14. **FIRE WORKS:** An ordinance allowing Tyson Foods to use fireworks for the singular occasion of their 65<sup>th</sup> anniversary celebration at the Washington County Fair Grounds on July 27, 2000.



July 5, 2000.

|             |                                                             |  |  |  |  |
|-------------|-------------------------------------------------------------|--|--|--|--|
|             | Roll                                                        |  |  |  |  |
| TRUMBO      | ✓                                                           |  |  |  |  |
| DANIEL      | ✓                                                           |  |  |  |  |
| SANTOS      | ✓                                                           |  |  |  |  |
| YOUNG       | ✓                                                           |  |  |  |  |
| RUSSELL     | ✓                                                           |  |  |  |  |
| REYNOLDS    | ✓                                                           |  |  |  |  |
| AUSTIN      | ✓                                                           |  |  |  |  |
| DAVIS       | ✓                                                           |  |  |  |  |
| MAYOR HANNA | ✓                                                           |  |  |  |  |
|             | (consent) HD<br>BD.                                         |  |  |  |  |
| TRUMBO      | ✓                                                           |  |  |  |  |
| DANIEL      | ✓                                                           |  |  |  |  |
| SANTOS      | ✓                                                           |  |  |  |  |
| YOUNG       | ✓                                                           |  |  |  |  |
| RUSSELL     | ✓                                                           |  |  |  |  |
| REYNOLDS    | ✓                                                           |  |  |  |  |
| AUSTIN      | ✓                                                           |  |  |  |  |
| DAVIS       | ✓                                                           |  |  |  |  |
| MAYOR HANNA |                                                             |  |  |  |  |
|             | 8-0-0<br>CJ take to Engl<br>H. airport. 2<br>Partial permit |  |  |  |  |
| TRUMBO      | ✓                                                           |  |  |  |  |
| DANIEL      | ✓                                                           |  |  |  |  |
| SANTOS      | ✓                                                           |  |  |  |  |
| YOUNG       | ✓                                                           |  |  |  |  |
| RUSSELL     | ✓                                                           |  |  |  |  |
| REYNOLDS    | ✓                                                           |  |  |  |  |
| AUSTIN      | ✓                                                           |  |  |  |  |
| DAVIS       | ✓                                                           |  |  |  |  |
| MAYOR HANNA |                                                             |  |  |  |  |
|             | 8-0-0.                                                      |  |  |  |  |



|             |                                  |                      |               |  |  |
|-------------|----------------------------------|----------------------|---------------|--|--|
|             | KS HD.<br>CENTER PRAIRIE TRAIL.  |                      |               |  |  |
| TRUMBO      | ✓                                |                      |               |  |  |
| DANIEL      | ✓                                |                      |               |  |  |
| SANTOS      | ✓                                |                      |               |  |  |
| YOUNG       | ✓                                |                      |               |  |  |
| RUSSELL     | ✓                                |                      |               |  |  |
| REYNOLDS    | ✓                                |                      |               |  |  |
| AUSTIN      | ✓                                |                      |               |  |  |
| DAVIS       | ✓                                |                      |               |  |  |
| MAYOR HANNA |                                  |                      |               |  |  |
|             | 8-0-0.<br>H BD 2ND<br>KA 004.00. | BD 3RD<br>HD         | PASS.         |  |  |
| TRUMBO      | ✓                                | ✓                    | ✓             |  |  |
| DANIEL      | ✓                                | ✓                    | ✓             |  |  |
| SANTOS      | ✓                                | ✓                    | ✓             |  |  |
| YOUNG       | ✓                                | ✓                    | ✓             |  |  |
| RUSSELL     | ✓                                | ✓                    | ✓             |  |  |
| REYNOLDS    | ✓                                | ✓                    | ✓             |  |  |
| AUSTIN      | ✓                                | ✓                    | ✓             |  |  |
| DAVIS       | ✓                                | ✓                    | ✓             |  |  |
| MAYOR HANNA |                                  |                      |               |  |  |
|             | 8-0-<br>BD HD 2ND<br>KA 00.5.00. | 8-0.<br>RA 3RD<br>KS | 8-0.<br>PASS. |  |  |
| TRUMBO      | ✓                                | ✓                    | ✓             |  |  |
| DANIEL      | ✓                                | ✓                    | ✓             |  |  |
| SANTOS      | ✓                                | ✓                    | ✓             |  |  |
| YOUNG       | ✓                                | ✓                    | ✓             |  |  |
| RUSSELL     | ✓                                | ✓                    | ✓             |  |  |
| REYNOLDS    | ✓                                | ✓                    | ✓             |  |  |
| AUSTIN      | ✓                                | ✓                    | ✓             |  |  |
| DAVIS       | ✓                                | ✓                    | ✓             |  |  |
| MAYOR HANNA |                                  |                      |               |  |  |
|             | 8-0.                             | 8-0.                 | 8-0           |  |  |

MR.  
CLARK

|             |                                       |                   |                 |  |  |
|-------------|---------------------------------------|-------------------|-----------------|--|--|
|             | HD <del>2ND</del> 2ND<br>VA 00-16.00. | KR 3RD<br>PR.     | PASS.           |  |  |
| TRUMBO      | ✓                                     | ✓                 | ✓               |  |  |
| DANIEL      | ✓                                     | ✓                 | ✓               |  |  |
| SANTOS      | ✓                                     | ✓                 | ✓               |  |  |
| YOUNG       | ✓                                     | ✓                 | ✓               |  |  |
| RUSSELL     | ✓                                     | ✓                 | ✓               |  |  |
| REYNOLDS    | ✓                                     | ✓                 | ✓               |  |  |
| AUSTIN      | ✓                                     | ✓                 | ✓               |  |  |
| DAVIS       | ✓                                     | ✓                 | ✓               |  |  |
| MAYOR HANNA |                                       |                   |                 |  |  |
|             | 8-0.<br>HD RA 2ND.<br>AD 00-8.00.     | 8-0-0<br>KS BID.  | 8-0-0.<br>PASS. |  |  |
|             |                                       | USE UNITS.        |                 |  |  |
| TRUMBO      | ✓                                     | ✓                 | ✓               |  |  |
| DANIEL      | ✓                                     | ✓                 | ✓               |  |  |
| SANTOS      | ✓                                     | ✓                 | ✓               |  |  |
| YOUNG       | ✓                                     | ✓                 | ✓               |  |  |
| RUSSELL     | ✓                                     | ✓                 | ✓               |  |  |
| REYNOLDS    | ✓                                     | ✓                 | ✓               |  |  |
| AUSTIN      | ✓                                     | ✓                 | ✓               |  |  |
| DAVIS       | ✓                                     | ✓                 | ✓               |  |  |
| MAYOR HANNA |                                       |                   |                 |  |  |
|             | RA HD 2ND<br>RZ 00-16.00.             | 8-0.<br>KS H. 3RD | 8-0.<br>PASS.   |  |  |
| TRUMBO      | ✓                                     | ✓                 | ✓               |  |  |
| DANIEL      | ✓                                     | ✓                 | ✓               |  |  |
| SANTOS      | ✓                                     | ✓                 | ✓               |  |  |
| YOUNG       | ✓                                     | ✓                 | ✓               |  |  |
| RUSSELL     | ✓                                     | ✓                 | ✓               |  |  |
| REYNOLDS    | ✓                                     | ✓                 | ✓               |  |  |
| AUSTIN      | ✓                                     | ✓                 | ✓               |  |  |
| DAVIS       | ✓                                     | ✓                 | ✓               |  |  |
| MAYOR HANNA |                                       |                   |                 |  |  |
|             | 8-0.                                  | 8-0-0.            | 8-0-0           |  |  |

|             |                               |                      |        |  |  |
|-------------|-------------------------------|----------------------|--------|--|--|
|             |                               |                      |        |  |  |
|             | PZ 00-18.00.                  |                      |        |  |  |
| TRUMBO      | <i>left on 15.</i>            |                      |        |  |  |
| DANIEL      |                               |                      |        |  |  |
| SANTOS      |                               |                      |        |  |  |
| YOUNG       |                               |                      |        |  |  |
| RUSSELL     |                               |                      |        |  |  |
| REYNOLDS    |                               |                      |        |  |  |
| AUSTIN      |                               |                      |        |  |  |
| DAVIS       |                               |                      |        |  |  |
| MAYOR HANNA |                               |                      |        |  |  |
|             | H HD <sup>2ND</sup>           | H RA. <sup>3RD</sup> | PASS   |  |  |
|             | PZ 00-18.00.                  |                      |        |  |  |
| TRUMBO      | ✓                             | ✓                    | ✓      |  |  |
| DANIEL      | ✓                             | ✓                    | ✓      |  |  |
| SANTOS      | ✓                             | ✓                    | ✓      |  |  |
| YOUNG       | ✓                             | ✓                    | ✓      |  |  |
| RUSSELL     | ✓                             | ✓                    | ✓      |  |  |
| REYNOLDS    | ✓                             | ✓                    | ✓      |  |  |
| AUSTIN      | ✓                             | ✓                    | ✓      |  |  |
| DAVIS       | ✓                             | ✓                    | ✓      |  |  |
| MAYOR HANNA |                               |                      |        |  |  |
|             | 7-0-0.                        | 7-0-0.               | 7-0-0. |  |  |
|             | AD 98-8.00 PARKING & LOADING- |                      |        |  |  |
| TRUMBO      | <i>left on 16.</i>            |                      |        |  |  |
| DANIEL      |                               |                      |        |  |  |
| SANTOS      |                               |                      |        |  |  |
| YOUNG       |                               |                      |        |  |  |
| RUSSELL     |                               |                      |        |  |  |
| REYNOLDS    |                               |                      |        |  |  |
| AUSTIN      |                               |                      |        |  |  |
| DAVIS       |                               |                      |        |  |  |
| MAYOR HANNA |                               |                      |        |  |  |



|             |                                             |              |       |                            |  |
|-------------|---------------------------------------------|--------------|-------|----------------------------|--|
|             |                                             |              |       |                            |  |
|             | SHILOH DRIVE BID WAIVER                     |              |       |                            |  |
| TRUMBO      |                                             |              |       |                            |  |
| DANIEL      |                                             |              |       |                            |  |
| SANTOS      | <i>Jeff m</i><br><i>15</i><br><i>making</i> |              |       |                            |  |
| YOUNG       |                                             |              |       |                            |  |
| RUSSELL     |                                             |              |       |                            |  |
| REYNOLDS    |                                             |              |       |                            |  |
| AUSTIN      |                                             |              |       |                            |  |
| DAVIS       |                                             |              |       |                            |  |
| MAYOR HANNA |                                             |              |       |                            |  |
|             | Shiloh table drive                          |              |       |                            |  |
| TRUMBO      | ✓                                           |              |       |                            |  |
| DANIEL      | ✓                                           |              |       |                            |  |
| SANTOS      | ✓                                           |              |       |                            |  |
| YOUNG       | ✓                                           |              |       |                            |  |
| RUSSELL     | ✓                                           |              |       |                            |  |
| REYNOLDS    | ✓                                           |              |       |                            |  |
| AUSTIN      | ✓                                           |              |       |                            |  |
| DAVIS       | ✓                                           |              |       |                            |  |
| MAYOR HANNA |                                             |              |       |                            |  |
|             | 8-0.<br>BD 2nd<br>HD.<br><i>L. H. H. H.</i> | PA 3rd<br>BD | PASS. | PA<br>H.<br>Surgery claim. |  |
| TRUMBO      | ✓                                           | ✓            | ✓     | ✓                          |  |
| DANIEL      | ✓                                           | ✓            | ✓     | ✓                          |  |
| SANTOS      | ✓                                           | ✓            | ✓     | ✓                          |  |
| YOUNG       | ✓                                           | ✓            | ✓     | ✓                          |  |
| RUSSELL     | ✓                                           | ✓            | ✓     | ✓                          |  |
| REYNOLDS    | ✓                                           | ✓            | ✓     | ✓                          |  |
| AUSTIN      | ✓                                           | ✓            |       |                            |  |
| DAVIS       | ✓                                           | ✓            | ✓     | ✓                          |  |
| MAYOR HANNA |                                             |              |       |                            |  |
|             | 8-0.                                        | 7-0.         | 8-0.  |                            |  |

|             | RA ZND.<br>FIREWORKS. | RR H.<br>ZPP | PASS. |  |  |
|-------------|-----------------------|--------------|-------|--|--|
| TRUMBO      | ✓                     | ✓            | ✓     |  |  |
| DANIEL      | ✓                     | ✓            | ✓     |  |  |
| SANTOS      | ✓                     | ✓            | ✓     |  |  |
| YOUNG       | ✓                     | ✓            | ✓     |  |  |
| RUSSELL     | ✓                     | ✓            | ✓     |  |  |
| REYNOLDS    | ✓                     | ✓            | ✓     |  |  |
| AUSTIN      | ✓                     | ✓            | ✓     |  |  |
| DAVIS       | ✓                     | ✓            | ✓     |  |  |
| MAYOR HANNA |                       |              |       |  |  |
|             |                       | 8-0.         | 8-0   |  |  |
| TRUMBO      |                       |              |       |  |  |
| DANIEL      |                       |              |       |  |  |
| SANTOS      |                       |              |       |  |  |
| YOUNG       |                       |              |       |  |  |
| RUSSELL     |                       |              |       |  |  |
| REYNOLDS    |                       |              |       |  |  |
| AUSTIN      |                       |              |       |  |  |
| DAVIS       |                       |              |       |  |  |
| MAYOR HANNA |                       |              |       |  |  |
| TRUMBO      |                       |              |       |  |  |
| DANIEL      |                       |              |       |  |  |
| SANTOS      |                       |              |       |  |  |
| YOUNG       |                       |              |       |  |  |
| RUSSELL     |                       |              |       |  |  |
| REYNOLDS    |                       |              |       |  |  |
| AUSTIN      |                       |              |       |  |  |
| DAVIS       |                       |              |       |  |  |
| MAYOR HANNA |                       |              |       |  |  |

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

## FINAL AGENDA CITY COUNCIL JULY 5, 2000

A meeting of the Fayetteville City Council will be held on Wednesday, July 5, 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

- Council*  
*88-00*
1. **APPROVAL OF THE MINUTES:** Approval of City Council minutes from the meetings of June 1, June 6, and June 20, 2000.
  2. **BID 00-48:** A resolution awarding Bid 00-48 to Chris King Electric for electrical services for the remainder of the year 2000 with five one-year renewal options.
  3. **BID 00-49:** A resolution awarding Bid 00-49 to Synthetic Designs Stucco for the Engineering Building at 125 W. Mountain Street in the amount of \$45,900.00 plus a 10% contingency of \$4,590.00.  
*89-00*
  4. **BID 00-50:** A resolution awarding Bid 00-50 in the amount of \$26,860.00 with a 10% contingency to Airworks a Division of Multi-Craft Inc. for the installation of Phase II HVAC System, City Prosecutor's Office and the Jail.  
*90-00*
  5. **DICKSON STREET:** A resolution approving Change Order No. 2 (Final) in connection with the Dickson Street Water and Sewer Relocations in the amount of \$46,279.00 and a budget adjustment.  
*91-00*
  6. **T-HANGARS:** A resolution awarding a contract to Harrison Davis Construction, Inc. in the amount of \$489,865.50 with a 15% contingency for the construction of two eight-bay T-Hangars at Drake Field and approval of a budget adjustment.  
*92-00*
  7. **J.D.G. TELEVISION:** A resolution approving a lease agreement with J.D.G. Television, Inc. to lease an area that contains thirteen parking spaces in the Fayetteville Municipal Parking Lot located west of the Campbell Bell Building between Mountain, Church, and Center Streets. This lease agreement will allow J.D.G. Television, Inc. to construct a covered parking canopy for thirteen employee parking spaces and will be designed to incorporate and screen three proposed satellite 'receive only' dishes.  
*93-00*



## B. OLD BUSINESS

Put copy of proposed ord in file for August

Failed  
2nd meeting  
in August.

1. **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 second reading at the June 20, 2000 meeting.

## C. NEW BUSINESS

NO ACTION

1. **CITY TRAILS:** Presentation from Chuck Rutherford on the city's trails.

PASS  
9/1-00

2. **CENTER PRAIRIE TRAIL:** A resolution approving the purchase of an abandoned railroad right-of-way in the amount of \$50,000 with the intent to build a multi-use trail within the abandoned railroad right-of-way between Prairie Street and the Walton Art Center parking lot.

PASS  
4/250

3. ✓✓ **VA 00-4.00:** An ordinance approving vacation request VA 00-4.00 submitted by Henry Kelly, Jr. of Millsap Road Investments for property located at 665 Millsap Road, Lot 19 of CMN Business Park Phase I. The property is zoned C-2, Thoroughfare Commercial and contains approximately 2.58 acres. The request is to vacate a portion of an existing water line easement within lot 19.

PASS  
4/251

4. ✓✓ **VA 00-5.00:** An ordinance approving vacation request VA 00-5.00 submitted by Harvey Luttrell on behalf of Wiggins Memorial United Methodist Church for property located at 205 W. 6<sup>th</sup> Street. The property is zoned R-2, Medium Density Residential and contains approximately 0.18 acres. The request is to vacate a portion of the City right-of-way.

PASS  
4/252

5. ✓✓ **VA 00-6.00:** An ordinance approving vacation request VA 00-6.00 submitted by Joe and Angela Stevens for property located on Old Farmington Road between Beechwood and Eastern. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately .23 acres. The request is to vacate a portion of Old Farmington Road.

PASS  
4/253

6. ✓✓ **AD 00-8.00:** An ordinance for AD 00-8.00, Administrative Item Amendment to Chapter 162 "Use Units" of the Unified Development Ordinance, Section 162.01 "Establishment and Listing" to allow additional retail uses in the C-1 Neighborhood Commercial District.

PASS  
4/254

7. ✓✓ **RZ 00-16.00:** An ordinance approving rezoning request RZ 00-16.00, submitted by Arden Gale for property located at 1530 Albright Road. The property is zoned A-1, Agricultural and contains approximately 4.21 acres. The request is to rezone to R-1, Low Density Residential.

8. ✓

*left in 1st reading*  
**RZ 00-17.00:** An ordinance approving rezoning request RZ 00-17.00 submitted by Northstar Engineering on behalf of Emad Damen for property located at 2323 Deane Street. The property is zoned R-1, Low Density Residential and contains approximately 1.47 acres. The request is to rezone to R-2, Medium Density Residential.

9. ✓✓

*PASS 4255*  
**RZ 00-18.00:** An ordinance approving rezoning request RZ 00-18.00, submitted by Richard Grubbs on behalf of Tommy and Jodi Holland and Richard and Mary Osborne for property located on east Appleby. The property is zoned R-1.5, Moderate Density Residential and contains approximately 2.5 acres. The request is to rezone to R-O, Residential Office.

10. ✓

*left in 1st reading*  
**AD 98-8.00:** An ordinance approving AD 98-8.00, Administrative amendment to Chapter 172 "Parking and Loading" of the Unified Development Ordinance, Section 172.01 (D)(1) "Standards for the Number of Spaces by Use-Off Street Parking" to revise the required parking for eating places (restaurants).

11. ✓

*left in 1st reading*  
**SHILOH DRIVE:** 1) An ordinance approving a bid waiver with McClinton-Anchor, to allow the reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the new Shiloh Drive extension at the CMN property line, including the radius and intersection of Northwood Avenue; 2) Approval of a construction contract with McClinton-Anchor in the estimated amount of \$43,300.00 for the above described street reconstruction; 3) Approval of a 15% project contingency of \$6,495.00 for material/construction testing and variations in final quantities.

12.

*Table*  
**SHILOH DRIVE:** A resolution approving a letter contract in the amount of \$5,000.00 with Milholland Company for engineering design, construction staking, construction management, and as-built drawings for the reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the CMN property line and the intersection with Northwood Avenue.

13. ✓✓

*PASS 4255*  
**SALES TAX FOR LIBRARY:** Consideration of an ordinance levying a one cent sales tax for a period of eighteen months for the consideration of a new Fayetteville Library and setting an election therefore.

14. ✓

*4257 PASS*  
**FIRE WORKS:** An ordinance allowing Tyson Foods to use fireworks for the singular occasion of their 65<sup>th</sup> anniversary celebration at the Washington County Fair Grounds on July 27, 2000.

## DEPARTMENTAL CORRESPONDENCE

---

To: Aldermen, Mayor Hanna, and City Attorney Jerry Rose  
From: Heather Woodruff, City Clerk  
Date: June 30, 2000

RE: Minutes of City Council meetings

Recently the minutes of the City Council meetings have been questioned. I feel it is necessary at this time to detail my responsibilities as well as the council's.

The Handbook for Arkansas Municipal Clerks, Records and Treasurers Association states:

*While there are no statutory standards governing the content of the minutes, good practice dictates that the minutes should comprise a general concise but clear description of the actions of the city council, not only their final actions in the form of votes but also a sufficient description to reveal that proper procedures were followed . . .*

*One of the duties of city clerks and recorders is the recording of minutes of city council meetings. A.C.A Section 14-43-506 provides, "The city clerk shall have the custody of all the laws and ordinances of the city and shall keep a regular and correct journal of the proceedings of the city council . . ." A.C.A. Section 14-45-107 provides, ". . . the recorder/treasurer shall also be, and act as, clerk of the town. He shall attend all meetings of the council and make a fair, accurate, and correct record of all the proceedings, laws, rules and ordinance, made and passed by the council."*

*The keeping of accurate and complete minutes of council meetings by the clerk or recorder is essential to the validity of the ordinances and other actions of your city or town. The Arkansas Supreme Court has so ruled many times.*

As City Clerk it is imperative to the records of the city that I maintain a neutral position whether conflicts arise between staff, citizens, or aldermen or a combination thereof. I have taken minutes for the City of Fayetteville for nearly five years now. In the past, the style and format I have used has been a combination of paraphrase and summary. I have found this to be both efficient and acceptable to the City Attorney, Council, Staff, and the general public. Because of the recent tension within our city, I have tried to provide nearly verbatim minutes for the past several meetings. I have found this to be extremely time consuming, inefficient, frustrating and unnecessary.



As a neutral party to the proceedings of the meeting and the recorder I find minutes which are more concise to be more affective as both a legal document and historical record.

Attached you will find minutes from the June 1, 2000 and June 6, 2000 City Council meetings. These minutes are nearly verbatim and have consumed nearly forty plus man hours, each, at an estimated cost of \$800 to \$900 per document. With my current staff and budget, I cannot continue to produce such detailed documents. I will be reverting back to my former style of paraphrase/summary minutes.

**It is the council's responsibility to review the minutes for errors, omissions, and misinterpretation.**

Typo and grammatical errors should be brought to my attention before the council meeting so a corrected copy can be presented at the council meeting. For errors in content, interpretation, and/or omissions I propose the following from the Handbook of Arkansas Municipal Clerks and Treasurers Association:

*From time to time the minutes as prepared by the clerk or recorder might be disputed by a council member. If so, then a vote may be taken whether to approve the minutes as prepared or to amend them. If amended by vote of the council then an addendum may be prepared that conforms with the amendment passed by the council. If the motion to amend does not pass, the clerk or recorder should note the discussion in the minutes of the next meeting in which the minutes of the prior meeting have been challenged.*

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

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's 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 for him 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 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 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 how 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 to 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 inconsistent 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, as he understood, it was signed, and you should have copies of it before you. This is an order by the Chancery Court of Washington County that grants Argus Properties and Fayetteville Exchange LLC 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. 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 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 questions. 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 his degree was in finance, and that is why he relies on Mr. Rose's legal advice. He was under the impression 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 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 they 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. They were not able to persuade them. They had the opportunity to present their views to the City Council. 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. They did not agree with them. They had the opportunity, yesterday, to communicate to the Chancery Court of Washington County. 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 in the order 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 the order was what he signed. He did not say that. The order was a legal document. The judge 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 he had sat there many, many times and people had asked about appeals and



Jerry Rose had always gone through the spiel 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 is 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 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 everyone would 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 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. Kester's job to represent the interest of their clients and he would hope 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 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 since the Council was an inferior court 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 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 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 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 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 they could all agree on was October 30th. 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 action pending on the redtail hawk. 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 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 re-zoned from agriculture to commercial. Basically, it was his understanding there was some opposition to it, but CMN was allowed to re-zone 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 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, said if he had been aware 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 was going to develop around them we are going to let them know they can't touch these trees. He says, first of all, 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 the thing had been in effect since the early 1990's. The fact he did not think 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 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. The reason he was bringing this up was that everybody was on notice 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 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 in her opinion that the 10.03% plan, although she felt like she needed to give her okay for it at the Planning Commission Meeting, 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 wishing 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 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 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 the \$310,000.00 if legally the League of Women 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 it could be conceivable. He really did not know because he had not researched it incredibly well. 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 taking 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, exactly what it would be. But there was some risk involved.

Alderman Santos asked 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, yes, anybody could challenge it. They did run some risk.

Alderman Davis stated he appreciated Mr. Fulcher's comments. If he would go back to the Planning Commission Meeting minutes, he would find out 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 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 said 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, 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" does 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 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 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 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 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 resented Mr. Santos making that implication. He thought if Mr. Santos wanted to talk motive, how about having a meeting a 9:00 a.m. when most of them were employed and working. He added they had agreed a year and half ago 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 4:30 p.m today would accommodate the other aldermen 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 said 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 not 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.

Clay 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 up with 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 11<sup>th</sup> 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 is 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 polarized. 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 and liberty. They have to temper that with the police rights that any community has to make sure their citizens are safe and secure and 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 for a compromise, and in some cases there just is not one. 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 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 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 accept it, and that community is happy with it. Now they come to Fayetteville and their only preconception is 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, 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, it is committed to a quality of life and preserving trees, and in essence he perceives 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 be close to it and the 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 that have lived here practically their whole life. He did not know that grove of trees were there. They added nothing to his 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 and his kids can shop. 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 tree 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. 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 elusive. 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 its 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 and he appreciated what Mr. Kester was trying to do in saying maybe they ought to go look back at the roots of this, but if we want to do 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. 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 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 it 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 attorney, 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 they would not cut any trees until the Circuit Court has had a full chance to do this. They said to them 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 want 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. Kester 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 rented. 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. Kester 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 they have lost because they have decided to impose their will on Argus. Now if this City Board decides that it 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 in two. 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 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 doesn'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 the judge has the right to do any more. He would be glad to answer any questions.

Alderman Young stated 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 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. That was what you were arguing.

---

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

Alderman Young replied Mr. Butt had stated 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 is the property owner of record. They have hired Argus and given them written authority to develop the property in their behalf.

Alderman Santos cited several takings cases and explained the two part takings test.

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 as 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 he 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, what was just and what was good ~~for this community.~~ What we are doing right now is not good for this community. This should have been resolved months ago. It has not been resolved. That is what has brought all this 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. 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 Kester, 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 appurtenances, 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. In this case there are already two injunctions, one from the Federal Court. Notwithstanding that fact, there is another one from State Court. 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 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 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 I should immediately enter a preliminary injunction on and that has happened. It is also important to note 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, it 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. Everybody agrees 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 the trees can ever grow back to the size and diameter and have the characteristics 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 of the development should go ahead. We may disagree about that but the courts are going to figure it out. 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 we can't fix later. Money can shuffle around, but you can't put the trees back later. Any one of you, assuming 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. If you all refuse to do it, and any one of you can stop it, that is something I think the voters of Fayetteville will remember.

Marquette 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 a solution and who are really taking responsibility. If you don't take responsibility, and 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 I have 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 as 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 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 Mouton 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 the City, the Council members, would make every effort to make sure we don't make irreparable decisions this afternoon that we cannot change, an issue we need to be careful about. We need to make sure we are not doing anything that is not exactly right and that the City could possibly be in trouble for. I agree with the citizens that once the trees are gone, they 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 Kester said, I would like to say ditto, so I am not redundant and waste your time. I do believe 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. Jan 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 with very little damage 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 an unconstitutional 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 later claim 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? 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.

Lu 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 the 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 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 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. Probably ninety percent of the people 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 has 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 and that a lot of people didn't wish to come down and voice publicly.

Lu 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. If the people who had 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 was 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.

Lu Weiss stated 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, but 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.

Lu 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, 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 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 which is the resolution before you this evening. From where I sit, it looks to me like the question of eighty-one trees, preserving eight-one 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 Mr. Butt smeared from ear to ear and I thank him 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 where I sit like the fix is in, like it is a done deal. 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 been 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 plea bargain. I am not going to try to get out of 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 are sincerely, seriously trying to work it out, let's try to work it out. Since it is a really serious thoughtful principle we need to sit 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 Brophy 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 9<sup>th</sup> and 10<sup>th</sup> 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 which I have seen in other parts of the country, and the results of it were not at all aesthetically pleasing. Some places prospered, such as Portland, Oregon, is a fine example. 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 there has to be a reason why people would want or people would value something or 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. 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 of the property. 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 phased permit procedure which is not recognized legally in your ordinance. It is that phased procedure that is costing the plaintiff's \$310,000.00 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. Why would there be such a rush when there are, 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 phased 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 in Georgia at the end of 1999 and was not registered to do business in the State of Arkansas until March 7th 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 know 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 have 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 articulate 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 he asked the question was because he heard several people suggest 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. Another one of the guiding principles that I always used with my clients was seeing if you can't find a win-win solution where you are, 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 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 themselves and if there was anyway at all at which a possible compromise might be reached in which everyone might be happy, after 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 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 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 understands 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 is, 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 wining 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, in 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. 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 shoes 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 the Planning Commission and it was appealed. I don't know why but that church pulled the plan and went elsewhere. There is precedent 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 they have been receiving with a form letter that reads they have dealt with the Landscape Administrator's plan, trees are being saved, and 100 or more trees 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 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 effect, 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 of 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 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 a worthless tree. (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 are 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 would 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, lest 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 all nine of them sitting up here including the Mayor, sincerely believe that they were doing what their constituents wanted them to do. He certainly believed that he was. He thought a lot of it depended upon who 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 had 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 polls 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 affect 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 was also several attorneys who had spoken and said that the City did not only have 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 financial strength 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 tied at 4-4. Mayor Hanna voting to break the tie.**

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 stated that if the City forfeited their jurisdiction and the issue was stayed by passing this resolution, he did not think there would be anything for them to consider at the meeting in the morning.

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

Meeting adjourned at 9:40 p.m.



RESOLUTION NO. 72-00

A RESOLUTION RECOGNIZING WASHINGTON COUNTY CIRCUIT/CHANCERY COURT JURISDICTION OVER STAYS REGARDING TREE REMOVAL OF LSD 00-5.00 AND THEREBY DENYING ANY FURTHER REQUESTS FOR SUCH STAYS FROM THE FAYETTEVILLE CITY COUNCIL.

WHEREAS, in *Serafini, et al. vs. City of Fayetteville, et al.*, Washington County Case No. 2000-536, Plaintiffs have filed an appeal of the Planning Commission decision to grant large scale development approval to the developers of the Steele Crossing Shopping Center; and

WHEREAS, in that appeal the Plaintiffs asked the Chancery Court in Case No. 2000-997, to preliminarily enjoin the removal of trees on LSD 00-5.00 which is the Steele Crossing Shopping Center; and

WHEREAS, an order was issued by the Chancery Court on May 31, 2000 enjoining Argus Properties, L.L.C. and Fayetteville Exchange L.L.C. from removing any trees on the property known as LSD 00-5.00 pending the appeal above and setting a bond of \$310,000 to be paid on or before 12 p.m. (noon) on Friday, June 2, 2000 in order for the injunction to issue.

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

Section 1. As a result of the appeal filed in this matter, the City Council hereby recognizes Washington County Circuit/Chancery jurisdiction over stays regarding tree removal of LSD 00-5.00 (Steele Crossing Shopping Center).

Section 2. As a result of such recognition, the City Council hereby denies any further requests for such stays and directs those seeking such stays to make application in the Courts and not to the City Council.

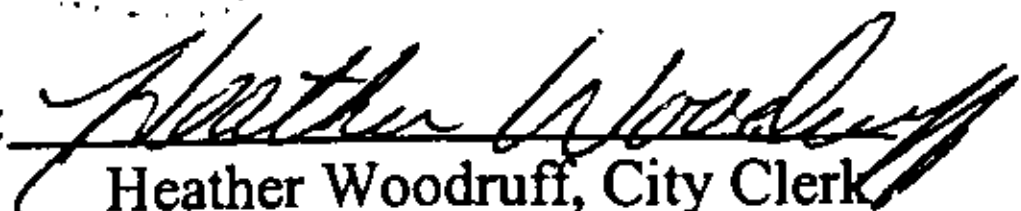
PASSED AND APPROVED this 1 day of June, 2000.

APPROVED:

By: 

Fred Hanna, Mayor



By: 

Heather Woodruff, City Clerk



**MINUTES OF A MEETING  
OF THE  
FAYETTEVILLE CITY COUNCIL  
JUNE 6, 2000**

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

**PRESENT:** Mayor Fred Hanna; Aldermen Robert Reynolds, Ron Austin, Bob Davis, Trent Trumbo, Heather Daniel, Cyrus Young, Kevin Santos, and Kyle Russell; City Attorney Jerry Rose; City Clerk Heather Woodruff; Staff; Press; Audience.

**CONSENT AGENDA**

**APPROVAL OF MINUTES**

Approval of the minutes from the May 16, 2000 City Council Meeting.

**GARLAND STREET IMPROVEMENTS:** A resolution approving an engineering design contract in the amount of \$28,253.37 with Hawkins-Weir Engineers, Inc. for the design of water and sanitary sewer relocations and system improvements on Garland Street from Maple Street to North Street in preparation for the State AHTD widening of Garland Street.

*RESOLUTION 73-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**COPS IN SCHOOLS FEDERAL GRANT:** A resolution accepting a Cops in Schools Federal Grant in the amount of \$470,095.00 and approval of a budget adjustment in the amount of \$46,530.00.

*RESOLUTION 74-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**OLD MISSOURI ROAD IMPROVEMENTS:** A resolution approving a contract for surveying services in the amount of \$70,060.00 with Garver Engineers for the Old Missouri Road improvements; and approval of a budget adjustment in the amount of \$70,060.00 to fund the surveying contract.

*RESOLUTION 75-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**BID 00-42:** A resolution awarding Bid 00-42 to Central States Fire Apparatus LLC for the purchase of a new Fire Department pumping engine at a cost of \$209,096.00.

*RESOLUTION 76-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**AD 00-10.00:** A resolution approving AD 00-10.00 as submitted by the City Planning Division to adopt the planning area boundary.

*RESOLUTION 77-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**Alderman Bob Davis moved to approve the Consent Agenda. Alderman Heather Daniel seconded the motion. Upon roll call the motion carried unanimously.**

## **OLD BUSINESS**

## **NEW BUSINESS**

### **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. 54<sup>th</sup> 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.

*Mr. Rose read the ordinance.*

Mayor Hanna asked the Council if they had any comments about this rezoning.

Alderman Daniel stated the Planning Commission had passed the rezoning unanimously. However, since this was in Ward 4, she would like to leave it on the first reading.

Mayor Hanna asked if there were any other comments. There were no further comments made.

*THE ORDINANCE WAS LEFT ON THE FIRST READING.*

## **AIRPORT STANDARDS**

A resolution adopting the updated "Minimum Standards for Operations and Commercial Activities" for the Fayetteville Municipal Airport-Drake Field replacing the current document and its revisions.

Brenda Moss, Financial Coordinator for the airport, stated the Minimum Standards were basically a part of the regulations and rules that the Airport was operated under. The Standards had not been revised since 1981. They had basically taken out the terminology and language of airlines, and replaced them with more general aviation terminology. One major change was the removal of the word "aeronautical businesses," and replacing it with "commercial."

Alderman Russell asked if this had gone through the Airport Board?

Ms. Moss replied, "yes."

Mayor Hanna asked if anyone in the audience would like to address this resolution?

There was no public comment.

**Alderman Ron Austin made a motion to adopt the resolution. Alderman Trent Trumbo seconded the motion. Upon roll call the motion carried unanimously.**

*RESOLUTION 78-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**RFQ 00-4**

Resolution approving a Letter of Engagement to Kutak Rock & Campbell for attorney services on the financing of the Wastewater Treatment Plant Facility.

Jerry Rose, City Attorney, stated the council should have a copy of the engagement letter before them. This was a standard bond counsel letter of engagement. However, attached to that, was an hourly-wage or rate for work done on the possibility of funding this project through a sales tax.

Alderman Young stated any time bonding issues came up, he asked a standard question. His question was always just a simple one. He just wanted to make sure who they are working for. He had a letter there and it read, on page 3 of the City Engagement Letter, you will note that we have identified the City of Fayetteville as our client and have stated that in connection with all transactions covered by the Engagement Letter we are counsel only to the City. He just mentioned this to make this a part of the minutes. Everything was okay.

**Alderman Trent Trumbo made a motion to approve the resolution. Alderman Bob Davis seconded the resolution. Upon roll call the motion carried unanimously.**

*RESOLUTION 79-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**RFQ 98-10**

Resolution approving a Letter of Engagement to Wright, Lindsey & Jennings for the financing of the New Library.

Jerry Rose, City Attorney, stated this was virtually the same thing as the last item. He explained the Council had already passed one contract with Wright, Lindsey & Jennings. It had been strictly a bond counsel contract. This one was an amendment to that and replaces that one. It again was a standard bond counsel agreement with the added hourly rate for work done on the sales tax issue if that was the council's choice.



Alderman Young stated he would ask his standard question when it came through before.

Alderman Russell asked if the approval of this letter committed the City to a certain funding source for the Library or if it just gave them those options with these attorneys?

Mr. Jerry Rose answered, that was correct.

**Alderman Bob Davis moved to accept the resolution. Alderman Heather Daniel seconded the motion. Upon roll call the motion carried unanimously.**

*RESOLUTION 80-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

### **FARMERS MARKET**

An ordinance amending Section 114.03 of the Code of Fayetteville, Food; Milk, as proposed by the Board of Directors of Rural Mountain Producers Exchange, Inc. to allow vendors to use parking spaces on the east side of East Street and to allow the sale of other processed farm products.

- Mayor Hanna stated this was for the Farmer's Market.

*Mr. Rose read the ordinance.*

Mark Cain, President of Fayetteville Farmers Market, stated he knew that some of them were there about three years ago when they had a local person who was a goat dairy farmer and wanted to sell locally processed cheese on the market. At that time, the City Ordinance and the R & P Regulations did not allow the sale of cheese. Since that time, they had done a lot of study as a market. All of their vendors had been brought into the process in terms of focus meetings over the last three years. Donna Dole came on the market with her cheese back in August of 1997. It has been a big success with the customers and has been a welcome addition to the Farmers Market. They were simply asking to increase the sale of other processed products there at the Market that are also grown by the vendor which for the time being included jellies, jams, vinegars. They proposed a processing committee, somewhat like their craft committee that will jury the products to make sure the vendors are indeed growing all of the ingredients in the products and that all of the health regulations have been conformed with. Back in 1997 they were given the use of the east side of East Street on Saturdays only. That was when they had their biggest influx of farmers coming into town to sale and what they were simply asking for now was that wording be placed into the ordinance that would allow the use of the parking spaces on the east side of East Street on Saturdays. Right now they used the west side of East Street as part of the Tuesday, Thursday and Saturday markets.

Alderman Trumbo stated he thought they were doing an outstanding job. It was a big draw for a



lot of people in town and out of town. It was great. He questioned how the politics worked on picking a spot. If they ran out of spots, were they going to allow more produce and vendors? How did that work?

Mark Cain replied they had a point system. They paid a 10% commission into their nonprofit organization that helped pay for their manager, sacks, advertising, and other things. Every market day a envelope was sent around and they wrote down what they had made and put 10% of that back into the envelope. From this they accumulated points based on the amount of sales that they did, and also the number of market days that they had attended the previous year, and the number of years that they had been at the market. It was a system that tried to acknowledge seniority and also, enthusiasm in terms of sales. New vendors could get on the market if they were successful. At the end of every year at their Fall Banquet Meeting they had a count of where all the points were added up, and people chose their spots for the next year. Now people coming on the market that were new, they may not get a permanent spot right away but they could show up on Tuesday or Thursday, generally Saturday spots were not open. They are placed in the empty spaces as they come in.

Alderman Trumbo commented that was great. He asked what the ball park figure was on sales a year that the Farmers Market made?

Mark Cain replied he believed last year they took in about \$450,000.00.

Alderman Trumbo stated that's great and asked if that was that a record year?

Mark Cain replied, yes. Every year has been going up.

Alderman Daniel asked, Mark to explain the role of the health department in a little more detail?

Mark Cain stated in terms of processed products, all processed products, and at this time they were not including any bread items because generally people don't grow their own wheat, but people who have berry farms, or grape farms, or whatever, could easily produce jams and jellies to sale at the Market. Those all have to be produced in a certified kitchen. It can be at a restaurant or a home built one that was certified by the State Health Department, or any other certified kitchen available that can be rented. Also, they were requiring minimum product liability insurance. The Market already carried liability insurance for its vendors, but they wanted to insure that each vendor had their own liability insurance. Certain items like the dairy products or the frozen meats required USDA certification, so just in the same way right now they required plant vendors to be certified by the State Plant Board, those types of documents would be required to be on file with them before anyone could sale a processed product.

Alderman Davis asked Mark what limits the liability that he was requiring for those vendors to

carry?

Mark Cain stated he believed it was \$500,000.00. He asked Donna Dole what she was carrying now? She replied, generally one million dollars coverage per case.

Alderman Davis stated per occurrence of two million aggregate. An aggregate would be, what two million, which would be the maximum per policy period?

Donna Dole said, she would have to go back and review her policy.

Alderman Davis said, okay, just out of curiosity. Are you having all the vendors name the Farmers Market as an additional insured?

Mark Cain replied that had been proposed. He believed probably the amount of liability insurance may vary with the type of product they were carrying. Some things carry higher risks, like dairy products. Jams, jellies, pickles generally in the high acid group require a process in the kitchen, but they were not nearly the same risk as the salsa or tomato sauces, and they were proposing right now to only add in the low risk items until they gained more experience with how they were going to introduce all of the vendors. Not all of the vendors would be in line actually to start producing any processed products. It would probably come fairly slow to the market as people get this under their belt. It would just be another addition to the type of income they could create from their farm products.

**Alderman Austin moved to suspend the rules and move to the second reading. Alderman Daniel seconded the motion. Upon roll call the motion carried unanimously.**

*Mr. Rose read the ordinance.*

Mayor Hanna asked if anyone in the audience would like to address this proposed ordinance change?

**Alderman Kevin Santos made a motion to suspend the rules and go the third and final reading. Alderman Ron Austin seconded the motion. Upon roll call the motion carried unanimously.**

*Mr. Rose read the ordinance.*

**Mayor Hanna called for the vote. Upon roll call the ordinance passed unanimously.**

*ORDINANCE 4248 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

## **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 storm water management, drainage and erosion control permits.

Alderman Daniel stated she hoped the Council didn't want to move on this tonight because there was some new information she found before her tonight and it was pretty complicated and very significant.

Alderman Austin stated this was referred to the Ordinance Review Committee. We had a very thorough discussion last Tuesday. We had input from various developers and individuals, and Alderman Davis made a recommendation that we accept it and present it at Council tonight.

Alderman Davis stated the recommendation was, and he received the feeling out of the task force, we really didn't vote on it, we would put together a task force and give it ample time to come up with a solution to this. Jim Beavers, City Engineer, indicated also, there was some new stuff coming out for the grading of 93 and the storm water of 96 which currently overlaps. There is some additional information coming out at the end of this year and he would like to incorporate all of these items into a new ordinance instead of the Council working on anything at this point in time.

Alderman Santos stated they also had some good suggestions for additional changes to the ordinance like requiring a change to the overall plan, re-approval of the overall plan as the individual lot plans change, like they did at Steele Crossing. And another thing, maybe we just should not do partials for large scale developments with lots over a certain size. There are some different things we can look at. I think probably the only partials we do are for really big lots, large scales, so they would have pretty much the same effect.

Alderman Austin asked Alderman Santos if all of those suggestions were given to Jim Beavers, City Engineer, and his Staff, and if we do go with the idea of a study committee to incorporate into their recommendations?

Alderman Santos answered, that was correct.

Alderman Russell wanted to ask a couple of questions whether the Council does anything on this tonight or not? I am with Heather on certainly not moving this through tonight if we do anything with it at all because it is complicated. I would like Jerry Rose or Charlie Venable or Jim Beavers, if he is here, to with respect just use the grading ordinance as an example and outline for the benefit of the Council and for the benefit of the public the procedure that developers usually are required to follow under the ordinance, say for a large scale development, so we



know what we are considering messing with here in changing.

Charles Venable, Public Works Director, stated since Jim Beavers, City Engineer, was going to be the one responsible, he would be the best one to answer these questions.

Jim Beavers handed out copies of what the City's policy was, and he wanted to put down on paper the way they had reviewed the plans. As he stated earlier, we have about a two and a half page list here of how we review a grading plan that is submitted at this time. He asked Mr. Russell if he wanted him to go through the entire list?

Alderman Russell said, he didn't know if it was entirely necessary to go through the whole thing. His general question was the order of events underneath the City grading ordinance, specifically, he thought the storm water management ordinance tracts it fairly similarly. He was confused particularly as he thought you were supposed to submit a preliminary grading plan when you submit a plat for large scale approval.

Jim Beavers answered, yes, sir.

Alderman Russell stated he was kind of confused as to the process. It seemed to him the ordinance would require a final grading permit approval before the Planning Commission approves a large scale plat, and he does not when in that process work can begin on the land, except the ordinance reads, no work is supposed to begin until you have a grading permit, and he was assuming you all have interpreted that means a partial is sufficient for work to begin. He didn't know where the partial permit was issued, usually, with regard and in relation to the approval of the large scale plat. Which comes first, usually?

Jim Beavers stated the planning process is such that a preliminary grading plan and a preliminary drainage report are required with each large scale or subdivision that goes through the planning process. After the Planning Commission has approved the large scale or subdivision, then the developer's engineer is to prepare his construction plans which include the final grading plan and the final drainage calculations.

Alderman Russell asked if that was after large scale had been approved?

Jim Beavers replied after approval.

Alderman Russell stated that confuses him because just reading through these ordinances, it says no subdivision may be finalized nor large scale development plats approved before a final grading plan has been submitted to the City Engineer and approved. Which would indicate to him the procedure should be reverse of what Mr. Beavers was talking about in that the applicant should gain approval of a final grading plan from Mr. Beavers before they do large scale



development, plat approval in front of the Planning Commission. I am looking at 169.08 B.

Jim Beavers stated he would recommend that was one of several things when the Committee meets they need to look at because that is not our procedure, has never been our procedure and quite frankly, I think that part of the ordinance should be changed.

Alderman Russell replied, okay, the way we do it now is we do the plat submission along with the preliminary plan submission, then the large scale approval before the Planning Commission based on the preliminary plans and then you all look at the final plans and give out final permits after the large scale approval, right?

Jim Beavers answered, yes.

Alderman Santos suggested while the Council was waiting for this to go through three readings, could they go ahead and name a committee, or name what kind of representative they would like to see on this committee? Could the Council do that tonight?

Alderman Austin suggested the Mayor could appoint a committee or the Council could have a resolution to have a committee.

Mayor Hanna replied he would be glad to do it however the Ordinance Review Committee wants to do it.

Alderman Austin stated they wanted Alderman Young to be on the committee and Jim Beavers and his Staff to be on the committee, and some representatives from the construction industry, developer's industry and some citizens. That is really about all we talked about. We didn't name any names other than Cyrus and Jim Beavers.

Alderman Daniel suggested maybe each of the Councilmen could keep their ears open if they have some constituents who are interested in being on this committee, then we could start a list and look at it. What do you all think?

Mayor Hanna replied that sounded like a good idea. He would hesitate to form a committee before the Council found out who would actively serve on it. This committee is not something you need to appoint somebody to that will not show up.

Alderman Santos stated that if anyone was interested to give their Aldermen a call. Call your individual aldermen.

Mayor Hanna added call your alderman or call the Mayor's office, leave it with our secretary or ask for Mr. Venable.

Alderman Young stated if you want to serve he suggested that you do it in a hurry because that committee needs to meet next week.

Alderman Austin stated it would be an AD HOC committee. It will serve until we make a report and then it will go off.

Mayor Hanna stated there were several things you all evidently will need to discuss on this. He felt committees shouldn't be put together in a hurry, and he believes you should not do anything without going over the ordinance thoroughly so that what the committee decides upon will be sufficient.

Alderman Young stated one of the things that Jim Beavers was talking about was the new federal regulations that won't come in for six months to a year from now. The other thing he was talking about was combining the grading and the storm water management together basically into one ordinance, which is fine. I don't see where that would take that long to do that because the grading ordinance is already in place, unless you want to do some wholesale changes to it. He does not see doing that because they have changed it once or twice.

Charles Venable stated it took them about a year the last time they did it, remember? We had a committee then.

Alderman Young stated to just make sure that it siamese's in with the storm water management. He was still leery because even if they do that then he thought it had to be spelled out very plainly regarding whatever we do, and then when they change the tree ordinance, it needs to match what they do, that nothing happens until all these permits are in place.

Alderman Daniel asked Alderman Young if he was talking about a moratorium?

Alderman Young replied, no. He said regarding this thing he handed out, one of the whole purposes of the Tree Ordinance, and matching it with the grading plan, was so that trees would not get taken out that do not have to be. Now that was the main purpose of putting that provision in the Tree Preservation plan was to match it up with the grading plan.

Alderman Austin stated in visiting with Ms. Hesse, in the Tree and Landscape division, she wanted some time to go over it thoroughly. He did not believe they could rush that issue.

Alderman Russell stated Ms. Hesse told him six months.

Alderman Austin stated then it goes to the Ordinance Review Committee. All of these other committees will need some time so maybe the Council should just deal with the Agenda item tonight as a rush up deal and deal with the committee as a separate thing and not let the

committee preclude dealing with the Agenda item, if you would like to do that? He has submitted an ordinance. It is on the Agenda. It is on the first reading.

Alderman Russell stated they could either expedite it or leave it on the first reading or table it.

Mayor Hanna stated he felt they would not have to table it tonight if they weren't ready. After the next meeting he supposed it would have to be tabled.

Alderman Daniel stated she felt there was going to be greater attention paid to the City's ordinances considering the latest event, so she didn't think anything should be rushed through.

Alderman Russell stated he had a question about partial permits with regard to this memo that Jerry Rose prepared at Alderman Young's request. He has had some citizens raise this issue with him because they are afraid that granting partial permits gives undo leverage to developers and would possibly open the City up for legal liability if they then revoked the permits or refused to grant final permits later. The memo reads that the developer proceeds at his own risk. He takes that to mean that if the City granted a partial permit to a developer and their final permit application or a final plat or final plan does not meet the requirements of the ordinances, and the City, therefore refuses to issue a final permit, they can't come in and say they have all of this money invested, and you issued a partial permit, so they are entitled to a final permit. Is that correct?

Jerry Rose replied that was a good point. He and Jim Beavers had talked about that and from now on they want to be sure that is expressed fully in the partial permits that he is issuing. They are going to do that in the future giving them written notice that they are proceeding at their own risk. The fact is once large scale development approval/permission is given, it is not of matter of whether or not if the permits will be issued. It is a matter in what form they will be issued. In other words, the large scale development gives the permission for the permits to be issued. Now certainly they must follow all of the provisions of the City ordinances but there would rarely be a circumstance in which you would summarily deny a permit. It is not a yes or no answer. The answer is either yes or no unless you do this. Does that make sense? Have I stated that correctly, asking Tim Conklin, City Planner, and Jim Beavers, City Engineer?

Tim Conklin, City Planner, stated once a large scale development is approved, if their permit/applications are not meeting what is required, they tell them how to make it meet what is required, how to make it right.

Alderman Russell stated it was perfectly okay for the City to deny a permit if they are not doing what they are required to do under the ordinances, but it is not okay for the City, for no-good reason, to sit on a permit and not issue it.



Jerry Rose, stated again, the answer is not yes or no. The answer is either yes, you may have your permit or no, you may not have it unless you do this.

Alderman Young clarified in other words, they keep changing up their plans until it complies with the ordinance.

Jerry Rose, replied that was correct.

Alderman Austin asked if Engineering verifies that they actually do, right?

Alderman Russell stated somewhere in there he saw that if it is a major change to what the Planning Commission approved then they have to go before the Subdivision Committee of the Planning Commission to get the major change approved. If it is a minor change, you can approve it, right? That is after the Planning Commission has approved large scale development, which he is still confused about the order of the procedure. Under the current ordinance it would seem like a final grading plan needs to be submitted and approved by the City Engineer before large scale development plat approval. I may be wrong. I may be reading that wrong and that would counter to the procedure that you all have outlined. I guess we will talk about it in the committee.

Alderman Daniel asked if the City would no longer grant partial permits, are we boxing ourselves in, in any way? Does that give the City less flexibility?

Jim Beaver stated what he thought it would do is that it would naturally delay and slow down projects, but it would also put a burden on the Engineering Staff. They are now going to be pressed to get those out in a more timely fashion, if they could after the whole thing is in because they have already been delayed several weeks or month, and he was not sure where they would go with that. They would be talking about even further delays or be talking about less review, he just didn't know how they would handle that.

Alderman Austin asked if it could mean more staff?

Jim Beavers, answered, yes, sir.

Alderman Young asked what Mr. Beavers meant by delayed weeks or months?

Jim Beavers, stated if he understood the question, if they wait until they have all of the drainage calculations 100% correct before they issue a grading permit, as you are fully aware through your company, and we discussed this last Tuesday, it probably takes an average development, and Ron Petrie does most of these now. Again, I want to brag on Ron. He does an excellent job, a great job. I would say it has probably taken anywhere from two to four cycles of revisions before



the firm gets all of their drainage calculations to match the City's criteria manual and that could take anywhere from six weeks to three to four months. That would be an additional delay.

Alderman Young asked who was doing the delaying? The engineering company or the City of Fayetteville?

Jim Beavers, replied it was both if you take a time of the year like right now when they are really busy and have a back log of about 20-30 projects waiting to be reviewed and there is one individual who reviews projects. If drainage was submitted early in the year when they didn't have the back log, but we kick it back and it comes back in now, then there is going to be that lengthy time period before it gets reviewed for its second review. I am not saying if that is good or bad. I am just telling you that is how it is.

Alderman Young asked if they submitted something that complied with the ordinance right off, you could review it and approve it, right?

Jim Beavers, replied, yes, sir, we would love that. Most firms do a very good job but there are some minor things in our manual that generally they have to go back and check. We have to say the consultants in Northwest Arkansas are generally very, very good and do a very good job. I think the drainage designs going on today are far beyond what they were ten years ago. I think the firms are doing a very good job. I would like to say one thing that has not been mentioned when we talk about a phased or partial permit or grading permit issued in advance of checking the drainage calculations. I would like to make the point that they never approve any construction, any grading of any kind, without the Landscape Administrator first checking the trees. So if this whole issue is about the trees, I think it needs to be made clear that they do not allow, even if they are breaking out part of the project for the grading, we don't allow them to grade on that until they submit a full plan on that area and it is checked by Engineering and the Landscape Administrator.

Alderman Young stated if the storm water changes up the grading then that might change up what the tree preservation would be.

Jim Beavers, replied he would not say that couldn't happen but he did not believe that would happen very often.

Mayor Hanna asked if anyone had any other questions for Mr. Beavers?

Alderman Daniel asked if the Council was going to set a deadline when constituents can submit their names?

Mayor Hanna stated they would probably be well served to put the Friday deadline on the

applications for this committee. This is not something he feels needs to come back before the Council or Nominating Committee. We want people who want to be involved in it to be involved.

Alderman Young stated he would like somebody to set a time for next week.

Alderman Santos suggested at Agenda Session next week.

Alderman Young stated he was talking about when they were going to meet.

Mayor Hanna stated they could set a meeting date for later that week. If you don't get the applications in until Friday it would be hard to set a date for the meeting.

Alderman Reynolds asked did the Council know how many people they wanted on the committee?

Alderman Daniel suggested that each aldermen could come up with maybe one name. They did not want it to become too large.

Alderman Young said, something less than a hundred.

Alderman Daniel asked that by application did that mean just calling and submitting their name or do we need them to fill out a form?

Alderman Russell stated there were members of the public attending the meeting that would like to address the partial permit issue tonight while it is on the Agenda and we are talking about it.

Alderman Austin addressed the Mayor. We had a very thorough discussion at the Ordinance Review and he thought it would be good for us to be reminded that Kyle Russell brought it to our attention what our rules were at the last meeting about public input. One of the things that he remembered Kyle reading or Jerry Rose reading was that we avoid repeating items that were presented at committee meetings and other meetings.

Alderman Russell asked, repetitive comments?

Alderman Austin stated the reason he brought this up is that we are probably going to have this ordinance in some form to be considered and he just thought it would be more timely if most of the comments were addressed to the final recommendation. They don't want to limit the comments but just to advise people that probably this would be the most appropriate and would have the most impact.

Alderman Russell stated he believed if you say something now there would be no need to say it later and if you are going to say something later there is no need to say the same thing now.

Colene Gaston, 3270 Rom Orchard Road, I work in the City. I will try, Mr. Austin, to cover things I did not comment on at the committee meeting. There is one issue that has been raised tonight that Kyle has touched upon which concerns her that we are just going on from there because there is a provision she thinks is in effect now that is contrary to the way we are doing things. She put together a packet for the Council's assistance. She went to the trouble to do it for herself and she thought it might help all of you. As Heather knows, as of two weeks ago, she did not know what the UDO was. She went to get a copy of it and they were totally out of print. At the end of last week they came in and she got a copy. She found out the grading ordinance in the UDO has been amended. You have to take what is in your binder and cross reference it with the amendment. She attempted to do that for the Council and that is what is in the packet. The first thing in the packet was Cyrus's proposed ordinance. The next thing in the packet was Jerry Rose's memo talking about partial and phased permits. She thought it was interesting if you look and try to understand this process, one for Jerry's analysis, and attached to it are all of the so-called permits that have been issued for CMN to date, or as of the date this memo was written, since then three others have been issued. She attached those also. When they talk about permits she didn't think people realize what they are talking about is essentially a letter. The problem in understanding these permits sometimes was when you look at the letter they make reference to a plan but it is not specifically identified. You then go down to Engineering and you try to see what has been approved. It is very difficult. She knows Jim Beavers knows what has been approved but for anyone else coming in and trying to see what is approved and what is permitted, essentially is very difficult. Some of these permit approval letters don't even date the plans. They say the revised plans and drainage reports that were resubmitted for this project has been reviewed and approved subject to, which is a letter dated January 11, 2000. What those plans are in the boxes and boxes of files there, she thinks it is difficult to find out. It also, if you look at some of the approval letters, the new ones, you see that in fact verbal approvals have been issued and now they come back to get a written record of those verbal approvals. She thinks, to say the least, the system is very confusing and needs improvement and was glad to see there was going to be some ordinance review. She believes that process will result in a better procedure, and she said she was repeating herself, because one of her comments was we need to have a clear procedure. We need to know what pieces of the whole we are doling out along the way. We need to keep in mind the big picture. After those copies, there is the copy of the grading ordinance. She did her best to go through it for you and mark out the sections that have been repealed and referenced in the amendment where to go look. You can take the two together and find out what the existing law is. The last attachment is the storm water ordinance. Again, she wanted to call the Council's attention back to the amended graded ordinance. It is the same section that Kyle read. She also handed it out on a separate sheet just so you would see it. She thinks that it is very clear. It reads, "no subdivision may be finalized nor a large scale development plat approved before a final grading plan has been submitted to the City Engineer and approved." That is not.



what we are doing here. We approved, or the Planning Commission approved on April 24<sup>th</sup> a large scale development for Steele Crossing. At that time there was no final grading plan submitted to the City Engineer and approved. There was not one approved until last Thursday and it is not even a final one. It is a partial one. She just wonders how we can keep doing business this way with the existing ordinance? She would like to know what the answer to that is.

Mayor Hanna asked if anyone in Planning had an answer to that one.

Colene Gaston said, she was new to these ordinances and she could be wrong. But it seems pretty clear to her in that provision we are not following the law as it is written. Thank you.

Mayor Hanna thanked Ms. Gaston.

Joanie Connors, 885 Fritz Drive, it is always a worrisome thing to the public when a committee is formed to study an issue because that means generally nothing is going to happen. This ordinance seems to be quite simple to her. It seems simply to be about the issue of allowing the public and the City government to have some time to study developments before they go through. It is to allow the law to take effect. The regulations we have in this City should have a chance to be studied in application to these developments. She thinks a vote on this issue would show who it is that you represent, us or the developers. Thank you.

Fran Alexander, 1946 N. Fox Hunter Road, gentlemen, I propose that you in order to study this and come to some conclusion about what to do next, declare a moratorium on any further grading or storm water development until you know what you are doing and all the rest of us know what you are doing. I want to site an example of something that is very, very serious to my family personally that has occurred, I think, because of the way things have been done. If you will recall the development on Mission that was eroding into Lake Lucille, a couple of years ago. That is right below my mother's home which has been sitting there for thirty years. In the last, and I want to point out the trees were virtually all removed from this heavily forested area, and I don't know in the process whether storm water drainage ordinances, grading ordinances and tree ordinances were all lined up, but I seriously doubt they were since we have seen the results lately the ordinances are not being lined up. The trees were removed, the streets were put in, the lots were put in, the utilities were put in and a few houses were put in, and Mayor Hanna had to stop the process of developing in order to stop the bleeding of the sediment into Lake Lucille. Remember? Because so much of that hill was washing into that lake and the people who lived around that on the other side of Mission were bitterly upset. Since that time Arlington Terrace has been repaved and the area at Kings Drive it intersects right below Arlington Drive was also repaved. Shortly after that was done subsidence took out about of one third of Kings Drive right there, right above that development. My mother's house is right above that intersection. She has had \$2,500.00 of plumbing, where the plumbing disconnected from the house and now she faces



\$30,000.00-\$40,000.00 of foundation repair. I cannot prove that dirt that is now in Lake Lucille caused this to happen. But it didn't happen for 25-26-27 years. So you need to get these ducks in a row because you are costing a lot of us a lot of money. You know that I have been telling you, and telling you, and telling you. We are going on fourteen years that water runs downhill. Deal with it.

Mayor Hanna asked if there was anyone would like to speak to this grading plan? If not, we will close the public comment. I will ask you again to call your application in if you would like to serve on the committee. You could call my secretary, or Charlie Venable, or the City Clerk, and leave your name, address and telephone number. We will attempt to choose a committee that will be brought back before this Council at Agenda Session next Tuesday.

Alderman Russell asked if they were going to leave the ordinance on the first reading for now?

Alderman Young stated that is one answer to her question about stalling it. This ordinance will proceed on with each reading and get to a third and final reading and then we will have to do something. There is a time in which the Committee has to act in.

---

*ORDINANCE WAS LEFT ON THE FIRST READING.*

#### **DAMAGE CLAIM**

Consideration of a damage claim filed against the City by Richard Shewmaker.

Richard Shewmaker, 605 W. Dickson, stated I would rather be any place than here tonight. I have worked for a little more than two years with the City to try to resolve this damage on the building that I own at 603 W. Dickson. The basement is called 601, the main floor is called 603 and the top floor where we live is called 605. We have not had success in trying to settle the claim, so the only option we have since the statute of limitation ends the end of this month, is to come to the Council. It is not the only option. I guess there is no reason to come here and talk about it. I wanted to do that and see if we couldn't get some type of settlement from the City without getting involved in litigation. There are a lot of letters we are going to go through. If you will bear with me it won't take a whole lot of time but they are important to us in trying to present our side. The whole topic is rather simple. It is about a man and a machine. It is about a building. It is about character and truth. As I know you have been on the Council for some time even the youngest one here is familiar with tort liability. You are immune from tort liability. Tort being wrong doing, if you do something wrong, you are immune from that. If you do something wrong that is intentional you are not necessarily immune from that. This is a section of the statute that says you do have the right to come before you and you have the right to hear any claims and you have the right to settle those claims. We are going to talk about a machine that did the damage to our building. This old building before we got it was called the Polk Furniture Building. Before that it was called Stump Furniture and then before that it was a feed

store. We have some pictures that go way back in that time. It basically is a 70-year-old building built the way they built buildings 70 years ago which is not the way they do them now. Here is a picture of the machine that was down there. It is called a vibrating roller. It is a first class piece of machinery. It said it was made for highway and other large paving jobs. That was a really small paving job down there. It would have been great if we could have had something small down there. To give you an idea about the size of that machine, it weighs ten tons or it weighs twenty-two thousand pounds. I drive a Toyota Avalon which is a full size Toyota. This thing weighs seven times as much as that vehicle does. It is sixteen feet long. It is right at seven feet wide. From the bottom to the top of it, the roll bar is ten foot tall. The rollers on the front of it are called vibrating rollers. Those two rollers, one on the front and one on the back, are forty-eight inches tall. They are big and are used to do a big type of a job. It holds water and fuel. The water capacity of it is two hundred and fifty gallons. That is fifty-five gallon buckets of water. I want to now talk a little bit about the building. Mr. Shewmaker showed the Council and audience the building and the machine/to scale. This is that machine scaled next to our building. The shot is on Powerhouse Avenue. It is forty feet from the bottom. I think this is very critical. Here is the machine lying on the street. On the first floor there is a basement. This is not just a building that sits above the ground or flush with the ground. When he purchased the building, it had been vacant for a number of years and all three floors had been used for the sale of furniture for Polk Furniture. They were told the building behind it, at one time, had been used by Polk Furniture. That building and their building each have 12,000 square feet. The wall is forty feet tall. From the ground up to the first floor is stacked rock. There is not rebar in it. Back then they did not build with rebar. This is stacked rock with cement. Above this floor there are three layers of brick and plaster and stucco that was applied to the outside and inside walls. One of the critical things about this is the scale of it. We are talking about a machine that is up against a building where there is nothing on the other basement wall. If the bottom of this building is shaken, it will make the top shake, and will most likely shake at a greater vibration than the lower level did. When the damage occurred to the building, he was in the building when it happened. He was up in the resident level. He wants to talk about truth and character. On May 14 at his church service, their associate minister presented this sermon. He believed it applied to this project. He talked about the crisis of truth. The one absolute truth taught in school today is tolerance, not whether it is right or wrong. It is whether I tolerate you. If you lie to me, I am supposed to figure out a way to tolerate you. Frederick Nitsche had an interesting quote, "once the reality of absolute is denied all relationships are based on the exercise of power." Whom has the most power? I am going to tell you right now that I do not have the power. You, the Council, have the power. We individually create truth, or right or wrong, through personal taste, emotional preface and cultural choices. Absolute is something which is true for all people, for all places and for all times. The Council has read some these letters, most of them you have not read. If you will bear with me, we are going to go through some of it. These are his feelings and the feelings of his attorney, that the tort of damaging the building is one issue, and there is a possibility of the tort of fraud and the intentional tort of such. Webster defines fraud as deception, trickery, cheating and intentional perversion of truth to induce another to part with

some value or valuable thing belonging to him. The City is not immune from the tort of fraud. He worked numerous times, two official times, with the City plus a lot of different phone calls to ask the City to recognize they had damaged his building and to make the payment. Initially that payment request was for the entire amount. You will notice today there is a letter in your packet from last week, which is asking for 50% payment from the City with a resolution, hoping the insurance company will pay the other 50%. This is a letter that was written to the Council and it basically reads that in 1997 the City of Fayetteville laid a six-inch water line from Dickson Street to Powerhouse Seafood Restaurant. That street was named Gregg Street at that time, I believe, and later on it was renamed Powerhouse Avenue. After the water line project was completed, the City reconstructed the street which is now named Powerhouse. During the process of vibrating crushed rock on the street damage was done to our building at 601, 603 and 605 West Dickson. Improper use of the City's Ingersol Rand Vibrating Roller DD90 can result in the duplication in the effects of an earthquake. I have tried to get contractors, engineers and architects to come up here and say something. They are not going to do that. It is not to their benefit to do such and on the other hand, a lot of them do a lot of work with the City. That is different from having them on a witness stand testifying under oath. I have privately on several occasions tried to settle this issue with the City without success. I must go public now and the reason for doing that is June 30 is the end of statute of limitations. The City's denial of my claim continually mentions I have no evidence the City did the damage and I waited eight months to submit the claim. On May 12, 1993, the Fayetteville Historic District Commission honored our efforts in the preservation, a part of Fayetteville's historic past, and proclaimed the structure located at 603 West Dickson as an example of excellence in historic preservation. There have been some insinuations that the cracks have always been in the building. I find that very difficult. First of all they weren't always there and we would not have won such an award if they had been. We received the Acknowledgment for the Best Commercial Restoration of the year. Any cracks that existed had been repaired and the building painted. The evidence is that cracks caused by the earthquake machine have no paint in them today. I waited eight months to submit the claim. I am 57 years old. Our parents, all four of them, until a few years ago were living. Our parents' ages were in the 90's. Old age death is not immediate. It drags out and causes a lot of pain and disruption in the lives of their spouses and all other relatives around them. For a period of time of eleven months before the damage was done to our building and a period of time twelve months after the damage was done, we lost from death on separate occasions, my wife's mother, my mother's closest sister's husband, my mother's closest sister, my father and my wife's father. My mother will be 91 this summer and has not completely recovered from all of this. Those deaths don't occur like in a car wreck where all of a sudden it happens and it is over with. These deaths drug on and on. During this time we had also asked the City to enforce the noise ordinance and that was a real ruckus. They had threats on their lives and that thrown on top of everything else gave them a really full cup. The eight months delay to the damage claim is clearly understandable. The cracks with no paint in them speak for themselves. That building was rehabilitated by us. We have requested, through my aldermen, Mr. Young and Mr. Russell, which again is in our letter, that the City pass a resolution doing the following: Resolve that under that statute you saw,



make a payment to us in the amount of 50% of the damage claim plus a 5% consumer price index as determined by the University of Arkansas Center of Business and Economic Research, (that payment will be \$290,000.00) and resolve that Hanover Insurance Companies be encouraged to make like payment on an equal amount. Since 1992 and until recently he was a real estate agent with Lindsey & Associates. As of May 29 or about a week before then, he was no longer associated with Lindsey. Nor does he have an active real estate license of any sort in the State of Arkansas. A legal problem with a major city could be significant harm for any real estate company. It makes no difference if it is Lindsey or whoever. I have visited with Jim. He is my friend and always will be. I also know he visited with the Mayor to try to see if we couldn't come to some resolution to this project. Attached are the letters to the City requesting the claims be honored, the letters from the City denying the claim and the City's letters denying the second claim. That second claim was verbal and not in writing. There was no letter in there for that. After they got the family things behind them, he contacted Kevin Crosson, who was the Public Works Director for the City of Fayetteville at that time. Kevin came down and looked at the building. I wish at that time I had a tape recorder because Kevin Crosson told me the City has had problems with the vibrating roller. Kevin asked if I had any estimates on the building? At that time Kevin and I were in Rotary together. At Rotary Kevin brought me an envelope with the original form in it to fill out regarding a claim request. If needed, he felt sure that Kevin's prints would be on that envelope. He asked him if he had any estimates and he said no. He told him he had to have three estimates and then get the packet back to him. That is what I did. He wrote a letter to Kevin dated July 1, 1998, which reads during the summer of 1997 the street next to our building at 603 West Dickson, known as Powerhouse Avenue, was paved by the City of Fayetteville Street Department while Street Superintendent Randy Allen was on vacation. While in our home the top floor of the building began to shake, not vibrate. He received a telephone call from Sound Warehouse wanting to know if the building was falling down. He was afraid. The glasses were banging against one another. He ran out of the building and discovered the City vibrator roller the size of a large truck was operating next to our building. He yelled and screamed at them to stop. Now remember, we are talking about a twenty thousand-pound piece of machinery that was sixteen feet long and at the top of the row bar ten foot tall. The plaster on the east side of the building next to the street was shattered from one end of the building to the other. The shaking also cracked the front, back and the west side of the building. The interior plaster of the building was also cracked. The building construction, which is three layers of brick with plaster on each side, shook the plaster from the brick requiring most of it to be removed and replaced. Serious damage was done to the building. We purchased our property on Dickson Street in October 1990, and began a renovation of it. He is confident that the City of Fayetteville will act responsibly and enable us to again restore this building during the summer while the traffic is slower. This was signed by him July 1, 1998. This is the form that Kevin left him. The City is probably still using the same thing. You describe the claims on it, but he attached his claims to it. He did a summary sheet. The names listed: Ace, Workman and Albert are plaster companies which are the biggest part of the job. Again, this was two years ago. The preparation of this building calls for sand blasting and if you have ever been around that you cannot live



inside a place that you are sand blasting. Sand goes everywhere. Since Sound Warehouse would be disrupted, he felt they should have something, some compensation. Their rent is \$3,000.00 a month. Next was for wrapping the furniture, not moving it out, just sealing it up to where the sand would not get all in it; removing the awnings; two stairways that have to come out (cracks are behind them); and removal of the signs. Some of the aldermen have been there and have seen cracks inside and outside of the building. It is a logical assumption that there is a void in between where the three layers of brick are located. He showed a bonding agent that you squirt in there to try to pull a bond back to where the crack went through. Those amounts are not that far off. One was \$553.00; one \$562.00; and one \$595.00. Again, we got primarily the plaster people to do it because why get a bid on the removal of the awnings. Stuff like that is just a waste of time. This is the bid sheet submitted by Ace Acoustics. Another is Workman Plaster who is out of Rogers, and Albert Plaster. After he submitted that, Kevin wanted to come down to the building with Charlie Venable, of which they did and walked through the building. Then they received a letter. It was addressed to him and dated July 31, 1998, and this is in your packet. In response to your claim dated July 1998, I have fully evaluated the facts available to me at this time and make a determination pertaining to the damage at your building located at 605 West Dickson. Your letter states that cracks in your plaster siding are the results of street work that took place on Powerhouse Avenue the two weeks of June 30 to July 7 of 1997. You brought the damage to my attention in April of 1998, roughly nine months after the construction took place. This delay and notification make it impossible for the City to say with certainty that the damage was done by the City Street work. We have reconstructed and resurfaced numerous miles of city streets and have received no claims of damage of this type which you have described. As you know, municipalities are granted total immunity from liability under State Statute except in the instances of an intentional neglect. Based on all of the above there is no evidence that the damage of being claimed is a result of any actions of the City, therefore, your claim must be denied. If you have any additional information for us to consider please feel free to contact me at your convenience. It was signed, Kevin Crosson. The reference up here to Mr. Venable when the City paved Powerhouse Avenue, I told Mr. Venable that not by this building, but by some buildings behind us which set back from the street maybe eight feet, that when everything was done he would pave that section up to those buildings. Charlie called me about doing that. I asked Charlie to come down to the area we were discussing and he did. I have some photos with me here. I can't pave that. There all kinds that are going to play legalities to get out of it by saying that is not my property, it is owned by the railroad, but when it rains hard they have a problem behind us where there is a bunch of trees. There are some problems with some of the property behind us. It causes flooding under heavy rains to occur on one building and he cannot lease it. I have a 2500 foot building that he could show anyone what happens when it rains. The water runs into it and all over the floor from the back. There are days that this 9,000 foot building on Dickson picks up water. On particular days on Dickson that is where the water stops. It hits on that wall because it has no place to go. It runs out from underneath of that building onto the street for several days at a time after the rain stops. If he had paved that section up there in the front that would be just another stopper to keep that water under the building.

That is just not the thing to do. This situation that he in is not a good situation. For him to stop that thing up and block that water up under that building it would possibly make the floors start buckling and the walls come down. At that time Charlie was not as powerful in the City as Kevin Crosson. He was the one I wanted to talk to. Right now Charlie is, but back then he wasn't. During the time of him getting his estimates, Workman, one of the contractors who submitted one of the plaster bids, asked him the question if this was the same building that the City of Fayetteville called him and asked him to give them a price on? I said I didn't know. He went and checked his records and said it was 603 or 601 West Dickson. I told him it was the same building. If they called you for a price, which was fine, but he was putting it together for you and you would be working with him. I am the owner of the building. After he was denied his claim, he called the president of the company, and asked him if he remembered that, and he said, yes. I told him what had happened and asked if there was any kind of statement he could make? All I want you to do is to tell the truth. Do you have any evidence to back up any statement that you do make? He sent him a letter and some logs out of his phone logs. It reads to whom it may concern on August 4, 1998. On April 2, 1998, Mr. Richard Shewmaker called our office to get an estimate to repair his building at 603 West Dickson Street in Fayetteville, Arkansas. On April 14, 1998, either Richard or Randy with Fayetteville Street Department called our office to get an estimate on the same building. On April 17, 1998, I gave Mr. Shewmaker an estimate to repair the outside of this building. On May 20, 1998, I gave Mr. Shewmaker an estimate to repair both the outside and the inside of the building. When I learned that the Fayetteville Street Department wanted an estimate on the same building, I called and said that we were dealing directly with the owner and that all estimates for repair would be submitted through the owner. He feels that it is highly unlikely that the City would ask for this information if they did not know that they had not damaged the building. Again, he wanted to ask the Council to look at this number, the 636-3398 in Rogers. When you call up there, you talk with his secretary who has a log book. This is the way they give information to people. I asked if he had such and if he could supply it as evidence. He provided this and you can see where he marked through the things that he was not interested in anybody knowing. I gather that most of that is phone numbers. This is where Richard Shewmaker of Lindsey & Associates wants Larry to call him, 521-6611. In conformation with his letter he has this statement: On April 14<sup>th</sup> Richard or Randy with the Street Department would like a price to put drivet on a wall. There is a phone number listed and if you call that number you will find it is the Street Department. That was in 1998. Sometime after that in April of 1999 I wrote this letter to Mayor Hanna. We had numerous conversations to try to get somewhere. Dear Mayor Hanna: This letter is intended to be a freedom of information request. For the period of April, March 1998 to December 1998, I request access to telephone records, incoming call message books, long distance telephone records, cellular telephone from the City Administrator in particular, and Kevin Crosson, Charlie Venable and Fred Hanna. The same information is needed from the City Attorney's office, the Street Department, in particular Randy Allen and Richard Cochrac. When the data is available, please let me know. Fred was able to get that information together and then called him. He came down to City Hall. This is just the first page of that bill. As the gentleman from Workman

Plaster stated on April 14, he was called by the City of Fayetteville. This has been tracked from one end to the other. The City called for a bid on the building because they knew they had damaged the building. In my estimation when they discovered it was going to cost them some money they decided to say they did not damage the building. I talked to Kit Williams. I have talked to several attorneys about this thing. I believe he was on the Council at the time. I didn't go into all this detail. I was trying to keep this thing as private as I could. Kit told him he had a case one time where something like this was discovered and the accused person had been discovered. They had asked for a bid and that was the end of the case. He then submitted all of this information to his insurance company. The insurance company that insured the building at the time of the damage was not the insurance company that he had at this time. My agent who is dead now was with McCartney Fawcett. She was going to switch him to another company and I really never questioned any of that. I thought I had insurance with Hanover at the time of the accident, when I was going to submit the claim, I didn't have any insurance with them. I was just insurance dumb because I have never had anything to happen to me like this before. This is not normal for me to deal with things like this. The agreement said you had two years to file a claim. They filed a claim. They sent in an engineering company Hague Engineering out of Texas. He was sure Hague was an engineering company that they used on a regular basis. They sent some people up here on two occasions. They met with the City and gathered at the City Shop and started up the machinery and did all kinds of tests. They looked at the building down there where they live. These are some pages out of a report. Mr. Randy Allen with the City of Fayetteville told us that three pieces of equipment had been used to pave Powerhouse Avenue along the east side of the Shewmaker building. Each of the pieces of equipment was operated with a seismographic recorder documenting earthborn vibrations and frequency of vibrations. As expected the most severe vibrations were produced by the Ingersol Rand Compactor, the one that is in this picture. As shown in the appendix chart the peak velocity was 2.2 inches per second. As shown in the chart only a few recorded points exceeded the threshold of cosmetic damage to plaster and stucco. They are admitting there the tests exceeded the threshold for cosmetic damage. I don't know if they are talking about a building like this or if they are talking about a building like this down here. Remember that 2.2 is the number they said was recorded. The threshold of vibration damage for light structures is between .5 and 2.0 which again, is another place that reads, yes, it did exceed the limit for cosmetic damages. The testing of the largest piece of vibrating equipment revealed that the vibrations exceeded very slightly the threshold for cosmetic damage to light commercial structures at a distance of two feet from the compactor. When the threshold is exceeded there is only a 5% probability that minor cosmetic damage might occur. There are about fifty-three pictures for anyone to come up here and look at. This one picture is in the middle of a field at the City Shop with a seismographic machine. These are two entirely different situations. If you found out who Hague did most of their work for, you would find it to be Hanover Insurance Company. After all of that, Mayor Hanna wrote me a letter dated September 30. I came to him maybe two months before that in 1999 and asked if they would not reconsider all of this stuff and make a significant payment, not the full payment like we asked for, which we thought would trigger the insurance. All we want you to do is tell the truth. That



is the way I feel about it. I did then and I do now. I think that if you look at some of those trials and the fact the City called for a bid, I think it lends itself to that. This is a letter the Mayor wrote me and what he is doing here is conveying a memorandum to him from Don Bunn and Charlie Venable. It reads: Dear Mr. Shewmaker and it is dated September 30, the reference claims for damages, 605 West Dickson. Several weeks ago you and I met to discuss your claim against the City for damages to your residence 605 West Dickson caused by the City's operation of the vibrating compactor near the building. Your claim cited multiple cracks on the exterior, all around the building, some cracks inside the building, and other damages. As a result of our meeting I agreed to have the Public Works Staff review your claim again to determine whether or not it is in our opinion a valid claim. As part of that claim review, Charlie Venable and Don Bunn met with you at your residence on Friday, August 27 and looked at the damage to your building both inside and outside. In addition they observed the vibrating compactor in the field to get an idea of how the compactor operated on the job. In a memorandum dated September 30, 1999, Mr. Venable and Mr. Bunn stated in their opinion that neither the operator nor the operation of the City's vibrating compactor nor any other aspect of the City's work around your building could have caused the damage. That is a very stiff statement. Not maybe. It could not have caused damage cited in his claim. Attached is the memorandum. It should be pointed out again the claim against the City was not filed until eight months later after the damage occurred and you presented no evidence of the condition of the building prior to the incident. In view of these facts and the opinions of Mr. Venable and Mr. Bunn, as stated in the report the City must confirm this denial. There is no paint in the cracks that are down there that was done by the vibrator. This is a letter that says the same thing, a memorandum to Mayor Hanna from Charles Venable and Don Bunn. I will read one statement and not the whole letter. It is our opinion that the City's operation of the compactor did not cause the damage that we saw at the building at 605 West Dickson Street. Our opinion is also based partly on Randy Allen's experience with the compactor in other situations. I asked to be present at this trial run and I was not allowed to be there, and as I recall the machine was broken down for some period of time. It took a little while, maybe a month or two, before the tests were run that were talked about in that letter. The City took the machine out to a site, put it up against a wall and did some vibrations, I assume, and from that they determined that it could not have caused this damage. I wrote a letter to Mayor Hanna and it was a freedom of information request dated October 8, 1999. I received your letter September 30, 1999, concerning damage to my building located at 605 West Dickson in Fayetteville, Arkansas. You attached a memorandum from Don Bunn and Charles Venable. The third paragraph of that memorandum described an on site evaluation of the use of the vibrating compactor. I requested these people visit the site and describe for recording where and how the tests were run. You reported back to me that they refused to do so. Therefore, I am requesting, in writing, the detailed description of the construction work on Markham Street. I need a legal description, a detailed description of what the machine was doing when hands were placed on the wall. In that letter it said that when the machine was working they placed their hands on the wall and did not feel like the vibration was that significant. I requested to make a model of the machine used the distance from the wall when tested, when vibration frequencies



were used as well as an aptitude setting. Also, I wanted the speed of the machine and the amount of the water in each tank. I received a letter shortly thereafter. The reference is from the Mayor. Reference is made to the freedom of information request dated October 8, 1999, and which you received October 12, 1999, regarding my letter of September 30, 1999. The location of the wall is about one block west of Razorback Road on the north side of Markham Street. The pavement is 6 inches of the base of the wall. The work consisted of leveling, resurfacing the street with asphalt, concrete, hot mix material. The machine being used to roll the asphalt was Ingersoll Rand DD90. The other information requested, we have no record of it. He went out there and looked at the site. At Markham, and again this is to scale, there is the machine, a 20,000 lb machine, is up against the wall. It is four and one half feet tall. Behind that wall as opposed to not being anything, like it is over here, just a wall standing there with nothing behind it in the basement. There is a forty lineal foot of yard of dirt that goes before there is a house up there. This is an entirely different situation. Now if the machine had been put up here on this dirt and we could have seen it vibrate, that wall would have fallen down and the machine would have turned over, too. But that is not the comparison that was done. We own five feet out from the building. It was given to them back in 1992 by the City. The other day, May 11<sup>th</sup> he signed an easement for the City and the Street Department project to redo our sidewalks down there, there was no easement signed here. It may not mean anything to you but according to the attorneys it might have something to do with it, since it encroached upon private property, without an easement, condemnation without just compensation. That is a legal description of that piece of land. He was coming back from a football game and they were building that big parking deck, about six stories high, a massive concrete and steel structure. He called the gentleman that was the project manager of that project, and told him what his situation was, and asked him if he was ever told not to do things like this. He said years ago it was common knowledge that anyone operating a machine like this would never get up next to something like that. He said now with unemployment as low as it is, there are all kinds of folks that get on machines that should not be on machines, and they have had problems. They have had lawsuits and they lost. Now in the specifications you most always find the architect or the engineer making a comment. This is a sheet that he faxed him. Do not operate earth moving equipment within five feet of the walls of concrete structures for the purpose of depositing or compacting material. He had a book from the Arkansas Highway and Transportation Department with standard specifications for highway construction. When you go beyond that they are called special conditions and specifications. The highway department will tell you that these don't fit being up next to a building. This is one little part out of the 874 page highway book that gets into what is called embankment construction. An embankment according to Webster is a raised structure on earth. That is raised dirt. If embankment material can be deposited on one side only of those different things but walls, care should be taken that the area immediately adjacent to the structure is not compacted to the extent that it will cause overturn, or the wall to turn over. They didn't even have PSI concrete when his building was made. All of this was mortar put together in a wheelbarrow but yet this building has the right to stand. Do not operate earth moving equipment within five foot walls of concrete. This machine was built in accordance with the state of the art standards and

recognizes safety rules, but nevertheless, it's misuse can constitute a risk to life and limb, to the user or third parties, and may cause damage to the machine or to other material properties. The machine must be used in accordance with it's designated use as described in the operating manual. The machine must be only operated by safety conscience persons who are fully aware of the risk involved in operating the machine. Observe and instruct the user in all other general, applicable, legal and mandatory regulations relative to the incident, prevention and environment protection use of this machine. The edge is not stable. The edge of the street next to his old building is not stable. Always use and keep a distance from the edge of the building, pits and slopes. That is what this is. This is like a pit. It is just a hole. That basement is a hole in the ground and the machine was right up next to it. Use extreme caution and be very observant when operating in close quarters and congested areas which is what that is down there. Be observant to other workman, bystanders and other machines in the area. Be specifically careful if trenches, light poles, towers, buildings are within the affective range of the vibratory compactor. Improper operation could result in damage or injury. That is what has happened. People might say that your building is damaged but you will live and go on. He said he loved Fayetteville as much as everyone at the meeting. He wanted to show the Council how serious what he was talking to them about really was. He had in his hand a Property Owners Disclosure Statement. It was put out by the Arkansas Real Estate Commission. If you buy or sell something you fill this form out. It is intended to eliminate problems. It is intended for the owner of the property to not lie on the condition of his property when he has it for sale. This disclosure statement is part of the contract and under "other" on the contract his company had them include that the home inspection had to be to the 100% satisfaction of the buyer. He wanted to show the Council how serious the damage to this building comes into reality if you are talking about trying to sale it. Some of the questions from the disclosure statement are as follows: Has there been any damage to the property or any of the structures from fire, earthquake, landslides, floods, storms prior or during the ownership? Yes, there has been damage to the building since he has owned it. Are there any known defects in the structures or substructures or other improvements located on the property? Yes. Have you ever filed or made an insurance claim, warranty claim or other claim concerning the property? Yes. Have you ever received a settlement of a claim and not made the repairs? No. Are you aware of any events at the subject property of which if known to a potential buyer would adversely affect in a material manner the value or desirability of the property? Yes. Are there any other defects on the property known to you? This goes on for a few other pages. These are plain questions and when they are answered by me they are going to be answered honestly and no other way. This entire thing can be summarized by going over those five or six points again. We talk about, did the City damage his building or did the City not damage his building? It would have been a lot easier a long time ago if the City had just said, at the very beginning, we damaged your building and we are sorry. Maybe everything would have worked out differently with the insurance company. At least he would like to think it would have. But what really happened is that the City damaged the building and went through a series of things trying to say through some examples or working with other people that it is impossible to damage a seventy-year-old building with a basement like this with no steel in it. The City

called for an estimate. The City would not have called for an estimate on this building if they had not damaged this building. Do you remember all of that stuff, the letter from the plaster company, the records of his that he received a call on X date and phone records that show that call was made on X date from the City to him? It was a long distance phone call. You won't find the City calling Workman Plaster for anything. The City called for an estimate. The City participated with Hague Engineering in misrepresenting a test. If they had put a seismic machine on top of a wall that did not have anything on the other side that would have been a proper test. But just sitting it out there in the middle of the field and watching that company put that seismic machine down there, someone should have said that this is not a proper description of what happened down there. We were not inclined to that because we had already called for an estimate on the building. In the City's own trial No. 3 the machine was on the wrong side of the wall. That is very serious and very important. The City entered private property which we talked about just briefly of being an issue of condemnation without just compensation, maybe. The care required for the construction of the Town Center construction surpasses the care required, based on all of these examples that the City has used, of working next to my building. I am going to describe my building once again. My building from the wall of the basement floor is forty feet. There are three different levels in it. A basement where we had tenant space, Sound Warehouse, and where we live up here. On the other side of that wall down there, which was described in Highway Department's General Specifications that they give to contractors, you will get vibration. You are going to get that wiggly effect which will happen every time. You shake it a little on the bottom and the top starts doing more. These are not steel beams that go across but wooden beams that are not tied in. They just laid them on top of the block walls. This is an issue, which in his opinion, does not need to go to court. The issue of tort immunity on damaging the building is one thing. The issue of trying to cover it up, time after time after time. If there had been one time, someone could say that was an accident. I don't think we can say that on all of these different times. I don't think that was an accident. I think it was an intentional tort. The issue does not need to go to court and we have to call witnesses and you get people up there with Mc Clinton Anchor, Kink, Nabholz and Sweester, who won't come here in an environment like this but on a witness stand, I almost bet you that they will tell the truth. And if we call the people up who are designing the building for the football stadium and look at those specs, gentlemen I bet you a dollar to a donut, that these same requirements will be in here there. Again I am going to read to you what Webster says some of these things are that we have talked about. A tort is a wrongful act. A fraud is an intentional tort; a deception; a trickery, cheating; an intentional pervasion of truth to induce another to part with something valuable. This building is valuable to me. The money to fix it is valuable. The City never in any of this denied being next to the building. They say that you can be next to a seventy-year-old building that is stacked rock, with a basement, no steel in the walls and not damage the structure. But on the other hand, you don't want to get next to the Town Center which is a massive steel structure and poured concrete. You are not supposed to get next to it. Again as we have started out, this is a really simple issue in my opinion. It is about a man and a machine. It is about a building that is seventy years old that my wife and I own. It is about character and truth. When Jim Glenn retired as President of



McIlroy Bank & Trust, and he handed his keys over to Gary Head, this is the one thing that he said that was quoted in the newspaper, "the truth will serve you well." I will go back to another statement that my associate minister made and in connection with the truth that is absolute which is true for all people, for all places and for all times. I want to thank you for listening to this and if you have any questions I would be more than glad to answer them. I would be tickled to death if this City would strongly consider that resolution that I asked for you to do so and I wish that you would pass on it tonight, and then we can go forth.

Alderman Austin asked Mr. Shewmaker if he could say a word to him. I want to thank you for giving me the grand tour of your beautiful place where you live up there. The tour included a lot more than just what you wanted to show me. You showed me the whole thing. You should be proud of it.

Richard Shewmaker said, they were proud of it.

Alderman Austin continued. It is obvious that you have done your job here. And it is obvious to me there is some damage to your building. What's not obvious to me is what the cause is and the only thing I know here is to speak the truth. It is not obvious to me. As I was leaving your place, I had to notice an eighteen-wheeler driving right in front of you on Dickson Street and ~~appeared to be loaded.~~ I am guessing 60,000 - 80,000 pounds. It was not vibrating like equipment but that extra weight would probably be equivalent to it. I don't know how many trucks go by your place and whether they could be a consideration or not. And the last question, the last thing I want to just ask is when the Staff called Rogers and asked for an estimate, could they have been verifying the truth of what you said your estimate was? This is just a question.

Richard Shewmaker responded he could pull back that page and let Alderman Austin read it.

Alderman Austin replied he was just asking, could they?

Richard Shewmaker stated it doesn't say that. That gentleman's letter does not say that.

Alderman Davis stated he thought a lot of him. He was just asking questions. First of all on the Hanover report that was done for Hanover, I should say, I guess you showed two or three pages of a 57-70 report. Before he would decide to do anything he would want to have the ability or opportunity to read all of those pages and see what the engineer actually said instead of just pulling out two or three pages of the report. Second of all, he has been in the insurance business in Fayetteville for thirteen years, a total of twenty overall, and from what he has seen it is nothing unusual with clients that he has had that may have a problem with the City, not liken to your situation, but in other situations. Toward the City you usually know what those costs of repairs would be if they feel like they are negligent. In this situation he does not think, and maybe he is wrong and maybe you all can correct him, I don't think there is anybody on Staff that would



have any idea what possible cost the stucco would be. And if that is the case, they would have to go to an outside source. He does not think that by the Staff asking for an outside source, instead of doing it internally on something they don't have any idea of what that would run, I don't know if that would actually obligate the City to show any type of negligence. I don't know. That is just an assumption. Number three: I would also want to see what the appraisal of the building was before the damage, not including the land cost because we are talking strictly about the building here and not the value of the land itself. Number four: You have done an excellent job of remodeling this building but the old Polk's building I do know before was in very bad repair. I don't know because I didn't see what you did to the building when you remodeled it. I don't know to what extent you went to actually fix the old problems with the building or if you basically just covered them up. And I feel like you probably took the extra steps, but I don't know that. So I have a lot of questions from those particular items.

Richard Shewmaker replied he does not know where we are going on this but the report is available. They saw the crux of the report. The damage couldn't be done. And then you saw a picture of the seismograph measuring the machine and it says in the report that it is picture number so and so. That is the whole crux of that report. These guys are pros in what they are doing.

Alderman Davis stated he knows and has read a lot of insurance reports and has seen why they decline clients and usually they are very forthright in telling you the problems. Usually it takes more than three pages out of a 57-page report to come to that conclusion and that is why he would want the City Staff or himself or anybody else up there to see all the pages involved.

Richard Shewmaker replied the Council was more than welcome to look at the report. You will find them to make every accusation in the sun. They are use to doing that. That is not his job.

Alderman Davis said, he understood.

Richard Shewmaker read the last paragraph from Mr. Wilson of Workman Plaster. Mr. Wilson said when he learned that the Fayetteville Street Department wanted an estimate on the same building he called and said that they were dealing directly with the owner and that all estimates for repair would be submitted through the owner. On their log book the lady didn't say they wanted to talk to somebody to see what was going on down there, it says Richard or Randy at the Street Department in Fayetteville would like a price of putting drivet on a wall. I don't think they would have called without feeling that had been done.

Alderman Daniel stated referring to one of Alderman Davis's questions, in your estimation as having been a real estate agent, how much has this building been devalued?

Richard Shewmaker stated let me just give you an idea. We are setting records down there every

day. What something was worth yesterday, you don't know what it is going to be worth tomorrow. That is the reason we went down there. We knew that this day was going to come. He had someone at his home after he had given up his real estate license, who was a licensed realtor asking if we would sale the top floor up there. The answer was no. The time will come but they were not ready yet. The size of each floor is 4250 feet. That is \$833,000.00.

Alderman Davis replied he understood where Mr. Shewmaker was coming from but once again, on an appraisal he would want to see what it was at the time of the damage with the exclusion of the land cost.

Richard Shewmaker replied he did not know what it was worth at the time of the damage. He guessed somebody could do that.

Alderman Davis asked Mr. Shewmaker what was the value on his insurance policy?

Richard Shewmaker answered, a quarter.

Alderman Davis asked if \$250,000.00 is the total property value?

Richard Shewmaker replied he insured his stuff to try to cover a mortgage and that is all he insures it for. After this damage occurred, his insurance was canceled.

Alderman Davis asked if Mr. Shewmaker's policy an ACV, an actual cash value policy?

Richard Shewmaker replied he was not an insurance wizard.

Alderman Davis stated he understood. There is replacement cost and there is ACV.

Richard Shewmaker replied he believed it was replacement. I don't know the answer to that.

Alderman Davis stated if it was grossly under insured, then you have a large coinsurance penalty if you ever had a total loss or a partial loss.

Richard Shewmaker replied he didn't know anything about that. He has had an attorney look at all of these things and he says he is more than willing to represent them.

Alderman Austin asked Mr. Shewmaker if he terminated his insurance or did the insurance company terminate him?

Richard Shewmaker answered that at one time when they went from one company to another, before they submitted the claim, we voluntarily did that. The agent just called him and told him

they were going to switch to this other company. He said fine. Now after they did that it was terminated. They do have insurance on it now. We may not tomorrow. Insurance to him is that it enables him to do is to keep a mortgage. He has talked to his lenders. He owes \$625,000.00 and he has assurance from the one who owns 99% of that mortgage that the remainder of the property has escalated in value enough that he is not going to call the note.

Alderman Russell asked if the insurance company that terminated Mr. Shewmaker's coverage after the damage occurred was the same insurance company that is denying coverage?

Richard Shewmaker replied as he recalled. We are going back into something that does not concern him that much. He said he was legally within a time frame of dealing with this one according to their attorney. Although it took two years to submit a claim, the statute of limitation is five years in dealing with the contract.

Alderman Davis stated the carrier that had the claim would be the only one to spend the dollars to send someone out to look out it. Otherwise, they would just deny it if looking at the dates and possible occurrences.

Alderman Russell stated, in other words, the insurer that Mr. Shewmaker had his property insured with at the time of the damage would be the one that you would file the claim with.

Richard Shewmaker replied that would be Hanover. That is the one that is all dealt within here. I cannot even tell you the name of whom my insurance company is now.

Alderman Young stated it sounded like to him some of the aldermen wanted some additional information so he assumes everyone is wanting to table this or put it off for two weeks. Charlie, you may not want to respond right now. You may want to wait. Do you have any thoughts on what Mr. Shewmaker has presented here?

Charles Venable stated he thought he heard Mr. Shewmaker call him a liar, which he resents. I have known Richard a long time. I have looked at this twice. I have been through it twice. He does have some damage there but a lot of it is old. The large cracks have been there. He has some fine, hairline cracks on his plaster that, I mean, with that type of building it is going to do that with that plaster. I have looked at it. One thing that we did ask him for that he did not give us until tonight was something from the insurance company because he did send someone down or they did call first and I refused them until they wrote a letter asking to see what it was about and they did write a letter asking the City to let them look at the machine and to run it for them. They did that but he has not seen any of the results of that either. Of course there are a lot of things that he is talking about here that is different from paving and things of that nature, but he does not want to go into that right now.



Richard Shewmaker stated he wanted to say right now the common sense that he was talking about if there was not a crack and there was no paint in the crack, that was done afterwards. There are lintels, do you all know what lintels are? You have a basement window and there is an opening that you can crawl through, the lintel is the big, huge rock that is laid across that window. They have lintels that are broken. Those things do not just occur. They don't have any cracks or paint in those lintels.

Charles Venable stated he agreed they are broken but some of them have been broken for quite a while, Richard. The one on your front porch up there, for example, has been broken for quite a while.

Richard Shewmaker stated he thought they needed to go on a tour. He would be more than glad to host you all in his house on a tour.

Charles Venable stated he thought all of the Council needed to go through and look.

Alderman Davis stated he had another question for Mr. Shewmaker. The resolution that you wanted Kyle or Cyrus to present says that you feel some of this you can get back from the insurance carrier.

Richard Shewmaker stated they feel the City played a role in this. I am going to just say that and leave that alone. It is our hope we can take your admission and if it is an admission with a five-dollar bill after going through all of this, it doesn't mean the same thing as an admission with a substantial payment. That was his conversation with Fred at the second request. The substantial payment tells a story. It is possible the insurance company might even make the payment without me having to pay the attorney a third, you see.

Alderman Davis stated he understood that and there is a clause in Mr. Shewmaker's policy that talks about arbitration. In the event that you feel like in the policy has not treated you fairly, you do have a clause in all insurance policies that gives you that right.

Richard Shewmaker said, he guessed he was somewhere else on that.

Alderman Davis answered, okay.

Alderman Reynolds addressed the Mayor and said Randy's name was mentioned and he just noticed that Randy has entered the building. Randy, did you get up and come down here, and did you want to say something?

Randy Allen, Street Superintendent, stated he was just there available for any questions that the Council might have about this particular issue. I was at home and heard my name mentioned



several times about occurrences that took place during the paving process. If you have any questions, I will be happy to answer them.

Richard Shewmaker stated he wanted to mention that the discussion of two weeks was mentioned, let's please not wait that long. Our deadline is the 30<sup>th</sup> of this month to have something filed. That means, I would say, by the latest the 15<sup>th</sup> they are going to have to go on with the project. I will do anything I can do to accommodate anything that you all want as far as coming down there, as far as anything, I will do anything to accommodate you. If you all would like to meet there tomorrow at 4:30 p.m. as you do your tours, I will be there. I will get a copy of this report to whoever you want to. Let me tell you something, when you are at odds with people, you don't give them everything you have. That is the reason he did not give Mr. Venable a copy of that report. But you will find it will say things like you can look at a crack so long and psychology will take over and you will dream that there is something there that is not there. The real crux is, as I said before, it is the utilization of the machine and the test of the machine setting out there in the middle of a field. The mentioning of Mr. Venable's name and Mr. Randy Allen's name was in the text of these letters and I think you all know that, too. When we read these letters, we read the names that were in the letters.

Alderman Russell stated he had a few comments. You know with any damage claim or lawsuit, it is the Council's job to be a good steward of the taxpayer's money and try to be fair to everybody as well. He is a little bit nervous any time there is this big a damage claim, and you know, I think that I should be. I commend you for coming forward with it and having the courage to come forward with it. You know the advantage in the City settling with you is that this is over right now and you do not have to go to court, none of our Staff members have to spend time in court and hopefully we could satisfy everybody. The disadvantage and from our prospective the advantage in settling with you for some amount is that the jury may order the City to pay more than what they were willing to settle for. The advantage in not settling is that the City may not have to pay anything depending upon the doctrines of tort immunity. As a steward of the taxpayer's money, your presentation has made me nervous. As a steward of the taxpayer's money, I don't necessarily want to see all this stuff go in front of a jury so I am interested in trying to broker some kind of settlement. It seems like the majority of the City Council would like to wait and get more information to do that, and I would be happy to have them wait and have you provide them with whatever information that you need. I would hate to see this go into court especially if there is a chance that a jury is going to find that the City is liable for more than what you even want us to settle for. I think the appropriate thing to do is to wait and try to work something out by the 15<sup>th</sup>. I think that is very reasonable on your part to want something done by that time rather than waiting two weeks because that gets close, and I am sure Jerry knows what goes into filing or defending a lawsuit and it would be nice for you and your attorney to know, at least, in a couple of weeks before your deadline as to whether something is going to be worked out or not.

Richard Shewmaker stated I want you to know that I tried everything I could do to keep from coming down here tonight but the only other option I had was to go stick my head in the sand and I am not made that way. I have worked and fought for this for my family, my wife and my children, and I am only doing what you all would have done. That is all I am doing.

Alderman Davis thanked Mr. Shewmaker

Alderman Russell asked the Council what they wanted to do regarding this situation.

Mayor Hanna stated that Richard had asked the Council to do something. I have not said anything about this because he had a very good presentation. There are some things in the presentation that I have questions about but Jerry Rose and I went up at Richard's invitation and looked at this in 1998. I asked Richard at that time what he thought the value of his building was before the damage occurred and what it was after. He did not answer me. I asked him if I brought an offer to City Council in the fifty to sixty thousand dollar range, if he would be interested in talking about that and he wasn't at the time. I think \$580,000.00, of which the City is being asked to pay half, is a tremendous amount of damages and I seriously doubt that they were all caused by that. I am not saying that no damages were caused. I certainly wouldn't say that. Richard did things like using his fountain pen like that. There happens to be a floor and a roof and walls in there. They don't go like that. The walls are not just standing up by itself. I am not here to try to play judge and jury. I would suggest that the Council ask, and I will ask you, would you consider a lessor amount than this tonight?

Richard Shewmaker stated the only reason I am saying this is because I don't want to be here, but while I am here, I am going to try to defend my family as best I can. I believe that when after the first denial occurred, I called the Mayor on the phone and said this is rotten, and you said you wanted to come down there and look at it. I said I want you to come down there and look at it. You called me back and asked me if it was okay to bring Jerry. It was okay to bring anybody you wanted to. I believe the statement that was made was that you told me the building was not worth the amount of the damage. Fred, maybe in the time when you were down there things weren't worth that much but things are worth more now. It is an area where there is just so much room. Swifty never dreamed what he could probably get for his building. Five years ago you probably never dreamed it, could you? You have not hit the peak yet. It is unbelievable. It is great to be there. It is great to be in Fayetteville. I am tickled to death that I am down there. I am tickled to death that we have fought all of these battles for parking variances which we didn't do just for us, we did blanket parking variances for which we fought for a year to get it to where everybody could build down there. That is what makes it work, for all of us to build down there. The only dollar amount that I ever remember, and I considered it at that time being a friendly gesture from the Mayor, because that was his limit. Your limit is \$20,000.00. You asked if I would settle for that and I said, no.

Mayor Hanna replied that was in the office at a later time. When we were down there talking, I think Jerry will.

Richard Shewmaker stated he didn't remember that. I am not saying that it didn't happen but I don't remember that.

Mayor Hanna stated actually at the time, I know that you were going through a hard time.

Richard Shewmaker stated the biggest part of our discussion was I had a hard time talking to you all because I got into the same thing again, but in more detail. If you all want to see death certificates and things like that, dates of entry to the psychiatric wards and things like that, they are available. When I was discussing that, and I think Jerry will remember that, I broke down and I really couldn't, and I still have difficulty talking about it.

Mayor Hanna stated he realized that but there are two questions. You have not answered any one of them. What do you think the value of your building was before that damage was done and what do you think it was after? Would you consider a lesser amount tonight if the Council talked around and offered you something less than \$290,000.00?

Richard Shewmaker stated he did not know what the building was worth then. I am not lying to you. I don't know. I could tell you what things sold for. As far as what things sold for you mentioned something and that is the only way I know to do it. I want to get this thing over with.

Alderman Davis stated he understood that. Being in my profession, we do not insure the land. Evidently you bought your policy not intending to insure the land and you are telling me at this point in time you have \$250,000.00 worth of coverage, total. There is no way when I look at it from my stand point, with my experience in insurance, that I would want anybody to ever pay more than \$250,000.00 because that is all you have insured it for yourself. If you are trying to split that between the carrier and the City, then you are looking at lowering your fee you are charging the City. Now, whether you can go back to your insurance carrier and get anything because it turns out the value is more than what you are claiming, then you have a problem once again with your coinsurance and you end up with zip.

Richard Shewmaker stated let me tell you something. I am a believer that whatever the dollar is there somewhere or another, I had insurance and I am a believer that if we didn't have all of these erroneous things occur, and if we just had someone to say, hey, I did it. I did it. I told the truth. I told an absolute truth. I think we would not be here today. I might have my building already fixed up.

Mayor Hanna stated he knew in his own mind the damage that was done to that building, if it was caused by the City's vibrator, was basically cosmetic. I am going to make a suggestion to



the Council that we offer to change the amount and that resolution to \$40,000.00 and ask him if he will accept it. Now it is up to you the Council. I can't make the motion. I am sure you will want to ask the City Attorney what he will want to go along with it. That is my suggestion. There is your start right there.

Richard Shewmaker stated that was really close on what the City paid on some sewer backups, I think.

Alderman Trumbo stated he was not interested in making the settlement offer. I told Richard, and I appreciate him coming forward and sharing his views on this, but I think this is something that we, the Council, are not judge or jury. My degree is in finance, not engineering, and I obviously want to hear Randy Allen speak, and we have heard Mr. Venable, whom I have a lot of respect for his credibility and character, and I don't think the Council is at the point to where they are able to make an offer to the City Council on damage that I have no idea who caused it and what the vibrations are and what the engineering, scientific information would be needed to formulate that kind of decision.

Richard Shewmaker stated there was a lot more logic to it than wizardry. There really is.

Alderman Trumbo stated this is a case where you have a good argument. Mr. Venable and Mr. Allen have a good argument. This is something about why you go to court.

John Maguire, Administrative Services Director, addressed the Mayor. I would suggest to the Council that they ask Richard to consider mediation and protect both sides as much as possible. Just get an outside mediator to set down and work it out.

Alderman Santos asked, if that could be done before the deadline?

John Maguire stated Jerry Rose could tell you the attorneys could file a short form filing with a minimal cost to stay the time, if you run past June 30. The pleading could be amended in all the detail that you want.

Alderman Russell stated that negotiations can go on after Mr. Shewmaker's attorney goes ahead and files a complaint. Until that case goes to the jury, we can still settle.

John Maguire replied exactly. The filing would be minimal, in his opinion.

Mayor Hanna asked if Mr. Rose could handle setting up a mediation?

Jerry Rose replied if Mr. Shewmaker will agree to it. Sure.



Richard Shewmaker stated he would have to talk to John and see what he thinks.

John Maguire stated the State Law in these incidences recommend mediation of recent. It is a new statute.

Alderman Russell stated he wanted to make a couple more comments. Personally, I don't care of how much you have your property insured for because it is between you and your insurance company, as far as I am concerned.

Richard Shewmaker stated it was the same value he insured it for ten years ago.

Alderman Russell stated Mr. Shewmaker's purpose of insuring his property for you, the choice that you made, is so that you could keep your mortgage on the property. If you have insurance for X amount and I am not saying the City did, because I think this is a classic case where there is more than one way to look at the story. You have one story and the City Staff has another story, and that is what juries are for. I am not saying that he is opposed to any kind of settlement because as I said before, I would love to settle this. I am not going to limit settlement, my thinking in the settlement based upon what you have insured the property for. I am limiting it based upon my assessment of the case as a party. That is what we are, a party to the case. I know we are not a judge and a jury but parties and their attorneys, which Jerry is the Councils' evaluate things like this and we say, do we want this to go before a jury or not? Are we willing to not admit liability but to make a certain amount of payment to avoid having to have this go before a jury and risk more? If the City settles, you are gambling on the settlement that if we go forward to trial, you are gambling that you are not going to get anything, and the City is gambling that a jury is going to order us to pay more than a million dollars. That is why I am all for settling this for some amount in between that. As I indicated before I think some of the people on the Council, at least want some more information before settling on an amount and maybe a mediation. I think that might be appropriate but I am very open to settling the claim at some point before it goes before a jury because as I said I am nervous when I see all this stuff, and this is only one side of the story, but I have to admit as a steward of the taxpayer's money, yes, I am nervous when I see all of those documents that you presented. I am nervous to have them go before a jury.

Richard Shewmaker stated before he told Fred after the second denial that the only choice they had left was to go to court and to try to prove, not only in this instance, but in other instances the incompetence of the street work which I told him I was not interested in doing. If that is what we have to do we can do it. If I can get you all to come on a tour to my house today or tomorrow or some time, I promise you I won't take up another 15 minutes of your time. I think you go in the bus, don't you? I want to take you 4-5 blocks to show you something that equals that other construction incompetence that I am talking about. Again, I am not pointing any fingers at anybody. I feel I am backed up in a corner and I have to do what I am doing.

Alderman Davis stated he wants what is fair, is fair just like you do, okay?

Alderman Young asked Mr. Shewmaker if he could consult with his attorney tomorrow and start deciding whether or not you would submit to mediation or whatever?

Richard Shewmaker stated he talked to him yesterday and let me tell you what he getting ready to do. I am supposed to meet with one of his associates in the morning. He is going to Oklahoma City for a three-week trial. As far as he filing the suit, his associate would have to do that. It makes no difference to me.

Alderman Young stated it was basically Mr. Shewmaker's decision as to what to do. You can talk to him and make that decision. I would propose that the Council set a special meeting then before our Agenda Session next Tuesday, and if he wants to do that he can get with Jerry, and that would give him more time to get more information to decide what you all want to do.

Richard Shewmaker asked, what date would that be?

Alderman Daniel said, that would be before 4:30 p.m.

Alderman Russell said, the date would be one week from today.

Richard Shewmaker asked, if it was the 13<sup>th</sup>?

Alderman Russell answered Mr. Shewmaker, yes.

Alderman Austin asked if the meeting could be held after the Agenda Session? If you will agree to that I will second the motion.

Alderman Young said, however, the Council wanted to do it, before or after the session.

Richard Shewmaker asked, if the Council wanted to tour the property?

Alderman Young said, that would give these people enough time to get everything together.

Alderman Russell asked, if the Council wanted to pick a time to tour Mr. Shewmaker's property?

Richard Shewmaker asked, if the Council wanted to tour as a group?

Charles Venable said, that would be best in his opinion.

Alderman Davis stated he would like for Mr. Shewmaker, once again to do what John Maguire

recommended. Talk and see if you can go through mediation on this.

Richard Shewmaker stated he was going to do that.

Alderman Davis stated he believed that was probably the best solution at this point. Yes, I would to go ahead and see the information that I requested.

Richard Shewmaker asked, if it was the engineering report?

Alderman Davis replied yes, the engineering report and the value you have on your insurance policy. I understand what Kyle just told me, but looking at it from real life values I know what people are willing to pay for things and if your evaluation on your insurance is substantially less than what you feel like it is worth, that is a different situation. Usually your banker, Kyle, will also see to it that you have a percentage of the value on the insurance.

Alderman Reynolds stated the Council needed to talk with the Staff. We need to get the advice first from the City Attorney also.

Jerry Rose stated let me give you a little bit of advice or what I think it is. One, I'll tell you the obvious, that obviously this is a very difficult proceedings to hold court in. It is hard to do. I am not sure what my role is or Mr. Venable's role or Randy's role in it is and it is awkward. It is very hard and very difficult for us to do it. Obviously a court of law or a mediator, as John Maguire suggests, is a better form probably for it than this. It is hard to do and I sympathize with your dilemma in doing it. Before you turn that down, could you leave that up for just a second, Richard? Let me be sure that I understand. I read your letter there and you remodeled back in 1993 and your building was painted and remodeled and stuccoed or dry treated at that time, is that correct? That is not correct?

Richard Shewmaker answered, no. In 1993 was when that award was given to us.

Jerry Rose replied exactly. When did you do it then prior to that? In 1990, 1991?

Richard Shewmaker stated they moved into it in 1990.

Jerry Rose asked if that was the time it was last painted and dry treated and stuff like that? Here is my problem. Let me try to articulate my thoughts. First of all Richard is exactly right about his understanding of the law. You have tort immunity. That means that you are not liable in a court of law for torts of negligence. I don't know of any tort that I have heard described tonight that was not the tort of negligence. I have heard Mr. Shewmaker quote fraud and misrepresentation. I don't know how any fraud or misrepresentation harmed his building even if he is correct in that assumption. Certainly there was no fraud or (mis) anything at the time that



this occurred. Legally, I guess I have some confidence in your tort immunity defense. Let's go beyond that because I think I hear you don't want to do that, you want to go further than that and you want to be right in what you do regardless of what the law provides. Let me tell you what I had to look at and what the Mayor had to look at and what Mr. Venable had to look at because Mr. Shewmaker was asking us to advocate to you the expenditure, at that time, of a half of a million dollars, approximately \$500,000.00 bucks. That is a lot of money. It was more money than the Mayor or myself or Mr. Venable or anybody else could recommend to you to do based upon our word. We figured you all needed some facts of your own to determine that and that is pretty much one reason why you are here tonight. One other thing, there is no engineering report of which I am aware of which supports Mr. Shewmaker's conclusion that the wall was damaged or his building was damaged as a result of this machine. There is no member of City Staff that I have talked to from Randy Allen to Kevin Crosson to Charlie Venable who believes and Charlie Venable is an engineer, that his wall was damaged by that piece of machinery. The only piece of evidence that I had at all to determine any of this is Mr. Shewmaker's contention that was so. I don't know of any other. Having said that, that led me again to the conclusion that based upon the facts again, it was too much of a decision for the Mayor to make, or I to make, or Charlie Venable to make, or Randy to make to advocate this kind of thing happening without your listening to what you just listened to. I don't know how to respond to all of this. We can indeed if you wish have a hearing and I can ask Randy, I suppose questions. I would be interested, Randy, do you recall calling these folks that Mr. Shewmaker believes that show some liability on our part?

Alderman Daniel asked Randy to come to the microphone.

Jerry Rose stated I think that would be good because Mr. Shewmaker believes that is very important and let's determine why you called and what you were doing when you called.

Jerry Rose stated he would like him to look at that. Have you seen this, Randy? Did you see this on TV? There is a little note here that says that Richard or Randy at the Street Department in Fayetteville would like a price to put on dry crete on a wall. Do you recall that?

Randy Allen, Street Superintendent, stated that was correct. I was instructed to make that call by Kevin Crosson. He had no experience in the construction trade. We had received no estimate from Mr. Shewmaker as to the cost of damages that he was claiming on his building. He was just, at that point, saying there's damages, there's damages. The walls were almost falling down and things of that nature.

Jerry Rose asked was that in any way an admission of liability?

Randy Allen answered, absolutely not. That was a fact-finding mission to find out exactly what the drivet would cost to be reapplied to the exterior of that type of building.



Jerry Rose asked Randy if he believed that machine caused that damage? You have been out there and have looked at the damage, haven't you?

Randy Allen answered, yes, I have. I have been out there two or three different times.

Jerry Rose asked Randy if he believed that machine caused it?

Randy Allen answered, no, I do not.

Jerry Rose asked Randy to tell the Council just why briefly. I don't like doing this but can you tell the Council just briefly why you believe that?

Randy Allen answered, because of all of the applications that I have seen this vibrator roller in, next to, and around. I just have not seen this type of damage occur. We are talking about a type of material on the exterior of a building that is very rigid and brittle. If you place it on a structure that has any movement, you will see cracking in it. I use to live in a stucco house, when I was a youngster. It had cracks in it. That's just typically the nature of the beast. From my estimation and what I ascertained in looking at the damages, to me there were probably more damages occurred by passing of the AM Railroad Train within a 100 feet of Mr. Shewmaker's building than there was from the vibratory roller for the short period of time that we were there paving Powerhouse Avenue.

Jerry Rose stated that's plenty. That is all I am trying to tell you is all the members of the City Staff that I talked to articulated to me what I thought were reasonable reasons why they believe this damage was not caused by that. The point Mr. Shewmaker placed so much emphasis on and whether or not the paint is inside of it or after it, I am not sure what the meaning of that is, but logic tells me that if the crack was there at the time when the building was painted in 1993, the crack would have paint in it. Does that make sense? However, if the crack occurred sometime after 1993, then perhaps it would not have paint in it. Well, about all that tells you is those cracks in that building probably occurred after 1993 and the roller was in 1997. I don't know how to evaluate that. In addition to that Mr. Shewmaker has some extraordinarily good reasons why he didn't report this for eight months after it occurred. Extraordinarily good reasons. Reasons that all of us can sympathize with and I think have great compassion for but it doesn't take away the simple fact that it was eight months before it was reported. We have no way of knowing what happened during those eight months. None. I don't know what to do with that. Now obviously we can start a large argument here tonight and I know that Mr. Shewmaker disagrees completely with what I just told you. I am sure that he has probably a very good presentation to give you. You all need to decide whether or not you want to do that, or do you want to do that at a special meeting, or what do you want to do with it? I am just trying to tell you that this is not a new problem. It is one that Charlie Venable has looked at since 1998. It has been going on for two years. We have not been rude or ignored Mr. Shewmaker. We have

been out there. We have looked. We have run tests. The Mayor has met with him. I have met with him. The Mayor has met with him on more than one occasion. Mr. Venable has met with him. City Staff has met with him. I don't want you to think in any way that we have blown off Mr. Shewmaker or ignored him in any way, shape, form or fashion. It is simply that the evidence we had didn't lead us to the same conclusions that Mr. Shewmaker drew. The final decision is yours if you want to make it.

Alderman Austin stated that what they had there was good evidence to take John Maguire's suggestion and I think we ought to give Mr. Shewmaker a couple of days to give us some feedback. I would like to move that when we do meet it will be with the idea of receiving the new information we asked for and considering mediation as a solution because I am confident the facts will be presented the same way they were presented tonight. I trust a mediator is somebody who does it professionally. I think that is the right way to do it. I feel real comfortable with that as an alderman.

Alderman Young asked, if the meeting would be after the Agenda Session?

Alderman Daniel said, yes, and she just recently toured and looked at the buildings so she did not want to go on the tour. She was sure that Richard would be glad to go around with any of you between now and Tuesday if you want to look up close at this.

Richard Shewmaker stated he felt like he needed to make one more comment in response. If anyone would like to come to that building when the train goes by, I want you down there. You can run some eighteen wheelers up and down the front. I want you down there. You can't hear or feel a thing. Those vehicles don't do a thing. I would not tell you that if I didn't know it. I have lived there for ten years. The train had nothing to do with the damage of this building. We might as well talk about the airplanes that land at High Fill. That is all I have to say about that.

Alderman Young asked Jerry Rose, if this goes to mediation, is the first thing that each side files an initial thing with the court and then request to go to mediation or does it go directly to mediation?

Jerry Rose stated he was not sure how you get there from here but all it takes cooperation and desire on Mr. Shewmaker's part to have it go to mediation. If that is what we are trying to do we can figure out or his attorney can figure out a way to get there. I think Mr. Maguire's idea of having his attorney go ahead and file a lawsuit which would total the time and make the statute of limitations run is probably the thing to do since we are almost out of time. It sounds like it would be the way to go. If we had more time, we would not have that difficulty. We are going to have to enter into some kind of mediation agreement as to the form of the mediation. Who is going to do it and agree to that, and whether or not if it will be binding in any rights of appeal that may be available to him? That can be done. Again all of it requires Mr. Shewmaker's

cooperation and at any time he withdraws it, we don't have that anymore.

Alderman Young asked if Richard decides to go that route of initially filing and then going to mediation, then if he files that before next Tuesday, we wouldn't have to meet in a special session next Tuesday?

Alderman Austin stated he thought they should go ahead and decide whether they were going to have a mediator even though he may file a lawsuit.

John Maguire asked Jerry Rose if it could be only a two-page deal, and then you can amend the heck out of it and put eighty pages on it later?

Jerry Rose stated you can, but that's me giving Mr. Shewmaker legal advice and he has a capable attorney that can give him that on his own. He can figure that out. I'm sure this is not Mr. Everett's first rodeo.

Richard Shewmaker stated as he understood it we are talking about him finding out about mediation and getting a copy of the engineering report and insurance policy.

Alderman Davis stated, if it turns out that he decides to go through mediation and you are willing to accept that and go ahead and file the suit, then there really is no reason to supply us with any additional information.

Richard Shewmaker replied, okay. Do you all want me to figure that out in a day or two?

Alderman Young told Mr. Shewmaker he could go ahead and get the Council the information though.

Alderman Russell stated that what his concerns were about this was the Council had heard Mr. Shewmaker's version of the story and he was not a juror in the case, but if he were, he believed that Mr. Shewmaker was a credible person and he seemed like a very trustworthy person to him. The Council had also heard the City Staff's version of the story of which he was not saying that was not a credible version, but they had only heard from one person that was there, he thought, at the time that this machine was operating, and that was Mr. Shewmaker, which was a pretty significant fact. The only way the Council could really know what happened was for all of them to go up to the third floor of Mr. Shewmaker's building and bring the DD 90 out there and fire it up. He did not believe anybody wanted to do that.

Richard Shewmaker answered Alderman Russell. Tell you what I will do. If you all will put up a sufficient bond, I'll let you start it over again. I will.



Alderman Austin stated he didn't know if he wanted to go for that but he thought it would might be a good idea for Mr. Shewmaker to get that seismic equipment up there and measure some of the vibrations from the trains.

Richard Shewmaker answered, there isn't any, Ron. That is what I am saying.

Alderman Austin stated he just thought that would be good evidence, if there were not any.

Mayor Hanna asked, what year was that building painted, Richard, on the outside?

Richard Shewmaker asked, pardon me?

Mayor Hanna asked again, what year was that building painted on the outside, the exterior?

Richard Shewmaker answered, I would have to look. I would say 1990. That was when we bought the building. We worked on it for years. I am going to say 1991 or early 1992.

Mayor Hanna asked Mr. Shewmaker if he painted the exterior after he bought it?

Richard Shewmaker answered, after we remodeled the inside we fixed the outside and painted it.

Alderman Russell stated, we have been saying there is more than one version to the story and that is what juries are for but we can avoid sending it to a jury if we so choose. Mediation might help us do that. I hope we can reach some sort of solution.

Alderman Young asked, if the Council was in agreement to having a special meeting after the Agenda Session or do they need to take a vote?

Alderman Russell stated we can schedule it and then call it off if we need to later.

Mayor Hanna thanked Mr. Shewmaker.

Alderman Young reiterated to Mr. Shewmaker that the meeting was at 4:30 p.m. next Tuesday.

Mayor Hanna asked if anyone had any announcements?

Meeting adjourned.



\_\_\_\_\_  
Heather Woodruff, City Clerk

**CERTIFICATE**

STATE OF ARKANSAS                    )  
                                                  )  
COUNTY OF WASHINGTON            )

I, \_\_\_\_\_, City Clerk, within and for the City of Fayetteville, Arkansas do hereby certify that the foregoing is a true and correct copy of Ordinance No. \_\_\_\_\_ of the Ordinances of the City of Fayetteville, Arkansas, entitled: "AN ORDINANCE CALLING A SPECIAL ELECTION IN THE CITY OF FAYETTEVILLE, ARKANSAS FOR THE PURPOSE OF SUBMITTING TO THE ELECTORS OF THE CITY THE QUESTION OF AUTHORIZING AND LEVYING A CITY-WIDE ONE PERCENT (1%) SALES AND USE TAX FOR A PERIOD OF EIGHTEEN (18) MONTHS FOR THE PURPOSE OF PAYING A PORTION OF THE COST OF THE ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPPING OF A PUBLIC LIBRARY, WHICH SHALL INCLUDE PARTICULARLY, WITHOUT LIMITATION, LAND, A LIBRARY BUILDING, MEETING ROOMS, FURNITURE, FURNISHINGS, FIXTURES, COMPUTERS AND RELATED EQUIPMENT AND SOFTWARE, BOOKS AND OTHER LIBRARY MATERIALS, PARKING FACILITIES, INCLUDING A MULTI-LEVEL PARKING DECK, LANDSCAPING AND ANY NECESSARY ROAD, DRAINAGE AND UTILITY IMPROVEMENTS THEREFOR; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY"; passed by the City Council of the City on \_\_\_\_\_, 2000, said Ordinance now appearing of record in my office in Book \_\_\_\_\_ at Page \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and seal office this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Heather Woodruff, City Clerk  
City of Fayetteville, Arkansas

Section 4. The City Clerk is authorized and directed to give notice of the election by one publication in a newspaper having general circulation within the City. Publication shall be made not less than ten (10) days prior to the election.

Section 5. The election shall be held no earlier than thirty (30) days after the date of the adoption of this Ordinance. The election shall be held and conducted and the vote canvassed and the results declared under the law and in the manner now provided for municipal elections, and only qualified electors of the City shall have the right to vote at the election.

Section 6. The Mayor shall proclaim the results of the election by issuing a proclamation and publishing the same one time in a newspaper having general circulation in the City. The results as proclaimed shall be conclusive unless suit challenging the results is filed in the Circuit Court of Washington County within thirty (30) days after publication of the proclamation.

Section 7. A copy of this Ordinance shall be given to the Washington County Board of Election Commissioners so that the necessary election officials and supplies may be provided. A certified copy of the Ordinance and a map clearly showing the boundaries of the City shall also be provided to the Commissioner of Revenues of the State of Arkansas as soon as practical.

Section 8. The Mayor and the City Clerk, for and on behalf of the City, be, and they are hereby authorized and directed to do any and all things necessary to call and hold the special election as herein provided and, if the Special Tax is approved by the electors, to cause the Special Tax to be collected in accordance with the laws of the State of Arkansas, and to perform all acts of whatever nature necessary to carry out the authority conferred by this Ordinance.

Section 9. All Ordinances and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 10. Emergency. It is hereby ascertained and declared that there is an immediate need for the capital improvements described in this Ordinance in order to promote and protect the health, safety, and welfare of the City and its inhabitants, and that the improvements can be accomplished only by the levy and collection of the Special Tax. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the immediate preservation of public peace, health and safety shall be enforced and take effect immediately from and after its passage.

PASSED this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Fred B. Hanna, Jr., Mayor

ATTEST:

- D. When two or more items of major household appliances, commercial appliances, major equipment and machinery are sold, each individual unit shall be treated as a single transaction for purposes of the sales and use tax.
- E. For groceries, drug items, dry goods and other tangible personal property and/or services not otherwise expressly covered in this Section, a single transaction shall be deemed to be any single sale which is reflected on a single invoice, receipt or statement, on which an aggregate sales tax figure has been reported and remitted to the State.

Section 3. The ballot shall be in substantially the following form:

OFFICIAL BALLOT  
SPECIAL ELECTION

City of Fayetteville, Arkansas  
August 15, 2000

Vote on each question by placing an "X" in the square opposite the question either "FOR" or "AGAINST":

FOR a one percent (1%) sales and use tax within the City of Fayetteville, Arkansas to be levied for a period of eighteen (18) months and pledged to pay a portion of the costs for the acquisition, design, construction and equipping of a public library, which shall include particularly, without limitation, land, a library building, meeting rooms, furniture, furnishings, fixtures, computers and related equipment and software, books and other library materials, parking facilities, including a multi-level parking deck, landscaping and any necessary road, drainage and utility improvements therefor.

AGAINST a one percent (1%) sales and use tax within the City of Fayetteville, Arkansas to be levied for a period of eighteen (18) months and pledged to pay a portion of the costs for the acquisition, design, construction and equipping of a public library, which shall include particularly, without limitation, land, a library building, meeting rooms, furniture, furnishings, fixtures, computers and related equipment and software, books and other library materials, parking facilities, including a multi-level parking deck, landscaping and any necessary road, drainage and utility improvements therefor.

After payment of all of the improvements listed above, any surplus tax collections which may be accumulated shall be transferred to the general funds of the City, and shall be used for payment of maintenance and operation costs of the City's public libraries.



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE CALLING A SPECIAL ELECTION IN THE CITY OF FAYETTEVILLE, ARKANSAS FOR THE PURPOSE OF SUBMITTING TO THE ELECTORS OF THE CITY THE QUESTION OF AUTHORIZING AND LEVYING A CITY-WIDE ONE PERCENT (1%) SALES AND USE TAX FOR A PERIOD OF EIGHTEEN (18) MONTHS FOR THE PURPOSE OF PAYING A PORTION OF THE COST OF THE ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPPING OF A PUBLIC LIBRARY, WHICH SHALL INCLUDE PARTICULARLY, WITHOUT LIMITATION, LAND, A LIBRARY BUILDING, MEETING ROOMS, FURNITURE, FURNISHINGS, FIXTURES, COMPUTERS AND RELATED EQUIPMENT AND SOFTWARE, BOOKS AND OTHER LIBRARY MATERIALS, PARKING FACILITIES, INCLUDING A MULTI-LEVEL PARKING DECK, LANDSCAPING AND ANY NECESSARY ROAD, DRAINAGE AND UTILITY IMPROVEMENTS THEREFOR; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.**

WHEREAS, the City of Fayetteville, Arkansas (the "City") is a city of the first class duly organized and existing under the laws of the State of Arkansas (the "State"); and

WHEREAS, the City Council of the City (the "City Council") has determined that it is in the best interests of the citizens of the City to acquire, construct and equip a public library, as more particularly described in Sections 1 and 3 of this Ordinance (the "Project"); and

WHEREAS, the City Council has determined that the Project will cost approximately Twenty-three Million Dollars (\$23,000,000) to complete; and

WHEREAS, the City Council has determined that it is in the best interests of the City and the citizens of the City to pay the majority of the cost to complete the Project on a "pay as you go" basis through the levying of a City-wide one percent (1%) sales and use tax (the "Special Tax") for a period of eighteen (18) months pursuant to Amendment 62 of the Arkansas Constitution ("Amendment 62") and Ark. Code Ann. §§14-164-301 through 340 (the "Authorizing Legislation"); and

WHEREAS, the City Council has determined that the remainder of the cost to complete the Project and any additional monies needed to enhance the Project can be raised from other sources, including, but not limited to, private and public grants, donations and appropriations; and

WHEREAS, the purpose of this Ordinance is to submit to the electors of the City the question of authorizing and levying the Special Tax for the purpose of accomplishing



the Project under Amendment 62 and the Authorizing Legislation at a special election to be called for that purpose and to levy the Special Tax at the rate of one percent (1.00%) on the receipts from sales at retail within the City of all items which are subject to taxation under the Arkansas Gross Receipts Tax Act of 1941, as amended (Ark. Code Ann. §§26-52-101, *et seq.*), and the receipts from storing, using or consuming within the City tangible personal property under Arkansas Compensatory Tax Act of 1949, as amended (Ark. Code Ann. §§26-53-101, *et seq.*);

NOW THEREFORE, BE IT ORDAINED, by the City Council of the City of Fayetteville, Arkansas:

Section 1. A special election shall be held on Tuesday, August 15, 2000. There shall be submitted to the electors of the City at the special election the question of levying a one percent (1%) City-wide sales and use tax, pursuant to Amendment 62 and the Authorizing Legislation, specifically Ark. Code Ann. §§14-164-327 through 338, as amended, the proceeds of which shall be used for the purpose of paying a portion of the cost of the acquisition, design, construction and equipping of a public library, which shall include particularly, without limitation, land, a library building, meeting rooms, furniture, furnishings, fixtures, computers and related equipment and software, books and other library materials, parking facilities, including a multi-level parking deck, landscaping and any necessary road, drainage and utility improvements therefor. The tax shall not be extended or collected for a period in excess of eighteen (18) months.

Section 2. That the new sales and use tax shall be levied and collected only on the first two thousand five hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price from a single transaction. A "single transaction" is defined according to the nature of the goods purchased as follows:

- A. When two or more devices in which or by which any person or property is, or may be, transported or drawn, including but not limited to on-road vehicles, whether required to be licensed or not, off-road vehicles, farm vehicles, airplanes, water vessels, motor vehicles, or non-motorized vehicles and mobile homes, are sold to a person by a seller, each individual unit, whether part of a "fleet" sale or not, shall be treated as a single transaction for the purposes of the sales and use tax.
- B. The charges for utility services, which are subject to the sales and use tax, and which are furnished on a continuous basis, whether such services are paid daily, weekly, monthly or annually, shall be computed in daily increments, and each such daily charge increment shall be considered to be a single transaction for the purposes of the sales and use tax.
- C. For sales of building materials and supplies to contractors, builders or other persons, a single transaction, for the purposes of the sales and use tax, shall be deemed to be any single sale which is reflected on a single invoice, receipt or statement, on which an aggregate sales (or use) tax figure has been reported and remitted to the State.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE CALLING A SPECIAL ELECTION IN THE CITY OF FAYETTEVILLE, ARKANSAS FOR THE PURPOSE OF SUBMITTING TO THE ELECTORS OF THE CITY THE QUESTION OF AUTHORIZING AND LEVYING A CITY-WIDE ONE PERCENT (1%) SALES AND USE TAX FOR A PERIOD OF EIGHTEEN (18) MONTHS FOR THE PURPOSE OF PAYING A PORTION OF THE COST OF THE ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPPING OF A PUBLIC LIBRARY, WHICH SHALL INCLUDE PARTICULARLY, WITHOUT LIMITATION, LAND, A LIBRARY BUILDING, MEETING ROOMS, FURNITURE, FURNISHINGS, FIXTURES, COMPUTERS AND RELATED EQUIPMENT AND SOFTWARE, BOOKS AND OTHER LIBRARY MATERIALS, PARKING FACILITIES, INCLUDING A MULTI-LEVEL PARKING DECK, LANDSCAPING AND ANY NECESSARY ROAD, DRAINAGE AND UTILITY IMPROVEMENTS THEREFOR; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.**

WHEREAS, the City of Fayetteville, Arkansas (the "City") is a city of the first class duly organized and existing under the laws of the State of Arkansas (the "State"); and

WHEREAS, the City Council of the City (the "City Council") has determined that it is in the best interests of the citizens of the City to acquire, construct and equip a public library, as more particularly described in Sections 1 and 3 of this Ordinance (the "Project"); and

WHEREAS, the City Council has determined that the Project will cost approximately Twenty-three Million Dollars (\$23,000,000) to complete; and

WHEREAS, the City Council has determined that it is in the best interests of the City and the citizens of the City to pay the majority of the cost to complete the Project on a "pay as you go" basis through the levying of a City-wide one percent (1%) sales and use tax (the "Special Tax") for a period of eighteen (18) months pursuant to Amendment 62 of the Arkansas Constitution ("Amendment 62") and Ark. Code Ann. §§14-164-301 through 340 (the "Authorizing Legislation"); and

WHEREAS, the City Council has determined that the remainder of the cost to complete the Project and any additional monies needed to enhance the Project can be raised from other sources, including, but not limited to, private and public grants, donations and appropriations; and

WHEREAS, the purpose of this Ordinance is to submit to the electors of the City the question of authorizing and levying the Special Tax for the purpose of accomplishing

STAFF REVIEW FORM

XX AGENDA REQUEST  
CONTRACT REVIEW  
GRANT REVIEW

For the Fayetteville City Council meeting of July 3, 2000

FROM:

Harold J. Dahlinger Building Maintenance Administrative Services  
Name Division Department

ACTION REQUIRED: Award of Bid #00-48 for electrical services to Chris King Electric for the remainder of the year 2000 with five one year renewal options.

COST TO CITY:

| Cost of this Request | Category/Project Budget | Category/Project Name |
|----------------------|-------------------------|-----------------------|
| \$Various            | See Attached            | Various               |
| Various              | See Attached            | Various               |
| Account Number       | Funds Used To Date      | Program Name          |
| See Attached         | See Attached            | Various               |
| Project Number       | Remaining Balance       | Fund                  |

BUDGET REVIEW: X Budgeted Item      Budget Adjustment Attached

[Signature]  
Budget Manager

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:                     

|                                                |                        |                                                 |                                     |
|------------------------------------------------|------------------------|-------------------------------------------------|-------------------------------------|
| <u>Marilyn J. Cramer</u><br>Accounting Manager | <u>6-14-00</u><br>Date | <u>                    </u><br>Internal Auditor | <u>                    </u><br>Date |
| <u>[Signature]</u><br>City Attorney            | <u>6-15-00</u><br>Date | <u>                    </u><br>ADA Coordinator  | <u>                    </u><br>Date |
| <u>[Signature]</u><br>Purchasing Officer       | <u>6-14-00</u><br>Date |                                                 |                                     |

STAFF RECOMMENDATION: Award of Bid #00-48 to Chris King Electric and award of a Contract.

[Signature]  
Division Head

6/14/00  
Date

Cross Reference

New Item: Yes No

                      
Department Director

[Signature]  
Administrative Services Director

6/19/00  
Date

[Signature]  
Member

6/19/00  
Date

Prev Ord/Res #:                     

Orig Contract Date:



## STAFF REVIEW FORM

Description Bid #00-48 Electrical Contract Meeting Date 7/3/00

## Comments:

Budget Coordinator

## Reference Comments:

Accounting Manager

- ① need single bidder justification in memo  
② fill in name of contractor on 1<sup>st</sup> page  
③ 3<sup>rd</sup> pg is blank after #12

Done - AliceDone - Alice

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor



# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

## DEPARTMENTAL CORRESPONDENCE

---

TO: The Fayetteville City Council

THRU: Fred Hanna, Mayor  
John Maguire, Administrative Services Director

FROM: Harold Dahlinger, Facilities Superintendent 

DATE: June 12, 2000

RE: BID AWARD RECOMMENDATION

Attached is the Agenda Request for the award of Bid #00-48 to the lowest bidder meeting requirements for electrical work and related service needs of the City of Fayetteville for the calendar year 2000 (with option for five (one-year) term renewal).

I recommend acceptance of the rates provided by Chris King Electric for Bid #00-48. Previous experience with this vendor on other City projects has shown that quality and workmanship is at a level which allows us to be very comfortable in recommending this bidder for the various projects which are budgeted for calendar year 2000. Chris King Electric has provided services to the City of Fayetteville for the past four years under a similar contract. We have found his services to be outstanding and very cost effective to the City and its projects.

Utilization of an annual acceptance of a bidder in this particular area should eliminate time delays in the bidding process on individual projects along with the ability to negotiate details of specific projects to assist in keeping better control of job pricing.

The budgeted amounts for these services will be taken from the applicable programs as specific projects are identified.

# AGREEMENT FOR ELECTRICAL, COMMUNICATIONS AND RELATED SERVICES

This AGREEMENT executed this \_\_\_\_\_ day of \_\_\_\_\_, 2000, between the City of Fayetteville, Arkansas, hereinafter called the "City" and King Electrical Contractors, hereinafter called the "Contractor", and having an address at 2145 Moore, Fayetteville, AR 72704.

IN CONSIDERATION OF THE FOLLOWING COVENANTS contained herein the parties agree as follows:

1. The Contractor shall at the written request of the City provide material, labor and equipment for electrical, communications and related service(s) for the following:

- a. New construction as requested for jobs not bid separately;
- b. Repair as requested for jobs not bid separately;
- c. Additional work as required and as directed by owner.

2. The first term of this agreement shall be from award of contract through December 31, 2000. The City has the option to renew this contract for five consecutive one year terms. Annual increases will be allowed based on the Consumer Price Index for All Urban Consumers (Index) as published by the U.S. Department of Labor, Bureau of Labor Statistics, published as of October 31, using 1982-84 as the base year. The initial index to be used is October, 1999.

3. City shall pay Contractor for services rendered as set out in Contractor's Bid.

Charges will be invoiced to City at the end of each Contractor's monthly accounting periods based upon the fee schedule outlined in Contractor's Bid and the expense charges to the project during the preceding accounting period. All invoices are due upon receipt and shall be paid by the City unless disputed within thirty (30) days of their receipt.

4. The contract documents which comprise the contract between City and the Contractor consist of this contract and the following documents:

- a. Bid form identified as Invitation to Bid 00-48 with the specifications, conditions, and requirements typed thereon;

- b. The Contractor's proposal and all supporting documents and correspondence submitted by the Contractor in response to Bid 00-48.

5. These contract documents constitute the entire agreement between the City and the Contractor and may be modified only by a duly executed written instrument signed by the City and the Contractor.

6. Contractor shall not assign his duties under the terms of this contract.

7. Contractor agrees to hold the City harmless and indemnify the City against any and all claims for property damage, personal injury or death, arising from Contractor's performance of this contract.

8. The Contractor shall furnish a certificate of insurance addressed to the City, showing that he carries the following insurance which shall be maintained throughout the term of the contract.

Workers Compensation

Statutory Amount

Comprehensive General and  
Automobile Insurance

Bodily Injury Liability

\$ 500,000 for each  
person injured.

\$ 1,000,000 for each  
accident.

Property Damage Liability

\$ 250,000 for each  
accident.

\$ 500,000 aggregate

The insurance shall include explosion, collapse and underground coverage. The premiums for all insurance and the bond required herein shall be paid by the Contractor.

9. Contractor agrees to begin work within ten (10) days after issuance by the City of a "work order" or "Notice to Proceed" and to complete the work within the time agreed to by the parties.

10. All work called for herein shall be coordinated directly with the project manager for each project as designated by the City.

11. City shall have the right to terminate this Agreement for City's convenience upon written notice of Contractor, and



Contractor shall terminate performance of services on a schedule acceptable to City. In the event of termination for City's convenience City shall pay Contractor for all services performed to date of termination.

12. Nothing in this agreement shall be construed to give any rights or benefits to anyone other than Contractor and City.

(Left Blank Intentionally)



IN WITNESS WHEREOF, City and Contractor have executed this agreement, the effective date of which shall be \_\_\_\_\_.

CITY OF FAYETTEVILLE

By: \_\_\_\_\_  
Fred Hanna, Mayor

ATTEST:

By: \_\_\_\_\_  
Heather Woodruff, City Clerk

King Electrical Contractors  
Contractor-Company Name

By: Chris King

Title: President

ATTEST:

By: Karen King  
Contractor-Company Secretary

## INVITATION TO BID

| BID #<br>00-48                                                                                                             | DATE ISSUED:<br>May 22, 2000                                                                                                                                                                                           | DATE AND TIME OF OPENING:<br>June 5, 2000 at 2:00 p.m. |                                                              |       |
|----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|--------------------------------------------------------------|-------|
| BUYER:<br>City of Fayetteville, AR                                                                                         |                                                                                                                                                                                                                        | DATE REQUIRED:<br>As scheduled by Project Manager      |                                                              |       |
| F. O. B.<br>Fayetteville, AR                                                                                               | BUYER'S PHONE #<br>(501) 575-8289                                                                                                                                                                                      | GUARANTEED DELIVERY DATE:                              |                                                              |       |
| ITEM #                                                                                                                     | DESCRIPTION                                                                                                                                                                                                            | QUANTITY                                               | UNIT PRICE                                                   | TOTAL |
| 1                                                                                                                          | Per Attached Specifications<br><b>ELECTRICAL SERVICES</b><br>Labor rate for the following:<br>*Master Electrician per hour<br>*Journeyman Electrician per hour<br>*Apprentice Electrician per hour<br>Laborer per hour | *License Required<br>hour<br>hour<br>hour<br>hour      | \$ 25.00 hr.<br>\$ 23.00 hr.<br>\$ 18.00 hr.<br>\$ 15.00 hr. |       |
| 2                                                                                                                          | Percent additional rate for overtime                                                                                                                                                                                   |                                                        | 50 %                                                         |       |
| 3                                                                                                                          | Percent Additional rate for Sundays & Holidays                                                                                                                                                                         |                                                        | 50 %                                                         |       |
| 4                                                                                                                          | Material Cost Plus Markup Percent                                                                                                                                                                                      |                                                        | 13 %                                                         |       |
| 5                                                                                                                          | Guaranteed Emergency Response Time                                                                                                                                                                                     |                                                        | 1/4 hr.                                                      |       |
| 6                                                                                                                          | Guaranteed Regular Response Time                                                                                                                                                                                       |                                                        | 1/2 hr.                                                      |       |
| 7                                                                                                                          | Dump Truck with Operator                                                                                                                                                                                               |                                                        | \$ 45.00 hr.                                                 |       |
| 8                                                                                                                          | Bobcat backhoe with Operator                                                                                                                                                                                           |                                                        | \$ 45.00 hr.                                                 |       |
| 9                                                                                                                          | Backhoe with Operator                                                                                                                                                                                                  |                                                        | \$ 45.00 hr.                                                 |       |
| 10                                                                                                                         | Bucket Truck with Operator                                                                                                                                                                                             |                                                        | \$ 45.00 hr.                                                 |       |
| 11                                                                                                                         | Personnel Lift                                                                                                                                                                                                         |                                                        | \$ 16.00 hr.                                                 |       |
| 12                                                                                                                         | Platform Lift                                                                                                                                                                                                          |                                                        | \$ 18.75 hr.                                                 |       |
| 13                                                                                                                         | Rental Equipment Cost Plus Markup                                                                                                                                                                                      |                                                        | 13 %                                                         |       |
| These services will be ordered as needed throughout the contract period. There is no guaranteed minimum or maximum amount. |                                                                                                                                                                                                                        |                                                        |                                                              |       |
| CONTRACTOR'S LICENSE NUMBER:                                                                                               |                                                                                                                                                                                                                        | 0063870401                                             |                                                              |       |
| RESTRICTIONS OR EXCEPTIONS TO THE BID MUST BE NOTED:                                                                       |                                                                                                                                                                                                                        |                                                        |                                                              |       |

## EXECUTION OF BID

Upon signing this Bid, the bidder certifies that they have read and agree to the requirements set forth in this bid proposal, including specifications, terms and standard conditions, and pertinent information regarding the articles being bid on, and agree to furnish these articles at the prices stated.

|                                             |                                                       |                                           |                        |
|---------------------------------------------|-------------------------------------------------------|-------------------------------------------|------------------------|
| UN<br>SIGNED<br>BIDS<br>WILL BE<br>REJECTED | NAME OF FIRM:<br><i>King Electric</i>                 | PHONE:<br><i>443-0006</i>                 | TAX PERMIT:<br>—       |
|                                             | BUSINESS ADDRESS:<br><i>2145 W Moore Fay AR 72704</i> | CITY AND STATE:<br><i>Fayetteville AR</i> | ZIP:<br><i>72704</i>   |
|                                             | AUTHORIZED SIGNATURE:<br><i>Chris King</i>            | TITLE:<br><i>President</i>                | DATE:<br><i>6-5-00</i> |
|                                             |                                                       |                                           |                        |

**KING ELECTRICAL CONTRACTORS  
2145 W MOORE LANE  
FAYETTEVILLE ARKANSAS**

King Electric has 29 full time employees that specialize in commercial and industrial wiring. We also have employees specifically trained in the Hubbell Premise Wiring for data and telecommunications. They also are trained in leviton fiber optic terminating. We have personal lifts, platform lifts, mechanical benders for conduit up to 4", pipe threaders, meggars, wire tracers, ladders, and other equipment owned to do any size of electrical job. Our personal has been trained to use all of the above equipment in a safe and workmanlike manner. We are in the process of all employees attending the 10 hour OSHA safety training class. We just received an award from our insurance company for 3 years of no work loss personal injury. All lead men carry digital pagers and mobile telephones. All trucks are equipped to do most service calls.

Chris King





*Certificate of Completion*

**HUBBELL PREMISE WIRING**

Hubbell Incorporated (Delaware)

*hereby certifies that*

Roger Jones

of

Kings Electric

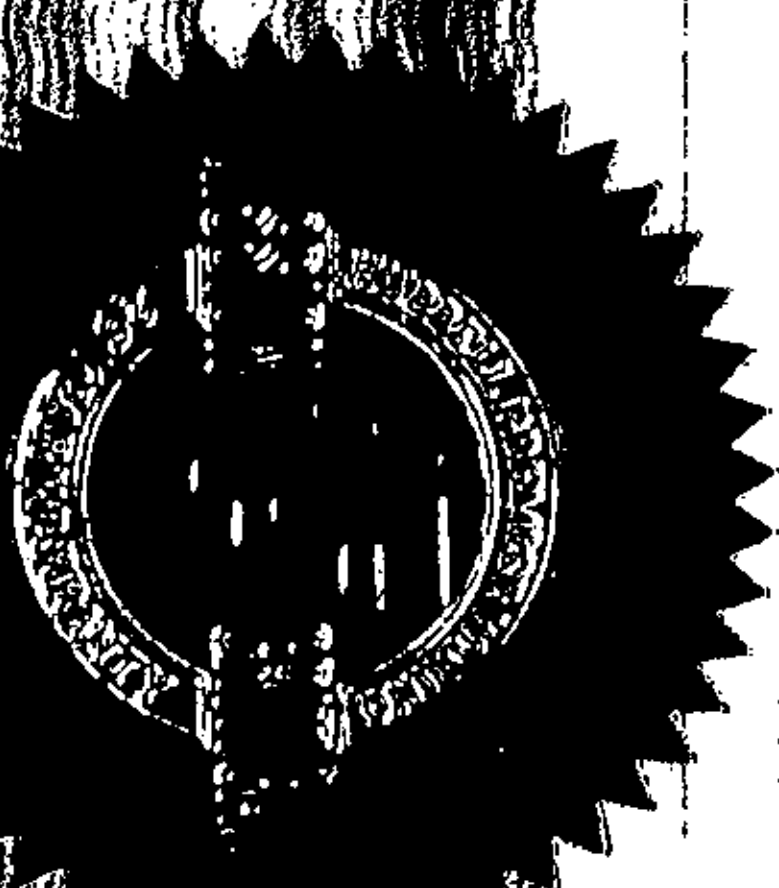
*has successfully completed the Hubbell Premise Wiring*

*Mission Critical Training Program*

*October 20th, 1999*

*Ami McKen*  
Hubbell Premise Wiring  
Vice President & General Manager

*Kenneth Jones*  
Hubbell Premise Wiring  
Vice President - Sales







# HUBBELL PREMISE WIRING

Hubbell Incorporated (Delaware)

hereby certifies that

Tim Edwards

of

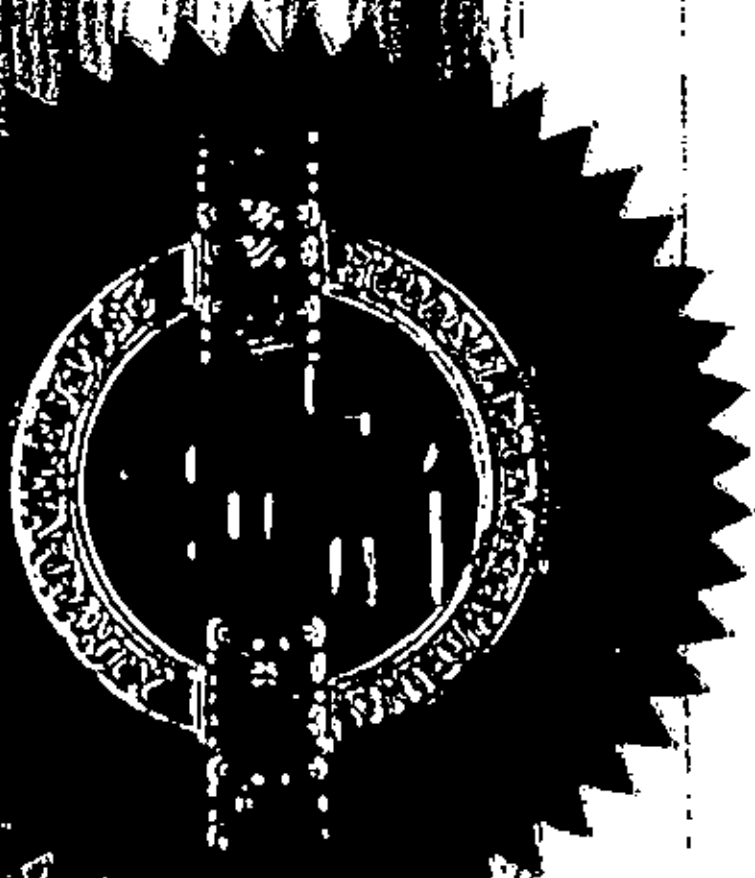
Kings Electric

*has successfully completed the Hubbell Premise Wiring*

*Mission Critical Training Program*

*October 20th, 1999*

*Eric A. Preston*  
Hubbell Premise Wiring  
Vice-President & General Manager



*Kevin J. Carson*  
Hubbell Premise Wiring  
Vice-President - Sales

For the Fayetteville City Council meeting of July 3, 2000

**TUCCO.WPD**

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

## DEPARTMENTAL CORRESPONDENCE

---

TO: The Fayetteville City Council

THRU: Fred Hanna, Mayor  
John Maguire, Administrative Services Director

FROM: Harold Dahlinger, Facilities Superintendent *HD*

DATE: June 13, 2000

RE: AWARD OF BID FOR INSULATION & SYNTHETIC STUCCO SYSTEM (DRYVIT)  
FOR ENGINEERING BUILDING (TCA)

The present exterior of the Engineering Building under renovation consists of block, brick and concrete. The Dryvit System specified will require 1 ½ inches of insulation mechanically attached for energy efficiency prior to the system being placed on the entire building, which consists of approximately 10,000 square feet.

Low bidder for Bid #00-49 was received from Synthetic Designs Stucco of Rogers, AR in the amount of \$ 45,900.00. I am also requesting a 10% contingency in the amount of \$ 4,590.00 for possible design changes to the northwest wing of the structure.

We request the awarding of this contract to Synthetic Designs Stucco of Rogers, AR.



CONTRACT

This contract executed this 13<sup>th</sup> day of June, 2000, between the City of Fayetteville, Arkansas, hereinafter called the City, and Synthetic Designs, hereinafter called the Contractor, and having an address at 1110 E Necessary Rd Rogers AR 72758.

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. The Contractor at his own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per bid 00-49 as stated in CONTRACTOR'S PROPOSAL, and in accordance with specifications attached hereto and made a part hereof under Bid #00-49, all included herein as if spelled out word for word.
2. The City shall pay the Contractor based on prices indicated in Contractor's Proposal. Progress payments will be made 30 days after approval and acceptance of work and submission of invoice. Amount of contract not to exceed \$ 45,900.00.
3. The Contract documents which comprise the contract between the City and the Contractor consist of this Contract and the following documents attached hereto, and made a part hereof:
  - A. Bid form identified as Invitation to Bid 00-49 with the specifications and conditions typed thereon.
  - B. The Contractor's proposal.
  - C. The Notice to Prospective Bidders and the Bid Tabulation.
4. These Contract documents constitute the entire agreement between the City and the Contractor and may be modified only by a duly executed written instrument signed by the City and the Contractor.
5. Contractor shall not assign his duties under the terms of this agreement.
6. Contractor agrees to hold the City harmless and indemnify the City, against any and all claims for property damage, personal injury or death, arising from Contractor's performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.



7. The Contractor shall furnish a certificate of insurance addressed to the Owner, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet, the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under Worker's Compensation Insurance, the Contractor shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Comprehensive General Public Liability, \$250,000

Comprehensive Automobile Liability (owned, hired and non-owned Vehicles) with bodily injury limits of \$100,000 and property damage limit of \$50,000 for each accident;

Standard Workmen's Compensation and Employer's Liability covering with statutory limits;

The premiums for all insurance and the bond required herein shall be paid by the Contractor.

8. If contract exceeds \$20,000, Contractor agrees to furnish a Performance Bond, approved by the City, guaranteeing the performance of this contract, for not less than one hundred percent of the amount of this contract. Said performance bond shall be conditioned on full and complete performance of this contract and acceptance by the City of Fayetteville for the payment of all labor and materials entering into or incident to the proposed improvements. The Contractor agrees to furnish proof of licensure as required under the terms of Act 150 of the 1965 Acts of the Arkansas Legislature.
9. Contractor agrees to begin work within ten (10) days of notice to proceed and complete the work within the time frame outlined in the bid document. Liquidated damages of \$100 per day shall be assessed at the option of the City, not as a penalty, beginning on the first day following the completion time to cover additional costs.
10. All work called for herein shall be coordinated directly with the Project Manager or their designee, at 718-7640.

11. This contract may be terminated by the City with 10 days written notice.
12. Contractor shall be responsible for meeting compliance with ADA regulations.

WITNESS OUR HANDS THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2000.

CITY OF FAYETTEVILLE,  
FAYETTEVILLE, ARKANSAS

BY \_\_\_\_\_  
MAYOR

ATTEST: CITY CLERK

\_\_\_\_\_

Synthetic Designs  
FIRM NAME

ATTEST: SECRETARY

Julie Scheunemann

BY  - President  
Mark Dehl NAME AND TITLE

1110 E Necessary Rd  
Rogers AR 72758  
BUSINESS ADDRESS

**CITY OF FAYETTEVILLE, ARKANSAS**  
**Terms and Conditions**

1. All bids shall be submitted in a sealed envelope and must be submitted on forms provided by the City.
2. The item bid and the bid number shall be stated on the face of the sealed bid envelope.
3. Bids received after the date and time set for receiving bids will not be considered.
4. The City reserves the right to accept or reject any or all bids, waive formalities in the bidding and make a bid award deemed to be in the best interest of the City. The City shall be able to purchase more or less than the quantity indicated subject to availability of funds.
5. The bid price shall remain good and firm until project is completed.
6. All products delivered shall comply with applicable standards of quality.
7. Any exceptions to the requirements of the City of Fayetteville must be noted on the Bid Form.
8. Prices shall include all labor, materials, overhead, profit, insurance, etc., to cover the furnishing of the items bid.
9. Each bidder shall state on the face of the bid form the anticipated number of days from the date of receipt of an order for delivery of equipment and installation to the City of Fayetteville.
10. Copy of the warranty shall accompany the bid, and any exceptions to the warranty shall be clearly noted on the bid form.
11. Bidders must provide the City with their bids signed by an employee having legal authority to submit bids on behalf of the bidder. The entire cost of preparing and providing responses shall be borne by the bidder.
12. The City reserves the right to request any additional information it deems necessary from any or all bidders after the submission deadline.
13. The request for bid is not to be construed as an offer, a contract, or a commitment of any kind; nor does it commit the city to pay for any costs incurred by bidder in preparation of bid.
14. The City will not be responsible for misdirected bids. Vendor should call the Purchasing Office at (501) 575-8289 to insure receipt of their bid documents prior to opening time and date listed on the bid form.



15. If products and/or components other than those described in this bid document are proposed, the bidder must include complete descriptive literature and technical specifications. All requests for additional information must be received within five working days following the request.
16. Bids must be hand delivered or received by mail in the Purchasing Office, Room 306, 113 W. Mountain St. Fayetteville, AR 72701, on or before the time of closing listed on the face of the bid.

- \*17. Public improvement bids with a total of \$20,000 or more shall submit certificates of insurance within 10 days of notice of bid award. Certificates of insurance are to be addressed to the City of Fayetteville, showing that the contractor carries the following insurance which shall be maintained throughout the term of the bid. Any work sublet, the contractor shall require the subcontractor similarly to provide the same insurance coverage. In case any employee engaged in work on the project is not protected under Workers' Compensation, the Contractor shall provide, and shall cause each subcontractor to provide, adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

|                                               |                        |
|-----------------------------------------------|------------------------|
| Workers' Compensation:                        | Statutory Amount       |
| Comprehensive General & Automotive Liability: | \$250,000 each person. |
|                                               | \$500,000 aggregate.   |
| Property Damage Liability:                    | \$100,000 aggregate.   |

- \*18. Public improvement bids with a total of \$20,000 or more require a 5% bid bond and if awarded, a 100% performance and payment bond to be submitted before notice to proceed is given.
- \*19. Public improvement bids exceeding \$20,000 or more require a contractor's license.
- \*20. The City shall pay Contractor based on unit prices indicated in contractor's bid proposal. Progress payments will be made after approval and acceptance of work and submission of invoice. Payments will be made approximately 30 days after receipt of invoice.
- \*21. Contractor shall not assign his duties under the terms of this agreement. All work shall be coordinated directly with the Project Manager, or their designee.

\*Applies to construction public improvement projects only, unless otherwise noted.



Building Renovation  
City Engineering Department  
for  
City of Fayetteville

SECTION 07240  
EXTERIOR INSULATION AND FINISH SYSTEM

- 1) Summary: Exterior insulation and finish system, complete, including bonding agent, insulation, reinforcing fabric, adhesives, fasteners, and base and finish coats.
- 2) Samples. Submit for verification 2' x 2' sample of system showing textures and colors selected, using workmanship and tools typical of actual installation.
- 3) Installer Certificates: Submit certificates signed by manufacturer certifying that installers comply with requirements under "Quality Assurance" article.
- 4) Applicator: Single firm, approved in writing by system manufacturer with a minimum of five years experience employing trained workers familiar with current installation methods and materials.
- 5) Standards: Current model code approval by ICBO, BOCA, and SBCC.
  1. Base approval on full scale diversified Fire Testing, end use configuration by independent agencies whose classifications and requirements have general acceptance as regulatory.
  2. Manufacturer will be listed with Factory Mutual.
  3. Manufacturer will be ISO9001 Certified.
- 6) DELIVERY, STORAGE AND HANDLING  
Deliver materials to site in original unopened packages, clearly marked with manufacturer's name, brand name, and description of contents. Store materials in accordance with manufacturer's recommendations for storage and handling.

**PROJECT CONDITIONS**

Ambient air temperature shall be 40 degrees F or greater and rising at time of installation of coating application and shall remain at 40 degrees F or greater for at least 24 hours after application.

1. Provide temporary heat as required to meet above requirements.

**7) MANUFACTURERS**

These specifications are based on Exterior Insulation and Finish System "Outsulation" as manufactured by Dryvit Systems, Inc. or approved equal.

## 8) MATERIALS

- A Insulation Board: Insulation board shall be produced by manufacturer approved by EIFS manufacturer meeting the following requirements.
1. Type: Expanded Polystyrene Insulation Board.
  2. Nominal Density: 1.0pcf.
  3. Maximum Flame-Spread and Smoke Development: ASTM E-84, 25 and 450 respectively.
  4. Thickness: As indicated on Drawings, but in no case shall insulation be less than 3/4 inch or greater than 4 inches.
- B Reinforcing Fabric: Manufacturer's open weave type glass fiber fabric complying with ASTM D1682 as supplied by system manufacturer:
1. Standard Weight: Minimum 4.2 ounces per square yard plus or minus 10 percent.
- C Coating System:
1. Base Coat: Acrylic based, modified Portland cement (Type I or II) and silica sand to function as base coat for coating application and mixed with base coat liquid admixture as supplied by system manufacturer.
  2. Finish Coat: Acrylic based, modified portland cement (Type I or II) and silica sand; compatible with base coat and mixed with finish coat liquid admixture as supplied by system manufacturer.

## 9) INSTALLATION - GENERAL

Follow manufacturer's printed instructions for installation of exterior insulation and finish system.

- 10) 1. First pressure wash, remove any and all dirt, loose paint, or loose substrate.
2. Apply the E.I.F.S. bonding agent to the wall with sprayer or roller and let dry.

## 11) INSULATION BOARD INSTALLATION

- 12) Apply insulation to substrate providing firm butt joints. Tamp entire surface with even pressure to ensure complete contact with adhesive. The installation of each board with the use of a 6 foot straight edge.
  1. Allow adhesive a minimum of 24 hours to dry.
  2. Sand surfaces which are high and out of plane until flush. Do not fill low areas.

## 13) REINFORCING MESH

Place reinforcing fiber glass mesh, overlapping edges a minimum of 3 inches, over insulation and secure in place with base coating and use high impact mesh on high traffic areas up to four feet high.

14) BASE COAT

- 15) 1. Apply base coat in such a manner as to level surface and fill joints. Apply base coat 1/8 inch to 3/16 inch thick.  
2. Cure base coat as directed by manufacturer.

16) TEXTURED FINISH

- 17) 1. Mix in accordance with manufacturer's printed instructions.  
2. Do not apply finish texture until base coat has cured properly.  
3. Trowel finish coat onto base surface and float to achieve uniform texture to match approved sample.  
4. Apply and level material in one operation.  
5. Obtain final texture by trowels or floats as necessary to achieve specified finish.  
6. Provide finish coat 1/16 inch to 1/8 inch thick.



# INVITATION TO BID

|                |                              |                                                          |
|----------------|------------------------------|----------------------------------------------------------|
| BID #<br>00-49 | DATE ISSUED:<br>May 26, 2000 | DATE AND TIME OF OPENING:<br>June 13, 2000, at 2:00 p.m. |
|----------------|------------------------------|----------------------------------------------------------|

|                                    |                               |
|------------------------------------|-------------------------------|
| BUYER:<br>City of Fayetteville, AR | DATE REQUIRED:<br>30 days ARO |
|------------------------------------|-------------------------------|

|                              |                                   |                           |
|------------------------------|-----------------------------------|---------------------------|
| F. O. B.<br>Fayetteville, AR | BUYER'S PHONE #<br>(501) 575-8289 | GUARANTEED DELIVERY DATE: |
|------------------------------|-----------------------------------|---------------------------|

| ITEM # | DESCRIPTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | QUANTITY | UNIT PRICE | TOTAL              |
|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|------------|--------------------|
| 1      | <p><b>Per attached specifications:</b><br/>Furnishing of All Materials, Labor, and Related Items for the Installation of Synthetic Stucco System on the Engineering Building.</p> <p><b>TOTAL BASE BID:</b></p> <p>5% bid bond to be submitted with bid<br/>100% performance bond<br/>required with successful contract.<br/>Performance bond must be<br/>executed by a resident local agent<br/>who shall be entitled to full<br/>commission paid local agents and<br/>who shall be licensed by the<br/>Insurance Commissioner to<br/>represent the surety company<br/>executing the bond and filing with<br/>the bond the agent's power of<br/>attorney as his authority. The mere<br/>countersigning of a bond will not be<br/>sufficient.</p> <p><b>Contractor's License No#</b><br/><u>0055720100</u></p> <p><b>RESTRICTIONS OR EXCEPTIONS<br/>TO THE BID MUST BE NOTED:</b></p> | 1        |            | <u>\$45,900.00</u> |

## EXECUTION OF BID

Upon signing this Bid, the bidder certifies that they have read and agree to the requirements set forth in this bid proposal, including specifications, terms and standard conditions, and pertinent information regarding the articles being bid on, and agree to furnish these articles at the prices stated.

|                                             |                                                  |                                     |                              |
|---------------------------------------------|--------------------------------------------------|-------------------------------------|------------------------------|
| UNSIGN<br>ED<br>BIDS<br>WILL BE<br>REJECTED | NAME OF FIRM:<br><u>Synthetic Designs</u>        | PHONE:<br><u>501-936-7207</u>       | FED ID#<br><u>71-0798732</u> |
|                                             | BUSINESS ADDRESS:<br><u>1110 E. Necessary Rd</u> | CITY AND STATE:<br><u>Rogers AR</u> | ZIP:<br><u>72758</u>         |
|                                             | AUTHORIZED SIGNATURE:<br><u>[Signature]</u>      | TITLE:<br><u>President</u>          | DATE:<br><u>6/9/00</u>       |



# SYNTHETIC DESIGNS

1110 E. Necessary Rd.  
Rogers, AR 72758

Phone 501-936-7207  
Fax 501-936-7237

June 13, 2000

Prop # 2063

Attn: Harold Dahlinger  
City of Fayetteville  
City Engineering Department

For the installation of the Synthetic Stucco System on the exterior of the building as shown on plans dated 8-12-99.

Total cost \$ 45,900.00

ACORD

## CERTIFICATE OF LIABILITY INSURANCE

A. 3. Page 13

PRODUCER

Rogers Insurance Agency  
P.O. Box 2048  
Rogers AR 72757-2048

Adrian Luttrell

Phone No. 501-636-4551 Fax No.  
INSURED

Deihl Enterprises Inc.  
dba Synthetic Designs  
1110 E. Necessary Rd  
Rogers AR 72758

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION  
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE  
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR  
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

## COMPANIES AFFORDING COVERAGE

|              |                          |
|--------------|--------------------------|
| COMPANY<br>A | State Auto               |
| COMPANY<br>B | Zenith Insurance Company |
| COMPANY<br>C |                          |
| COMPANY<br>D |                          |

## COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD  
INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS  
CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS,  
EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| CO<br>LTR | TYPE OF INSURANCE                                                                                                  | POLICY NUMBER | POLICY EFFECTIVE<br>DATE (MM/DD/YY) | POLICY EXPIRATION<br>DATE (MM/DD/YY) | LIMITS                               |
|-----------|--------------------------------------------------------------------------------------------------------------------|---------------|-------------------------------------|--------------------------------------|--------------------------------------|
| A         | GENERAL LIABILITY                                                                                                  | SOC6963042    | 01/25/00                            | 01/25/01                             | GENERAL AGGREGATE \$ 1,000,000       |
|           | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY                                                   |               |                                     |                                      | PRODUCTS - COMP/OP AGG \$ 1,000,000  |
|           | <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR                                     |               |                                     |                                      | PERSONAL & ADV INJURY \$ 1,000,000   |
|           | <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT                                                               |               |                                     |                                      | EACH OCCURRENCE \$ 1,000,000         |
|           |                                                                                                                    |               |                                     |                                      | FIRE DAMAGE (Any one fire) \$ 50,000 |
|           |                                                                                                                    |               |                                     |                                      | MED EXP (Any one person) \$ 5,000    |
|           | AUTOMOBILE LIABILITY                                                                                               |               |                                     |                                      | COMBINED SINGLE LIMIT \$             |
|           | <input type="checkbox"/> ANY AUTO                                                                                  |               |                                     |                                      | BODILY INJURY (Per person) \$        |
|           | <input type="checkbox"/> ALL OWNED AUTOS                                                                           |               |                                     |                                      | BODILY INJURY (Per accident) \$      |
|           | <input type="checkbox"/> SCHEDULED AUTOS                                                                           |               |                                     |                                      | PROPERTY DAMAGE \$                   |
|           | HIRE AUTOS                                                                                                         |               |                                     |                                      | AUTO ONLY - EA ACCIDENT \$           |
|           | NON-OWNED AUTOS                                                                                                    |               |                                     |                                      | OTHER THAN AUTO ONLY: \$             |
|           |                                                                                                                    |               |                                     |                                      | EACH ACCIDENT \$                     |
|           |                                                                                                                    |               |                                     |                                      | AGGREGATE \$                         |
|           | GARAGE LIABILITY                                                                                                   |               |                                     |                                      | EACH OCCURRENCE \$                   |
|           | <input type="checkbox"/> ANY AUTO                                                                                  |               |                                     |                                      | AGGREGATE \$                         |
|           |                                                                                                                    |               |                                     |                                      | \$                                   |
|           | EXCESS LIABILITY                                                                                                   |               |                                     |                                      | WC STATUTORY LIMITS OTH-ER \$        |
|           | <input type="checkbox"/> UMBRELLA FORM                                                                             |               |                                     |                                      | EL EACH ACCIDENT \$ 500,000          |
|           | <input type="checkbox"/> OTHER THAN UMBRELLA FORM                                                                  |               |                                     |                                      | EL DISEASE - POLICY LIMIT \$ 500,000 |
| B         | WORKERS COMPENSATION AND<br>EMPLOYERS' LIABILITY                                                                   | AR932940301   | 09/10/99                            | 09/10/00                             | EL DISEASE - EA EMPLOYEE \$ 500,000  |
|           | THE PROPRIETOR/<br>PARTNERS/EXECUTIVE<br>OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL |               |                                     |                                      |                                      |
|           | OTHER                                                                                                              |               |                                     |                                      |                                      |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS  
Plastering or Stucco Work

## CERTIFICATE HOLDER

CITF001

City of Fayetteville  
113 W. Mountain Street  
Fayetteville AR 72701

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE  
EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL  
10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT,  
BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY  
OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Adrian Luttrell

## CERTIFICATE OF LIABILITY INSURANCE

CSR DB  
SYNDE-1

DATE (MM/DD/YY)

06/13/00

PRODUCER

gers Insurance Agency  
O. Box 2048  
gers AR 72757-2048

rian Luttrell  
ne No. 501-636-4551 Fax No.  
URED

Deihl Enterprises Inc.  
dba Synthetic Designs  
1110 E. Necessary Rd  
Rogers AR 72758

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION  
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE  
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR  
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

## COMPANIES AFFORDING COVERAGE

COMPANY  
A State Auto

COMPANY  
B Zenith Insurance Company

COMPANY  
C

COMPANY  
D

## COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD  
INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS  
CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS,  
EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| TYPE OF INSURANCE                                                                                                                                                                                                                     | POLICY NUMBER | POLICY EFFECTIVE<br>DATE (MM/DD/YY) | POLICY EXPIRATION<br>DATE (MM/DD/YY) | LIMITS                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|-------------------------------------|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| GENERAL LIABILITY<br><input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR<br>OWNER'S & CONTRACTOR'S PROT                                | SOC6963042    | 01/25/00                            | 01/25/01                             | GENERAL AGGREGATE \$ 1,000,000<br>PRODUCTS - COMP/OP AGG \$ 1,000,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>EACH OCCURRENCE \$ 1,000,000<br>FIRE DAMAGE (Any one fire) \$ 50,000<br>MED EXP (Any one person) \$ 5,000 |
| AUTOMOBILE LIABILITY<br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> NON-OWNED AUTOS |               |                                     |                                      | COMBINED SINGLE LIMIT \$<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE \$                                                                                                       |
| GARAGE LIABILITY<br><input type="checkbox"/> ANY AUTO                                                                                                                                                                                 |               |                                     |                                      | AUTO ONLY - EA ACCIDENT \$<br>OTHER THAN AUTO ONLY:<br>EACH ACCIDENT \$<br>AGGREGATE \$                                                                                                                                  |
| EXCESS LIABILITY<br><input type="checkbox"/> UMBRELLA FORM<br><input type="checkbox"/> OTHER THAN UMBRELLA FORM                                                                                                                       |               |                                     |                                      | EACH OCCURRENCE \$<br>AGGREGATE \$<br>\$                                                                                                                                                                                 |
| WORKERS COMPENSATION AND<br>EMPLOYERS' LIABILITY<br>B THE PROPRIETOR/<br>PARTNERS/EXECUTIVE<br>OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL                                                              | AR932940301   | 09/10/99                            | 09/10/00                             | WC STATU-<br>TORY LIMITS <input type="checkbox"/> OTH-<br>ER <input type="checkbox"/><br>EL EACH ACCIDENT \$ 500,000<br>EL DISEASE - POLICY LIMIT \$ 500,000<br>EL DISEASE - EA EMPLOYEE \$ 500,000                      |
| OTHER                                                                                                                                                                                                                                 |               |                                     |                                      |                                                                                                                                                                                                                          |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS  
Plastering or Stucco Work

## CERTIFICATE HOLDER

CITF001

City of Fayetteville  
113 W. Mountain Street  
Fayetteville AR 72701

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE  
EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL  
10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT,  
BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY  
OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Adrian Luttrell

ACORD CORPORATION 1988







STAFF REVIEW FORM

XX AGENDA REQUEST  
 \_\_\_\_\_ CONTRACT REVIEW  
 \_\_\_\_\_ GRANT REVIEW

For the Fayetteville City Council meeting of July 5, 2000

FROM:

Harold Dahlinger Building Maintenance Administrative Services  
 Name Division Department

**ACTION REQUIRED:** Award of Bid #00-50 for Phase II HVAC System, City Prosecutor's Office and Jail to Airworks, Division of Multi-Craft Inc. for \$ 26,860.00 with a 10% contingency of \$ 2,686.00.

**COST TO CITY:**

|                                      |                                      |                                               |
|--------------------------------------|--------------------------------------|-----------------------------------------------|
| \$ 29,546.00<br>Cost of this Request | \$ 34,800<br>Category/Project Budget | Phase II HVAC System<br>Category/Project Name |
| 4470.9470.5804.00<br>Account Number  | \$ 4800<br>Funds Used To Date        | Program Name                                  |
| 99071-1<br>Project Number            | \$ 30,000<br>Remaining Balance       | Sales Tax Capital<br>Fund                     |

**BUDGET REVIEW:** XX Budgeted Item \_\_\_\_\_ Budget Adjustment Attached

[Signature] Budget Coordinator [Signature] Administrative Services Director

**CONTRACT/GRANT/LEASE REVIEW:**

**GRANTING AGENCY:**

|                                             |                 |                                        |                 |
|---------------------------------------------|-----------------|----------------------------------------|-----------------|
| <u>[Signature]</u><br>Accounting Manager    | 6-19-00<br>Date | <u>[Signature]</u><br>Internal Auditor | 6-19-00<br>Date |
| <u>[Signature]</u><br>City Attorney         | 6-19-00<br>Date | _____<br>ADA Coordinator               | _____<br>Date   |
| <u>[Signature]</u> PR<br>Purchasing Officer | 6-19-00<br>Date |                                        |                 |

**STAFF RECOMMENDATION:** Award Bid #00-50 to Airworks, Division of Multi-Craft in the amount of \$ 26,860.00 with a 10 % contingency of \$ 2,686.00.

[Signature] Division Head 6/16/00  
Date

Cross Reference

New Item: Yes No

Prev Ord/Res #: \_\_\_\_\_

Orig Contract Date: \_\_\_\_\_

Orig. Contract Number: \_\_\_\_\_

\_\_\_\_\_  
Department Director Date

[Signature] 6/19/00  
Administrative Services Director Date

[Signature] 6/20/00  
Mayor Date

Description Phase II HVAC-Pros. Office/Jail Meeting Date 7/5/00

**Reference Comments:**

Accounting Manager

City Attorney

**Purchasing Officer**

ADA Coordinator

Internal Auditor

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

## DEPARTMENTAL CORRESPONDENCE

---

TO: The Fayetteville City Council

THRU: Fred Hanna, Mayor  
John Maguire, Administrative Services Director

FROM: Harold Dahlinger, Facilities Superintendent 

DATE: June 16, 2000

RE: AWARD OF BID #00-50 FOR PHASE II - HVAC SYSTEM PROSECUTOR'S  
OFFICE/JAIL

The present HVAC system is approximately 25 years of age and in very poor mechanical condition. Phase II of this project will replace three (3) of the existing units that supply both the City Jail and the Prosecuting Attorney's areas. This bid will also reroute and replace some of the existing ductwork due to changes made within these areas.

One bid was received on this project in the amount of \$ 26,860.00 submitted by Airworks, Division of Multi-Craft, Inc. of Springdale, AR.

Staff recommends awarding this contract to Airworks for \$ 26,860.00 with a contingency in the amount of \$ 2,686.00.



## INVITATION TO BID

| BID #<br>00-50                     | DATE ISSUED:<br>June 2, 2000                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | DATE AND TIME OF OPENING:<br>June 16, 2000, at 2:00 p.m. |            |           |
|------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|------------|-----------|
| BUYER:<br>City of Fayetteville, AR |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | DATE REQUIRED:<br>30 days ARO                            |            |           |
| F. O. B.<br>Fayetteville, AR       | BUYER'S PHONE #<br>(501) 575-8289                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | GUARANTEED DELIVERY DATE:<br>As required                 |            |           |
| ITEM #                             | DESCRIPTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | QUANTITY                                                 | UNIT PRICE | TOTAL     |
| 1                                  | <p>Per attached specifications:<br/>Furnishing of All Materials, Labor,<br/>and Related Items for the HVAC<br/>System in the Prosecutor's Office &amp;<br/>Jail.</p> <p><b>TOTAL BASE BID:</b></p> <p>5% bid bond to be submitted with bid<br/>100% performance bond<br/>required with successful contract.<br/>Performance bond must be<br/>executed by a resident local agent<br/>who shall be entitled to full<br/>commission paid local agents and<br/>who shall be licensed by the<br/>Insurance Commissioner to<br/>represent the surety company<br/>executing the bond and filling with<br/>the bond the agent's power of<br/>attorney as his authority. The mere<br/>countersigning of a bond will not be<br/>sufficient.</p> <p>Contractor's License No#<br/>0025810301 HVAC License # 135450</p> <p><b>RESTRICTIONS OR EXCEPTIONS<br/>TO THE BID MUST BE NOTED:</b></p> | 1                                                        |            | 26,860.00 |

## EXECUTION OF BID

Upon signing this Bid, the bidder certifies that they have read and agree to the requirements set forth in this bid proposal, including specifications, terms and standard conditions, and pertinent information regarding the articles being bid on, and agree to furnish these articles at the prices stated.

|                                             |                                                                                                              |  |                                   |                       |
|---------------------------------------------|--------------------------------------------------------------------------------------------------------------|--|-----------------------------------|-----------------------|
| UN<br>SIGNED<br>BIDS<br>WILL BE<br>REJECTED | NAME OF FIRM:<br>Air Works, a division of MCC, Inc.                                                          |  | PHONE:<br>751-7411                | FED ID#<br>71-0423846 |
|                                             | BUSINESS ADDRESS:<br>2300 N. Lowell Rd.                                                                      |  | CITY AND STATE:<br>Springdale, AR |                       |
|                                             | AUTHORIZED SIGNATURE:<br> |  | TITLE:<br>Division Manager        |                       |
|                                             |                                                                                                              |  | DATE:<br>2/16/00                  |                       |



CITY OF FAYETTEVILLE, ARKANSAS  
Terms and Conditions

1. All bids shall be submitted in a sealed envelope and must be submitted on forms provided by the City.
2. The item bid and the bid number shall be stated on the face of the sealed bid envelope.
3. ~~Bids received after the date and time set for receiving bids will not be considered.~~
4. The City reserves the right to accept or reject any or all bids, waive formalities in the bidding and make a bid award deemed to be in the best interest of the City. The City shall be able to purchase more or less than the quantity indicated subject to availability of funds.
5. The bid price shall remain good and firm until project is completed.
6. All products delivered shall comply with applicable standards of quality.
7. Any exceptions to the requirements of the City of Fayetteville must be noted on the Bid Form.
8. Prices shall include all labor, materials, overhead, profit, insurance, etc., to cover the furnishing of the items bid.
9. Each bidder shall state on the face of the bid form the anticipated number of days from the date of receipt of an order for delivery of equipment and installation to the City of Fayetteville.
10. Copy of the warranty shall accompany the bid, and any exceptions to the warranty shall be clearly noted on the bid form.
11. Bidders must provide the City with their bids signed by an employee having legal authority to submit bids on behalf of the bidder. The entire cost of preparing and providing responses shall be borne by the bidder.
12. The City reserves the right to request any additional information it deems necessary from any or all bidders after the submission deadline.
13. The request for bid is not to be construed as an offer, a contract, or a commitment of any kind; nor does it commit the city to pay for any costs incurred by bidder in preparation of bid.
14. The City will not be responsible for misdirected bids. Vendor should call the Purchasing Office at (501) 575-8289 to insure receipt of their bid documents prior to opening time and date listed on the bid form.

15. If products and/or components other than those described in this bid document are proposed, the bidder must include complete descriptive literature and technical specifications. All requests for additional information must be received within five working days following the request.

16. Bids must be hand delivered or received by mail in the Purchasing Office, Room 306, 113 W. Mountain St. Fayetteville, AR 72701, on or before the time of closing listed on the face of the bid.

\*17. Public improvement bids with a total of \$20,000 or more shall submit certificates of insurance within 10 days of notice of bid award. Certificates of insurance are to be addressed to the City of Fayetteville, showing that the contractor carries the following insurance which shall be maintained throughout the term of the bid. Any work sublet, the contractor shall require the subcontractor similarly to provide the same insurance coverage. In case any employee engaged in work on the project is not protected under Workers' Compensation, the Contractor shall provide, and shall cause each subcontractor to provide, adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Workers' Compensation:

Comprehensive General & Automotive Liability:

Property Damage Liability:

Statutory Amount

\$250,000 each person.

\$500,000 aggregate.

\$100,000 aggregate.

\*18. Public improvement bids with a total of \$20,000 or more require a 5% bid bond and if awarded, a 100% performance and payment bond to be submitted before notice to proceed is given.

\*19. Public improvement bids exceeding \$20,000 or more require a contractor's license.

\*20. The City shall pay Contractor based on unit prices indicated in contractor's bid proposal. Progress payments will be made after approval and acceptance of work and submission of invoice. Payments will be made approximately 30 days after receipt of invoice.

\*21. Contractor shall not assign his duties under the terms of this agreement. All work shall be coordinated directly with the Project Manager, or their designee.

\*Applies to construction public improvement projects only, unless otherwise noted.

CONTRACT

This contract executed this 16th day of June, 2000, between the City of Fayetteville, Arkansas, hereinafter called the City, and Air Works, a division of Multi-Craft Contractors, Inc., hereinafter called the Contractor, and having an address at 2300 North Lowell Road, Springdale, AR 72765.

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. The Contractor at his own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per bid 00-50 as stated in CONTRACTOR'S PROPOSAL, and in accordance with specifications attached hereto and made a part hereof under Bid #00-50, all included herein as if spelled out word for word.
2. The City shall pay the Contractor based on prices indicated in Contractor's Proposal. Progress payments will be made 30 days after approval and acceptance of work and submission of invoice. Amount of contract not to exceed \$ 26,860.00.
3. The Contract documents which comprise the contract between the City and the Contractor consist of this Contract and the following documents attached hereto, and made a part hereof:
  - A. Bid form identified as Invitation to Bid 00-50 with the specifications and conditions typed thereon.
  - B. The Contractor's proposal.
  - C. The Notice to Prospective Bidders and the Bid Tabulation.
4. These Contract documents constitute the entire agreement between the City and the Contractor and may be modified only by a duly executed written instrument signed by the City and the Contractor.
5. Contractor shall not assign his duties under the terms of this agreement.
6. Contractor agrees to hold the City harmless and indemnify the City, against any and all claims for property damage, personal injury or death, arising from Contractor's performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.



7. The Contractor shall furnish a certificate of insurance addressed to the Owner, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet, the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under Worker's Compensation Insurance, the Contractor shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Comprehensive General Public Liability, \$1,000,000

Comprehensive Automobile Liability (owned, hired and non-owned Vehicles) with bodily injury limits of \$100,000 and property damage limit of \$50,000 for each accident;

Standard Workmen's Compensation and Employer's Liability covering with statutory limits;

The premiums for all insurance and the bond required herein shall be paid by the Contractor.

8. If contract exceeds \$20,000, Contractor agrees to furnish a Performance Bond, approved by the City, guaranteeing the performance of this contract, for not less than one hundred percent of the amount of this contract. Said performance bond shall be conditioned on full and complete performance of this contract and acceptance by the City of Fayetteville for the payment of all labor and materials entering into or incident to the proposed improvements. The Contractor agrees to furnish proof of licensure as required under the terms of Act 150 of the 1965 Acts of the Arkansas Legislature.
9. Contractor agrees to begin work within ten (10) days of notice to proceed and complete the work within the time frame outlined in the bid document. Liquidated damages of \$100 per day shall be assessed at the option of the City, not as a penalty, beginning on the first day following the completion time to cover additional costs.
10. All work called for herein shall be coordinated directly with the Project Manager or their designee, at 501/575-8361.



11. This contract may be terminated by the City with 10 days written notice.
12. Contractor shall be responsible for meeting compliance with ADA regulations.

WITNESS OUR HANDS THIS 16th DAY OF June, 2000.

CITY OF FAYETTEVILLE,  
FAYETTEVILLE, ARKANSAS

BY \_\_\_\_\_  
MAYOR

ATTEST: CITY CLERK

\_\_\_\_\_

Air Works, a division of Multi-Craft  
FIRM NAME Contractors, Inc.

ATTEST: SECRETARY

\_\_\_\_\_

BY Mark Jones  
NAME AND TITLE

2300 Lowell Road  
Springdale, AR 72765  
BUSINESS ADDRESS



AGENDA REQUEST FORM

Council Meeting of July 5, 2000

M Don Bunn Public Works Admin Public Works  
Name Division Department

**ACTION REQUIRED** Approval of Change Order No. 2 (Final) in connection with the Dickson Street Water and Sewer Relocations in the amount of \$46,279.00 and a budget adjustment.

**COST TO CITY**

|                                             |                                                 |                                                 |
|---------------------------------------------|-------------------------------------------------|-------------------------------------------------|
| <u>\$ 46,279.00</u><br>Cost of this Request | <u>\$ 660,000.00</u><br>Category/Project Budget | <u>Water and Sewer</u><br>Category/Project Name |
| <u>4470 9470 5808 00</u><br>Account Number  | <u>\$ 629,376.00</u><br>Funds Used to Date      | <u></u><br>Program Name                         |
| <u>99027-0010</u><br>Project Number         | <u>\$ 30,624.00</u><br>Funds Remaining          | <u>Sales Tax</u><br>Fund Category               |

**BUDGET/CONTRACT REVIEW**

| <u>Budgeted Item</u>      | <u>Budget Adj.</u> | <u>Attached</u>                               |
|---------------------------|--------------------|-----------------------------------------------|
| <u>et Coordinator</u>     | <u>Date</u>        | <u>Admin Services Director</u><br><u>Date</u> |
| <u>Accounting Manager</u> | <u>Date</u>        | <u>ADA Coordinator</u><br><u>Date</u>         |
| <u>City Attorney</u>      | <u>Date</u>        | <u>Internal Auditor</u><br><u>Date</u>        |
| <u>Purchasing Officer</u> | <u>Date</u>        |                                               |

**STAFF RECOMMENDATION** It is the recommendation of the Staff that the Council approve Change Order No. 2 (Final) in the amount of \$46,279.00 and a budget adjustment

  
Ass't Public Works Director

6-21-00  
Date

**Cross Reference**

Department Director

Date

New Item: Yes No

Admin Services Director

Date

Prev Ord/Res # 110-99

Mayor

Date

Orig. Contract # 689

Orig. Contract Date 8-17-99



## DEPARTMENTAL CORRESPONDENCE

June 20, 2000

**To:** Fayetteville City Council**From:** Don Bunn, Assistant Public Works Director**Thru:** Charles Venable, Public Works Director

Mayor Fred Hanna

**Subject:** Change Order No. 2 (Final)  
Dickson Street Water and Sewer Relocations

Attached for your review and approval is Change Order No. 2 (Final) in connection with the relocation of water and sewer facilities on Dickson Street. The total amount of the Change Order is \$ 46,279.00. The change order adds six (6) new line item quantities to the bid (\$10,610.00) and adjusts the remaining line items to reflect final as-built quantities (35,669.00),

A summary of the contract changes is:

|                                      |               |
|--------------------------------------|---------------|
| Original Contract Price              | \$ 598,961.00 |
| Change Order No. 1 (Administrative)* | 30,415.00     |
| Change Order No. 2 (Final)           | 46,279.00     |
| Final Contract Price                 | \$ 675,655.00 |
| Approved Amount (Res. 110-99)        | \$ 660,000.00 |
| Required Budget Adjustment Amount    | \$ 15,655.00  |

It is the recommendation of the Staff that the Council approve Change Order No. 2 (Final) in the amount of \$46,279.00 and approve a budget adjustment (attached).

\* Change Order No. 1 added approximately 195 feet of 6-inch water line in order to complete a connection between Dickson Street and Watson Street along Rollston Street.





The Benham Group

TO: United Plumbing, LLC  
 FROM: David A. Gilbert, P.E.  
 C: Don Bunn, City of Fayetteville  
 DATE: June 15, 2000

RE: Dickson St. Improvement Project – Water and Sewer Modifications  
 TBG #119804300

### Change Order #2

The following changes to the contract are hereby authorized by the owner. All quantities are final, and are based on verified quantities of materials installed:

#### Construction Plans

1. Sheet W6; Water Line Modifications: Revise connection of new 12" main to existing water line in alley of South Thompson Avenue, due to field conditions.
 

|                                                                                               |                  |
|-----------------------------------------------------------------------------------------------|------------------|
| 6" x 2" tapped tee                                                                            | 1 @ \$330.00 ea. |
| 6" plug                                                                                       | 1 @ \$180.00 ea. |
| Miscellaneous fittings (including threaded brass elbows, CTS adapters, brass connecting pipe) | LS @ \$660.00    |
| Net increase (decrease)                                                                       | \$1,170.00       |
  
2. Sheet S3; Sewer Line Modifications: Install sanitary sewer service line to 205 W. Dickson, per request of City water and sewer superintendent.
 

|                                         |                   |
|-----------------------------------------|-------------------|
| Sewer service, including tap, line, cap | 1 LS @ \$1,140.00 |
|-----------------------------------------|-------------------|
  
3. Water Line Modifications: Remove existing fire hydrants. In some locations, the new hydrants were added in locations which did not force the removal of existing hydrants on the 6" main. The old hydrants remained in service for a period of time before the new hydrants were placed in service. At Arkansas and Dickson, the City had placed a new hydrant between the time the survey was performed and the beginning of construction. In this location, where a new hydrant had been specified, no new hydrant was placed, but the old hydrant was removed.

|                                      |                         |
|--------------------------------------|-------------------------|
| <u>Remove existing fire hydrants</u> | <u>4 @ \$500.00 ea.</u> |
| Net increase (decrease)              | \$2,000.00              |

4. Water Line Modifications: Add miscellaneous fittings required to complete the project.

|                                |                   |
|--------------------------------|-------------------|
| 12" solid sleeve               | 7 @ \$350.00 ea.  |
| 6" solid sleeve                | 4 @ \$300.00 ea.  |
| 8" D.I. cap                    | 1 @ \$200.00ea.   |
| <u>Net increase (decrease)</u> | <u>\$3,850.00</u> |

5. Sewer Line Modifications: Add five sewer taps by Contractor's forces, per arrangement with water and sewer department.

|                                 |                         |
|---------------------------------|-------------------------|
| <u>Sewer taps on city mains</u> | <u>5 @ \$200.00 ea.</u> |
| Net increase (decrease)         | \$1,000.00              |

6. Additional mobilization costs, due to delay in AHTD permit to tie into the water main in College Avenue.

|                         |                   |
|-------------------------|-------------------|
| Additional mobilization | 1 LS @ \$1,450.00 |
|-------------------------|-------------------|

7. The following changes in contract quantity are hereby authorized, to reflect verified quantities installed on the project:

See attached spreadsheet for quantity reconciliation.

|                         |             |
|-------------------------|-------------|
| Net increase (decrease) | \$35,669.00 |
|-------------------------|-------------|

|                                 |                    |
|---------------------------------|--------------------|
| Contract price before change    | \$629,376.00       |
| <u>Cost of this change</u>      | <u>\$46,279.00</u> |
| Contract price including change | \$675,655.00       |

|                                                   |                   |
|---------------------------------------------------|-------------------|
| Substantial completion date before change         | February 22, 2000 |
| Final completion date before change               | March 8, 2000     |
| <u>Contract extension included in this change</u> | <u>76 days</u>    |
| New substantial completion date                   | February 22, 2000 |
| New final completion date                         | May 23, 2000      |

**End of Change Order #2**

*Change order is not valid unless countersigned by Contractor, Engineer, and Owner below.*

Ferry Krug Contractor

David Hillert, P.E., for the Benham Group Engineer

\_\_\_\_\_  
Owner



06/14/2000

## Reconciliation of Contract Quantities

United Plumbing, LLC

Dickson Street Improvement Project - Water and Sewer Modifications

**Note: Contract quantity reflects change order #1**

| Item                     | Contract<br>Quantity | Unit | Verified<br>installed | Variance | Unit Cost   | Extension     |
|--------------------------|----------------------|------|-----------------------|----------|-------------|---------------|
| R&D existing pavement    | 3,110                | SY   | 3,220                 | 110      | \$ 28.00    | \$ 3,080.00   |
| 12" water main           | 1,566                | LF   | 1,560                 | 4        | \$ 45.00    | \$ 180.00     |
| 12"x8" reducer           | 1                    | EA   | 1                     | -        | \$ 350.00   | \$ -          |
| 12"x6" reducer           | 1                    | EA   | -                     | (1)      | \$ 350.00   | \$ (350.00)   |
| 12"x6" T                 | 9                    | EA   | 10                    | 1        | \$ 600.00   | \$ 600.00     |
| 12" X                    | 1                    | EA   | -                     | (1)      | \$ 900.00   | \$ (900.00)   |
| 12" - 45 deg. Bend       | 8                    | EA   | 8                     | -        | \$ 500.00   | \$ -          |
| 12" butterfly valve      | 8                    | EA   | 8                     | -        | \$ 1,850.00 | \$ -          |
| 12"x6" TSV               | 7                    | EA   | 9                     | 2        | \$ 2,500.00 | \$ 5,000.00   |
| 12"x2" TS w/ corp. stop  | 11                   | EA   | 12                    | 1        | \$ 700.00   | \$ 700.00     |
| 12"x1" TS w/ corp. stop  | 31                   | EA   | 31                    | -        | \$ 300.00   | \$ -          |
| 8"x8" TSV                | 1                    | EA   | 1                     | -        | \$ 2,400.00 | \$ -          |
| 6" water main            | 610                  | LF   | 591                   | (19)     | \$ 140.00   | \$ (2,660.00) |
| 6" Cap                   | 14                   | EA   | 14                    | -        | \$ 150.00   | \$ -          |
| 6"x4" reducer            | 2                    | EA   | -                     | (2)      | \$ 200.00   | \$ (400.00)   |
| 6"x3" reducer            | 1                    | EA   | -                     | (1)      | \$ 200.00   | \$ (200.00)   |
| 6"x6" T                  | 3                    | EA   | 4                     | 1        | \$ 300.00   | \$ 300.00     |
| 6"x4" T                  | 2                    | EA   | 5                     | 3        | \$ 300.00   | \$ 900.00     |
| 6" - 45 deg. Bend        | 7                    | EA   | 6                     | (1)      | \$ 500.00   | \$ (500.00)   |
| 6" GV                    | 11                   | EA   | 12                    | 1        | \$ 1,000.00 | \$ 1,000.00   |
| 6"x6" TSV                | 3                    | EA   | 2                     | (1)      | \$ 5,000.00 | \$ (5,000.00) |
| 6"x1" TSV                | 3                    | EA   | 10                    | 7        | \$ 200.00   | \$ 1,400.00   |
| 4" water main            | 20                   | LF   | 41                    | 21       | \$ 200.00   | \$ 4,200.00   |
| 4" cap                   | 2                    | EA   | 5                     | 3        | \$ 200.00   | \$ 600.00     |
| 4" GV                    | 2                    | EA   | 2                     | -        | \$ 500.00   | \$ -          |
| 4"x4" TSV                | 2                    | EA   | 5                     | 3        | \$ 4,000.00 | \$ 12,000.00  |
| 1.5" cap                 | 1                    | EA   | 1                     | -        | \$ 100.00   | \$ -          |
| 1.5"x1" TS w/ corp. stop | 1                    | EA   | 1                     | -        | \$ 200.00   | \$ -          |



|                                   |       |    |       |       |    |           |    |            |
|-----------------------------------|-------|----|-------|-------|----|-----------|----|------------|
| 2" PE service tubing              | 269   | LF | 302   | 33    | \$ | 100.00    | \$ | 3,300.00   |
| 2" curb stop                      | 6     | EA | 8     | 2     | \$ | 300.00    | \$ | 600.00     |
| 2"x1" 2-way wyes                  | 3     | EA | 2     | (1)   | \$ | 400.00    | \$ | (400.00)   |
| 2"x1" 3-way wyes                  | 2     | EA | 4     | 2     | \$ | 600.00    | \$ | 1,200.00   |
| 1" PE service tubing              | 866   | LF | 952   | 86    | \$ | 50.00     | \$ | 4,300.00   |
| 1" curb stop                      | 43    | EA | 40    | (3)   | \$ | 200.00    | \$ | (600.00)   |
| 1" Cu service tubing              | 105   | LF | 37    | (68)  | \$ | 30.00     | \$ | (2,040.00) |
| Single meter set                  | 1     | EA | 4     | 3     | \$ | 3,000.00  | \$ | 9,000.00   |
| Double meter set                  | 1     | EA | -     | (1)   | \$ | 3,000.00  | \$ | (3,000.00) |
| Fire Hydrant                      | 7     | EA | 7     | -     | \$ | 2,200.00  | \$ | -          |
| Repaint existing fire hydrant     | 2     | EA | 3     | 1     | \$ | 50.00     | \$ | 50.00      |
| 10" PVC sewer line                | 602   | LF | 585   | (17)  | \$ | 50.00     | \$ | (850.00)   |
| Remove exist. SS Service          | 1     | EA | 1     | -     | \$ | 500.00    | \$ | -          |
| 4" PVC sewer line                 | 426   | LF | 430   | 4     | \$ | 65.00     | \$ | 260.00     |
| Cleanout                          | 2     | EA | 1     | (1)   | \$ | 200.00    | \$ | (200.00)   |
| Sewer service wye                 | 2     | EA | 19    | 17    | \$ | 400.00    | \$ | 6,800.00   |
| Manhole on exist. SS line         | 1     | EA | 1     | -     | \$ | 2,000.00  | \$ | -          |
| Bore under railroad               | 1     | EA | -     | (1)   | \$ | 6,000.00  | \$ | (6,000.00) |
| Pavement repair                   | 3,110 | SY | 3,220 | 110   | \$ | 6.00      | \$ | 660.00     |
| Sidewalk repair                   | 300   | SY | 300   | -     | \$ | 50.00     | \$ | -          |
| Curb repair                       | 180   | LF | 180   | -     | \$ | 20.00     | \$ | -          |
| Rock excavation                   | 100   | CY | -     | (100) | \$ | 0.01      | \$ | (1.00)     |
| Traffic control                   | 1     | LS | 1     | -     | \$ | 30,000.00 | \$ | -          |
| Trench safety                     | 1     | LS | 1     | -     | \$ | 5,000.00  | \$ | -          |
| Mobilization                      | 1     | LS | 1     | -     | \$ | 5,000.00  | \$ | -          |
| Additional line items:            |       |    |       | -     | \$ | -         | \$ | -          |
| 4" DI 45 deg bend (sewer)         | 2     | EA | 4     | 2     | \$ | 425.00    | \$ | 850.00     |
| 6" DI plug                        | 1     | EA | 1     | -     | \$ | 250.00    | \$ | -          |
| 8" Dresser coupling (RR crossing) | 2     | EA | 2     | -     | \$ | 400.00    | \$ | -          |
| 2" gate valve                     | 1     | EA | 2     | 1     | \$ | 475.00    | \$ | 475.00     |
| 6" anchor coupling                | 1     | EA | 4     | 3     | \$ | 300.00    | \$ | 900.00     |
| 2" compression coupling           | 1     | EA | 2     | 1     | \$ | 275.00    | \$ | 275.00     |
| 4" Foster adapter                 | 1     | EA | 1     | -     | \$ | 300.00    | \$ | -          |
| Change order #1:                  |       |    |       | -     | \$ | -         | \$ | -          |
| 12" x 8" tee                      | 1     | EA | 1     | -     | \$ | 600.00    | \$ | -          |

|                                                                                | 1   | EA | 1   | - | \$ | 1,000.00 | \$ | -         |
|--------------------------------------------------------------------------------|-----|----|-----|---|----|----------|----|-----------|
| 8" gate valve                                                                  | 1   | EA | 1   | - | \$ | 1,000.00 | \$ | -         |
| 8" PVC water main                                                              | 15  | LF | 16  | 1 | \$ | 140.00   | \$ | 140.00    |
| 6" PVC in Thompson Ave.                                                        | 195 | LF | 195 | - | \$ | 75.00    | \$ | -         |
| 1" cap                                                                         | 2   | EA | 2   | - | \$ | 100.00   | \$ | -         |
| Additional labor at railroad                                                   | 1   | LS | 1   | - | \$ | 2,000.00 | \$ | -         |
| <b>Change order #2:</b>                                                        |     |    |     | - |    |          | \$ | -         |
| 6" x 2" tapped tee                                                             | 1   | EA | 1   | - | \$ | 330.00   | \$ | -         |
| 6" plug                                                                        | 1   | EA | 1   | - | \$ | 180.00   | \$ | -         |
| misc. fittings for conn. @ S. Thompson                                         | 1   | LS | 1   | - | \$ | 660.00   | \$ | -         |
| Sewer taps on city main                                                        | 5   | EA | 5   | - | \$ | 200.00   | \$ | -         |
| Ozark Nat. Foods ss line                                                       | 1   | LS | 1   | - | \$ | 1,140.00 | \$ | -         |
| Remove ex. Fire hydrants                                                       | 4   | EA | 4   | - | \$ | 500.00   | \$ | -         |
| 12" solid sleeve                                                               | 7   | EA | 7   | - | \$ | 350.00   | \$ | -         |
| 6" solid sleeve                                                                | 4   | EA | 4   | - | \$ | 300.00   | \$ | -         |
| 8" cap                                                                         | 1   | EA | 1   | - | \$ | 200.00   | \$ | -         |
| Additional mobilization                                                        | 1   | LS | 1   | - | \$ | 1,450.00 | \$ | -         |
| <b>Total of variances in quantities</b>                                        |     |    |     |   | \$ |          | \$ | 35,669.00 |
| <b>(Reconciliation of installed quantities vs. contract bidding estimates)</b> |     |    |     |   |    |          |    |           |

## STAFF REVIEW FORM

AGENDA REQUEST  
 CONTRACT REVIEW  
 GRANT REVIEW

Award Contract to  
 Harrison Davis Const.  
 to construct two T-Hangars

For the Fayetteville City Council meeting of July 5, 2000

## FROM:

Dale Frederick  
 Name

Airport  
 Division

General Gvmt.  
 Department

**ACTION REQUIRED:** Request the award of a contract to Harrison Davis Construction Co., Inc. for the low bid of \$425,970 to construct two eight-bay T-Hangars at Fayetteville Municipal Airport/Drake Field. Contract was bid for two hangars as a cost savings effort. Engineer has recommended a 15% contingency (\$63,895.50), making the requested amount to be approved \$489,865.50. Total amount falls under the engineer's estimate of \$565,000. Approval is requested for an associated Budget Adjustment in the amount of \$193,854. Attached are 5 original contracts, please return 4 signed to Airport.

## COST TO CITY:

\$489,865.50  
 Cost of this Request  
5550-3960-5804.00  
 Account Number  
98056-1  
 Project Number

\$409,278  
 Category/Project Budget  
\$113,266  
 Funds used to date  
\$296,012  
 Remaining Balance

T-Hangar Unit  
 Category/Project Name  
Airport Improvements  
 Program Name  
Airport  
 Fund

## BUDGET REVIEW:

Attached  
[Signature]  
 Budget Coordinator

☒ Budgeted Item

☒ Budget Adjustment

[Signature]  
 Administrative Services Director

## CONTRACT/GRANT/LEASE REVIEW:

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

6-20-00  
 Date  
6-21-00  
 Date  
6-21-00  
 Date

## GRANTING AGENCY:

[Signature]  
 ADA Coordinator  
[Signature]  
 Internal Auditor

6-21-00  
 Date  
6-21-00  
 Date

**STAFF RECOMMENDATION:** The Airport Bd. recommended approval of this contract at their June 8<sup>th</sup> meeting.

[Signature]  
 Division Head  
[Signature]  
 Department Director  
[Signature]  
 Administrative Services Director  
[Signature]  
 Mayor

6-20-00  
 Date  
[Signature]  
 Date  
[Signature]  
 Date  
[Signature]  
 Date

## Cross Reference

New Item: ☒ Yes ☐ No  
 Prev. Ord/Res#: \_\_\_\_\_  
 Orig Cont. Date: \_\_\_\_\_  
 Contract #: \_\_\_\_\_



STAFF REVIEW FORM

Page 2

Description:

Meeting Date: July 5, 2000

Approval of low bid contract with Harrison Davis Construction to construct two eight-bay T-Hangars at Fayetteville Municipal Airport/Drake Field, and approval of associated Budget Adjustment.

Comments:

Budget Coordinator

Reference Comments:

Accounting Manager

Reference Comments:

City Attorney

Reference Comments:

Purchasing Officer

Reference Comments:

ADA Coordinator

Reference Comments:

Internal Auditor

Reference Comments:

# FAYETTEVILLE

A. 6. Page 3

AIRPORT DEPARTMENT  
THE CITY OF FAYETTEVILLE, ARKANSAS

**TO:** CITY COUNCIL MEMBERS

**THRU:** FRED HANNA, MAYOR

**THRU:** ALETT LITTLE, ECONOMIC DEVELOPMENT DIRECTOR *asl*

---

**FROM:** DALE FREDERICK, AIRPORT MANAGER *DF*

**DATE:** JUNE 20, 2000

**SUBJECT:** CONTRACT WITH HARRISON DAVIS CONSTRUCTION  
TO CONSTRUCT TWO EIGHT-BAY T-HANGARS  
AT FAYETTEVILLE MUNICIPAL AIRPORT/DRAKE FIELD

The Economic Development and Airport Departments request approval to award the contract to the Harrison Davis Construction Co., Inc. for the low bid of \$425,970.00 to construct two eight-bay T-Hangars at Fayetteville Municipal Airport/Drake Field. The project was bid for two hangars as a cost savings effort. The engineer has recommended a 15% contingency (\$63,895.50), making the amount to be approved \$489,865.50. The total amount falls under the engineer's estimate of \$565,000.

Approval of an associated Budget Adjustment in the amount of \$193,854 is also requested.

The Airport Board recommended approval of this contract at their June 8<sup>th</sup> meeting.

DF/lp

Attachment: Five Original Contracts  
Staff Review Forms  
Engineer's Recommendation and Bid Tabulation  
Notice of Selection  
Budget Adjustment  
Purchase Requisition  
Project Manual (Bid Specifications)



June 8, 2000

FY002151

Dale Frederick  
Airport Manager, Drake Field  
4500 South School  
Suite F  
Fayetteville, Arkansas 72701

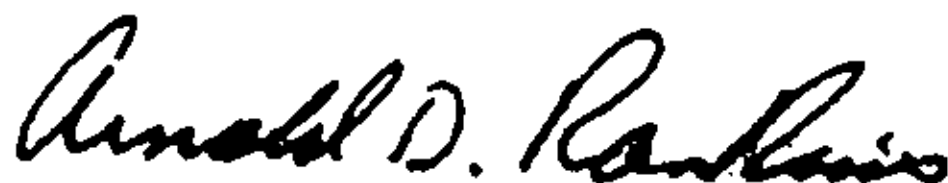
Re: Bids on 8 Bay "T" Hangars "F" & "G"

Dear Mr. Frederick:

After reviewing the Bids, I recommend that the contract be awarded to the Low Bidder Harrison Davis Construction Co., Inc. for his bid of \$425,970.00. Enclosed find a copy of the Certified Bid Tabulation.

If you have any questions, please contact me.

Sincerely,  
McCLELLAND CONSULTING ENGINEERS, INC.



Arnold D. Rankins, P.E., R.L.S.  
Project Manager

BID TAB

CITY OF FAYETTEVILLE  
DRAKE FIELD 8 BAY "T" HANGARS "F" AND "G"  
MCE PROJECT NO. FY002151

BID DATE: JUNE 7, 2000 2:00 PM

| BIDDER NO.         |                                       | BIDDER NO.                          | BIDDER NO.              |
|--------------------|---------------------------------------|-------------------------------------|-------------------------|
| CONTRACTOR         | HARRISON DAVIS CONSTRUCTION CO., INC. | HN P. MARINONI CONSTRUCTION CO., IN | LILLICH & BOSSLER, INC. |
| License Number     | 16150201                              | 33500401                            | 65810401                |
| TOTAL LUMP SUM BID | \$425,970.00                          | \$439,700.00                        | \$477,330.00            |

CERTIFIED BY:

*Arnold D. Rankins*  
ARNOLD D. RANKINS, P.E.

June 7, 2000

## NOTICE OF SELECTION

RECEIVED

JUN 20 2000

AIRPORT

TO: Harrison Davis Construction Co., Inc.

PROJECT DESCRIPTION: 8 Bay "T" Hangars "F" & "G" for Drake Field

The OWNER has considered the BID submitted by you for the above described WORK in response to its Advertisement for Bids dated May 31, 2000 and Instructions to Bidders.

You are hereby notified that your BID of \$ 425,970.00 has been selected for consideration by the Fayetteville City Council.

You are required by the Instructions to Bidders to execute the Contract and furnish the required CONTRACTOR'S Performance BOND, Payment BOND, and certificates of insurance within fifteen (15) calendar days from the date of this Notice to you. Furnish six original copies of each document leaving the Contract and Bonds undated.

If you fail to execute said Contract and to furnish said BONDS and certificates within fifteen (15) days from the date of this Notice, said OWNER will be entitled to consider all this rights arising of your BID BOND. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF SELECTION to the OWNER.

Dated this 20th day of June, 2000.

McCLELLAND CONSULTING ENGINEERS, INC.

By Arnold D. Rankins  
Arnold D. Rankins  
Title Project Engineer

## ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF SELECTION is hereby acknowledged

by \_\_\_\_\_,

this the \_\_\_\_\_ day of \_\_\_\_\_, 2000.

By \_\_\_\_\_

Title \_\_\_\_\_



# CITY OF FAYETTEVILLE

Purchase Requisition

(not a purchase order)

Requisition No.:

Date:

P.O. Number:

Expected Delivery Date:

or #:

73490

Vendor Name:

Marvin Davis Construction, Inc.

Mail:

Yes ☒ No ☐

SS:

FOB Point:

Taxable: Yes ☐ No ☐

City:

Fayetteville

State:

AR

Zip:

72703

Ship To Code:

65

Division Head Approval:

Requester:

Terrie Owens

\*Requester's Employee#:

102

Extension:

642

Description:

Construction of Two  
Eight-bay T-Hangars, as  
per low bid.

Quantity

Unit  
of Issue

Unit  
Cost

Extended  
Cost

Account Number:

Project/Subproject  
Number

Inventory  
#

Fixed  
Asset #

1

1

\$425,970

\$425,970

5550-3960-5804.00

98056-1

SHIPPING/HANDLING

Special Instructions:

Subtotal: \$425,970.00

Tax:

TOTAL: \$425,970.00

Approvals:

Mayor:

Admin. Services Director:

(for purchasing office use only)

Department Director:

Budget Coordinator:

Purchasing Manager:

Data Processing Mgr:

## DOCUMENT 00500

## CONTRACT

THIS AGREEMENT, made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2000, by and between Harrison Davis Construction Co. Inc. herein called the Contractor, and the City of Fayetteville, Arkansas, hereinafter called the Owner:

## WITNESSETH:

That the Contractor, for the consideration hereinafter fully set out, hereby agrees with the Owner as follows:

1. That the Contractor shall furnish all the materials, and perform all of the work in manner and form as provided by the following enumerated Drawings, Specifications, and Documents, which are attached hereto and made a part hereof, as if fully contained herein and are entitled 8 Bay "T" Hangars "F" & "G" for Drake Field, dated March 2000.

Advertisement for Bids  
Instructions to Bidders  
Bid and acceptance thereof  
Performance Bond

Payment Bond  
General Conditions  
Supplemental Conditions  
Specifications  
Drawings (See Sheet Index below)

## SHEET INDEX

| <u>Sheet No.</u> | <u>Description</u>                                   |
|------------------|------------------------------------------------------|
| 1                | Cover                                                |
| 2                | Site Plan                                            |
| 3                | Floor Plan - "T" Hangars "F" and "G"                 |
| 4                | Elevation and cross sections "T" Hangars "F" and "G" |
| 5                | Foundation Plan - "T" Hangar "F"                     |
| 6                | Foundation Plan - "T" Hangar "G"                     |
| E-1              | Electrical Plan - "T" Hangar "G"                     |
| E-2              | Electrical Details                                   |

2. That the Owner hereby agrees to pay to the Contractor for the faithful performance of this Agreement, subject to additions and deductions as provided in the Specifications or Bid, in lawful money of the United States, the amount of:  
Four Hundred Twenty Five Thousand Nine Hundred Seventy Dollars (\$ 425,970.00 ).
3. The Work will be substantially completed within 120 days after the date when the Contract Time commences to run as provided in Notice to Proceed, and completed and ready for final payment in accordance with the General Conditions within 120 days after the date when the Contract Time commences to run. A notice to proceed, for materials purchasing only, shall be issued by the Owner to the Contractor after execution of the Contract documents. A



separate notice to proceed will be issued by the Owner to the Contractor to begin construction, at which time the ~~ninety~~ <sup>ADP</sup> (120) calendar day construction period shall begin.

4. Liquidated Damages: Owner and Contractor recognize that time is of the essence of this Agreement and the Owner will suffer financial loss if the Work is not completed within the times specified in above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner **Five Hundred Dollars (\$500.00)** for each day that expires after the time specified in Paragraph 3 for Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the time specified in Paragraph 3 above for final payment or any proper extension thereof granted by Owner, Contractor shall pay Owner **Five Hundred Dollars (\$500.00)** for each day that expires after the time specified in Paragraph 3 for completion and readiness for final payment.
5. That within 30 days of receipt of an approved payment request, the Owner shall make partial payments to the Contractor on the basis of a duly certified and approved estimate of work performed during the preceding calendar month by the Contractor, LESS the retainage provided in the General Conditions, which is to be withheld by the Owner until all work within a particular part has been performed strictly in accordance with this Agreement and until such work has been accepted by the Owner.
6. That upon submission by the Contractor of evidence satisfactory to the Owner that all payrolls, material bills, and other costs incurred by the Contractor in connection with the construction of the work have been paid in full, final payment on account of this Agreement shall be made within 60 days after the completion by the Contractor of all work covered by this Agreement and the acceptance of such work by the Owner.
7. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the Surety Bond hereto attached for its faithful performance and payment, the Owner shall deem the Surety or Sureties upon such bond to be unsatisfactory or if, for any reason such bond ceases to be adequate to cover the performance of the work, the Contractor shall, at his expense, within 5 days after the receipt of notice from the Owner, furnish an additional bond or bonds in such form and amount and with such Surety or Sureties as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.
8. No additional work or extras shall be done unless the same shall be duly authorized by appropriate action by the Owner in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first above written, in three (3) counterparts, each of which shall, without proof or accounting for the other counterpart be deemed an original Contract.

SEAL:

HARRISON DAVIS CONST. CO, INC.  
CONTRACTOR

WITNESSES:

Arnold D. Henderson

By Harrison Davis  
PRESIDENT

Title

ATTEST:

CITY OF FAYETTEVILLE, ARKANSAS  
OWNER

Clerk

By \_\_\_\_\_  
Mayor Fred Hanna

Approved as to form:

\_\_\_\_\_  
Attorney for Owner

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

A. 6. Page 11

|                         |             |                    |                                    |              |
|-------------------------|-------------|--------------------|------------------------------------|--------------|
| Budget Year<br><br>2000 | Department: | General Government | Date Requested<br><br>July 5, 2000 | Adjustment # |
|                         | Division:   | Airport            |                                    |              |
|                         | Program:    | Airport Capital    |                                    |              |

|                                                                                                       |                                                                                                  |
|-------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| <b>Project or Item Requested:</b><br><br>\$193,854 is requested in the T-Hangar Unit Capital Project. | <b>Project or Item Deleted:</b><br><br>\$193,854 from the New Industrial Hangar Capital Project. |
|-------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|

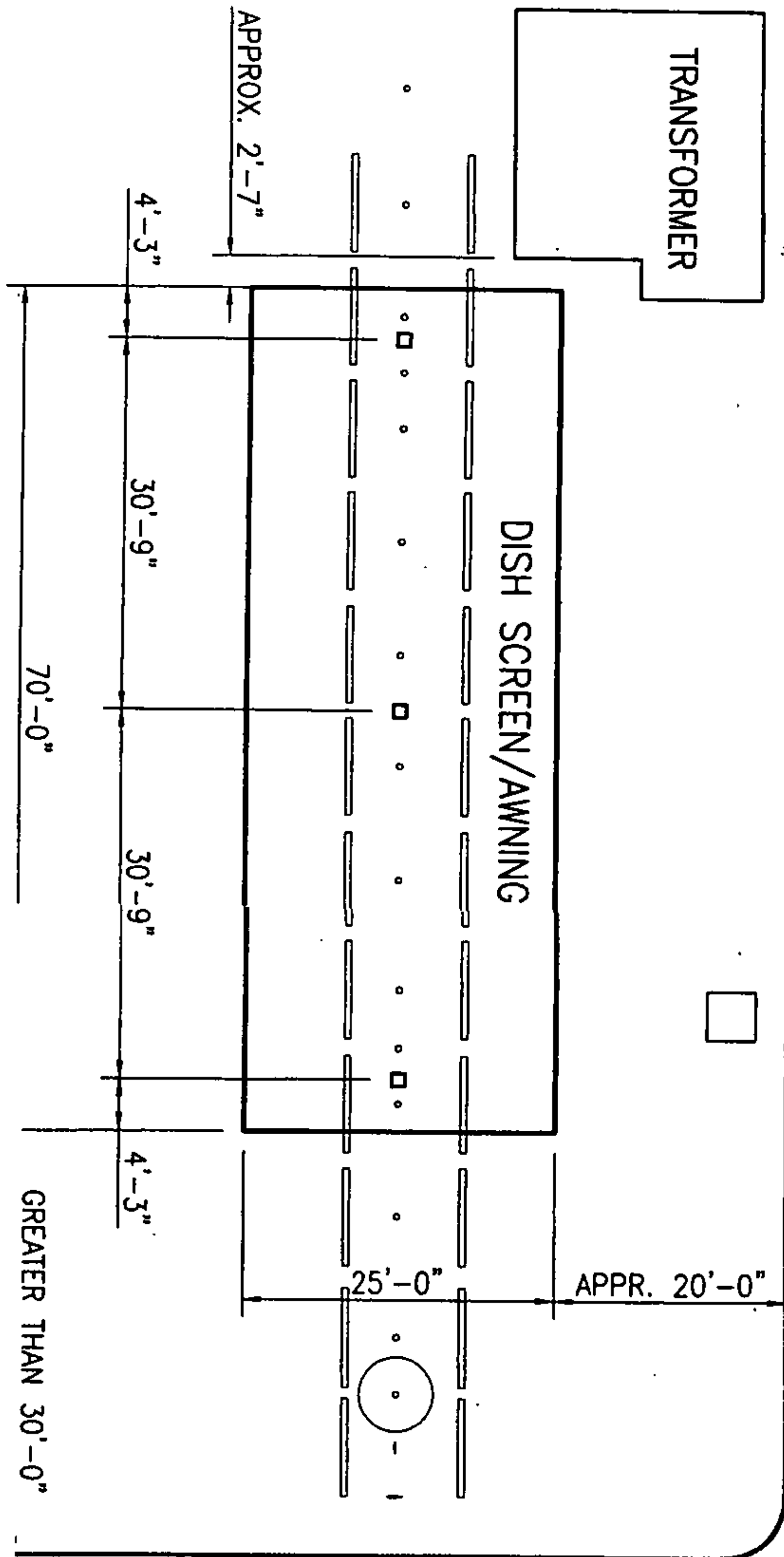
|                                                                                                                                                                                                                                |                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Justification of this Increase:</b><br><br>The additional funding is to cover the purchase of two eight-bay T-Hangars at the Fayetteville Municipal Airport. The contract was bid for two hangars as a cost savings effort. | <b>Justification of this Decrease:</b><br><br>With the construction of two eight-bay T-Hangars, the construction of an Industrial Hangar will not be needed at the present time. |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| Increase Expense (Decrease Revenue) |         |                |      |      |    |                |   |
|-------------------------------------|---------|----------------|------|------|----|----------------|---|
| Account Name                        | Amount  | Account Number |      |      |    | Project Number |   |
| Building Costs                      | 193,854 | 5550           | 3960 | 5804 | 00 | 98056          | 1 |

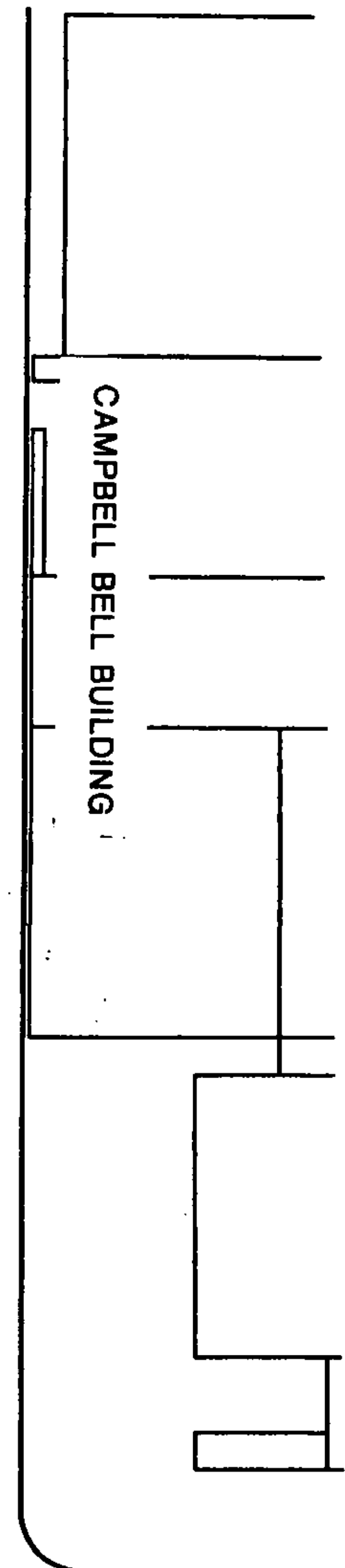
| Decrease Expense (Increase Revenue) |         |                |      |      |    |                |   |
|-------------------------------------|---------|----------------|------|------|----|----------------|---|
| Account Name                        | Amount  | Account Number |      |      |    | Project Number |   |
| Building Costs                      | 193,854 | 5550           | 3960 | 5804 | 00 | 99040          | 1 |

|                                                                                    |           |                               |                            |
|------------------------------------------------------------------------------------|-----------|-------------------------------|----------------------------|
| <b>Approval Signatures</b>                                                         |           | <b>Budget Office Use Only</b> |                            |
| Requested By                                                                       | Date      | Type:                         | A      B      C <u>D</u> E |
|  | 6-21-2000 | Date of Approval              | _____                      |
| Budget Manager                                                                     | Date      | Posted to General Ledger      | _____                      |
| Department Director                                                                | Date      | Posted to Project Accounting  | _____                      |
| Admin. Services Director                                                           | Date      | Entered in Category Log       | _____                      |
| Mayor                                                                              | Date      |                               |                            |





MOUNTAIN STREET



CITY ADMIN BLDG

| <u>X</u> | AGENDA REQUEST  |
|----------|-----------------|
|          | CONTRACT REVIEW |
|          | GRANT REVIEW    |

For the Fayetteville City Council meeting of July 5, 2000

**FROM:**

John Maguire  
Name

Admin. Services  
Division

**Administration**  
Department

**ACTION REQUIRED:** To approve a lease agreement with J.D.G. Television, Inc. to lease an area that contains 13 parking spaces in the Fayetteville Municipal Parking Lot located west of the Campbell Bell Building between Mountain, Church, and Center Streets. This lease agreement will allow J.D.G. Television, Inc. to construct a covered parking canopy for 13 employee parking spaces and be designed to incorporate and screen three proposed satellite 'receive-only' dishes.

**COST TO CITY:**

\$ - 0 -

Cost of this Request

Category/Project Budget

Category/Project Name

Account Number

### Funds Used To Date

Program Name

Project Number

Remaining Balance

Fund

| BUDGET REVIEW: |  | Budgeted Item | Budget Adjustment | Attached |
|----------------|--|---------------|-------------------|----------|
|                |  |               |                   |          |

## Budget Manager

Administrative Services Director

**CONTRACT/GRANT/LEASE REVIEW:**

**GRANTING AGENCY:** \_\_\_\_\_

Accounting Manager

Date \_\_\_\_\_

Internal Auditor

Date \_\_\_\_\_

City Attorney

Date \_\_\_\_\_

ADA Coordinator

Date \_\_\_\_\_

Purchasing Officer

Date \_\_\_\_\_

**STAFF RECOMMENDATION:** Staff recommends approval of the requested lease agreement.

Division Head

Date \_\_\_\_\_

### Cross Reference

Department Director

Date /

New Item:      **Yes**      **No**

Administrative Services Director

Date \_\_\_\_\_

Prev Ord/Res #: \_\_\_\_\_

Mayor

Date \_\_\_\_\_

Orig Contract Date:\_\_\_\_\_

Orig Contract Number: \_\_\_\_\_



# FOUNDATION NOTES:

1. ALL CONCRETE SHALL HAVE A MIN. 28-DAY COMPRESSIVE STRENGTH OF 3,000 PSI.
2. ALL REINFORCING STEEL SHALL BE ASTM A615, GRADE 60.
3. BOTTOMS OF PIERS SHALL BE NO LESS THAN 15' DEEP BELOW FINISHED GRADE.

CONFLICTS SHALL BE BROUGHT TO THE IMMEDIATE ATTENTION OF THE ENGINEER. J.D.G. TV

5. FOUNDATION ANCHORS SHALL HAVE EMBEDMENT INTO PIERS. A. 7 Page 3

6. ALL STEEL SHALL BE PRIMED AND PAINTED TO PROTECT AGAINST CORROSION. PAINT COLOR BY OWNER.

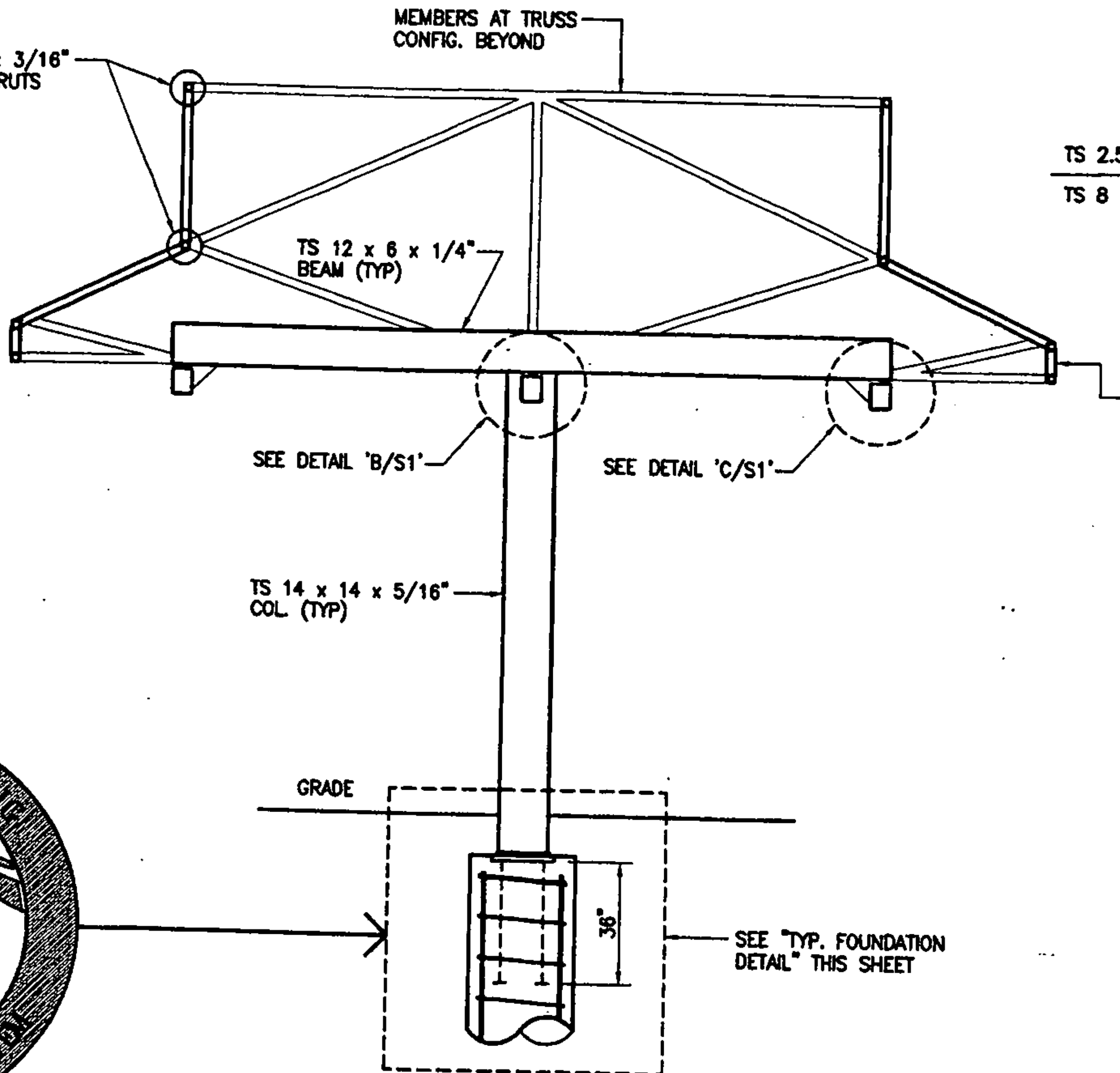
7. FABRIC CANOPY SKIN AND ATTACHMENT TO CANOPY STRUCTURE TO BE BY OTHERS, BUT MUST MEET SBCCI AND NFPA REQUIREMENTS.

8. WELDS TO BE GRIND AS REQ'D TO ACCEPT FINISH.

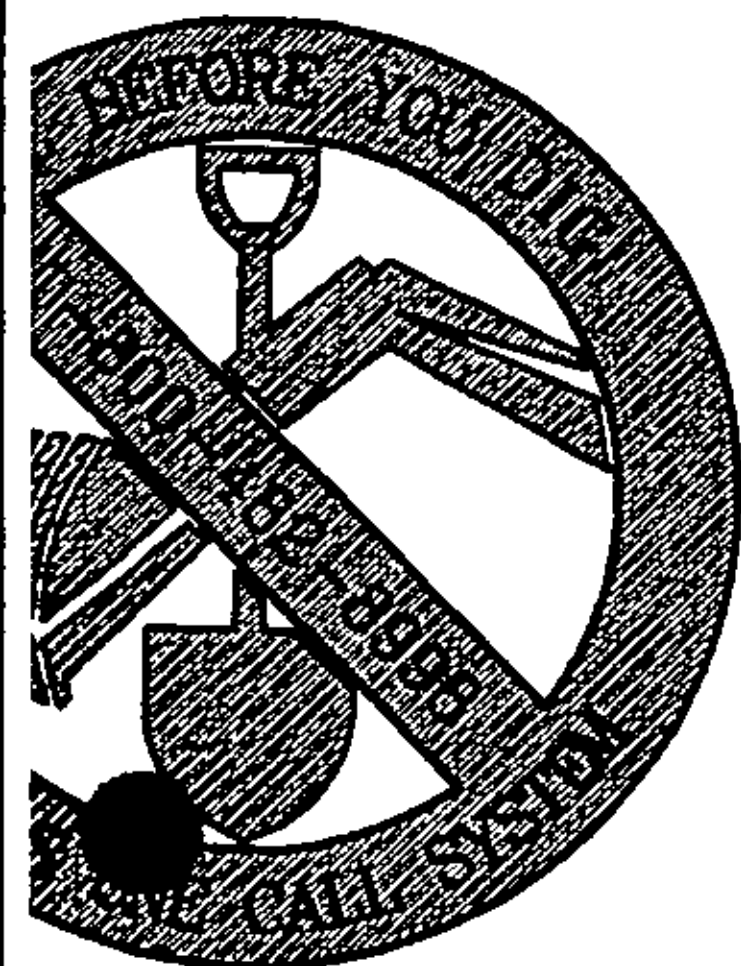
(TYP)

TS 14  
COLUN

TS 2.5  
TS 8



1 SECTION VIEW  
S1 SCALE 1/4\" = 1'-0"



THE CITY OF FAYETTEVILLE, ARKANSAS

---

To: Mayor Fred Hanna and City Council

From: Chuck Rutherford, Sidewalk and Trails Coordinator

Date: June 21, 2000

Subject: Possible purchase of abandoned railroad property

The City of Fayetteville has received an appraisal report of the abandoned railroad property west of West Ave. between Prairie St. and Mountain St. The appraised value of this 3.29 acres is \$50,000.00. At the June 14, 2000 Sidewalk and Trails Advisory Committee Meeting, the appraisal was discussed. The recommendation from the committee was to forward the appraisal to the City Council to approve the purchase of the abandoned railroad property. The intent is to hopefully build a multi-use trail within the abandoned railroad right-of-way between Prairie St. and the Walton Arts Center parking lot. The name given to this project is the Center Prairie Trail.

There are three sections at the north end of this abandoned railroad right-of-way that have previously been purchased. The section between Mountain St. and Center St. is currently owned by Town Creek Properties, Inc., which intends to donate a strip through their property for the trail. Enclosed is a letter from Thomas Bordeaux representing the Mill District LLC and Town Creek Properties supporting the trail and acknowledging the land donation. The section between Center St. and Meadow St. is owned by Denelle Campbell who is also in support of the trail. She is willing to sell a strip of land along the east of her property for the trail. The northern most section of this abandoned railroad property is a 17 foot wide strip between Meadow St. and Spring St. owned by Brian Reindl. At the present time Mr. Reindl is not interested in this 17 foot wide eastern portion of his property becoming a trail. I have enclosed two maps. One delineates railroad and private ownership. The other one shows Town Creek Properties, Inc., as the current owner of the section between Mountain St. and Center St.

At the present time the City has an engineering agreement with Crafton, Tull & Associates which is a phased project concerning this trail. Phase I is for Boundary and Topographic Survey and Cross-sections. The boundary and topographic surveys have been completed. Phase II is for Engineering Design, Bid Documents and Construction Phase. The remainder of the project is on hold until a decision is made about the purchase of the abandoned railroad property.

The engineering contract is being funded with Sidewalk and Trails CIP budget. This land purchase could be funded out of the same budget. However, this would expand the scope of this

CIP project titled Sidewalk Improvements. The project description and justification are stated as follows: This project establishes a sidewalk improvement program that installs, replaces and renovates sidewalks in the City of Fayetteville. The City of Fayetteville maintains existing sidewalks and has a large inventory of sidewalks that need to be completed, repaired or replaced. Developers are responsible for building sidewalks for new subdivisions, large scale developments and residences.

The revised project description and justification is as follows:

**Sidewalk and Trails Improvements-**

This project establishes a Sidewalk and Trails Improvements Project that installs, replaces and renovates sidewalks or trails in the City of Fayetteville. The sidewalks or trails improvements produced with this project are multi-use sidewalks or trails. The project can include land purchase, contracted services, labor, materials and equipment necessary to construct sidewalks or trails.

City Council is requested to ratify the change in project description and to authorize negotiations be initiated to purchase the abandoned railroad property for use as a trail subject to City Council approval of any contract.

Hopefully, this information brings all of you up to date on the progress of the Center Prairie Trail. If you have any questions please call me at 575-8291.

Chuck Rutherford

*Chuck Rutherford*

Sidewalk and Trails Coordinator



**APPRAISAL REPORT**  
**FOR**  
**CITY OF FAYETTEVILLE**

**Complete Summary Appraisal Report**

|                         |                                                                         |
|-------------------------|-------------------------------------------------------------------------|
| <b>PROJECT</b>          | Burlington Northern and Santa Fe Railway Company Railroad Rights-of-Way |
| <b>COUNTY</b>           | Washington                                                              |
| <b>PARCEL #</b>         | 765-02030-000, 02030A, 02033, 02033A, 05525, 05525A                     |
| <b>LOCATION</b>         | W of West St., and S of Mountain St. to Prairie St., Fayetteville       |
| <b>FEE OWNER</b>        | Burlington Northern and Santa Fe Railway Company                        |
| <b>ADDRESS</b>          | Various Rights-of-Way, See attached legal descriptions                  |
| <b>ESTATE APPRAISED</b> | Fee Simple                                                              |

**AREA OF SUBJECT PROPERTY** 143,482 Sq. Ft.  
(Description attached)

Permanent Fee Simple Interest 143,482 Sq. Ft.

**ESTIMATED FAIR MARKET VALUE OF THE PROPERTY:**

|              |           |
|--------------|-----------|
| Land         | \$ 50,000 |
| Improvements | \$ 0      |
| Total        |           |

**FAIR MARKET VALUE OF SUBJECT PROPERTY**

**\$50,000**

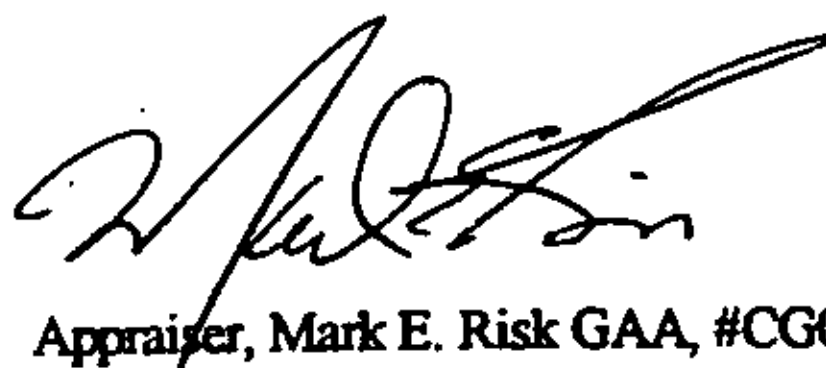
As of the 30th of May, 2000

**ALLOCATION OF F.M.V. OF SUBJECT PROPERTY**

Fee Simple Interest 143,482 Sq. Ft. @ \$0.35/Sq.Ft. = \$ 50,218      Say \$ 50,000

**ATTACHMENTS:**

☒ Certificate of Appraiser  
☒ Photographs  
☒ Site, H&B Use Narrative  
☒ Legal Descriptions  
☒ Market Data Approach  
☐ Survey

  
Appraiser, Mark E. Risk GAA, #CG0202

  
Appraiser, Leslie Manning

CNTR PRAIRIE TRAIL

C. 2 Page 4



Chuck Rutherford  
City of Fayetteville  
Sidewalks & Trails  
VIA FACSIMILE

June 12, 2000

Dear Chuck,

As the Trails Committee considers the Prairie St. Bike Path, I write, on behalf of our group of investors, to convey our thoughts and hopes regarding this bike trail proposal between Dickson St. and 6<sup>th</sup> St. As you know, our group is working on the re-development of the former Campbell Soup Feed Mill property on the corner of School Ave and 6<sup>th</sup> St. in Fayetteville, from its current dilapidated industrial state, to a new office and residential complex.

We are very excited about the prospect of a bike trail connecting our part of town to Dickson St. and the Walton Arts Center. We believe this trail will provide numerous benefits for our project, the Southside of Fayetteville, and the entire community. The Mill District LLC is working with you and the city to donate a portion of our property for the continuation of the trail to 6<sup>th</sup> Street. Rob Sharp and I, through our company Town Creek Properties, have also purchased the property on Center St, known familiarly as "the Peterson Garage". We did this so that the trail could be continued through this property and remain viable. As you know, we are willing and excited to donate a needed portion of land from this property to the city for use as a bike trail.

We believe a bike trail can benefit a community on many levels. Obviously, providing a scenic, well-maintained and logical trail system allows people to travel from point A to Point B in a healthy, relaxing, and environmentally friendly manner. It may help remove some autos from the street and it may reduce the need for additional parking along the way. Studies have also shown that a trail in your neighborhood will probably reduce crime and increase property values. These benefits will most likely be borne out once the trail is complete, but we are primarily interested in a trail for different reasons.

I have been fortunate to visit many cities around the country that have developed extensive trail systems. The trails I have seen, function to take people "off the beaten path" without taking them from an urban area. They introduce us to the nature hidden just around us. They show us a less homogenized, more interesting view of our built environment. They have added another, altogether enjoyable, level of community that is unavailable to us when we motor down the street enclosed in our car. Cities like Seattle, Austin, and Portland, OR have found that the trails have paid dividends that amply justify the initial investment, in their attraction of an educated work force, their scenic benefits to a community, and their enhancement of the values of the community that use them. In town after town those who are in vocal opposition to the proposed trail, become vocal proponents of the completed trail.



We fully expect the tenants in our completed development to use the trail not because it will save gas or clean the air, but because they like it. It will be relaxing, fun and a dose of the extraordinary in what might be an otherwise ordinary day.

It is our hope that the Trails Committee and the City Council will continue working toward the completion of this trail as one step in the construction of a great trail system. For our part, we will continue working with those along this section of trail to convince them that a trail system will benefit them not only materially, but spiritually.

Sincerely,  
Mill District LLC



Thomas Bourdeaux,  
Manager

CERTIFICATE OF APPRAISER

I hereby certify:

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

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

The City of Fayetteville has initiated this project.

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

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

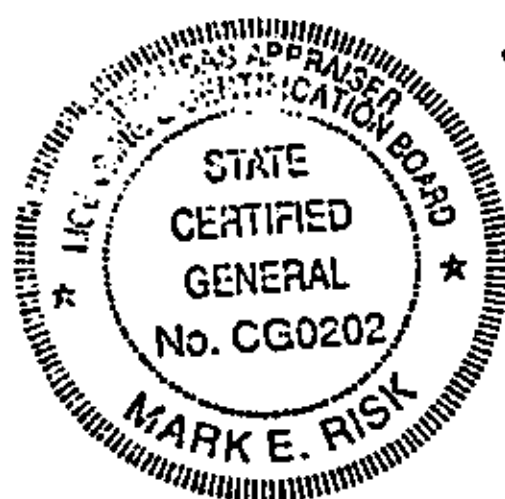
That I have no direct or indirect, present or contemplated future personal interest in such property, and no personal interest or bias with respect to the parties involved, or in any benefit from the acquisition of such property appraised.

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

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

That in my opinion the fair-market value of the subject property as of the 30th day of May, 2000, is \$50,000 based upon my independent appraisal and the exercise of my professional judgment.

6/4/00  
Date

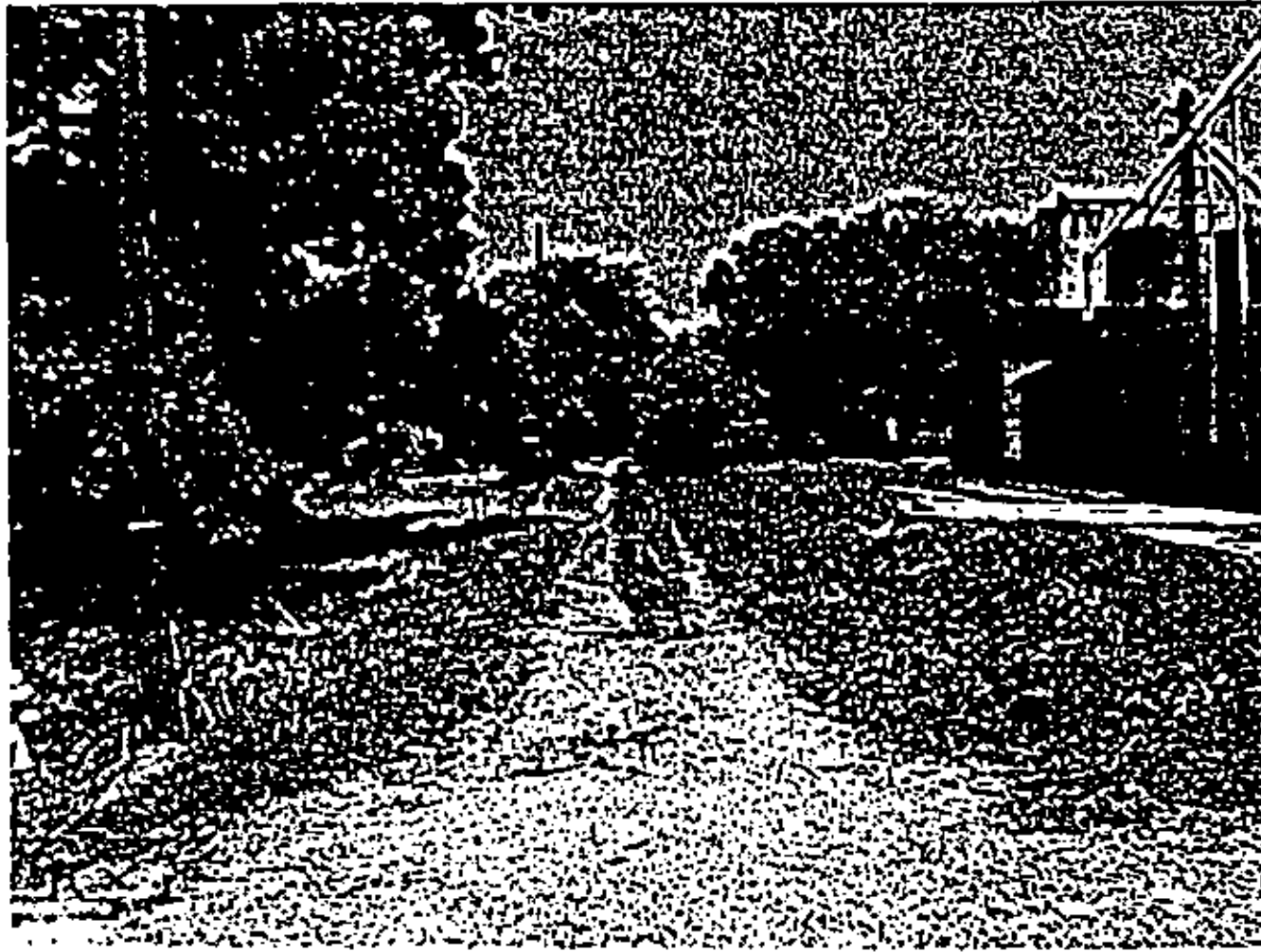


Signature

Signature

JOB Burlington Northern and Santa Fe Railway Company Rights-of-Way  
PARCEL 765-02030-000, 02030A, 02033, 02033A, 05525, 05525A

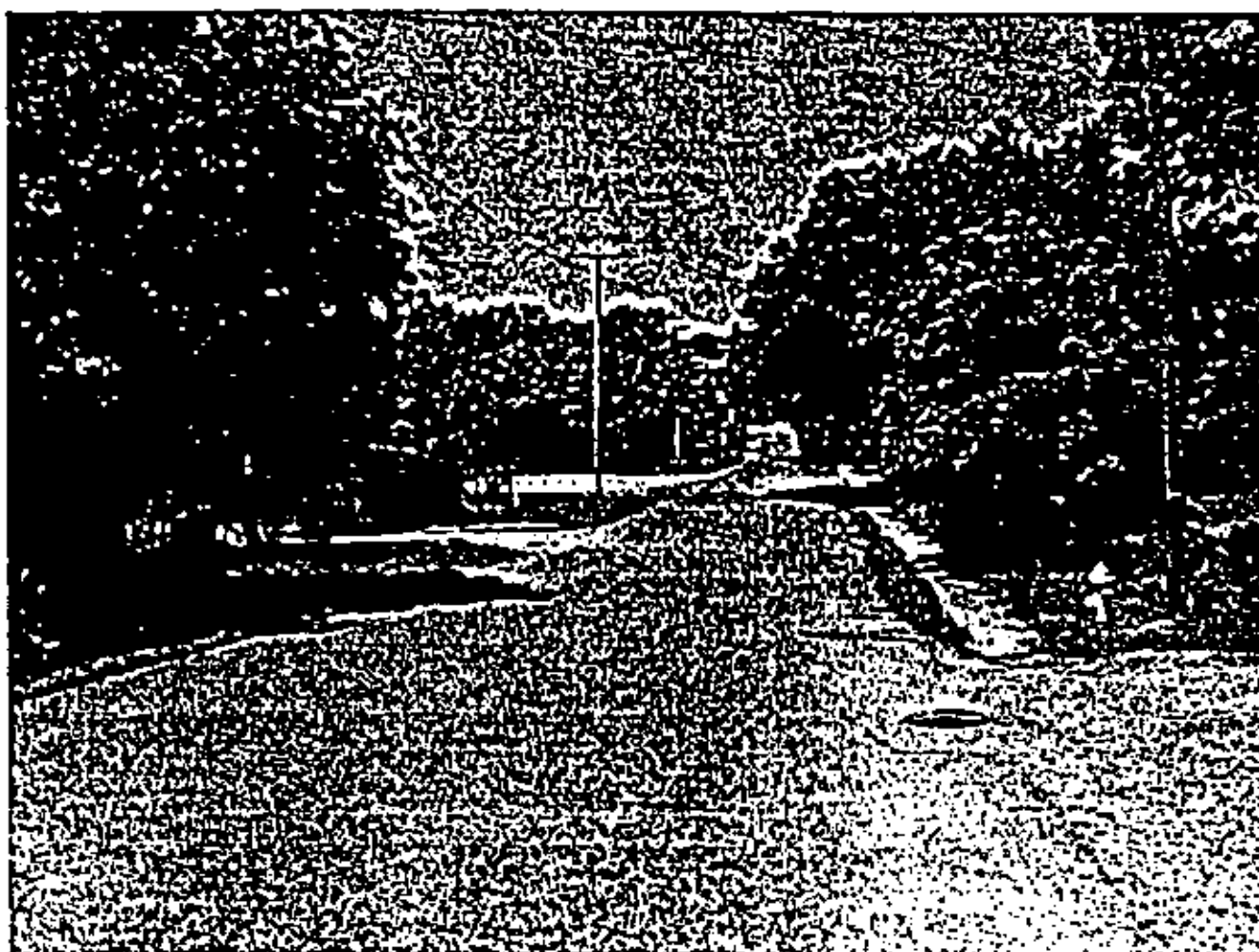
PICTURES



Subject Site looking North from Prairie St.



View of the Subject Site looking North toward Rock St. from around South St. area



Prairie Street Scene facing West



CONTACTED FOR APPRAISAL INSPECTION AND COMMENTS

**DATE:** May 30, 2000

**NAME:** City of Fayetteville

**COMMENTS:** The appraisers visually inspected the subject site on the above date. The appraisers obtained the legal descriptions of the subject sites from Crafton and Tull, Engineers. The appraisers were unaccompanied on their inspection of the subject property.

**GENERAL REMARKS:** The subject property consists of (6) contiguous railroad right of way parcels currently owned by The Burlington Northern and Santa Fe Railway Company and located in downtown Fayetteville. Generally, the parcels are 100 feet wide and have poor accessibility. The topography includes level to steep sloping characteristics.

**3 YR. SALE HISTORY:** To the appraiser's knowledge, there have been no transactions affecting the subject properties within the past three years.

**CHANGES IN  
PROPERTY SINCE  
DATE OF PURCHASE:** The subject properties are railroad rights of way that are either discontinued railroad lines or rights of way that were never constructed upon.

**METHOD OF  
APPRAISAL:** The appraiser has utilized the Market Data or Sales Comparison Approach to value the subject property.

## GENERAL INFORMATION

### MARKET VALUE DEFINED

The Appraisal Foundation defines market value as follows:

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

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

### PURPOSE OF THE APPRAISAL

This appraisal is made for the purpose of estimating the Fair Market Value of the subject property. The intended use of the appraisal is for possible purchase purposes by the City of Fayetteville for the Rails to Trails Project.

### PROPERTY RIGHTS APPRAISED

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



CONTINGENT AND LIMITING CONDITIONS

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

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

## THE APPRAISAL PROCESS

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

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

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

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

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

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

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

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

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

### SCOPE OF THE APPRAISAL

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

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

The subject property was physically inspected by the appraisers on May 30, 2000. The subject photographs were taken on that date.

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

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

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

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

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



## NEIGHBORHOOD DATA AND ANALYSIS

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

The subject property is located in downtown Fayetteville. Neighborhood boundaries could be University Ave. to the west, Dickson St. to the north, S. School Ave. to the east, and 6<sup>th</sup> St. to the south.

Mainly older, residential dwellings on city lots characterize the subject neighborhood. This area of Fayetteville is a mature neighborhood located on the south side of the Fayetteville square. Property values appear to be stable at this time. The neighborhood is in the Fayetteville School System. Jefferson Elementary School.

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

Prairie St, Mountain St., Rock St., South St., Gregg Ave. and West St. provide access to and from the immediate area of the subject.

## DESCRIPTION OF THE SUBJECT PROPERTY

### Site

The subject property under appraisal consists of (6) irregular-shaped parcels of various sizes. See attached legal descriptions for individual dimensions. The total site contains approximately 143,482 Sq. Ft. or 3.29 Acres. The extreme southern boundary of the site has direct access from Prairie St.. The northern boundary includes an unimproved portion of Mountain St. Drainage appeared to be adequate upon inspection. The site is generally 100 feet wide and has steep sloping characteristics in many areas with poor access and visibility. The site is presently encumbered with regular utility easements and all utilities are available to the site. The subject site lies within the City Limits of Fayetteville, and has a combination of Industrial (I-1) and Residential Office (R-0) zoning.

### Improvements

None

## LEGAL DESCRIPTION

See Attached Legal Descriptions

## HIGHEST AND BEST USE

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

The subject property is currently unimproved. The site is located in an area comprised primarily of residential dwellings and offices. Research indicates that most of the railroad rights of way ownership transfers in recent years have been purchases made by adjoining property owners. Due to its poor topography and access, it is the opinion of the appraiser that the subject's highest and best use would be as plottage with adjoining property.



## MARKET DATA APPROACH

### Analysis of the Market Data and Conclusion of Value

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

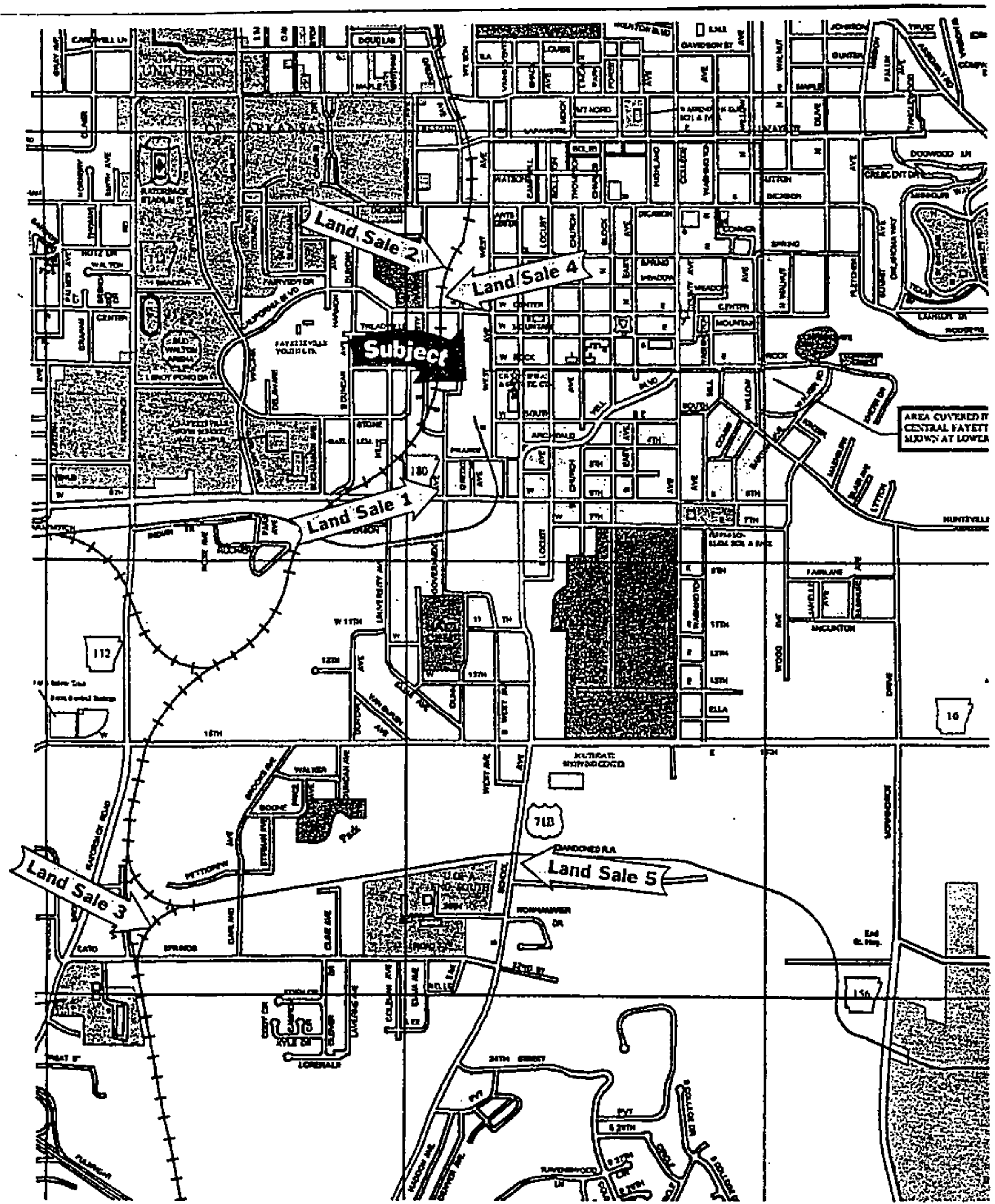
The appraiser has conducted an extensive search for recent sales of railroad right of way land in the vicinity of the subject property, which would be considered comparable to the subject land. These sales are included in this report.

After analysis of the R-O-W land sales, the comparable sales reflect a value range of *\$0.06/Sq.Ft. to \$2.21/Sq.Ft.* This is a significant range due to differences in location, size, and land utility. All sales were purchased by adjoining landowners for assemblage. These sales are considered very good indicators of the subject's value. It is the appraiser's opinion that the subject's land value would fall within the lower section of this value spectrum due to its size, zoning, land characteristics, location, and other characteristics.

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

Fee Simple Land Value      Approx. 143,482 Sq. Ft. @ \$0.35/SF = \$50,218    Say \$50,000

**Comparable Market Data**



**COMPARABLE LAND SALES**

**LAND SALE #1**

**Grantor:** The Burlington Northern and Santa Fe Railway Co.

**Grantee:** Filbeck, Kim

**Location:** West 6<sup>th</sup> St., Fayetteville

**Legal Description:** All that portion of The Burlington Northern and Santa Fe Railway Company's property at Fayetteville, Arkansas 72701, located on the Ft. Smith, Arkansas to Monett, Missouri Branch Line, now discontinued, located upon, over and across part of Block 21 of Ferguson's Addition to the City of Fayetteville, Arkansas.

**Date of Sale:** 10/29/98

**Reported Consideration:** \$8,000

**Site Characteristics:** Narrow, level to steep sloping parcel with 25.31' road frontage on 6<sup>th</sup> Street (Hwy. 62).

**Size:** Appx. 3,614 Sq. Ft. or 0.08 Acres

**Improvements:** None

**Zoning:** C-2 - Commercial Thoroughfare

**Remarks:** Narrow parcel purchased by adjoining property owner. Site has little road frontage and minimal access.

**Indicated Price:** \$2.21/Sq. Ft.



**LAND SALE #2**

**Grantor:** Burlington Northern Railroad Company

**Grantee:** G. Denele Campbell

**Location:** East of Gregg Ave., running north to south from W. Meadow St. to W. Center St.

**Legal Description:** A 100.0 foot wide strip of land situated in the West half of Block 21 of the Original Plat of the City of Fayetteville, Washington County, Arkansas together with portions of Gregg Avenue, West Center Street and West Meadow Street, being 50.0 feet wide on each side of the hereinafter described old Pacific and Great Eastern Railway Main Track centerline, as originally located and constructed, bounded on the North by the centerline of said West Meadow Street and bounded on the South by the centerline of West Center Street.

**Date of Sale:** 01/26/96

**Reported Consideration:** \$18,000

**Site Characteristics:** Narrow, level to steep sloping parcel

**Size:** Approx. 37,238 Sq. Ft., or 0.85 Acres

**Improvements:** None

**Zoning:** R-0 - Residential Office

**Remarks:** Railroad right-of-way parcel purchased by adjoining owner.

**Indicated Price:** \$0.48/Sq.Ft.

LAND SALE #3

**Grantor:** Burlington Northern and Santa Fe Railway Company

**Grantee:** ANT, LLC

**Legal:** Pt. SE 1/4, SE 1/4, Section 20, T16N, R30W

**Date of Sale:** 02/24/98

**Sales Price:** \$26,000

**Location:** East of Vale Ave. and West of S. Garland Ave. and North of Cato Springs Rd.

**Size:** Approx. 126,760 Sq. Ft., or 2.91 Acres

**Zoning:** I-1 – Heavy Commercial, Light Industrial

**Improvements:** None

**Remarks:** Level to sloping parcel located in industrial area of Fayetteville.

**Indicated Value:** \$0.21/Sq.Ft.



**LAND SALE #4**

**Grantor:** Burlington Northern and Santa Fe Railway Company

**Grantee:** Terry L. & Carolyn E. Peterson

**Legal:** All that portion of The Burlington Northern and Santa Fe Railway Company's 100.0 foot wide right of way, now discontinued, being 50.0 feet wide on each side of the former S. Louis-San Francisco Railway Company's Muskogee Subdivision Main Track centerline, as originally located and constructed upon, over and across Block 22 of the Original Town of Fayetteville, Arkansas, and the South half of West Center Street, according to the recorded plat of Fayetteville, Washington County, Arkansas, bounded between the centerline of West Center Street and the North line of West Mountain Street, according to said plat.

**Date of Sale:** 04/23/97

**Sales Price:** \$16,500

**Location:** 545 W. Center St., Fayetteville

**Size:** Approx. 10,700 Sq. Ft., or 0.25 Acres

**Zoning:** C-3 - Commercial

**Improvements:** None

**Remarks:** Railroad right-of-way purchased by the adjacent property owner.

**Indicated Price:** \$1.54/Sq.Ft.

LAND SALE #5

**Grantor:** Burlington Northern and Santa Fe Railway Company

**Grantee:** James H. Stewart and Charles W. Stewart

**Legal:** The Northerly 50 feet of the Burlington Northern and Santa Fe Railway Company's 100 foot wide Fayetteville to Pettigrew, Arkansas Branch Line right of way, now discontinued, located upon, over and across the North Half of the Southwest Quarter of the Southeast Quarter of Section 21, Township 16 North, Range 30 West of the 5<sup>th</sup> Principal Meridian, Washington County, Arkansas, bounded on the East by the East line of said North Half of the Southwest Quarter of the Southeast Quarter and bounded on the Westerly side by the centerline of State Highway No. 71; also

The Southerly 50 feet of said Railway Company's 100 foot wide Branch Line right of way in said North Half of the Southwest Quarter of the Southeast Quarter of Section 21, bounded on the East by the East line of said North Half of the Southwest Quarter of the Southeast Quarter and bounded on the Westerly side by a line extending North 08 degrees, 31 minutes East from a point on the Southerly line of said 100 foot wide Branch Line right of way distant 318 feet Westerly from the East line of said North Half of the Southwest Quarter of the Southeast Quarter.

**Date of Sale:** 11/03/97

**Sales Price:** \$3,000

**Location:** East of Hwy. 71B and North of 19<sup>th</sup> Street.

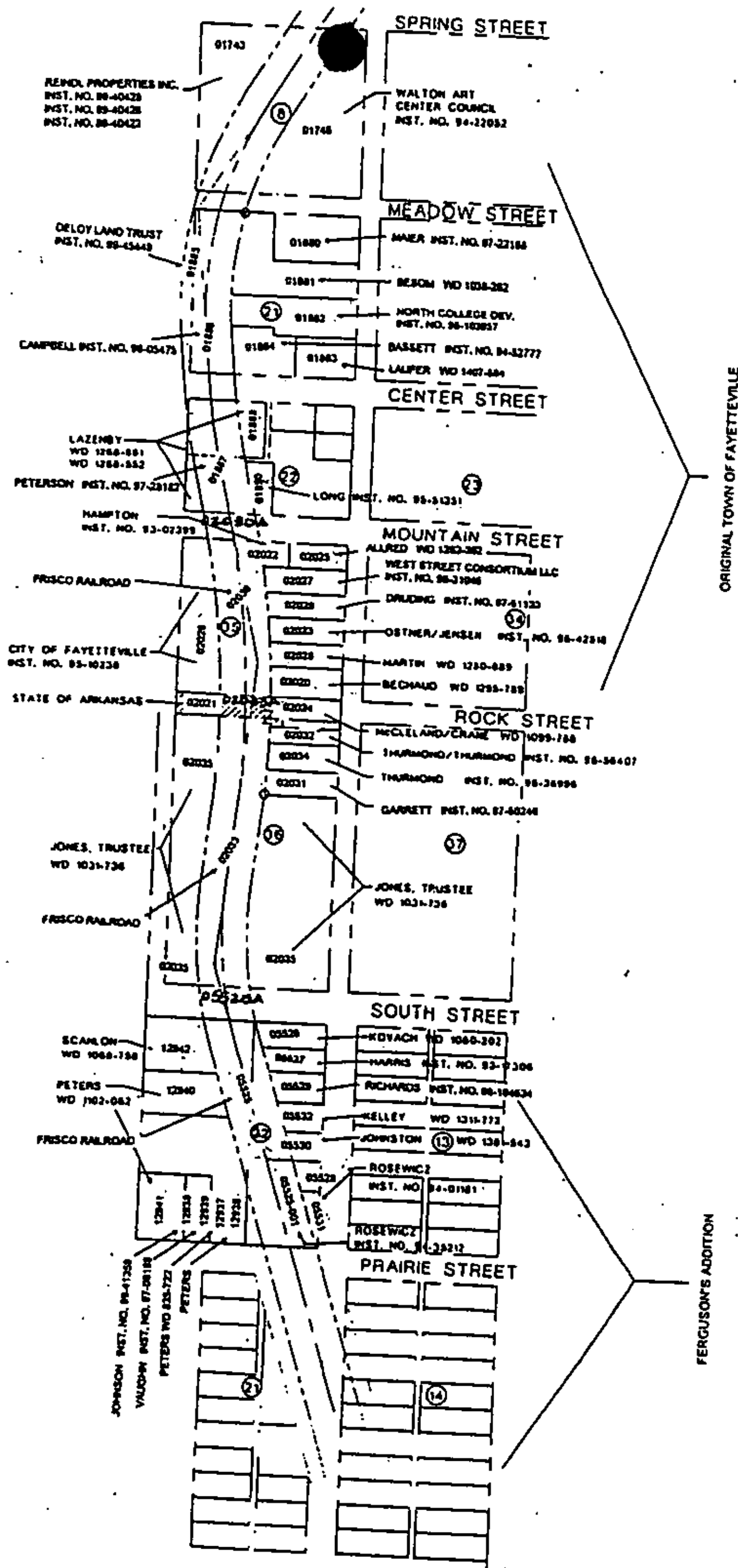
**Size:** Approx. 46,609 Sq. Ft. or 1.07 Acres

**Zoning:** C-2 – Commercial Thoroughfare

**Improvements:** None

**Remarks:** Located in south Fayetteville with Hwy. 71 frontage on S.School St. Purchased by adjoining property owner.

**Indicated Value:** \$0.06/sq.ft.





## CNTR PRAIRIE TRAIL

C. 2 Page 24

City of Fayetteville: Rails to Trails Project  
CTA 99217.00  
lgldsc02.doc

TRACT: 765-02030-000

LEGAL DESCRIPTION: RAILROAD R/W - BLOCK 35, ORIGINAL TOWN

All that portion of the 100.0 feet wide railroad right-of-way, now discontinued, being 50.0 feet wide on each side of the Main Track centerline, as originally located and constructed across Block 35 of the Original Town of Fayetteville, Washington County, Arkansas, being more particularly described as follows: commencing at the Northeast corner of said Block 35 and running thence West 171.96 feet along the North line of Block 35 to the East line of the railroad right-of-way for the point of beginning; thence leaving the North line of Block 35 and continuing along the East line of the railroad right-of-way along a curve to the right an arc length of 260.25 to a point of compound curve, said curve having a radius of 2096.53 feet, a central angle of 07°06'45" and a long chord of S 07°00'40" E 260.09 feet; thence along a curve to the right an arc length of 67.92 feet to a point on the South line of Block 35, said curve having a radius of 1728.65 feet, a central angle of 02°15'04" and a long chord of S 02°19'46" E 67.91 feet; thence leaving the East line of the railroad right-of-way and continuing along the South line of Block 35, West 100.02 feet to the West line of the railroad right-of-way; thence leaving the South line of Block 35 and continuing along the West line of the railroad right-of-way along a curve to the left an arc length of 61.09 feet to a point of compound curve, said curve having a radius of 1628.65 feet a central angle of 02°10'38" and a long chord of N 02°21'59" W 61.88 feet; thence along a curve to the left an arc length of 266.51 feet to the North line of Block 35, said curve having a radius of 1996.53 feet, a central angle of 07°38'54" and a long chord of N 07°16'45" W 266.31 feet; thence leaving the West line of the railroad right-of-way and continuing along the North line of Block 35, East 101.81 feet to the point of beginning, containing approximately 32,828 square feet or 0.75 acres more or less.

Subject to any easements and/or rights-of-way of record.

Prepared by:

Crafton, Tull & Associates, Inc.  
2345 Green Acres Road  
Fayetteville, AR 72703

04/18/00

City of Fayetteville: Rails to Trails Project  
CTA 99217.00  
lgldsc01.doc

TRACT: 765-02030-000A

LEGAL DESCRIPTION: RAILROAD R/W - MOUNTAIN STREET, ORIGINAL TOWN

All that portion of the 100.0 feet wide railroad right-of-way, now discontinued, being 50.0 feet wide on each side of the Main Track centerline, as originally located and constructed across an area reserved for Mountain Street right-of-way (never constructed) between Block 22 and Block 35 of the Original Town of Fayetteville, Washington County, Arkansas, being more particularly described as follows: commencing at the Northeast corner of said Block 35 and running thence West 171.96 feet along the North line of Block 35 to the East line of the railroad right-of-way for the point of beginning; thence leaving the East line of the railroad right-of-way and continuing along the North line of Block 35, West 101.81 feet to the West line of the railroad right-of-way; thence leaving the North line of Block 35 and continuing along the West line of the railroad right-of-way, along a curve to the left an arc length of 59.77 feet to the South line of Block 22, said curve having a radius of 1996.53 feet, a central angle of 01°42'55" and a long chord of N 11°57'39" W 59.77 feet; thence leaving the West line of the railroad right-of-way and continuing along the South line of Block 22, S 89°51'07" E 102.49 feet to the East line of the railroad right-of-way; thence leaving the South line of Block 22 and continuing along the East line of the railroad right-of-way, along a curve to the right an arc length of 59.37 feet to the point of beginning, said curve having a radius of 2096.53 feet, a central angle of 01°37'21" and a long chord of S 11°22'43" E 59.37 feet, containing approximately 5,957 square feet or 0.14 acres more or less.

Subject to any easements and/or rights-of-way of record.

Prepared by:

Crafton, Tull & Associates, Inc.  
2345 Green Acres Road  
Fayetteville, AR 72703

04/18/00



City of Fayetteville: Rails to Trails Project  
CTA 99217.00  
lgldsc04.doc

TRACT: 765-02033-000

LEGAL DESCRIPTION: RAILROAD R/W - BLOCK 36, ORIGINAL TOWN

All that portion of the 100.0 feet wide railroad right-of-way, now discontinued, being 50.0 feet wide on each side of the Main Track centerline, as originally located and constructed across Block 36 of the Original Town of Fayetteville, Washington County, Arkansas, being more particularly described as follows: commencing at the Northeast corner of said Block 36 and running thence West 136.13 feet along the North line of Block 36 to the East line of the railroad right-of-way for the point of beginning; thence leaving the North line of Block 36 and continuing along the East line of the railroad right-of-way along a curve to the right an arc length of 90.50 feet to a point of compound curvature, said curve having a radius of 1728.65 feet, a central angle of 02°59'59" and a long chord of S 01°42'56" W 90.49 feet; thence along a curve to the right an arc length of 230.97 feet to a point of compound curvature, said curve having a radius of 3736.42 feet, a central angle of 03°32'30" and a long chord of S 04°59'11" W 230.93 feet; thence along a curve to the left an arc length of 195.64 feet to a point of compound curvature, said curve having a radius of 982.16 feet, a central angle of 11°24'47" and a long chord of S 01°03'02" W 195.32 feet; thence along a curve to the left an arc length of 38.00 feet to a point on the South line of Block 36, said curve having a radius of 530.61 feet, a central angle of 04°06'12" and a long chord of S 06°42'27" E 37.99 feet; thence leaving the East line of the railroad right-of-way and continuing along the South line of Block 36, S 89°57'23" W 100.98 feet to the West line of the railroad right-of-way; thence leaving the South line of Block 36 and continuing along the West line of the railroad right-of-way along a curve to the right an arc length of 29.86 feet to a point of compound curvature, said curve having a radius of 630.61 feet, a central angle of 02°42'47" and a long chord of N 06°00'44" W 29.86 feet; thence along a curve to the right an arc length of 215.56 feet to a point of compound curvature, said curve having a radius of 1082.16 feet, a central angle of 11°24'47" and a long chord of N 01°03'02" E 215.20 feet; thence along a curve to the left an arc length of 224.79 feet to a point of compound curvature, said curve having a radius of 3636.42 feet, a central angle of 03°32'30" and a long chord of N 04°59'11" E 224.75 feet; thence along a curve to the left an arc length of 84.89 feet to the North line of Block 36, said curve having a radius of 1628.65 feet, a central angle of 02°59'11" and a long chord of N 01°43'20" E 84.88 feet; thence leaving the West line of the railroad right-of-way and continuing along the North line of Block 36, East 100.00 feet to the point of beginning, containing approximately 55,510 square feet or 1.27 acres more or less.

Subject to any easements and/or rights-of-way of record.

Prepared by:

Crafton, Tull & Associates, Inc.  
2345 Green Acres Road  
Fayetteville, AR 72703

04/18/00

City of Fayetteville: Rails to Trails Project  
CTA 99217.00  
lgldsc03.doc

TRACT: 765-02033-000A

LEGAL DESCRIPTION: RAILROAD R/W - ROCK STREET, ORIGINAL TOWN

All that portion of the 100.0 feet wide railroad right-of-way, now discontinued, being 50.0 feet wide on each side of the Main Track centerline, as originally located and constructed across an area reserved for Rock Street right-of-way (never constructed) between Block 35 and Block 36 of the Original Town of Fayetteville, Washington County, Arkansas, being more particularly described as follows: commencing at the Northeast corner of said Block 36 and running thence West 136.13 feet along the North line of Block 36 to the East line of the railroad right-of-way for the point of beginning; thence leaving the East line of the railroad right-of-way and continuing along the North line of Block 36, West 100.00 feet to the West line of the railroad right-of-way; thence leaving the North line of Block 36 and continuing along the West line of the railroad right-of-way, along a curve to the left an arc length of 42.83 feet to the South line of Block 35, said curve having a radius of 1628.65 feet, a central angle of  $01^{\circ}30'24''$  and a long chord of  $N 00^{\circ}31'28'' W 42.83$  feet; thence leaving the West line of the railroad right-of-way and continuing along the South line of Block 35, East 100.02 feet to the East line of the railroad right-of-way; thence leaving the South line of Block 35 and continuing along the East line of the railroad right-of-way, along a curve to the right an arc length of 42.83 feet to the point of beginning, said curve having a radius of 1728.65 feet, a central angle of  $01^{\circ}25'10''$  and a long chord of  $S 00^{\circ}29'38'' E 42.83$  feet, containing approximately 4,283 square feet or 0.10 acres more or less.

Subject to any easements and/or rights-of-way of record.

Prepared by:

Crafton, Tull & Associates, Inc.  
2345 Green Acres Road  
Fayetteville, AR 72703

04/18/00

## CNTR PRAIRIE TRAIL

C. 2 Page 28

City of Fayetteville: Rails to Trails Project  
CTA 99217.00  
lgldsc05.doc

TRACT: 765-05525-000A

LEGAL DESCRIPTION: RAILROAD R/W - SOUTH STREET, ORIGINAL TOWN

All that portion of the 100.0 feet wide railroad right-of-way, now discontinued, being 50.0 feet wide on each side of the Main Track centerline, as originally located and constructed across an area reserved for South Street right-of-way (never constructed) between Block 36 of the Original Town of Fayetteville, and Block 22 of Ferguson's Addition to the City of Fayetteville, Washington County, Arkansas, being more particularly described as follows: commencing at the Northeast corner of said Block 22 and running thence S 89°57'23" W 163.36 feet along the North line of Block 22 to the East line of the railroad right-of-way for the point of beginning; thence leaving the East line of the railroad right-of-way and continuing along the North line of Block 22, S 89°57'23" W 103.32 feet to the West line of the railroad right-of-way; thence leaving the North line of Block 22 and continuing along the West line of the railroad right-of-way, along a curve to the right an arc length of 66.10 feet to the South line of Block 36, said curve having a radius of 630.61 feet, a central angle of 06°00'21" and a long chord of N 10°22'18" W 66.07 feet; thence leaving the West line of the railroad right-of-way and continuing along the South line of Block 36, N 89°57'23" E 100.98 feet to the East line of the railroad right-of-way; thence leaving the South line of Block 36 and continuing along the East line of the railroad right-of-way, along a curve to the right an arc length of 66.57 feet to the point of beginning, said curve having a radius of 530.61 feet, a central angle of 07°11'19" and a long chord of S 12°21'13" E 66.53 feet, containing approximately 6,631 square feet or 0.15 acres more or less.

Subject to any easements and/or rights-of-way of record.

Prepared by:

Crafton, Tull & Associates, Inc.  
2345 Green Acres Road  
Fayetteville, AR 72703

04/18/00



City of Fayetteville: Rails to Trails Project  
CTA 99217.00  
lgldsc06.doc

TRACT: 765-05525-000

LEGAL DESCRIPTION: RAILROAD R/W - BLOCK 22, Ferguson's Addition

All that portion of the 100.0 feet wide railroad right-of-way, now discontinued, being 50.0 feet wide on each side of the Main Track centerline, as originally located and constructed across Block 22 of Ferguson's Addition to the City of Fayetteville, Washington County, Arkansas, less and except the Easterly 50 feet of said 100.0 feet wide railroad right-of-way conveyed to Emil Rosewicz by Quitclaim Deed record 94035212, being more particularly described as follows: commencing at the Northeast corner of said Block 22 and running thence S 89°57'23" W 163.36 feet along the North line of Block 22 to the East line of the railroad right-of-way for the point of beginning; thence leaving the North line of Block 22 and continuing along the East line of the railroad right-of-way along a curve to the left an arc length of 0.46 feet, said curve having a radius of 530.61 feet, a central angle of 00°02'57" and a long chord of S 15°58'21" E 0.46 feet; thence S 15°59'49" E 288.68 feet to the NE corner of the property described on Quitclaim Deed record 94035212; thence leaving the East line of the railroad right-of-way and continuing along the boundary of the property described on Quitclaim Deed record 94035212, S 89°57'23" W 52.00 feet to the centerline of the railroad right-of-way; thence continuing along the centerline of the railroad right-of-way, S 15°59'49" E 186.67 feet to the South line of Block 22, thence leaving the centerline of the railroad right-of-way and continuing along the South line of Block 22, S 88°33'43" W 51.66 feet to the West line of the railroad right-of-way; thence leaving the South line of Block 22 and continuing along the West line of the railroad right-of-way, N 15°59'49" W 448.07 feet; thence along a curve to the right an arc length of 28.86 feet to the North line of Block 22, said curve having a radius of 630.61 feet, a central angle of 02°37'21" and a long chord of N 14°41'09" W 28.86 feet; thence leaving the West line of the railroad right-of-way and continuing along the North line of Block 22, N 89°57'23" E 103.32 feet to the point of beginning, containing approximately 38,273 square feet or 0.88 acres more or less.

Subject to any easements and/or rights-of-way of record.

Prepared by:

Crafton, Tull & Associates, Inc.  
2345 Green Acres Road  
Fayetteville, AR 72703

04/18/00

**APPRAISAL REPORT**  
**FOR**  
**CITY OF FAYETTEVILLE**

**Complete Summary Appraisal Report**

|                  |                                                                         |
|------------------|-------------------------------------------------------------------------|
| PROJECT          | Burlington Northern and Santa Fe Railway Company Railroad Rights-of-Way |
| COUNTY           | Washington                                                              |
| PARCEL #         | 765-02030-000, 02030A, 02033, 02033A, 05525, 05525A                     |
| LOCATION         | W of West St., and S of Mountain St. to Prairie St., Fayetteville       |
| FEE OWNER        | Burlington Northern and Santa Fe Railway Company                        |
| ADDRESS          | Various Rights-of-Way, See attached legal descriptions                  |
| ESTATE APPRAISED | Fee Simple                                                              |

AREA OF SUBJECT PROPERTY 143,482 Sq. Ft.  
(Description attached)

Permanent Fee Simple Interest 143,482 Sq. Ft.

**ESTIMATED FAIR MARKET VALUE OF THE PROPERTY:**

|              |           |
|--------------|-----------|
| Land         | \$ 50,000 |
| Improvements | \$ 0      |
| Total        |           |

FAIR MARKET VALUE OF SUBJECT PROPERTY \$50,000

As of the 30th of May, 2000

**ALLOCATION OF F.M.V. OF SUBJECT PROPERTY**

Fee Simple Interest 143,482 Sq. Ft. @ \$0.35/Sq.Ft. = \$ 50,218 Say \$ 50,000

**ATTACHMENTS:**

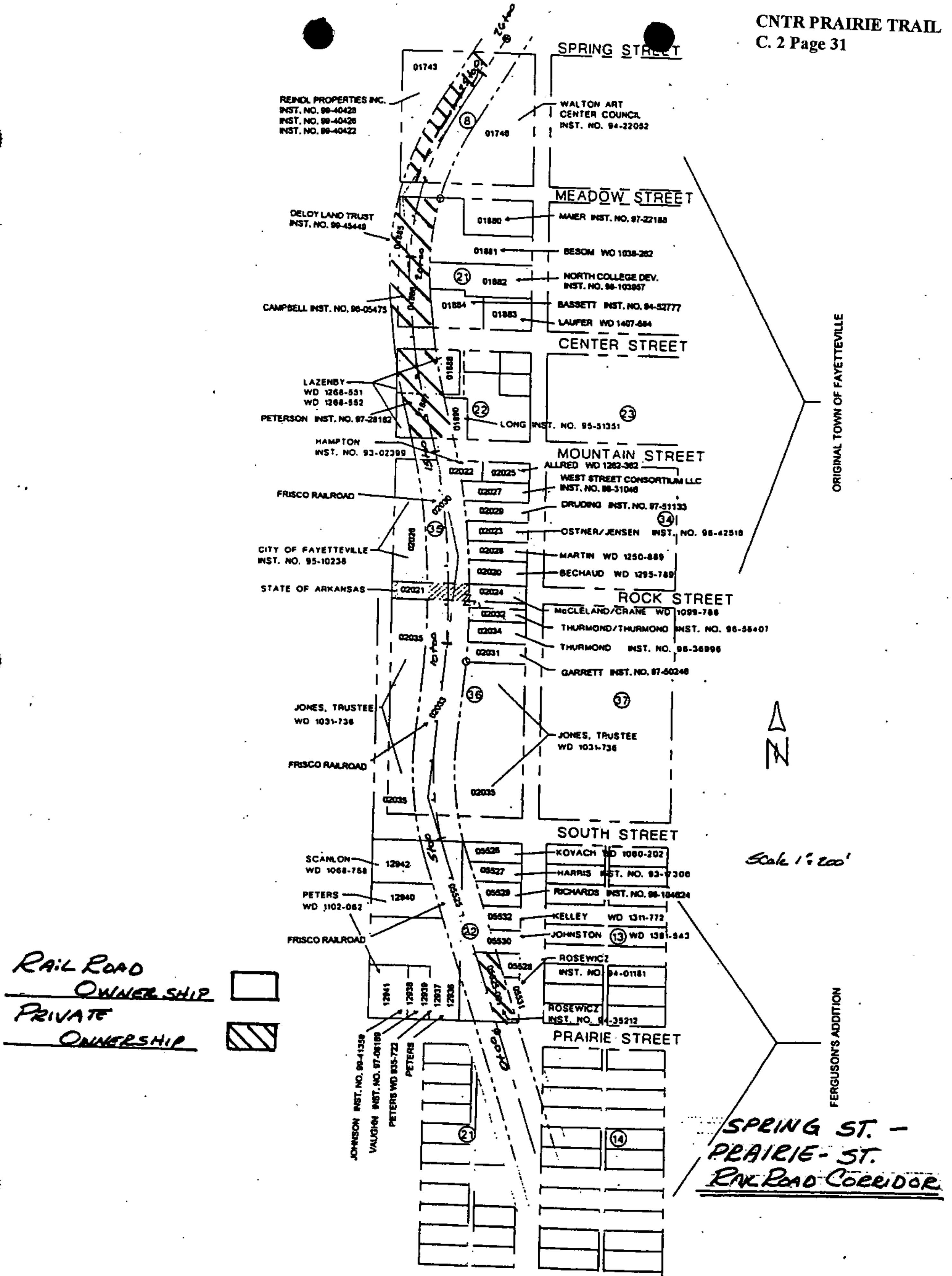
☒ Certificate of Appraiser  
☒ Photographs  
☒ Site, H&B Use Narrative  
☒ Legal Descriptions  
☒ Market Data Approach  
☐ Survey

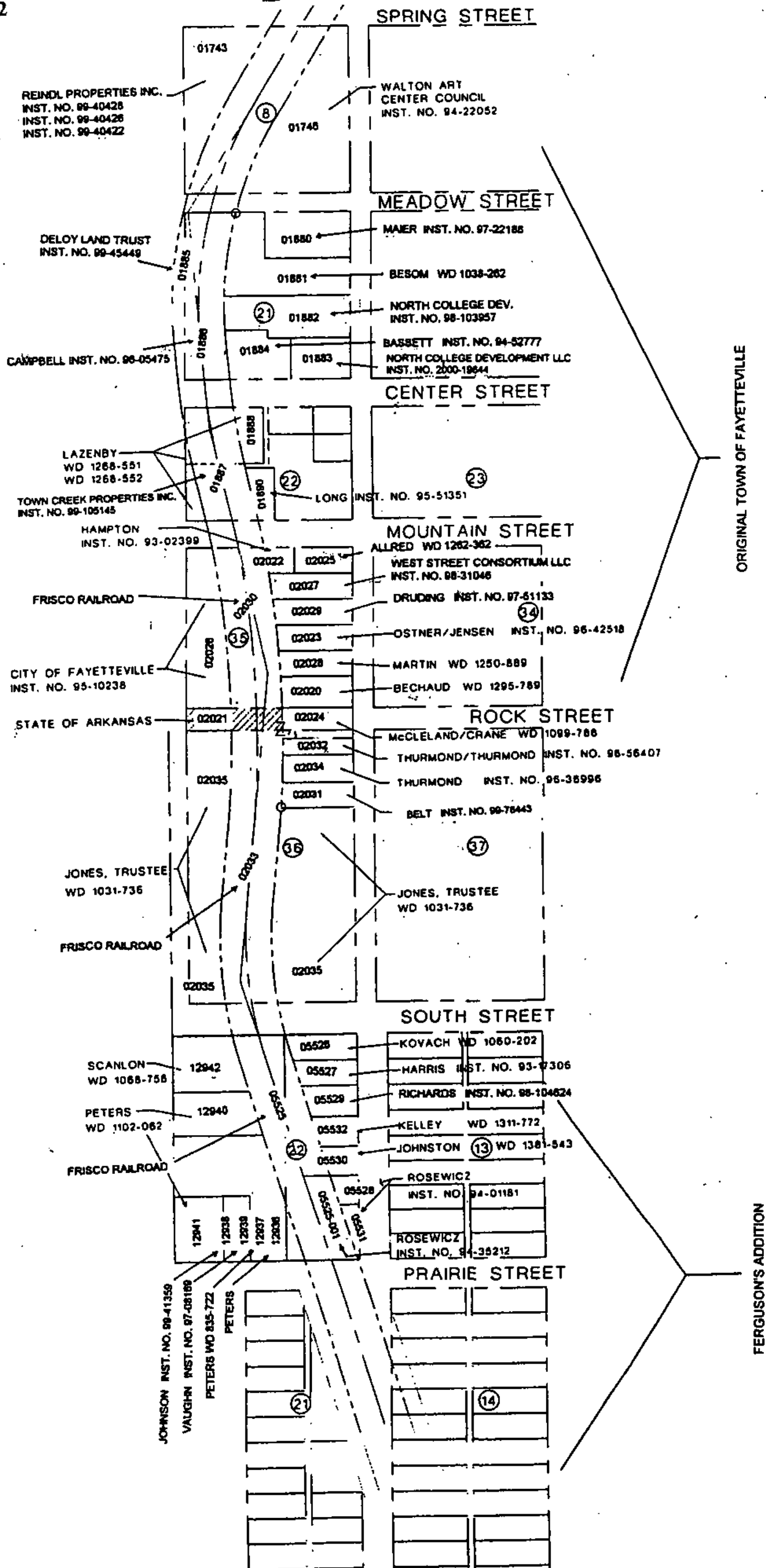
*Mark E. Risk*  
Appraiser, Mark E. Risk GAA, #CG0202



*Leslie Manning*  
Appraiser, Leslie Manning







## STAFF REVIEW FORM

☒ AGENDA REQUEST  
☐ CONTRACT REVIEW  
☐ GRANT REVIEW

For the Fayetteville City Council meeting of July 3, 2000

## FROM:

Tim Conklin  
Name

Planning  
Division

Public Works  
Department

**ACTION REQUIRED:** To approve an ordinance for VA00-4, submitted by Henry Kelly, Jr. of Millsap Road Investments for property located at 655 Millsap Road. Lot 19 of CMN Business Park Phase I. The property is zoned C-2, Thoroughfare Commercial and contains approximately 2.58 acres. The request is to vacate a portion of an existing water line easement within lot 19.

## COST TO CITY:

\$

Cost of this Request

Category/Project Budget

Category/Project Name

Account Number

Funds Used To Date

Program Name

Project Number

Remaining Balance

Fund

**BUDGET REVIEW:** \_\_\_\_\_ Budgeted Item \_\_\_\_\_ Budget Adjustment Attached

Budget Manager

Administrative Services Director

**CONTRACT/GRANT/LEASE REVIEW:**

**GRANTING AGENCY:** \_\_\_\_\_

Accounting Manager

Date

Internal Auditor

Date

City Attorney

Date

ADA Coordinator

Date

Purchasing Officer

Date

**STAFF RECOMMENDATION:** Staff recommended approval and Planning Commission unanimously voted 9-0-0 to recommend approval and forward the vacation to the City Council. This item was heard as a part of the consent agenda on June 12, 2000.

Division Head

Date

Department Director

Date

Administrative Services Director

Date

Mayor

Date

Cross Reference

New Item: **Yes**

Prev Ord/Res #: \_\_\_\_\_

Orig Contract Date: \_\_\_\_\_

Orig Contract Number: \_\_\_\_\_



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE APPROVING VA00-4.00 TO VACATE  
AND ABANDON PORTIONS OF ABANDONED WATER  
LINE EASEMENTS LOCATED ON LOT 19 OF CMN  
BUSINESS PARK, AS SUBMITTED BY HENRY KELLEY, JR.  
OF MILLSAP ROAD INVESTMENTS.

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

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

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

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

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

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

**Section 3.** That the above is contingent upon receiving the following: Dedication of a  
15' water/sewer easement to be located adjacent to the existing 25' utility easement on the east  
side of lot 19 from the south lot line to the north approximately 140 feet.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

**APPROVED:**

By \_\_\_\_\_  
Fred Hanna, Mayor

**ATTEST:**

By \_\_\_\_\_  
Heather Woodruff, City Clerk

EXHIBIT "A"

No. 1 Final Vacation of Easement filed as Bok 451, Page 600:

A strip of land over a portion of Lot 19 of CMN Business Park, said strip being 17.5 feet on both sides of an abandoned water line, the centerline of which being more particularly described as follows: Beginning at a point South 87°12'24" West 136.55 feet from the Southeast corner of said Lot 19; thence North 24°40'33" East 161.50 feet to the end of said easement vacation. This vacation, along with Ord. 2899 and Ord. 4238 deletes all interest of the City of Fayetteville, Arkansas, in the original easement, filed of record in Book 451, Page 600, Washington County, Arkansas, as granted by Elo Michaelis and LeBelle Michaelis.

No. 2 Vaction of a Portion Easement filed as Book 729, Page 295:

A stip of land over a portion of Lot 19 of CMN Business Park, said strip being 15.0 feet on both sides of an abandoned water line, the centerline of which being more particularly described as follows: Beginning at a point which is North 02°38'19" East 135.00 feet and North 87° 12'24" West 40.00 feet from the Southeast corner of Lot 19; thence North 87°12'24" West 60.00 feet to the end of this easement vacation, said point also being the West end of the easement as filed of record in Book 729 at Page 295, Washington County, Arkansas.



Planning Commission Minutes  
June 12, 2000  
Page 2

**CONSENT AGENDA:**

**Approval of minutes from the May 22, 2000 meeting.**

**AD 00-17.00: Administrative Item (Garrouette, pp 137)** was submitted by Rick Garrouette for property located at 2108 & 2110 Cinnamon Way, lot 11 Missouri Oaks Subdivision. The property is zoned R-2, Medium Density Residential. The request is for a triplex on a lot that was limited to a duplex by the final plat.

**LSD 00-7.10: Large Scale Development/P.U.D. (Indian Springs phase II, pp 372)** was submitted by Dave Jorgensen of Jorgensen & Associates on behalf of Sweetser Properties for property located south of Hwy 45 and west of Madison Drive. The property is zoned R-1, Low Density Residential and contains approximately 3.20 acres with 18 units proposed.

**VA 00-4.00: Vacation (Millsap Road Investment, pp 213)** was submitted by Henry Kelly, Jr. of Millsap Road Investments for property located at 655 Millsap Road. Lot 19 of CMN Business Park Phase I. The property is zoned C-2, Thoroughfare Commercial and contains approximately 2.58 acres. The request is to vacate a portion of an existing water line easement within lot 19.

**VA 00-5.00: Vacation (Wiggins Memorial United Methodist Church, pp 523)** was submitted by Harvey Luttrell on behalf of Wiggins Memorial United Methodist Church for property located at 205 W. 6<sup>th</sup>. The property is zoned R-2, Medium Density Residential and contains approximately 0.18 acres. The request is to vacate a portion of the City right of way.

**VA 00-6.00: Vacation (Stevens, pp 521)** was submitted by Joe and Angela Stevens for property located on Old Farmington Road between Beechwood and Eastern. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately 0.23 acres. The request is to vacate a portion of Old Farmington Road.

**Odom:** Good evening and welcome to the June 12, 2000 meeting of the Fayetteville Planning Commission. The first thing that needs to be brought to everyone's attention is that at the Agenda Session, Item 6 that is on the agenda, AD 00-19.00 Administrative Item appeal of the Floodplain Development Permit and Grading Permit for LSD 00-5 Steele Crossing has been pulled from the agenda and will instead be heard at a special Planning Commission Meeting a week from today, June 19, 2000 at 5:30 pm here in this room. We have five items on the consent agenda today. The first item is the approval of the minutes of the May 22, 2000 meeting. The second is AD00-17 submitted by Rick Garrouette, and I apologize if I pronounced that wrong, for property located at 2108 & 2110 Cinnamon Way, lot 11 Missouri Oaks Subdivision. The property is zoned R-2, Medium Density

Planning Commission Minutes  
June 12, 2000  
Page 3

Residential. The request is for a triplex on a lot that was limited to a duplex by the final plat. Item two is LSD 00-7.10 submitted by Dave Jorgensen of Jorgensen & Associates on behalf of Sweetser Properties for property located south of Hwy 45 and west of Madison Drive. The property is zoned R-1, Low Density Residential and contains approximately 3.20 acres with 18 units proposed. The third item is VA 00-4.00 submitted by Henry Kelly, Jr. of Millsap Road Investments for property located at 755 Millsap Road. Lot 19 of CMN Business Part, Phase I. The property is zoned C-2, Thoroughfare Commercial and contains approximately 2.58 acres. The request is to vacate a portion of an existing water line easement within lot 19. Item number 4 is VA 00-5.00 submitted by Harvey Luttrell on behalf of Wiggins Memorial United Methodist Church for property located at 205 W. 6<sup>th</sup>. The property is zoned R-2, Medium Density Residential and contains approximately 0.18 acres. The request is to vacate a portion of the city right-of-way. The fifth item on the consent agenda is VA 00-6.00 submitted by Joe and Angela Stevens for property located on Old Farmington Road between Beechwood and Eastern. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately 0.23 acres. The request is to vacate a portion of Old Farmington Road. These items on the consent agenda will be approved by the Commission unless a member of the Commission or the audience wishes to pull an item to discuss it individually.

**PUBLIC COMMENT & COMMISSION DISCUSSION:**

- Odom: Does any member of the Commission or the audience wish to pull any of the items on the consent agenda?
- Marr: Mr. Chair, just a question. Is the only change on item three which we received a revised copy?
- Odom: Item three, there was a change by the staff and it is my understanding there was an agreement by the applicant that that change was acceptable.
- Conklin: That is correct. We do have signed conditions of approval on every consent item on the agenda.
- Odom: Any further questions? Call the Roll.

**ROLL CALL:**

Upon roll call the motion to approve the consent agenda carries unanimously 9-0-0.

P.C. Meeting of 12 June 2000

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS  
113 W. Mountain St.  
Fayetteville, AR 72701

Waterline Easement Vacation  
Millsap Road Investment Co.

---

**TO:** Fayetteville Planning Commission Members  
**THRU:** Tim Conklin, City Planner  
**FROM:** Ron Petrie, P.E., Staff Engineer  
**DATE:** June 12, 2000

---

**Project:** VA 00-04.00: Easement Vacation (Millsap Road Investment Co., Inc., pp 213) was submitted by Henry Kelly, Jr. of Flake & Kelly Management, Inc. for property located at Lot 19, CMN Business Park. The property is zoned C-2, Thoroughfare Commercial, and contains approximately 1.857 acres. The request is to vacate a 30' and a 35' water easement located across Lot 19.

The waterline in this easement was previously abandoned. Please refer to the attached drawings for exact location and dimensions.

The applicant has submitted the required notification forms to the utility companies and to the City. The results are as follows:

Ozarks Electric - Not applicable.  
Southwestern Electric Power Company - Not applicable.  
Arkansas Western Gas - Not applicable.  
SW Bell - Not applicable.  
Cox Communications - Not applicable.

**City of Fayetteville:**

Water/Sewer - No objections provided that a 15' water & sewer easement be dedicated that is adjacent to the existing 25' utility easement on the east side of Lot 19 from the south lot line to the north approximately 140 feet.

Street Department - Not applicable.  
Solid Waste - Not applicable.

**Recommendation:** Approval of the requested easement vacation subject to the dedication of a 15' water/sewer easement to be located adjacent to the existing 25' utility easement on the east side of Lot 19 from the south lot line to the north approximately 140 feet.



PLANNING COMMISSION ACTION: yes Required  
           Approved            Denied

Date: 06 / 12 / 00

Comments:

---

---

---

---

CITY COUNCIL ACTION: yes Required  
           Approved            Denied

Date:      /      /     

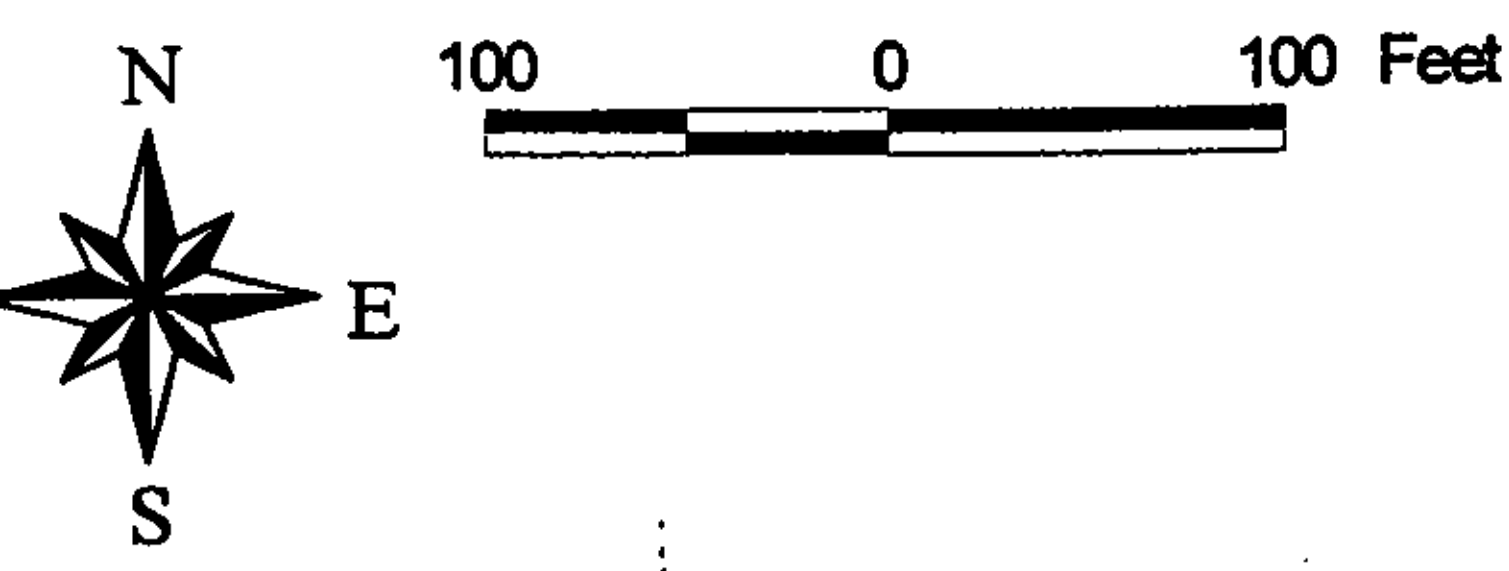
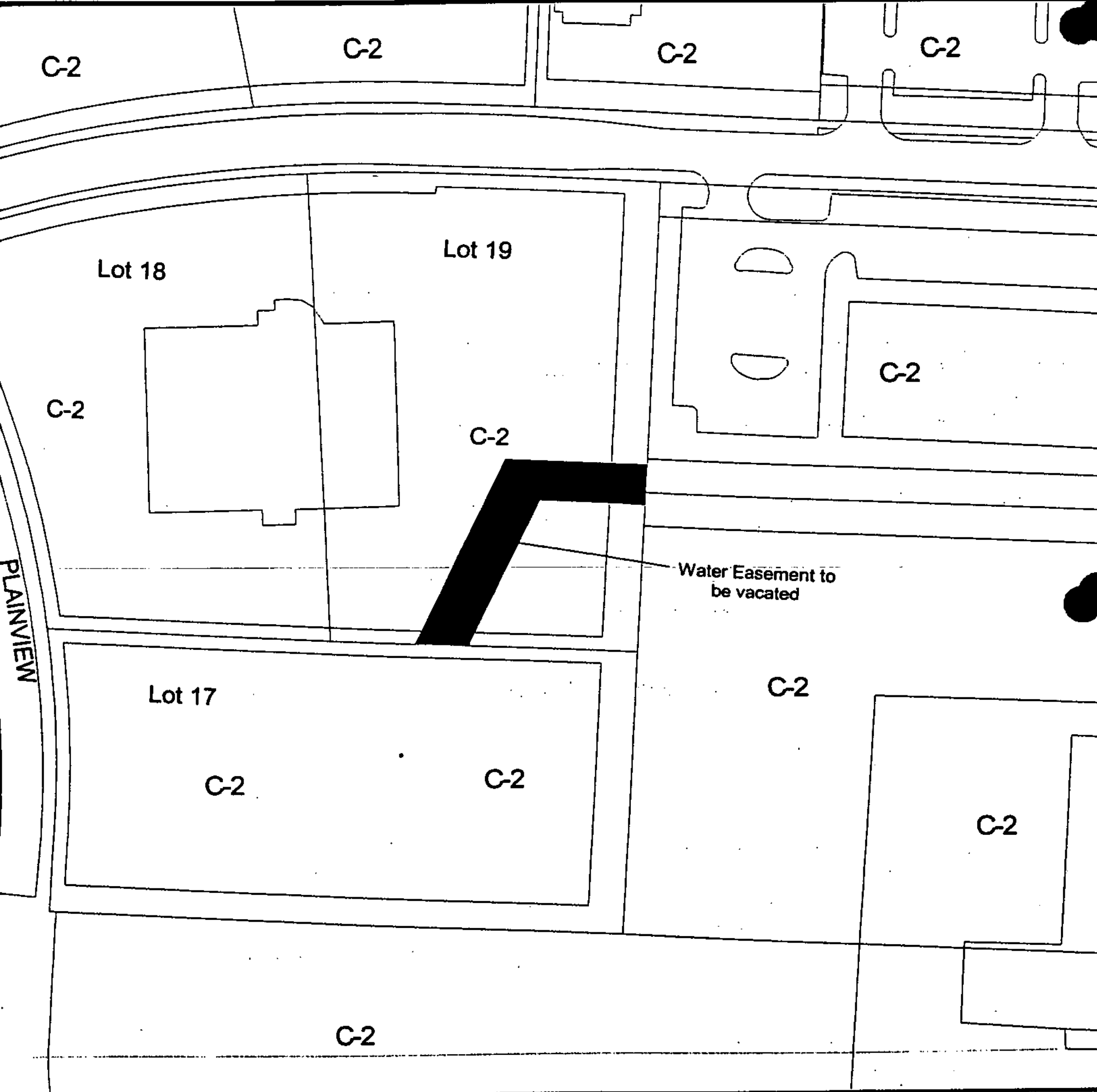
The "CONDITIONS OF APPROVAL", beginning on page one of this report, are accepted in total without exception by the entity requesting approval of this development item.

\_\_\_\_\_  
by

\_\_\_\_\_  
title

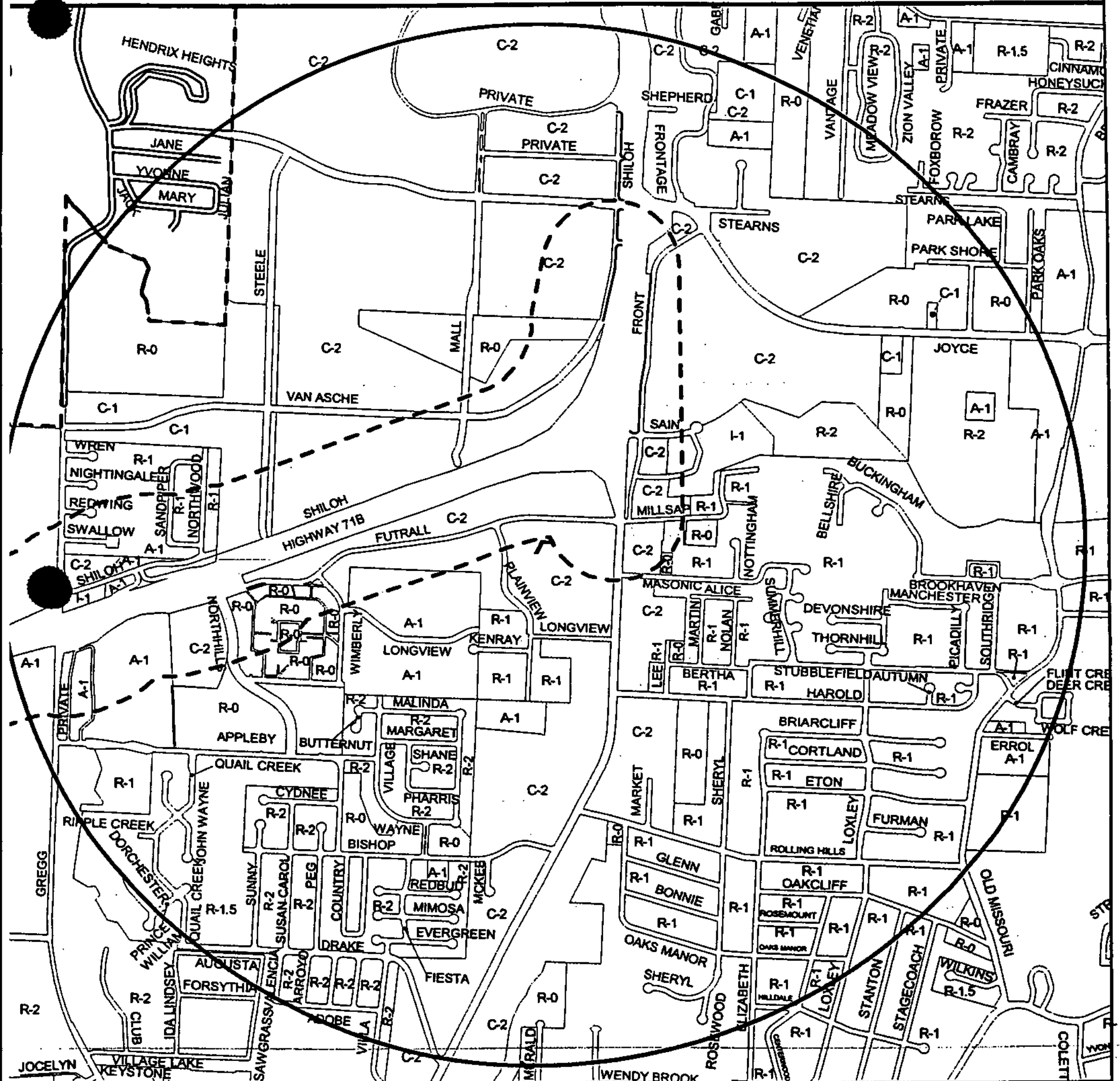
\_\_\_\_\_  
date

# A00-4.00 - Millsap Road Investments Lot 19 - Close Up





**/A00-4.00 - Millsap Road Investments - One Mile Diameter**



1400                      0                      1400 Feet





# FLAKE & KELLEY

MANAGEMENT

*Specialists in Leasing, Property Management, and Real Estate Consulting*

May 24, 2000

Mr. Edward D. Connell  
City of Fayetteville  
113 West Mountain  
Fayetteville, AR 72701

Dear Mr. Connell:

Enclosed please find the fully executed Petition and the Water/Sewer Easement Agreement for Lot 19 of CMN Business Park.

Thank you for your assistance in this matter.

Sincerely,

Hank Kelley, CPM®  
President/CEO

HK:skb  
000524.ec

## PETITION

### PETITION TO VACATE PORTIONS OF TWO EASEMENTS LOCATED IN LOT 19 OF CMN BUSINESS PARK, CITY OF FAYETTEVILLE, ARKANSAS

To: The City of Fayetteville Planning Commission and  
The Fayetteville City Council

I, Henry C. Kelley Jr., being the managing member of the owners of the real estate abutting the easement hereinafter sought to be abandoned and vacated, lying in Lot 19, CMN Business Park, City of Fayetteville, Arkansas, petition to vacate easements which are described as follows:

No. 1 Final Vacation of Easement filed as Book 451, Page 600:

A strip of land over a portion of Lot 19 of CMN Business Park, said strip being 17.5 feet on both sides of an abandoned water line, the centerline of which being more particularly described as follows: Beginning at a point South 87° 12' 24" West 136.55 feet from the Southeast corner of said Lot 19; thence North 24° 40' 33" East 161.50 feet to the end of said easement vacation. This vacation, along with Ord. 2899 and Ord. 4238 deletes all interest of the City of Fayetteville, Arkansas, in the original easement, filed of record in Book 451, Page 600, Washington County, Arkansas, as granted by Elo Michaelis and LeBelle Michaelis.

No. 2 Vacation of a Portion Easement filed as Book 729, Page 295:

A strip of land over a portion of Lot 19 of CMN Business Park, said strip being 15.0 feet on both sides of an abandoned water line, the centerline of which being more particularly described as follows: Beginning at a point which is North 02° 38' 19" East 135.00 feet and North 87° 12' 24" West 40.00 feet from the Southeast corner of Lot 19; thence North 87° 12' 24" West 60 feet to the end of this easement vacation, said point also being the West end of the easement as filed of record in Book 729 at Page 295, Washington County, Arkansas.

That the abutting real estate affected by said abandonment of the easements are the office building located on Lot 18 and Lot 19, CMN Business Park and owned by the undersigned and Lot 17, CMN Business Park on the South side, also owned by the undersigned. The public interest in the water lines, now abandoned, and the associated easements, was in use for many years (original raw water line from Lake Fayetteville) and the public interest and welfare would not be adversely affected by the abandonment of the requested portions of easements as described hereinabove.



PETITION OF VACATION  
Page 2 of 2

The petitioners pray that the City of Fayetteville, Arkansas abandoned the use and vacate their interest in the real estate as described hereinabove, however, any other easements, for whatever stated purposes the case may be, shall remain in full force and effect over, under or across any and all abandoned easements. Any other easements of the total property shall also remain in full force and effect.

WHEREFORE, the undersigned petitioners respectfully pray that the governing body of the City of Fayetteville, Arkansas, abandon and vacate the above described real estate in favor of the listed property owner.

Dated this 23 Day of May, 2000

Henry C. Kelley Jr., Managing Member, Millsap Road Investment Company, LLC  
Printed Name

Henry C. Kelley Jr.  
Signature

Henry C. Kelley Jr.  
Printed Name

Henry C. Kelley Jr.  
Signature

Henry C. Kelley, Jr., Managing Member

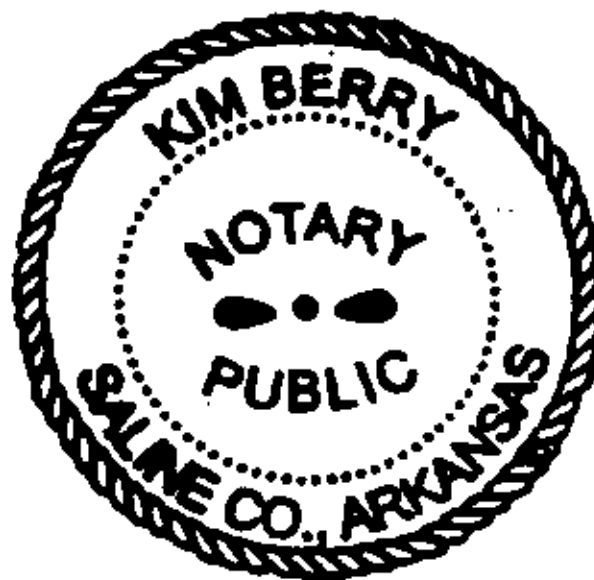
**WATER/SEWER EASEMENT**

**ACKNOWLEDGMENT**

STATE OF ARKANSAS                     )  
                                                  )       ss.  
COUNTY OF                            )

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 **Henry C. Kelley, Jr.**, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is a **Managing Member of the Millsap Road Investment Company, LLC**, an Arkansas limited liability company and is duly authorized in his capacity of to execute the foregoing instrument for and in the name of and on behalf of said company, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 23 day of May, 2000.



Kim Berry  
Notary Public

**ADDENDUM TO WATER/SEWER EASEMENT**

This Addendum to Water/Sewer Easement ("Addendum") is executed and delivered by **Millsap Road Investment Company, LLC** (called "Grantor") as an addendum to that certain Water/Sewer Easement (the "Easement") from Grantors to the **City of Fayetteville, Arkansas**, a municipal corporation, ("Grantee") dated of even date herewith and to which this Addendum is attached. This Addendum shall be deemed a part of the Easement and shall be read and interpreted in conjunction therewith.

In consideration of the covenants set forth herein, the consideration recited in the Easement, and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. Access to Easement Lands. As more particularly set forth in the Easement, Grantors conveyed to Grantee that certain water and sewer line easement over and across the lands described in the Easement under the heading "Permanent Easement Description" (the "Easement Lands"). Grantee's rights with respect to that part of Lot No. 17, CMN Business Park Subdivision to the City of Fayetteville, Arkansas (the "Lot") situated outside of the Easement Lands is limited



## WATER/SEWER EASEMENT

BE IT KNOWN BY THESE PRESENTS:

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

### PROPERTY DESCRIPTION:

Lot No. 19, CMN Business Park Subdivision to the City of Fayetteville as per final plat of said subdivision on file in Plat Book 12, Page 92 real estate records with the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas

### PERMANENT EASEMENT DESCRIPTION:

A permanent Water/Sewer Easement described as a strip of land 15 feet in equal and uniform width, being adjacent to and contiguous with the western side of the platted General Utility Easement situated on the east boundary line of the above referenced Lot No. 19, CMN Business Park subdivision to the City of Fayetteville, Arkansas, said lot being located in the Northwest Quarter (NW/4) of the Southeast Quarter (SE/4) of Section 26, Township 17 North, Range 30 West, Washington County, Arkansas, such easement being more particularly described as follows: Beginning at a point which is North 02° 38' 19" East 10.00 feet and North 87° 12' 24" West 25.00 feet from the Southeast corner of said Lot 19, said point being at the intersection of the platted General Utility Easements on the south and east boundary lines of Lot 19; thence North 02° 38' 19" East 140.00 feet to the north side of a permanent water line easement as filed in Book 729 at Page 295; thence along the north line of said water line easement North 87° 12' 24" West 15.00 feet; thence South 02° 38' 19" West 140.00 feet; thence South 87° 12' 24" East 15.00 feet to the Point of Beginning, containing 2,100 square feet (0.048 acre), more or less,

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

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

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

May 10, 2000

Mr. Hank Kelley, President  
Flake & Kelley Management Company  
P. O. Box 990  
Little rock, AR 72203

Re: Millsap Road Investment Company, LLC  
Lot 19, CMN Business Park  
Water Line Easement and Vacation

Dear Mr. Kelley:

After our telephone conversation last Friday (May 5th, 2000), I reviewed the circumstances surrounding the vacation of a waterline easement that went diagonally across Lot 17 and Lot 19 of the subject business park.

Initially, you submitted a request to abandon such line and vacate the easement across Lot 17 and Lot 19. According to the City Water/Sewer Maintenance Superintendent, the East-West portion of an intersecting line and easement was still alive for about 100 feet into the East side of Lot 19. So as not to have the entire request denied, the petition was modified to include only Lot 17 since all of the push from various sources were on that lot. You were informed of this modification during a phone conversation with the undersigned. The vacation across Lot 17 was approved by the Planning Commission as well as the Fayetteville City Council, contingent upon your acceptance of supplemental 15 ft. Water/Sewer Easements on the South and East side of Lot 17. To date, we have not received those documents.

On Monday of this week, we again reviewed the status of the water lines that go into the middle of Lot 19. Although there is no record of such, we did find one of our Water/Sewer Division personnel who recalled being called out one midnight to shut the water off so that a contractor could cap the 16" East-West water line about 15-20 feet inside the East property line of Lot 19. The outcome of this is we can now request a vacations of the SW-NE portion of the old easement as well as the West 60 feet portion of the E-W easement, leaving about 40 feet of said easement (30' wide) entering the East side of Lot 19. Although I do not know when a new 16"/18" water line may be constructed along the East side of Lots 19 & 17, the City is requiring an additional 15 foot wide Water/Sewer easement to the west of the existing 25 ft. platted general utility easement on Lot 19, similar to and to correspond with the easement for Lot 17.

I am informed that the vacation for Lot 19, as described in the attached PETITION document, will not be submitted to the Planning Commission or City Council until we are in receipt of the signed Water/Sewer Easement documents for each lot. Included you will find W/S easement document for Lot 19. This document has been prepared, with the inclusion of an "Addendum", as requested by Mr. Schallhorn, so as to be consistent with the Document for Lot 17.

Mr. Henry C. Kelley Jr.  
Lot 19, CMN Business Pk  
Easement Vacation  
Page 2 of 2

We need separate documents because the title and ownership interest is in the names of different entities. We will have to go through the entire procedure again for this vacation.

Please sign the previous easement sent to Scott Schallhorn on April 26, 2000 for Lot 17. Included is W/S easement document for Lot 19. Please return them to me as soon as possible. I can refrain from recording such easements until after Lot 19 vacation is complete, if you so desire. We try to present copies of the executed documents to the commission and the council to help out in attaining the requested vacations. We also need your signature on the enclosed petition. This vacation will be at no cost to you from the standpoint of the City normal charges.

If you have any questions or comments, please give me a call at (501) 444-3415.

Sincerely yours,

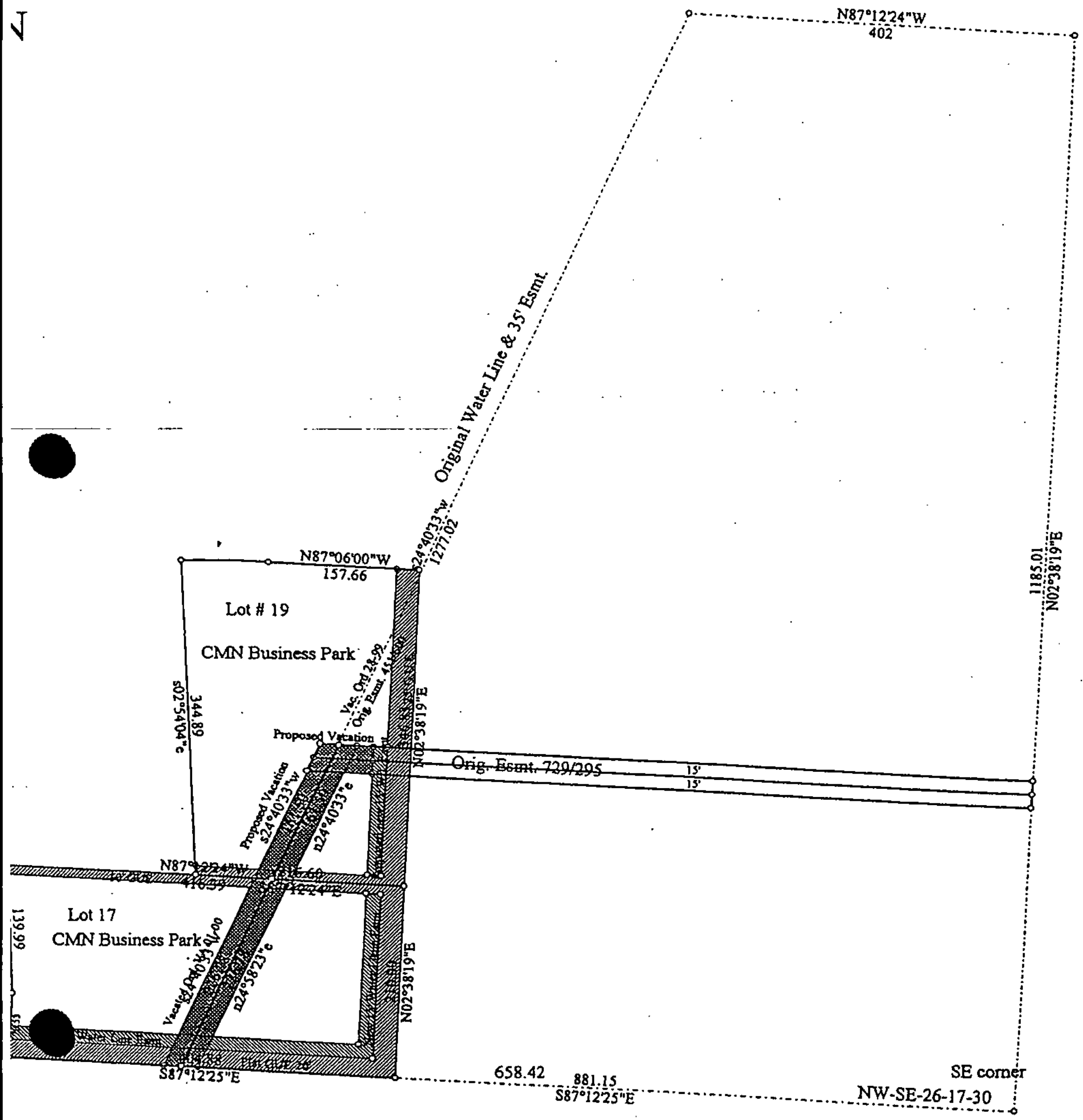
  
Edward D. Connell  
City Land Agent

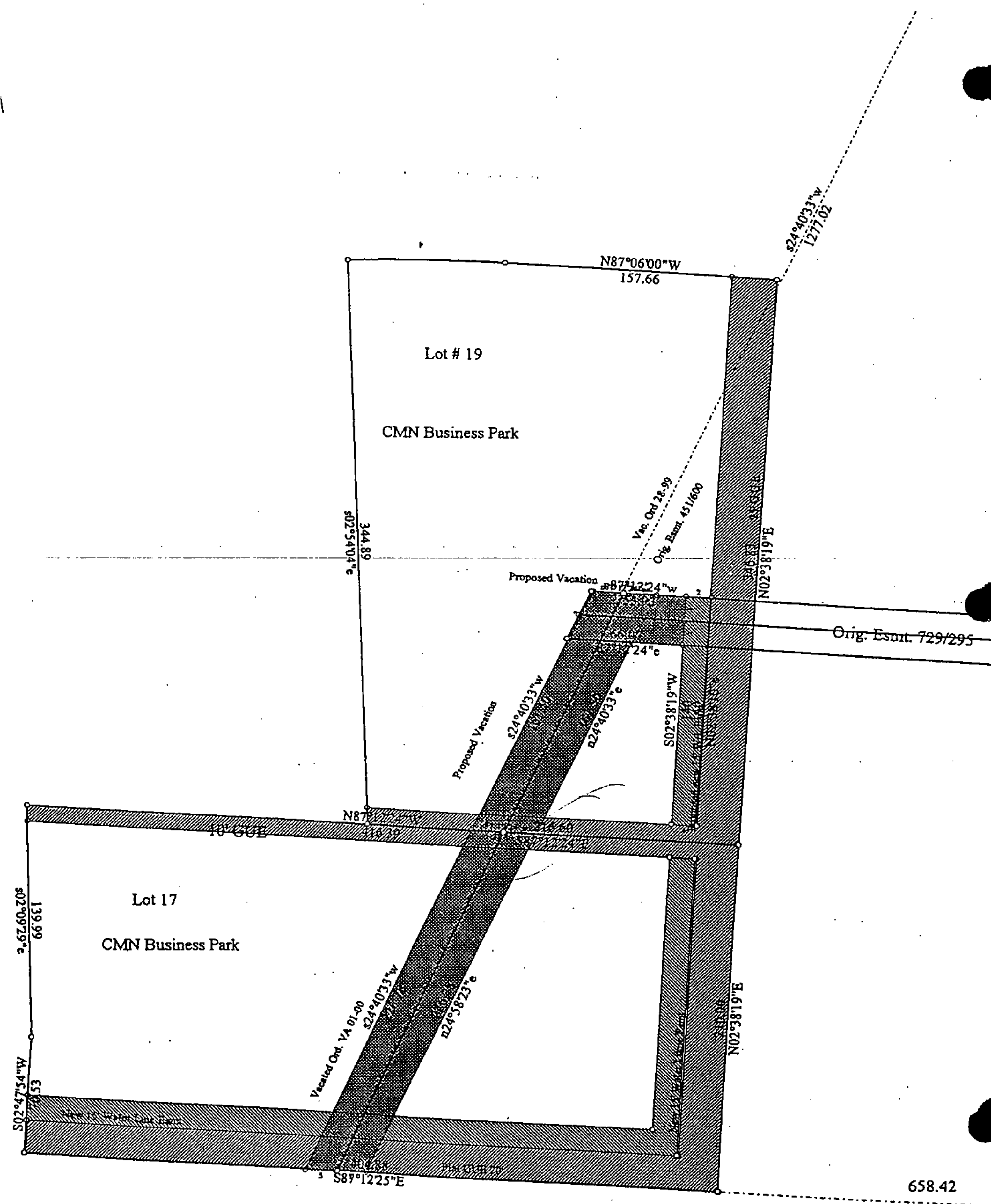
cc: Mr. Scott Schallhorn

Enclosure

\edc









# Data and Deed Call Listing of File: CMN-19.DES

-Tract 1: 17.453 Acres: 70631.4 Sq Meters: No significant closure error. : Perimeter = 3745 feet  
 -Tract 2: 1.970 Acres: 85806 Sq Feet: 7971.6 Sq Meters: No significant closure error. : Perimeter = 1242 feet  
 -Tract 3: 1.857 Acres: 80889 Sq Feet: 7514.9 Sq Meters: No significant closure error. : Perimeter = 1158 feet  
 -Tract 4: 0.382 Acres: 16658 Sq Feet: 1547.6 Sq Meters: Closure = s89.5548w 0.95 feet: Precision =1/2112: Perimeter = 2012 feet  
 -Tract 5: 0.188 Acres: 8173 Sq Feet: 759.3 Sq Meters: No significant closure error. : Perimeter = 1120 feet  
 -Tract 6: 0.867 Acres: 37750 Sq Feet: 3507.1 Sq Meters: Closure = n65.1359w 1.18 feet: Precision =1/677: Perimeter = 796 feet  
 -Tract 7: 0.182 Acres: 7946 Sq Feet: 738.2 Sq Meters: Closure = n65.1102w 1.18 feet: Precision =1/450: Perimeter = 529 feet  
 -Tract 8: 0.000 Acres: 0 Sq Feet: 0.0 Sq Meters: Closure = s87.1224e 760.00 feet: Precision =1/ 1: Perimeter = 760 feet  
 -Tract 9: 0.523 Acres: 22801 Sq Feet: 2118.3 Sq Meters: No significant closure error. : Perimeter = 1582 feet  
 -Tract 10: 0.247 Acres: 10745 Sq Feet: 998.2 Sq Meters: No significant closure error. : Perimeter = 1127 feet  
 -Tract 11: 0.048 Acres: 2100 Sq Feet: 195.1 Sq Meters: No significant closure error. : Perimeter = 310 feet  
 -Tract 12: 0.041 Acres: 1800 Sq Feet: 167.2 Sq Meters: No significant closure error. : Perimeter = 182 feet  
 -Tract 13: 0.000 Acres: 0 Sq Feet: 0.0 Sq Meters: Closure = s24.1223e 168.20 feet: Precision =1/ 2: Perimeter = 298 feet  
 -Tract 14: 0.130 Acres: 5653 Sq Feet: 525.2 Sq Meters: No significant closure error. : Perimeter = 398 feet  
 Net Area= 11.148 Acres: 485604 Sq Feet: 45114.0 Sq Meters

|                                    |                                  |                              |
|------------------------------------|----------------------------------|------------------------------|
| 001=/N87.1225W 658.42              | 042=/N87.1225W 222.73            | 083=/N87.1225W 658.42        |
| 002=/N87.1225W 222.73              | 043=S87.1225E 222.73             | 084=/N02.3819e 220           |
| 003=S87.1225E 881.15               | 044=N02.3819E 210                | 085=/N87.1224W 40            |
| 004=N02.3819E 1185.01              | 045=N87.1224W 136.55             | 086=/N02.3819E 125           |
| 005=N87.1224W 402                  | 046=s24.4033w 226.78             | 087=n02.3819e 15.00          |
| 006=s24.4033w 1277.02              | 047=@2 TR&-#17 Abandoned Esement | 088=n87.1224w 53.93          |
| 007=@1 Tr2-Lot 17                  | 048=/N87.1225W 222.73            | 089=s24.4033w 32.33          |
| 008=/N87.1225W 658.42              | 049=s87.1225e 18.90              | 090=s87.1224e 66.07          |
| 009=N02.3819E 210.00               | 050=n24.5823e 226.78             | 091=n02.3819e 15.00          |
| 010=N87.1224W 416.39               | 051=n87.1224w 37.80              | 092=@1 TR13-NE Vacation - 19 |
| 011=s2.0929e 139.99                | 052=s24.4033w 226.78             | 093=/N87.1225W 658.42        |
| 012=S02.4754W 70.53                | 053=s87.1225e 18.90              | 094=/N02.3819E 210           |
| 013=S87.1225E 404.88               | 054=@1 TR8-E-W 16" WL CL         | 095=N87.1224W 136.55         |
| 014=@1 TR#-Lot 19                  | 055=/N02.3819E 345               | 096=N24.4033E 161.5          |
| 015=/N87.1225W 658.42              | 056=N87.1224W 760.00             | 097=@1 TR14 19 Esm Vac       |
| 016=/N02.3819E 210.01              | 057=@1 TR9-#19-e-w esmt.         | 098=/N87.1225W 658.42        |
| 017=/N87.1224W 216.60              | 058=/N02.3819E 345               | 099=/N02.3819E 210           |
| 018=S87.1224E 216.60               | 059=n02.3819e 15.00              | 100=/N87.1224W 136.55        |
| 019=N02.3819E 346.83               | 060=n87.1224w 753.84             | 101=s87.1224e 18.86          |
| 020=N87.0600W 157.66               | 061=s24.5823w 32.40              | 102=n24.4033e 161.50         |
| 021: L1, R=1038.25, Arc=92.34      | 062=s87.1224e 766.16             | 103=n87.1224w 37.72          |
| 022=s02.5404e 344.89               | 063=n02.3819e 15.00              | 104=s24.4033w 161.50         |
| 023=@2 TR4-lot 17 plat esmt.       | 064=@1 TR10-Plat esmt -19        | 105=s87.1224e 18.86          |
| 024=N02.3819E 210                  | 065=/N87.1225W 658.42            |                              |
| 025=N87.1224W 416.39               | 066=/N02.3819E 210               |                              |
| 026=S02.4754E 10                   | 067=N02.3819E 346.83             |                              |
| 027=S87.1224E 391.39               | 068=N87.1224W 25                 |                              |
| 028=S02.3819W 180                  | 069=s02.4810w 336.88             |                              |
| 029=N87.1225W 379.82               | 070=N87.1225W 191.60             |                              |
| 030=S02.4754W 20                   | 071=S02.5404E 10.0               |                              |
| 031=s87.1225e 404.88               | 072=S87.1224E 216.60             |                              |
| 032=@2 TR5-lot 17 new w/s Easement | 073=@1 TR11-L-19 New Esmt.       |                              |
| 033=/N02.3819E 200.                | 074=/N87.1225W 658.42            |                              |
| 034=/N87.1224W 25                  | 075=/N02.3819e 210               |                              |
| 035=N87.1224W 15                   | 076=/N87.1224W 25                |                              |
| 036=S02.3819W 165                  | 077=/N02.3819E 10                |                              |
| 037=N87.1225W 364.82               | 078=N02.3810e 140                |                              |
| 038=S02.4754W 15                   | 079=N87.1224W 15                 |                              |
| 039=S87.1225E 379.86               | 080=S02.3819W 140                |                              |
| 040=N02.3819E 180                  | 081=S87.1224E 15                 |                              |
| 041=@2 TR6-Abandoned W/L CL #17    | 082=@1 TR12-E-W Vacation- 19     |                              |

## WATER/SEWER EASEMENT

BE IT KNOWN BY THESE PRESENTS:

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

### PROPERTY DESCRIPTION:

Lot No. 19, CMN Business Park Subdivision to the City of Fayetteville as per final plat of said subdivision on file with the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas

### PERMANENT EASEMENT DESCRIPTION:

A permanent Water/Sewer Easement described as a strip of land 15 feet in equal and uniform width, being adjacent to and contiguous with the western side of the platted General Utility Easement situated on the east boundary line of Lot No. 19, CMN Business Park subdivision to the City of Fayetteville, Arkansas, the plat of said lot filed for record October 8, 1993, said lot being located in the Northwest Quarter (NW/4) of the Southeast Quarter (SE/4) of Section 26, Township 17 North, Range 30 West, Washington County, Arkansas, being more particularly as follows: Beginning at a point which is North 02° 38' 19" East 10.00 feet and North 87° 12' 24" West 25.00 feet from the Southeast corner of said Lot 19, said point being at the intersection of the platted South and East boundaries General Utility Easements; thence North 02° 38' 19" East 140.00 feet to the North side of a permanent water line easement as filed in Book 729 at Page 295; thence North 87° 12' 24" West 15.00 feet; thence South 02° 38' 19" West 140.00 feet; thence South 87° 12' 24" East 15.00 feet to the Point of Beginning, containing 2,100 square feet (0.048 acre), more or less,

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

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

The said Grantors are 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 that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above high water, and to pay any damages which may arise to growing crops or fences from the construction, maintenance and operation as determined by three disinterested persons. One thereof to be appointed by the said Grantors; 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.

It is expressly understood that the above easement shall exclude any permanent structure located within said easement area at the time of the execution of this document.

The Grantors agree 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 Grantors 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.

Millsap Road Investment Company, LLC

\_\_\_\_\_  
Henry C. Kelley, Jr., Managing Member

ACKNOWLEDGMENT

STATE OF ARKANSAS                     )  
                                              )  
COUNTY OF                            ) 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 Henry C. Kelley, Jr., to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is a Managing Member of the Millsap Road Investment Company, LLC, an Arkansas limited liability company and is duly authorized in his capacity of to execute the foregoing instrument for and in the name of and on behalf of said company, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

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

MY COMMISSION EXPIRES:

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

ADDENDUM TO WATER/SEWER EASEMENT

This Addendum to Water/Sewer Easement ("Addendum") is executed and delivered by Millsap Road Investment Company, LLC (called "Grantor") as an addendum to that certain Water/Sewer Easement (the "Easement") from Grantors to the City of Fayetteville, Arkansas, a municipal corporation, ("Grantee") dated of even date herewith and to which this Addendum is attached. This Addendum shall be deemed a part of the Easement and shall be read and interpreted in conjunction therewith.

In consideration of the covenants set forth herein, the consideration recited in the Easement, and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. Access to Easement Lands. As more particularly set forth in the Easement, Grantors conveyed to Grantee that certain water and sewer line easement over and across the lands described in the Easement under the heading "Permanent Easement Description" (the "Easement Lands"). Grantee's rights with respect to that part of Lot No. 17, CMN Business Park Subdivision to the City of Fayetteville, Arkansas (the "Lot") situated outside of the Easement Lands is limited to a right of ingress and egress across the Lot for reasonable access to the Easement Lands for the uses and purposes set forth in the Easement. The limitation set forth in this paragraph shall not reduce or otherwise effect Grantee's rights with respect to the General Utility Easements set forth on the recorded plat of the Lot.
2. Repair of Ground Surface. Grantee, at its expense, shall fill any excavations on the Easement Lands and return the surface of the land to the same grade and flush with existing soil. Grantee shall use ground cover or other satisfactory materials to prevent erosion and washing of soil and replace any existing grass and shrubs damaged by Grantee's exercise of its rights under the Easement. Grantee's obligations under this paragraph are in addition to those set forth in the Easement.
3. Notice of Blasting. Grantee shall provide written notice to Grantors prior to its commencing construction on the Easement Lands and further prior to commencing any lasting or other work on the Easement Lands that may cause vibrations detectable outside the Easement Lands. Such notice shall be delivered by personal delivery, facsimile transmission or U.S. Mail for receipt at least two days prior to beginning such work and shall be transmitted to the following: Mr. Henry C. Kelley, Jr., 755 Millsap Road LLC, Millsap Road Investment Company, LLC, 425 West Capitol Avenue, Suite 300, Little Rock, Arkansas 72201, telephone: 501-375-3200, fax: 501-374-9537.
4. Entire Agreement; Binding Effect. This Addendum and the Easement contain the entire understanding of the parties with respect to the matters set forth in such documents. The Easement and this Addendum shall bind and inure to the benefit of Grantors, Grantee and their respective successors and assigns.

Millsap Road Investment Company, LLC

By: \_\_\_\_\_  
Henry C. Kelley, Jr., Member



## WATER/SEWER EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT Millsap Road Investment Company, LLC, an Arkansas limited liability company and 755 Millsap Road, LLC, an Arkansas limited liability company, hereinafter called GRANTORS, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement to construct, lay, remove, relay, inspect, enlarge and/or operate a water and/or sanitary sewer pipe line or lines, manholes, and appurtenances thereto, on, over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

### PROPERTY DESCRIPTION:

Lot No. 17, CMN Business Park Subdivision to the City of Fayetteville as per final plat of said subdivision on file with the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas

### PERMANENT EASEMENT DESCRIPTION:

A permanent Water/Sewer Easement of 15 feet in equal and uniform width being inside of and adjacent to the entire platted General Utility Easements along the south and east sides of Lot No. 17 of CMN Business Park, located in the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of Section 26, Township 17 North, Range 30 West, Washington County, Arkansas,

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

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

The said Grantors are 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 that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above high water, and to pay any damages which may arise to growing crops or fences from the construction, maintenance and operation as determined by three disinterested persons. One thereof to be appointed by the said Grantors; 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.

It is expressly understood that the above easement shall exclude any permanent structure located within said easement area at the time of the execution of this document.

The Grantors agree 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 Grantors 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.

Millsap Road Investment Company, LLC

755 Millsap Road, LLC

\_\_\_\_\_  
Henry C. Kelley, Jr., Managing Member

\_\_\_\_\_  
Henry C. Kelley, Managing Member



WATER/SEWER EASEMENT  
Page 2 of 2

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 Henry C. Kelley, Jr., to me well known as the person who executed the foregoing document, and who stated and acknowledged that he is a Managing Member of the Millsap Road Investment Company, LLC, an Arkansas limited liability company and the 755 Millsap Road, LLC, an Arkansas limited liability company, and is duly authorized in his capacity of each company to execute the foregoing instrument for and in the name of and on behalf of said companies, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

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

MY COMMISSION EXPIRES:

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

ADDENDUM TO WATER/SEWER EASEMENT

This Addendum to Water/Sewer Easement ("Addendum") is executed and delivered by Millsap Road Investment Company, LLC (called "Grantor") as an addendum to that certain Water/Sewer Easement (the "Easement") from Grantors to the City of Fayetteville, Arkansas, a municipal corporation, ("Grantee") dated of even date herewith and to which this Addendum is attached. This Addendum shall be deemed a part of the Easement and shall be read and interpreted in conjunction therewith.

In consideration of the covenants set forth herein, the consideration recited in the Easement, and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. Access to Easement Lands. As more particularly set forth in the Easement, Grantors conveyed to Grantee that certain water and sewer line easement over and across the lands described in the Easement under the heading "Permanent Easement Description" (the "Easement Lands"). Grantee's rights with respect to that part of Lot No. 17, CMN Business Park Subdivision to the City of Fayetteville, Arkansas (the "Lot") situated outside of the Easement Lands is limited to a right of ingress and egress across the Lot for reasonable access to the Easement Lands for the uses and purposes set forth in the Easement. The limitation set forth in this paragraph shall not reduce or otherwise effect Grantee's rights with respect to the General Utility Easements set forth on the recorded plat of the Lot.
2. Repair of Ground Surface. Grantee, at its expense, shall fill any excavations on the Easement Lands and return the surface of the land to the same grade and flush with existing soil. Grantee shall use ground cover or other satisfactory materials to prevent erosion and washing of soil and replace any existing grass and shrubs damaged by Grantee's exercise of its rights under the Easement. Grantee's obligations under this paragraph are in addition to those set forth in the Easement.
3. Notice of Blasting. Grantee shall provide written notice to Grantors prior to its commencing construction on the Easement Lands and further prior to commencing any lasting or other work on the Easement Lands that may cause vibrations detectable outside the Easement Lands. Such notice shall be delivered by personal delivery, facsimile transmission or U.S. Mail for receipt at least two days prior to beginning such work and shall be transmitted to the following: Mr. Henry C. Kelley, Jr., 755 Millsap Road LLC, Millsap Road Investment Company, LLC, 425 West Capitol Avenue, Suite 300, Little Rock, Arkansas 72201, telephone: 501-375-3200, fax: 501-374-9537.
4. Entire Agreement: Binding Effect. This Addendum and the Easement contain the entire understanding of the parties with respect to the matters set forth in such documents. The Easement and this Addendum shall bind and inure to the benefit of Grantors, Grantee and their respective successors and assigns.

Millsap Road Investment Company, LLC

By: \_\_\_\_\_  
Henry C. Kelley, Jr., Member



## PETITION

### PETITION TO VACATE PORTIONS OF TWO EASEMENTS LOCATED IN LOT 19 OF CMN BUSINESS PARK, CITY OF FAYETTEVILLE, ARKANSAS

To: The City of Fayetteville Planning Commission and  
The Fayetteville City Council

I, Henry C. Kelley Jr., being the managing member of the owners of the real estate abutting the easement hereinafter sought to be abandoned and vacated, lying in Lot 19, CMN Business Park, City of Fayetteville, Arkansas, petition to vacate easements which are described as follows:

No. 1 Final Vacation of Easement filed as Book 451, Page 600: *North*

*8/1/25*  
A strip of land over a portion of Lot 19 of CMN Business Park, said strip being 17.5 feet on both sides of an abandoned water line, the center line of which being more particularly described as follows: Beginning at a point *South* 87° 12' 24" West 216.60 feet from the Southeast corner of said Lot 19; thence North 24° 40' 33" East 161.50 feet to the end of said easement vacation. This vacation, along with Ord. 2899 and Ord. 4238 deletes all interest of the City of Fayetteville, Arkansas, in the original easement, filed of record in Book 451, Page 600, Washington County, Arkansas, as granted by Elo Michaelis and LeBelle Michaelis.

No. 2 Vacation of a Portion Easement filed as Book 729, Page 295:

A strip of land over a portion of Lot 19 of CMN Business Park, said strip being 15.0 feet on both sides of an abandoned water line, the center line of which being more particularly described as follows: Beginning at a point which is North 02° 38' 19" East 125 feet and North 87° 12' 24" West 40.00 feet from the Southeast corner of Lot 19; thence North 87° 12' 24" West 60 feet to the end of this easement vacation, said point also being the West end of the easement as filed of record in Book 729 at Page 295, Washington County, Arkansas.

That the abutting real estate affected by said abandonment of the easements are the office building located on Lot 18 and Lot 19, CMN Business Park and owned by the undersigned and Lot 17, CMN Business Park on the South side, also owned by the undersigned. The public interest in the water lines, now abandoned, and the associated easements, was in use for many years (original raw water line from Lake Fayetteville) and the public interest and welfare would not be adversely affected by the abandonment of the requested portions of easements as described hereinabove.

PETITION OF VACATION  
Page 2 of 2

The petitioners pray that the City of Fayetteville, Arkansas abandoned the use and vacate their interest in the real estate as described hereinabove, however, all other easements, for whatever stated purposes the case may be, shall remain in full force and effect over, under or across any and all abandoned easements. Any other easements of the total property shall also remain in full force and effect.

WHEREFORE, the undersigned petitioners respectfully pray that the governing body of the City of Fayetteville, Arkansas, abandon and vacate the above described real estate in favor of the listed property owner.

Dated this \_\_\_\_\_ Day of \_\_\_\_\_, 2000

Henry C. Kelley Jr., Managing Member, Millsap Road Investment Company, LLC  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

STAFF REVIEW FORM

☒ AGENDA REQUEST  
☐ CONTRACT REVIEW  
☐ GRANT REVIEW

For the Fayetteville City Council meeting of July 3, 2000

FROM:

|                    |                 |                     |
|--------------------|-----------------|---------------------|
| <u>Tim Conklin</u> | <u>Planning</u> | <u>Public Works</u> |
| Name               | Division        | Department          |

**ACTION REQUIRED:** To approve an ordinance for VA 00-5, submitted by Harvey Luttrell on behalf of Wiggins Memorial United Methodist Church for property located at 205 W. 6<sup>th</sup>. The property is zoned R-2, Medium Density Residential and contains approximately 0.18 acres. The request is to vacate a portion of the City right of way.

**COST TO CITY:**

|                             |                                |                              |
|-----------------------------|--------------------------------|------------------------------|
| \$                          |                                |                              |
| <u>Cost of this Request</u> | <u>Category/Project Budget</u> | <u>Category/Project Name</u> |
| <u>Account Number</u>       | <u>Funds Used To Date</u>      | <u>Program Name</u>          |
| <u>Project Number</u>       | <u>Remaining Balance</u>       | <u>Fund</u>                  |

**BUDGET REVIEW:**          Budgeted Item          Budget Adjustment Attached

         Budget Manager          Administrative Services Director

**CONTRACT/GRANT/LEASE REVIEW:**

**GRANTING AGENCY:**                                 

|                           |                      |                         |                      |
|---------------------------|----------------------|-------------------------|----------------------|
| <u>Accounting Manager</u> | <u>        </u> Date | <u>Internal Auditor</u> | <u>        </u> Date |
| <u>City Attorney</u>      | <u>6-20-00</u> Date  | <u>ADA Coordinator</u>  | <u>        </u> Date |
| <u>Purchasing Officer</u> | <u>        </u> Date |                         |                      |

**STAFF RECOMMENDATION:** Staff recommended approval and Planning Commission unanimously voted 9-0-0 to recommend approval and forward the vacation to the City Council. This item was heard as a part of the consent agenda on June 12, 2000.

|                                  |                 |
|----------------------------------|-----------------|
| <u><i>[Signature]</i></u>        | <u>6-20-00</u>  |
| Division Head                    | Date            |
| <u><i>[Signature]</i></u>        | <u>6-21-00</u>  |
| Department Director              | Date            |
| <u><i>[Signature]</i></u>        | <u>        </u> |
| Administrative Services Director | Date            |
| <u><i>[Signature]</i></u>        | <u>6/14/00</u>  |
|                                  | Date            |

Cross Reference

New Item: **Yes**

Prev Ord/Res #:                         

Orig Contract Date:                         

Orig Contract Number:



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE APPROVING VA00-5.00 TO VACATE  
AND ABANDON A PORTION OF CITY RIGHT-OF-WAY  
LOCATED AT 205 WEST 6<sup>TH</sup> STREET AS SUBMITTED BY  
HARVEY LUTTRELL ON BEHALF OF WIGGINS UNITED  
METHODIST CHURCH.

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

**WHEREAS**, the City Council has determined that the following described right-of-way  
is not required for corporate purposes.

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

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

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

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

**Section 3.** That the above is contingent upon receiving the following: Dedication of a  
20' utility easement that is located adjacent and parallel to the Locust Ave. and Seventh Street  
right-of-ways, also dedication of any additional easements required to provide a minimum of 10'  
easements from the existing water and sewer lines.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

**APPROVED:**

By \_\_\_\_\_  
Fred Hanna, Mayor

**ATTEST:**

By \_\_\_\_\_  
Heather Woodruff, City Clerk

EXHIBIT "A"

A part of the SW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 16, Township 16 North, Range 30 West and beginning at a point on the right of way of Seventh Street 15.0 feet North of the SE corner of said 40 acre tract; thence North along the West side of Lot 6, Block 28, Jennings' Addition, 35.0 feet; thence N  $89^{\circ}35'01''$  W, 180.0 feet to the SW corner of Lot 5, Block 2, Ferguson's Addition; thence North, 230.0 feet; thence N  $89^{\circ}35'01''$  W, 20.39 feet; thence S  $01^{\circ}10'50''$  W, 249.86 feet; thence on a curve to the left, having a radius of 15.0 feet, a distance of 23.76 feet; thence S  $89^{\circ}35'01''$  E, 190.65 feet to the point of beginning and subject to a 20 foot wide utility easement along the South and West sides thereof.



Planning Commission Minutes  
June 12, 2000  
Page 2

## **CONSENT AGENDA:**

**Approval of minutes from the May 22, 2000 meeting.**

**AD 00-17.00: Administrative Item (Garrouette, pp 137)** was submitted by Rick Garrouette for property located at 2108 & 2110 Cinnamon Way, lot 11 Missouri Oaks Subdivision. The property is zoned R-2, Medium Density Residential. The request is for a triplex on a lot that was limited to a duplex by the final plat.

**LSD 00-7.10: Large Scale Development/P.U.D. (Indian Springs phase II, pp 372)** was submitted by Dave Jorgensen of Jorgensen & Associates on behalf of Sweetser Properties for property located south of Hwy 45 and west of Madison Drive. The property is zoned R-1, Low Density Residential and contains approximately 3.20 acres with 18 units proposed.

**VA 00-4.00: Vacation (Millsap Road Investment, pp 213)** was submitted by Henry Kelly, Jr. of Millsap Road Investments for property located at 655 Millsap Road. Lot 19 of CMN Business Park Phase I. The property is zoned C-2, Thoroughfare Commercial and contains approximately 2.58 acres. The request is to vacate a portion of an existing water line easement within lot 19.

**VA 00-5.00: Vacation (Wiggins Memorial United Methodist Church, pp 523)** was submitted by Harvey Luttrell on behalf of Wiggins Memorial United Methodist Church for property located at 205 W. 6<sup>th</sup>. The property is zoned R-2, Medium Density Residential and contains approximately 0.18 acres. The request is to vacate a portion of the City right of way.

**VA 00-6.00: Vacation (Stevens, pp 521)** was submitted by Joe and Angela Stevens for property located on Old Farmington Road between Beechwood and Eastern. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately 0.23 acres. The request is to vacate a portion of Old Farmington Road.

**Odom:** Good evening and welcome to the June 12, 2000 meeting of the Fayetteville Planning Commission. The first thing that needs to be brought to everyone's attention is that at the Agenda Session, Item 6 that is on the agenda, AD 00-19.00 Administrative Item appeal of the Floodplain Development Permit and Grading Permit for LSD 00-5 Steele Crossing has been pulled from the agenda and will instead be heard at a special Planning Commission Meeting a week from today, June 19, 2000 at 5:30 pm here in this room. We have five items on the consent agenda today. The first item is the approval of the minutes of the May 22, 2000 meeting. The second is AD00-17 submitted by Rick Garrouette, and I apologize if I pronounced that wrong, for property located at 2108 & 2110 Cinnamon Way, lot 11 Missouri Oaks Subdivision. The property is zoned R-2, Medium Density

## Planning Commission Minutes

June 12, 2000

Page 3

Residential. The request is for a triplex on a lot that was limited to a duplex by the final plat. Item two is LSD 00-7.10 submitted by Dave Jorgensen of Jorgensen & Associates on behalf of Sweetser Properties for property located south of Hwy 45 and west of Madison Drive. The property is zoned R-1, Low Density Residential and contains approximately 3.20 acres with 18 units proposed. The third item is VA 00-4.00 submitted by Henry Kelly, Jr. of Millsap Road Investments for property located at 755 Millsap Road. Lot 19 of CMN Business Part, Phase I. The property is zoned C-2, Thoroughfare Commercial and contains approximately 2.58 acres. The request is to vacate a portion of an existing water line easement within lot 19. Item number 4 is VA 00-5.00 submitted by Harvey Luttrell on behalf of Wiggins Memorial United Methodist Church for property located at 205 W. 6<sup>th</sup>. The property is zoned R-2, Medium Density Residential and contains approximately 0.18 acres. The request is to vacate a portion of the city right-of-way. The fifth item on the consent agenda is VA 00-6.00 submitted by Joe and Angela Stevens for property located on Old Farmington Road between Beechwood and Eastern. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately 0.23 acres. The request is to vacate a portion of Old Farmington Road. These items on the consent agenda will be approved by the Commission unless a member of the Commission or the audience wishes to pull an item to discuss it individually.

**PUBLIC COMMENT & COMMISSION DISCUSSION:**

Odom: Does any member of the Commission or the audience wish to pull any of the items on the consent agenda?

Marr: Mr. Chair, just a question. Is the only change on item three which we received a revised copy?

Odom: Item three, there was a change by the staff and it is my understanding there was an agreement by the applicant that that change was acceptable.

Conklin: That is correct. We do have signed conditions of approval on every consent item on the agenda.

Odom: Any further questions? Call the Roll.

**ROLL CALL:**

Upon roll call the motion to approve the consent agenda carries unanimously 9-0-0.

PC Meeting of 12 June 00

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS  
113 W. Mountain St.  
Church  
Fayetteville, AR 72701

Street Right of Way Vacation  
Wiggins Memorial United Methodist

---

**TO:** Fayetteville Planning Commission Members  
**THRU:** Tim Conklin, City Planner  
**FROM:** Ron Petrie, Staff Engineer  
**DATE:** June 8, 2000

---

**Project:** VA 00-05.00: Vacation (Wiggins Memorial United Methodist Church, pp 523) was submitted by Harvey Luttrell for property located at 205 West Sixth Street. The request is to vacate a portion of the street right of way along Locust Avenue and Seventh Street. See the attached maps and legal descriptions for exact dimensions for the requested right-of-way vacation.

The applicant has submitted the required notification forms to the utility companies and to the City. The results are as follows:

Ozarks Electric - Not applicable.

Southwestern Electric Power Company - No objections.

Arkansas Western Gas - No objections provided that a 20' Utility Easement is retained "adjacent and parallel to Locust Avenue and Seventh Street."

SW Bell - No objections.

Cox Communications - No objections.

City of Fayetteville:

Engineering - No objections provided that the vacation description be rewritten to exclude the northern 20' of the right-of-way vacation that is shown to extend into the existing sixth street right-of-way.

Water/Sewer - No objections provided that easements are retained a minimum distance of 10' from all water & sewer lines. This includes the 12" sewer line along seventh street and the 8" water along Locust Avenue.

Street Department - No objections.

Solid Waste - No objections.

**Recommendation:** Approval of street right of way vacation subject to the three (3) conditions listed below.

1. Provide a revised right-of-way vacation description that excludes the northern 20' of right-of-way along Locust Avenue that extends into the sixth street right-of-way.

2. A 20' Utility Easement shall be dedicated that is located adjacent and parallel to the Locust



Avenue and Seventh Street right-of-way.

3. Dedicate any additional easements required to provide a minimum of 10' of easement from the existing water & sewer lines.

PLANNING COMMISSION ACTION: yes Required  
           Approved            Denied

Date:      /      /     

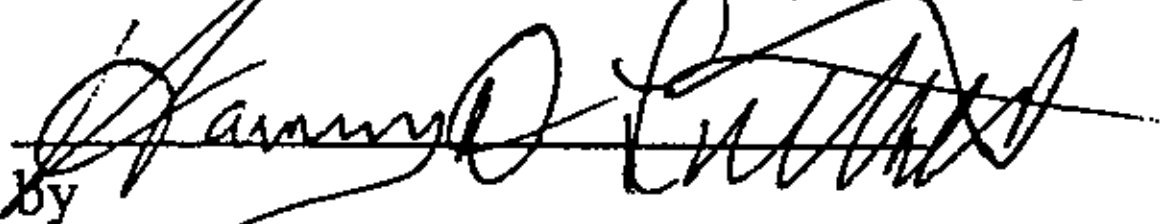
Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CITY COUNCIL ACTION: yes Required  
           Approved            Denied

Date:      /      /     

The "CONDITIONS OF APPROVAL", beginning on page one of this report, are accepted in total without exception by the entity requesting approval of this development item.

by 

TRUSTEE  
title

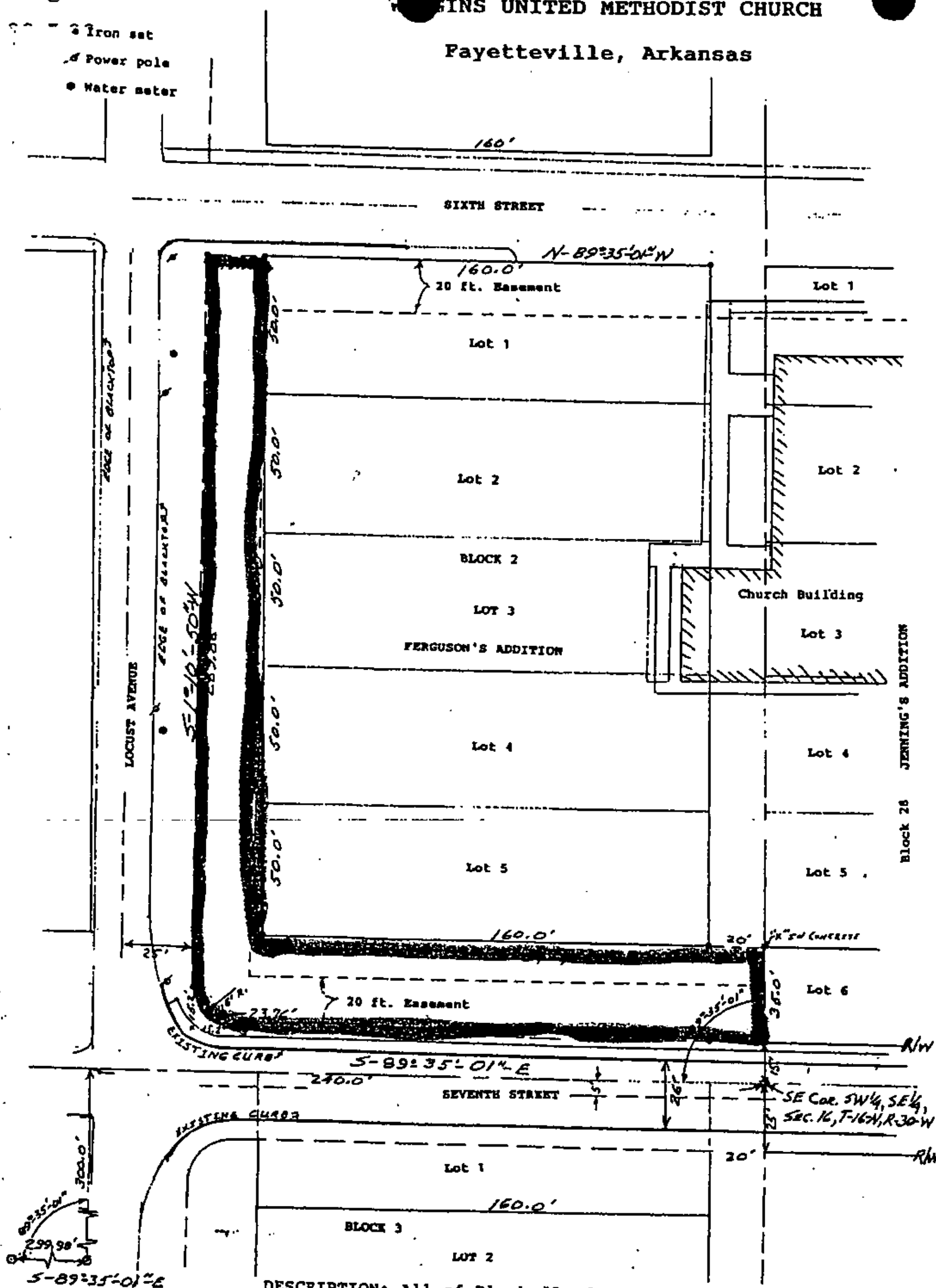
6-12-2000  
date

SURVEY FOR

WILKINS UNITED METHODIST CHURCH

Fayetteville, Arkansas

• Iron set  
• Power pole  
• Water meter



DESCRIPTION: All of Block #2 of Ferguson's Addition to the City of Fayetteville, Arkansas, as per plat of said Addition on file in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, and a humble request for the City of Fayetteville, Arkansas, to relinquish the lands to the South and West of said Block #2 that has been used and considered by present and past owners as a part of Block #2 and outside the Right of Way of Seventh Street on the South and Locust Avenue on the West being described as a part of the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 16, Township 16 North, Range 30 West and beginning at a point on the Right of Way of Seventh Street 15.0 feet North of the SE Corner of said 40 acre tract; thence North, along the West side of Lot #6, Block #28, Jennings' Addition, 35.0 feet; thence N-89°-35'-01"-W, 180.0 feet to the SW Corner of Lot #5, Block #2, Ferguson's Addition; thence North, 250.0 feet to the NW Corner of Lot #1, Block #2, Ferguson's Addition; thence N-89°-35'-01"-W, 19.98 feet; thence S-1°-10'-50"-W, 269.86 feet; thence on a curve to the left, having a radius of 15.0 feet, a distance of 23.76 feet; thence S-89°-35'-01"-E, 190.65 feet to the point of beginning and subject to a 20 foot wide utility easement along the North, South and West sides thereof.

CERTIFICATION: This is to certify that the above described property has been surveyed and that this plat conforms to that survey.

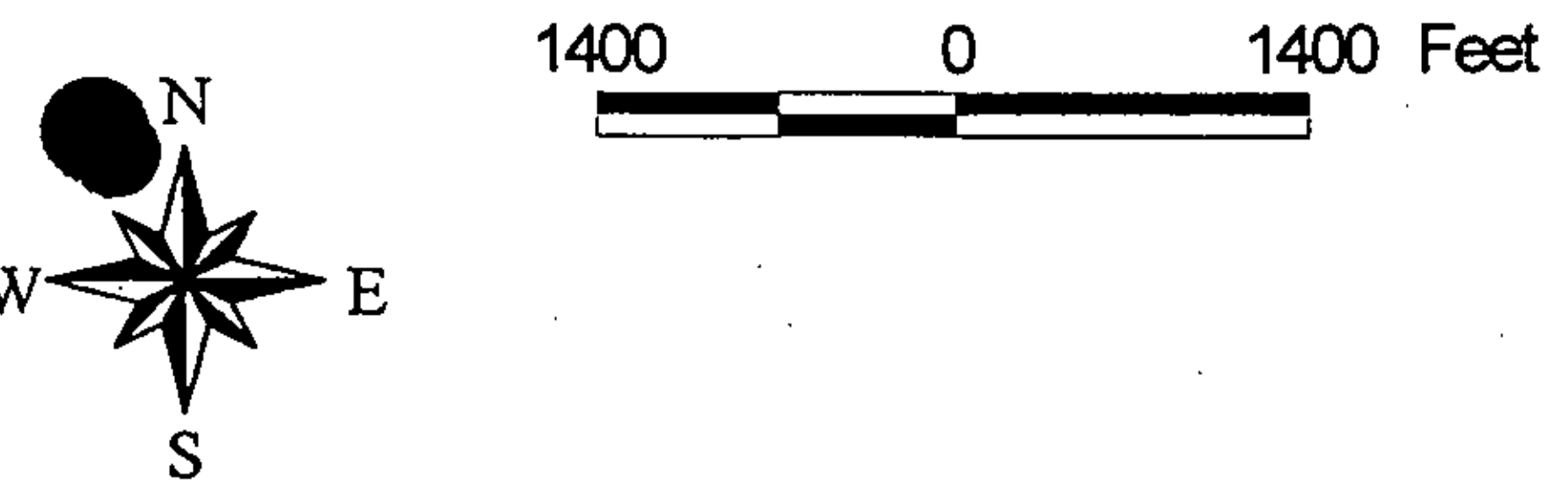
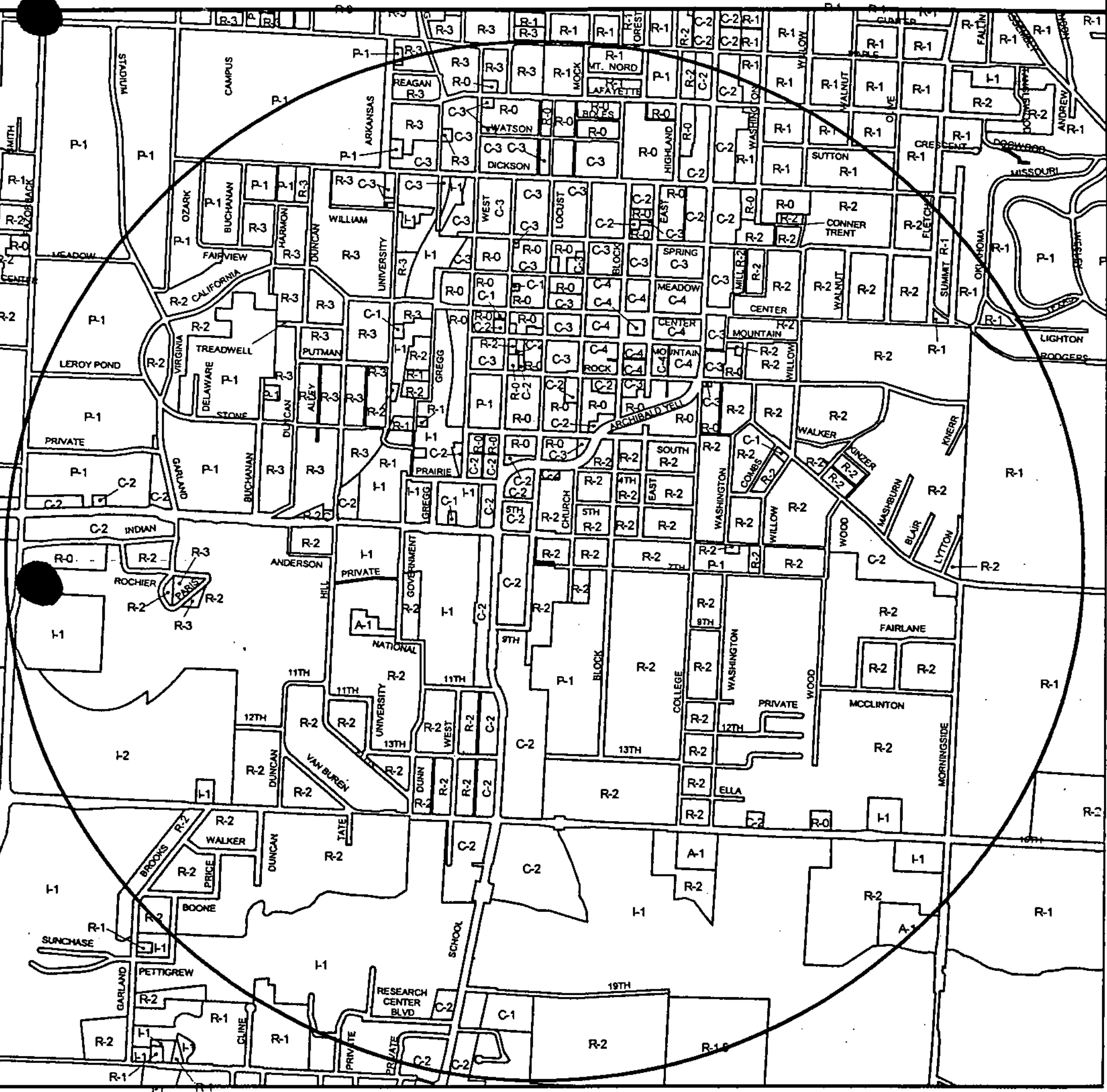
HARVEY D. LUTTRELL R.L.S. #81  
12228 WEST AR. HWY. #18  
FAYETTEVILLE, AR 72704

Surveyed and platted March 24, 2000.

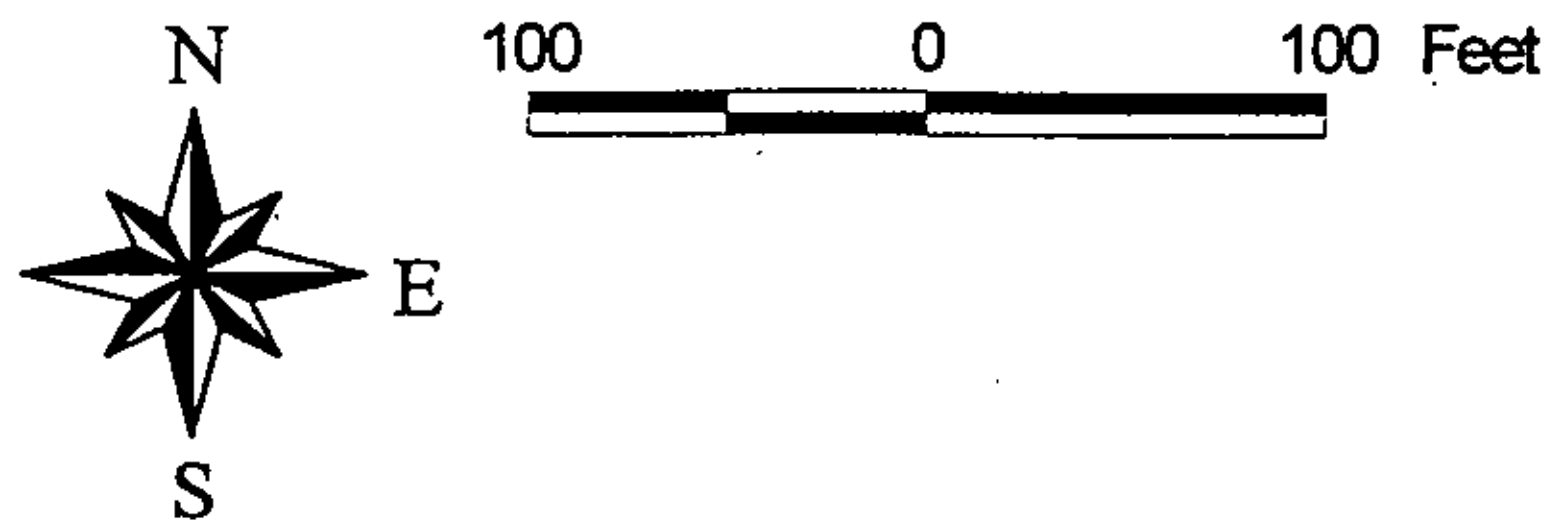
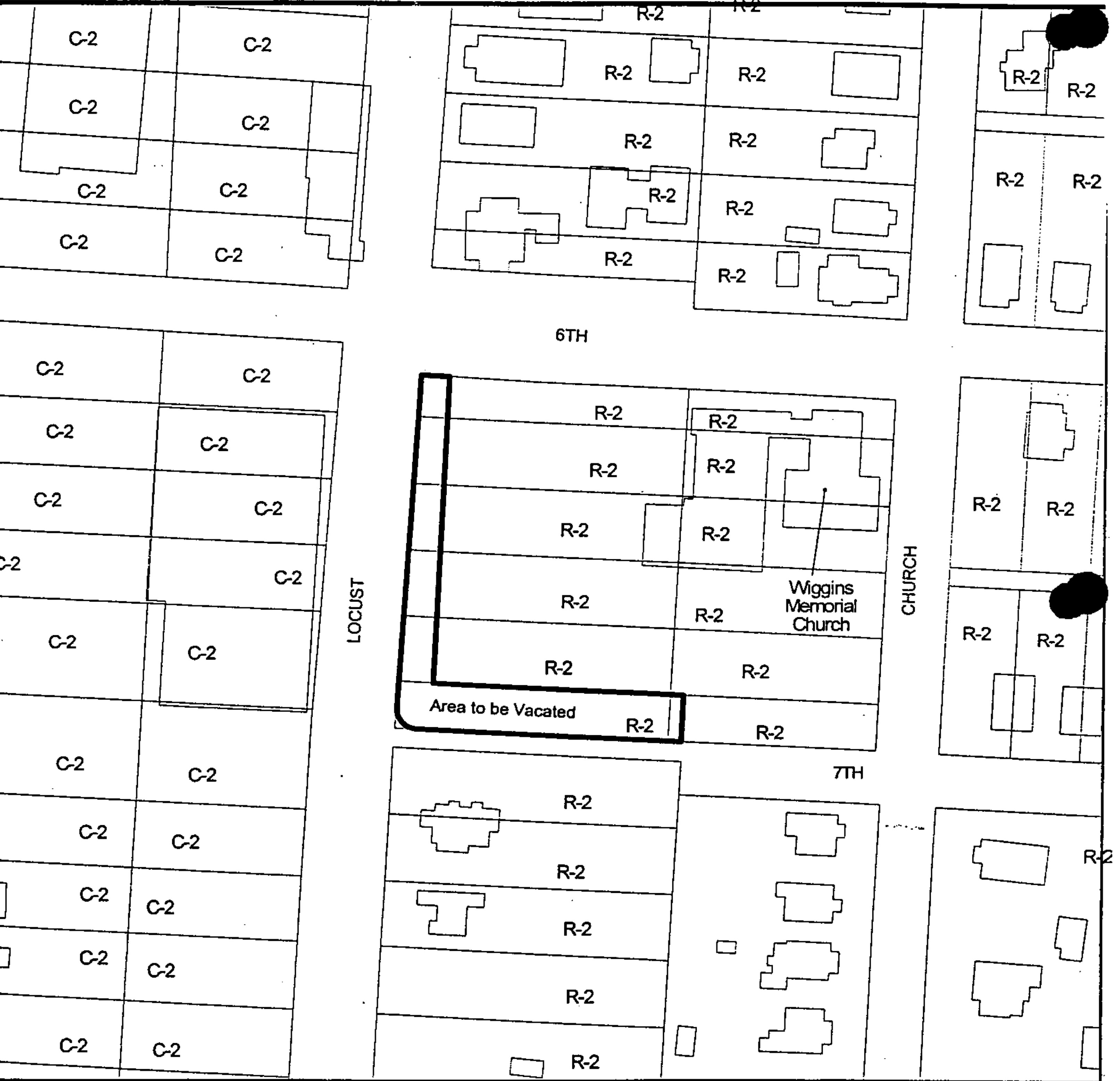




# VA00-5.00 - Wiggins Memorial Church - One Mile Diameter



# VA00-5.00 - Wiggins Memorial Church - Close Up



June 12, 2000

PETITION TO VACATE A PART OF THE PLATTED LOCUST AVENUE AND A PART OF THE PLATTED SEVENTH STREET LOCATED WEST AND SOUTH OF BLOCK #2, FERGUSON'S ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS.

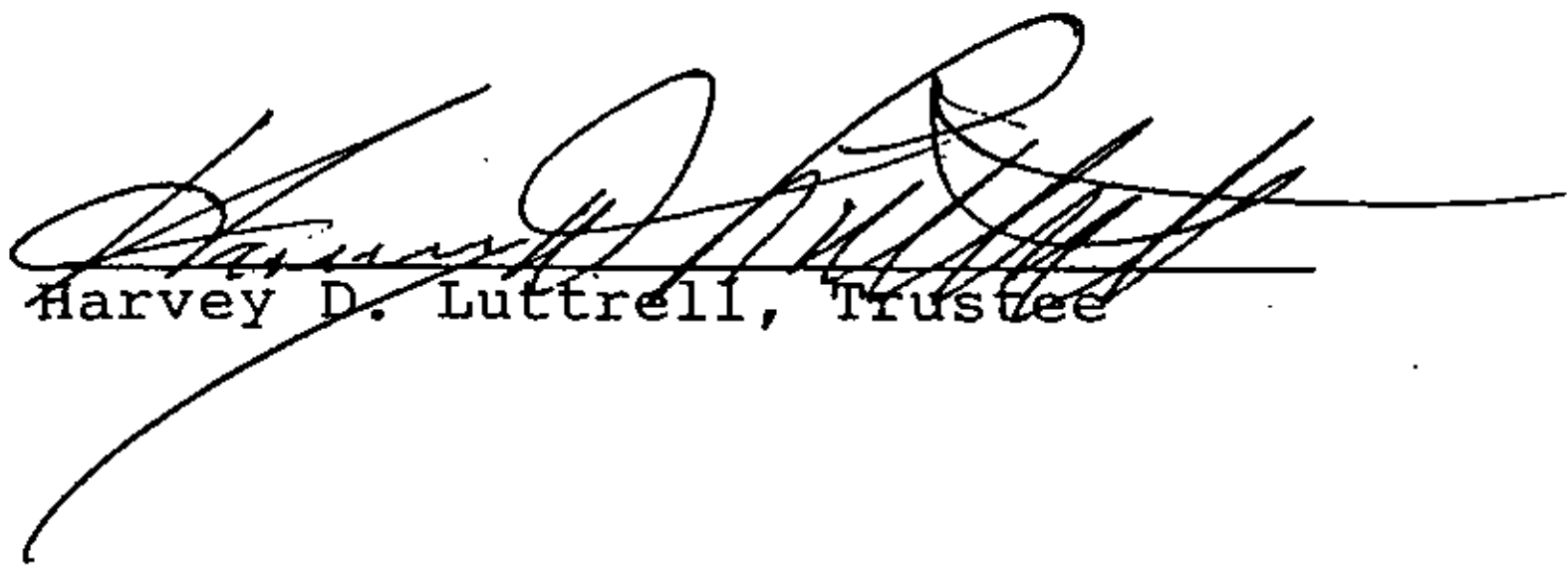
TO: The Fayetteville City Planning Commission and  
The Fayetteville City Council

RE: To the above stated petition and the letter and comments on the meeting planned for June 12. We accept the three conditions as stated and include the corrected description which excludes the Northern 20 feet of Locust Avenue that extends into Sixth Street.

The corrected description for the Right of Way vacation is as follows:

A part of the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 16, Township 16 North, Range 30 West and beginning at a point on the Right of Way of Seventh Street 15.0 feet North of the SE Corner of said 40 acre tract; thence North, along the West side of Lot #6, Block #28, Jennings's Addition, 35.0 feet; thence N-89°-35'-01"-W, 180.0 feet to the SW Corner of Lot #5, Block #2, Ferguson;s Addition; thence North, 230.0 feet; thence N-89°-35'-01"-W, 20.39 feet; thence S-1°-10'-50"-W, 249.86 feet; thence on a curve to the left, having a radius of 15.0 feet, a distance of 23.76 feet; thence S-89°-35'-01"-E, 190.65 feet to the point of beginning and subject to a 20 foot wide utility easement along the South and West sides thereof.

We thank you for your consideration and approval.



Harvey D. Luttrell, Trustee



VACATE PART OF THE PLATTED LOCUST AVENUE AND A PART  
 SEVENTH STREET LOCATED WEST AND SOUTH OF BLOCK #2,  
 FERGUSON'S ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS.

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

We, the undersigned Trustee's, acting on behalf of the Administrative Council of Wiggins Memorial United Methodist Church, representing the membership of the United Methodist Church, owners of Block #2, and Ferguson's Addition and Block #28, Jennings's Addition, humbly request the City of Fayetteville, Arkansas, a Municipal Corporation, to relinquish, abandon and vacate an area that abutts our property. We, along with past owners that had residences within said Block #2, Ferguson's Addition, have used and considered this area to be outside the Right of Way of Seventh Street on the South and Locust Avenue on the West. We therefore petition the City of Fayetteville, Arkansas to vacate the following described area:

A part of the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 16, Township 16 North, Range 30 West and beginning at a point on the Right of Way of Seventh Street 15.0 feet North of the SE Corner of said 40 acre tract; thence North, along the West side of Lot #6, Block #28, Jennings's Addition, 35.0 feet; thence N-89°-35'-01"-W, 180.0 feet to the SW Corner of Lot #5, Block #2, Ferguson's Addition; thence North, 250.0 feet to the NW Corner of Lot #1, Block #2 Ferguson's Addition; thence N-89°-35'-01"-W, 19.98 feet; thence S-1°-10'-50"-W, 269.86 feet; thence on a curve to the left, having a radius of 15.0 feet, a distance of 23.76 feet; thence S-89°-35'-01"-E, 190.65 feet to the point of beginning and subject to a 20 foot wide utility easement along the North, South and West sides thereof.

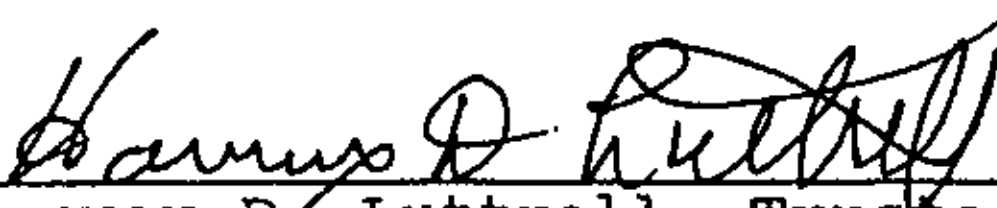
We have a great need to enlarge our parking lot and have a plan for a sidewalk along the South side of Sixth Street, the East side of Locust Avenue from Sixth to existing sidewalk at Seventh Street, Green spaces along Sixth, Seventh and Locust as well as interior islands that will be landscaped with trees and shrubs. We, also included a drainage system in proposal to protect adjoining property.

We have visited with and recieved comments from all known utility entities, private and public and protected their rights and interest by including an easement for their use if needed. We have sent a certified letter to the four adjoining neighbors and included our parking lot proposal, the survey, the notification and comment form and a stamped, self addressed envelope for the return of form.

Wherefore, the undersigned petitioners, as Trustee's for Wiggins Memorial United Methodist Church respectfully request that the governing body of the City of Fayetteville, Arkansas, abandon and vacate the above described real estate in favor for and to the United Methodist Church.

We feel that the New parking lot will not only benifit our congregation and our neighborhood but the public interest and wellfare as a whole.

Dated this 18th day of May, 2000.

  
 Harvey D. Luttrell, Trustee

  
 Jim Newport, Trustee



Parcel No. 765-05411-000  
Parcel No. 765-05412-000  
Parcel No. 765-05413-000  
Parcel No. 765-05414-000  
Parcel No. 765-05415-000

## GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

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

PROPERTY DESCRIPTION: (Document Reference: City of Fayetteville VA00-5.00)

A part of the Southwest Quarter (SW¼) of the Southeast Quarter (SE¼) of Section 16, Township 16 North, Range 30 West and beginning at a point on the right of way of Seventh Street 15.0 feet North of the Southeast corner of said 40 acre tract; thence North along the West side of Lot 6, Block 28, Jennings' Addition, 35.0 feet; thence North 89° 35' 01" West 180.0 feet to the Southwest corner of Lot 5, Block 2, Ferguson's Addition; thence North, 230.0 feet; thence North 89° 35' 01" West 20.39 feet; thence South 01° 10' 50" West 249.86 feet; thence on a curve to the left, having a radius of 15.0 feet, a distance of 23.76 feet; thence South 89° 35' 01" East 190.65 feet to the point of beginning and subject to a 20 foot wide utility easement along the South and West sides thereof.

PERMANENT EASEMENT DESCRIPTION:

A twenty (20) foot wide permanent utility easement across the above described property, being parallel with and contiguous to the west line (being the new east right of way line of Locust Avenue) and the south line (being the new north right of way line of Seventh Street) and situated on the east and north sides, respectively, thereof. This permanent easement contains 8,964 square feet (0.206 acre), more or less,

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

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, until the use of said permanent easement is relinquished, abandoned or vacated and so long as such pipe line or lines, electrical power, telephone and/or television lines or cables, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first 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, lines and/or cables, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above high water, and to pay any damages which may arise to growing crops or fences from the said construction, maintenance and operation as determined by three disinterested persons, one thereof to be appointed by the said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

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

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

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

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



WITNESS the execution hereof on this the \_\_\_\_\_ day of \_\_\_\_\_, 2000.

WIGGINS UNITED METHODIST CHURCH

BY: \_\_\_\_\_

\_\_\_\_\_  
[Please print or type Name and Title]

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_  
[Please print or type Name and Title]

ACKNOWLEDGMENT

STATE OF ARKANSAS                    )  
                                              )     ss.  
COUNTY OF WASHINGTON            )

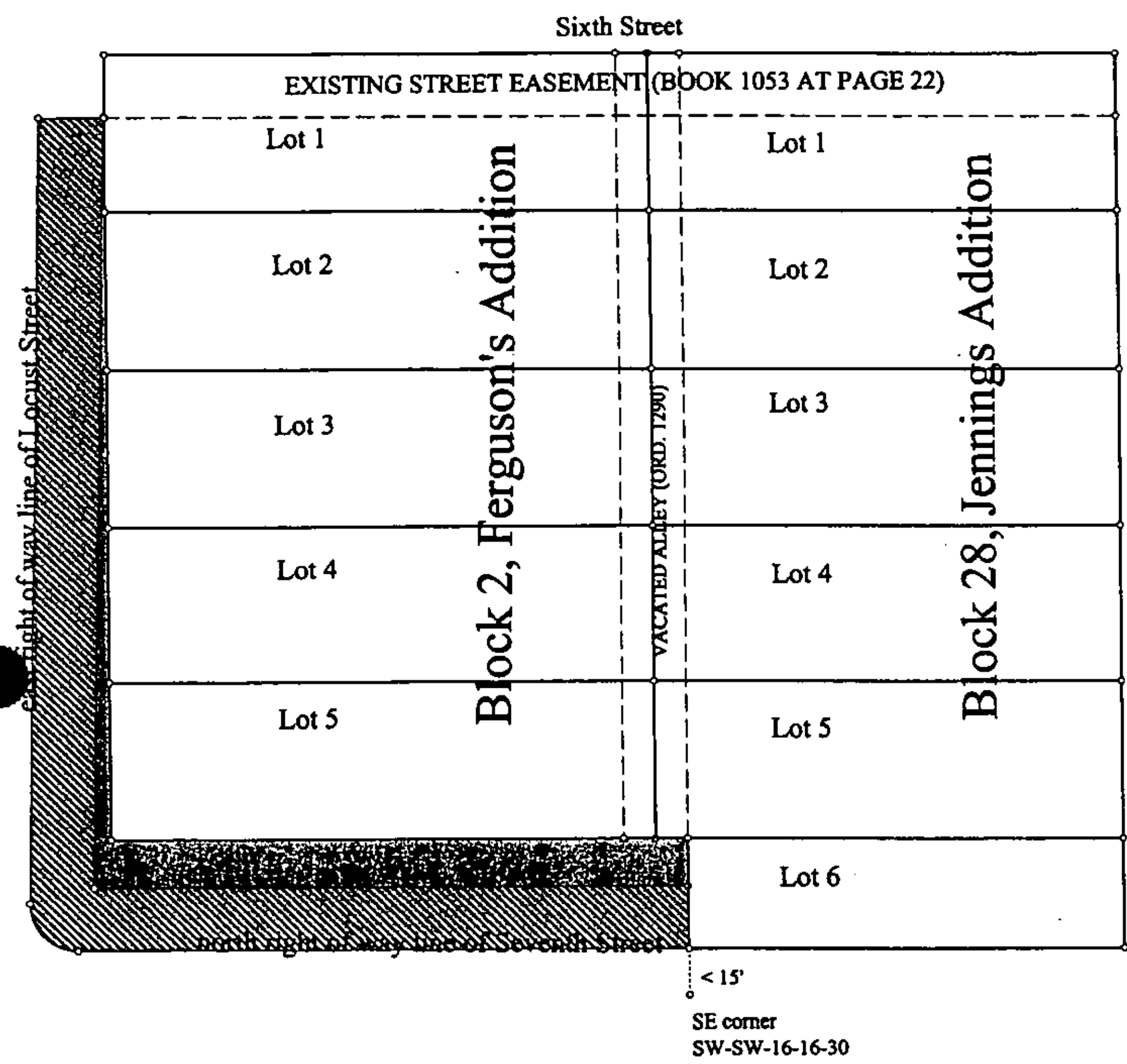
BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the \_\_\_\_\_ and \_\_\_\_\_ of the Wiggins United Methodist Church, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said Wiggins United Methodist Church, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

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

MY COMMISSION EXPIRES: \_\_\_\_\_ Notary Public  
\_\_\_\_\_



SCALE: 1" = 50'

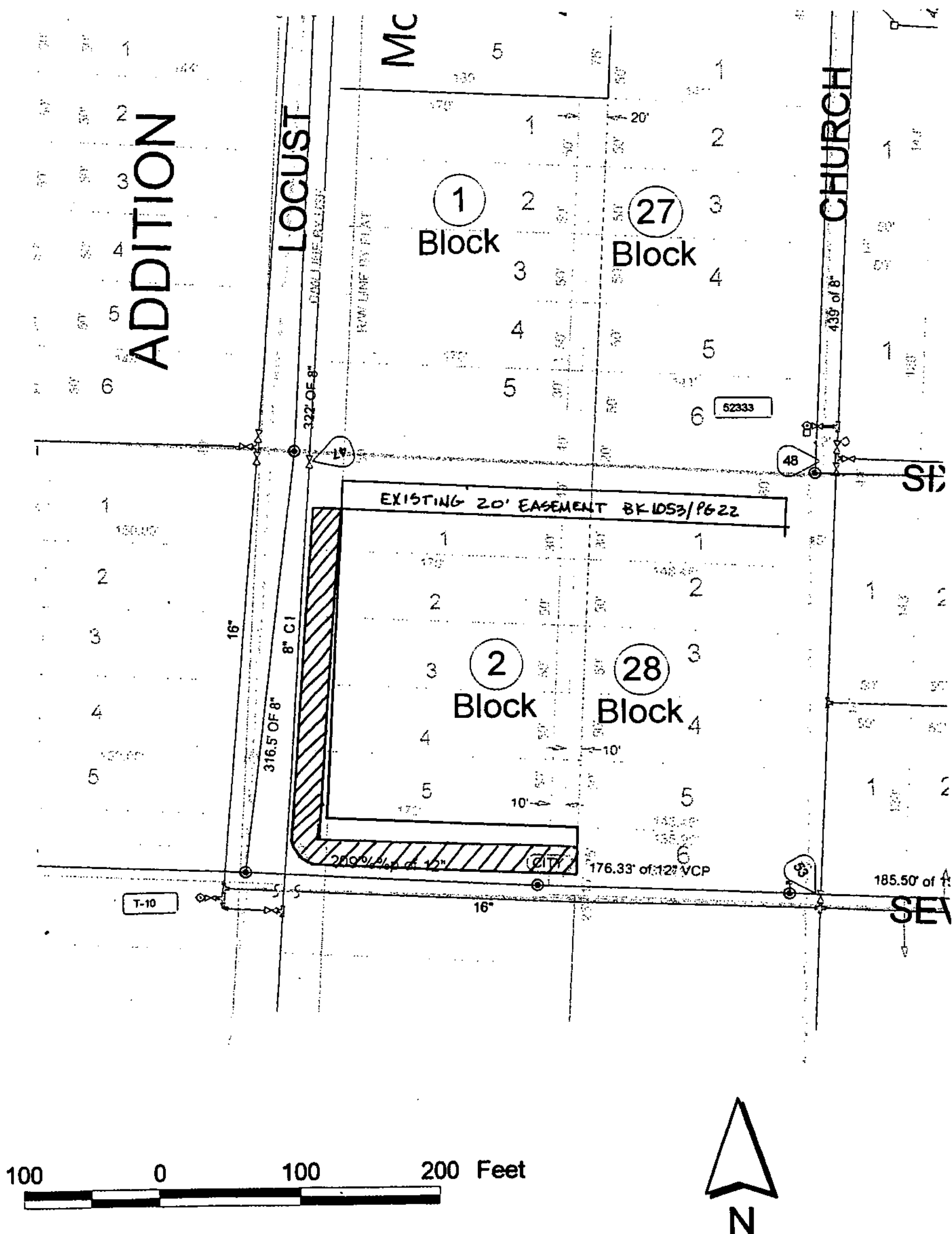


KEY:

-  RIGHT OF WAY TO BE VACATED (VA00-5.00)
-  PROPOSED 20' GENERAL UTILITY EASEMENT

# Plat Page 523

## SW-SE-16-16-30





STAFF REVIEW FORM

☒ AGENDA REQUEST  
☐ CONTRACT REVIEW  
☐ GRANT REVIEW

the Fayetteville City Council meeting of July 3, 2000

FROM:

Tim Conklin  
Name

Planning  
Division

Public Works  
Department

**ACTION REQUIRED:** To approve an ordinance for VA 00-6, submitted by Joe and Angela Stevens for property located on Old Farmington Road between Beechwood and Eastern. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately 0.23 acres. The request is to vacate a portion of Old Farmington Road.

**COST TO CITY:**

|                             |                                |                              |
|-----------------------------|--------------------------------|------------------------------|
| \$                          |                                |                              |
| <u>Cost of this Request</u> | <u>Category/Project Budget</u> | <u>Category/Project Name</u> |
| <u>Account Number</u>       | <u>Funds Used To Date</u>      | <u>Program Name</u>          |
| <u>Project Number</u>       | <u>Remaining Balance</u>       | <u>Fund</u>                  |

**BUDGET REVIEW:**        Budgeted Item        Budget Adjustment Attached

       City Manager

       Administrative Services Director

**CONTRACT/GRANT/LEASE REVIEW:**

**GRANTING AGENCY:**       

       Accounting Manager

       Date

       Internal Auditor

       Date

       City Attorney

       Date

       ADA Coordinator

       Date

       Purchasing Officer

       Date

**STAFF RECOMMENDATION:** Staff recommended approval and Planning Commission unanimously voted 9-0-0 to recommend approval and forward the vacation to the City Council. This item was heard as a part of the consent agenda on June 12, 2000.

       Division Head

       Date

       Department Director

       Date

       Administrative Services Director

       Date

       City Manager

       Date

Cross Reference

New Item: **Yes**

Prev Ord/Res #:       

Orig Contract Date:       

Orig Contract Number:

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE APPROVING VA00-6.00 TO  
VACATE AND ABANDON A PORTION OF CITY  
RIGHT-OF-WAY LOCATED AT OLD  
FARMINGTON RD., BETWEEN BEECHWOOD  
AVE. AND EASTERN AVE., SUBMITTED BY  
JOE AND ANGELA STEVENS.

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

**WHEREAS**, the City Council has determined that the following described right-of-way  
is not required for corporate purposes.

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

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

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

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

**Section 3.** That the above is contingent upon receiving the following: Dedication of  
the current 30' right-of-way as a general utility and access easement and dedication of a 15' utility  
easement located adjacent and parallel to the north side of the existing 30' right-of-way.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

**APPROVED:**

By \_\_\_\_\_  
Fred Hanna, Mayor

**ATTEST:**

By \_\_\_\_\_  
Heather Woodruff, City Clerk



EXHIBIT "A"

LEGAL DESCRIPTION FOR VA 00-6

A part of the SW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 17, Township 16 North, Range 30 West, City of Fayetteville, Washington County, Arkansas being more particularly described as follows:

That portion of Old Farmington Road which extends from Beechwood Ave. to Eastern Ave. along the South line of Lots 1 through 6 of the Sunset Addition, Block 1, to the City of Fayetteville and along the North line of Parcels 1, 2 and 3 of the Mitchell Oil property as filed in deed book 881 at page 410 and in deed book 1053 at page 105, at the Circuit Clerk's office, Washington County, Arkansas, said portion of road beginning at the SW corner of lot 1 of said Sunset Addition, Block 1, (also being the NE corner of the intersection of Old Farmington Rd. and Beechwood Ave.) thence S  $86^{\circ}49'11''$  E 340.82 feet; thence S  $02^{\circ}40'33''$  W 30.00 feet; thence N  $86^{\circ}49'11''$  W 340.71 feet; thence N  $02^{\circ}27'56''$  E 30.00 feet to the point of beginning, containing 0.235 acres, more or less, and subject to a 20 foot sewer easement to be in effect and centered along the existing sewer main located within the vacated street right-of-way and a 15 foot general utility easement along the south line of the vacated right-of-way encompassing existing utilities along said south line.

Planning Commission Minutes  
June 12, 2000  
Page 2

**CONSENT AGENDA:**

**Approval of minutes from the May 22, 2000 meeting.**

**AD 00-17.00: Administrative Item (Garrouette, pp 137)** was submitted by Rick Garrouette for property located at 2108 & 2110 Cinnamon Way, lot 11 Missouri Oaks Subdivision. The property is zoned R-2, Medium Density Residential. The request is for a triplex on a lot that was limited to a duplex by the final plat.

**LSD 00-7.10: Large Scale Development/P.U.D. (Indian Springs phase II, pp 372)** was submitted by Dave Jorgensen of Jorgensen & Associates on behalf of Sweetser Properties for property located south of Hwy 45 and west of Madison Drive. The property is zoned R-1, Low Density Residential and contains approximately 3.20 acres with 18 units proposed.

**VA 00-4.00: Vacation (Millsap Road Investment, pp 213)** was submitted by Henry Kelly, Jr. of Millsap Road Investments for property located at 655 Millsap Road. Lot 19 of CMN Business Park Phase I. The property is zoned C-2, Thoroughfare Commercial and contains approximately 2.58 acres. The request is to vacate a portion of an existing water line easement within lot 19.

**VA 00-5.00: Vacation (Wiggins Memorial United Methodist Church, pp 523)** was submitted by Harvey Luttrell on behalf of Wiggins Memorial United Methodist Church for property located at 205 W. 6<sup>th</sup>. The property is zoned R-2, Medium Density Residential and contains approximately 0.18 acres. The request is to vacate a portion of the City right of way.

**VA 00-6.00: Vacation (Stevens, pp 521)** was submitted by Joe and Angela Stevens for property located on Old Farmington Road between Beechwood and Eastern. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately 0.23 acres. The request is to vacate a portion of Old Farmington Road.

Odom: Good evening and welcome to the June 12, 2000 meeting of the Fayetteville Planning Commission. The first thing that needs to be brought to everyone's attention is that at the Agenda Session, Item 6 that is on the agenda, AD 00-19.00 Administrative Item appeal of the Floodplain Development Permit and Grading Permit for LSD 00-5 Steele Crossing has been pulled from the agenda and will instead be heard at a special Planning Commission Meeting a week from today, June 19, 2000 at 5:30 pm here in this room. We have five items on the consent agenda today. The first item is the approval of the minutes of the May 22, 2000 meeting. The second is AD00-17 submitted by Rick Garrouette, and I apologize if I pronounced that wrong, for property located at 2108 & 2110 Cinnamon Way, lot 11 Missouri Oaks Subdivision. The property is zoned R-2, Medium Density

Planning Commission Minutes  
June 12, 2000  
Page 3

Residential. The request is for a triplex on a lot that was limited to a duplex by the final plat. Item two is LSD 00-7.10 submitted by Dave Jorgensen of Jorgensen & Associates on behalf of Sweetser Properties for property located south of Hwy 45 and west of Madison Drive. The property is zoned R-1, Low Density Residential and contains approximately 3.20 acres with 18 units proposed. The third item is VA 00-4.00 submitted by Henry Kelly, Jr. of Millsap Road Investments for property located at 755 Millsap Road. Lot 19 of CMN Business Part, Phase I. The property is zoned C-2, Thoroughfare Commercial and contains approximately 2.58 acres. The request is to vacate a portion of an existing water line easement within lot 19. Item number 4 is VA 00-5.00 submitted by Harvey Luttrell on behalf of Wiggins Memorial United Methodist Church for property located at 205 W. 6<sup>th</sup>. The property is zoned R-2, Medium Density Residential and contains approximately 0.18 acres. The request is to vacate a portion of the city right-of-way. The fifth item on the consent agenda is VA 00-6.00 submitted by Joe and Angela Stevens for property located on Old Farmington Road between Beechwood and Eastern. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately 0.23 acres. The request is to vacate a portion of Old Farmington Road. These items on the consent agenda will be approved by the Commission unless a member of the Commission or the audience wishes to pull an item to discuss it individually.

**PUBLIC COMMENT & COMMISSION DISCUSSION:**

- Odom: Does any member of the Commission or the audience wish to pull any of the items on the consent agenda?
- Marr: Mr. Chair, just a question. Is the only change on item three which we received a revised copy?
- Odom: Item three, there was a change by the staff and it is my understanding there was an agreement by the applicant that that change was acceptable.
- Conklin: That is correct. We do have signed conditions of approval on every consent item on the agenda.
- Odom: Any further questions? Call the Roll.

**ROLL CALL:**

Upon roll call the motion to approve the consent agenda carries unanimously 9-0-0.



PC Meeting of 12 June 00

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS  
113 W. Mountain St.  
Fayetteville, AR 72701

Street Right of Way Vacation  
Joe & Angela Stevens

---

TO: Fayetteville Planning Commission Members  
THRU: Tim Conklin, City Planner  
FROM: Ron Petrie, Staff Engineer  
DATE: June 8, 2000 (*Revised June 12, 2000*)

---

**Project:** VA 00-06.00: Vacation (Stevens, pp 521) was submitted by Joe & Angela Stevens for property located at 1629 Old Farmington Road. The request is to vacate the 30' unimproved street right of way for Old Farmington Road located between Beechwood Avenue and Eastern Street.

The applicant has submitted the required notification forms to the utility companies and to the City. The results are as follows:

- Ozarks Electric - No service in area.
- Southwestern Electric Power Company - No objections provided that a 20' Utility Easement and access is retained to "protect existing overhead facilities along both sides of the existing street."
- Arkansas Western Gas - No objections provided that a 15' Utility Easement is retained "for Lots 1- 4, Block 1, part of Sunset Addition parallel and adjacent to existing south property line. Also, retain a 15' Utility Easement for Lots 5 & 6, Block 1, part of Sunset Addition, center of easement being located where first line is laid."
- SW Bell - No objections provided that easement rights are retained for the existing buried cable in the right-of-way.
- Cox Communications - No objections.

**City of Fayetteville:**

- Water/Sewer - No objections provided that the vacated right-of-way is retained as an utility easement for the existing sewer line and future water line(s).
- Street Department - No objections.
- Solid Waste - No objections provided that the vacated right-of-way is retained as an access easement for waste disposal vehicles, and is maintained in its current condition. (*Originally the Solid Waste Division did not approve of this request, however, after meeting the applicant and Planning staff on-site the above mentioned condition satisfies all requirements of the Solid Waste Division.*)

The applicant has submitted the adjacent property owner notification forms as required. All adjacent property owners stated that they had no objection to the proposed vacation.

**Recommendation:** Approval of street right of way vacation subject to the following conditions:

1. The existing 30' right-of-way shall be retained as a general utility easement.
2. A 20' (15') Utility Easement shall be dedicated that is located adjacent and parallel to the north side of the 30' right-of-way.
3. ~~A 10' Utility Easement shall be dedicated that is located adjacent and parallel to the south side of the 30' right-of-way less and except any existing structures.~~
4. The existing 30' right-of-way shall be retained as an access easement and shall be maintained in its current condition in order to provide an appropriate route for solid waste disposal vehicles.

*The changes noted above were made at the request of the petitioner and with the approval of SWEPCO - the utility which originally made the easement requests.*

**PLANNING COMMISSION ACTION:** yes Required  
                     Approved                      Denied

**Date:** 6/12/00

**CITY COUNCIL ACTION:** yes Required  
                     Approved                      Denied

**Date:**      /      /     

**Comments:**

---

---

---

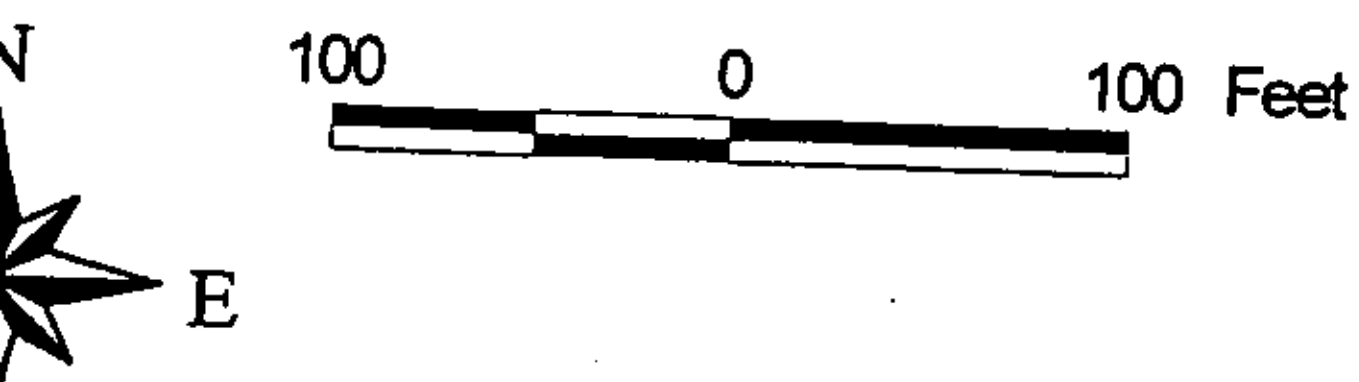
The "CONDITIONS OF APPROVAL" listed in this report are accepted in total without exception by the entity requesting approval of this right-of-way vacation.

**Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_



# VA00-6.00 - Stevens - Close Up



1400                      0                      1400 Feet



**PETITION TO VACATE A ROAD (OLD FARMINGTON ROAD, FROM BEECHWOOD AVE. TO EASTERN AVE.) LOCATED WITH PART IN BLOCK 1 SUNSET ADDITION AND WITH PART IN 20-16-30 OUTLOTS, CITY OF FAYETTEVILLE, ARKANSAS**

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

We, the undersigned, being all the owners of the real estate abutting the road hereinafter sought to be abandoned and vacated, lying between block 1, Sunset Addition and 20-16-30 outlots to the City of Fayetteville, Arkansas, a municipal corporation, petition to vacate Old Farmington Road (from Beechwood Ave. to Eastern Ave.) described as follows:

A PART OF THE SW1/4 OF THE SE1/4 OF SECTION 17, TOWNSHIP 16 NORTH, RANGE 30 WEST, CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF OLD FARMINGTON ROAD WHICH EXTENDS FROM BEECHWOOD AVE. TO EASTERN AVE. ALONG THE SOUTH LINE OF LOTS 1 THROUGH 6 OF THE SUNSET ADDITION, BLOCK 1 TO THE CITY OF FAYETTEVILLE AND ALONG THE NORTH LINE OF PARCELS 1, 2, AND 3 OF THE MITCHELL OIL PROPERTY AS FILED IN DEED BOOK 881 AT PAGE 410 AND IN DEED BOOK 1053 AT PAGE 105, AT THE CIRCUIT CLERKS OFFICE, WASHINGTON COUNTY, ARKANSAS, SAID PORTION OF ROAD BEGINNING AT THE SW CORNER OF LOT 1 OF SAID SUNSET ADDITION, BLOCK 1, (ALSO BEING THE NE CORNER OF THE INTERSECTION OF OLD FARMINGTON RD. AND BEECHWOOD AVE.) THENCE S86°49'11"E 340.82 FEET; THENCE S02°40'33"E 30.00 FEET; THENCE N86°49'11"W 340.71 FEET; THENCE N02°27'56"E 30.00 FEET TO THE POINT OF THE BEGINNING, CONTAINING 0.235 ACRES, MORE OR LESS, AND SUBJECT TO ANY AND ALL UTILITY EASEMENTS OF RECORD AND SUBJECT TO A 20 FOOT SEWER EASEMENT TO BE IN EFFECT AND CENTERED ALONG THE EXISTING SEWER MAIN LOCATED WITHIN THE VACATED STREET RIGHT-OF-WAY AND A 15 FOOT GENERAL UTILITY EASEMENT ALONG THE SOUTH LINE OF THE VACATED RIGHT-OF-WAY ENCOMPASSING EXISTING UTILITIES ALONG SAID SOUTH LINE.

Petitioners state that the owners listed below flank the above road on all three sides. That there is no need for public access and that the public interests and welfare would not be adversely affected by the abandonment of this portion of the above-described road. Further more in dealing with the planning department, it was stated that they wanted this road closed, and asked us to pursue this vacation in a timely manner, which we agreed to do. This portion of road does not meet city street standards and to bring this road up to standard would be pointless now or in the future.



The petitioners pray that the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject, however, to the existing utility easements and sewer easements as required, and that the above described real estate be used for their respective benefit and purpose as now approved by law.

The petitioners further pray that the above-described real estate be vested in the abutting property owners as provided by law.

WHEREFORE, the undersigned petitioners respectfully pray that the governing body of the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject to said utility easements, and that title to said real estate sought to be abandoned be vested in the abutting property owners as provided by law, and as to that particular land the owners be free from the easements of the public for the use of said road.

Dated this 5 day of 19<sup>th</sup>, 2000

Joe Stevens  
printed name

Joe Stevens  
signature

Angela Stevens  
printed name

Angela Stevens  
signature

DANIEL E. BANNAN, JR.  
Post 2722 VFW COMMANDER  
printed name

Daniel E. Bannan Jr.  
signature

Linda L. Eaton  
printed name

Linda L. Eaton  
signature

*Clarified  
for legal check*

Old Farmington Road Vacation Description (Beechwood Ave. Ave.) described as follows:

A PART OF THE SW1/4 OF THE SE1/4 OF SECTION 17, TOWNSHIP 16 NORTH, RANGE 30 WEST, CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF OLD FARMINGTON ROAD WHICH EXTENDS FROM BEECHWOOD AVE. TO EASTERN AVE. ALONG THE SOUTH LINE OF LOTS 1 THROUGH 6 OF THE SUNSET ADDITION, BLOCK 1 TO THE CITY OF FAYETTEVILLE AND ALONG THE NORTH LINE OF PARCELS 1, 2, AND 3 OF THE MITCHELL OIL PROPERTY AS FILED IN DEED BOOK 881 AT PAGE 410 AND IN DEED BOOK 1053 AT PAGE 105, AT THE CIRCUIT CLERKS OFFICE, WASHINGTON COUNTY, ARKANSAS, SAID PORTION OF ROAD BEGINNING AT THE SW CORNER OF LOT 1 OF SAID SUNSET ADDITION, BLOCK 1, (ALSO BEING THE NE CORNER OF THE INTERSECTION OF OLD FARMINGTON RD. AND BEECHWOOD AVE.) THENCE S86°49'11"E 340.82 FEET; THENCE S02°40'33"E 30.00 FEET; THENCE N86°49'11"W 340.71 FEET; THENCE N02°27'56"E 30.00 FEET TO THE POINT OF THE BEGINNING, CONTAINING 0.235 ACRES, MORE OR LESS, AND SUBJECT TO ANY AND ALL UTILITY EASEMENTS OF RECORD AND SUBJECT TO A 20 FOOT SEWER EASEMENT TO BE IN EFFECT AND CENTERED ALONG THE EXISTING SEWER MAIN LOCATED WITHIN THE VACATED STREET RIGHT-OF-WAY AND A 15 FOOT GENERAL UTILITY EASEMENT ALONG THE SOUTH LINE OF THE VACATED RIGHT-OF-WAY ENCOMPASSING EXISTING UTILITIES ALONG SAID SOUTH LINE.



Parcel No. 765-11198-000  
Parcel No. 765-11201-000

## GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

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

### PROPERTY DESCRIPTION: (Deed Ref. 97-007309)

Lots Numbered One (1) and Two (2) in Block One (1) of Sunset Addition, an Addition to the City of Fayetteville, Arkansas, as per plat of said Addition on file in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas. LESS AND EXCEPT starting at the Southwest corner of Lot One (1), Block One (1), Sunset Addition; thence North 02° 32' East along the West line thereof a distance of 88.2 feet to the point of beginning; thence continue North 02° 32' East along said West line a distance of 25.1 feet to a point on the old Southerly right of way line of U.S. Highway #62; thence North 88° 46' East along said old right of way line a distance of 95.2 feet to a point on the East line of Lot Two (2), Block One (1), Sunset Addition; thence South 02° 32' West along said East line a distance of 15.0 feet to a point on the Southerly right of way line of U.S. Highway #62; thence South 88° 46' West along said right of way line a distance of 64.1 feet to a point; thence South 71° 16' West along said right of way line a distance of 33.3 feet to the point of beginning and said exception containing 1583 square feet, more or less.

AND

Lots Numbered Three (3) and Four (4) in Block One (1) of Sunset Addition, an Addition to the City of Fayetteville, Arkansas, as per plat of said Addition on file in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas. LESS AND EXCEPT starting at the Southwest corner of Lot One (1), Block One (1), Sunset Addition, thence North 02° 32' East along the West line thereof a distance of 113.3 feet to a point on the old Southerly right of way line of U.S. Highway 62; thence North 88° 46' East along said right of way line a distance of 95.2 feet to the point of beginning; thence continue North 88° 46' East along said existing right of way line a distance of 100.2 feet to a point on the East line of Lot Four (4), Block One (1); thence South 02° 32' West along said East line a distance of 15.0 feet to a point on the Southerly right of way line of U.S. Highway 62; thence South 88° 46' West along said right of way line a distance of 100.2 feet to a point; thence North 02° 32' East a distance of 15.0 feet to the point of beginning and said exception containing 1503 square feet, more or less.

### PERMANENT EASEMENT DESCRIPTION:

A fifteen (15) foot wide permanent utility easement across the above described property, being parallel with and contiguous to the south property line and situated on the north side thereof. This permanent easement contains 2,983 square feet (0.068 acre), more or less.

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

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, until the use of said permanent easement is relinquished, abandoned or vacated and so long as such pipe line or lines, electrical power, telephone and/or television lines or cables, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first 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, lines and/or cables, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above high water, and to pay any damages which may arise to growing crops or fences from the said construction, maintenance and operation as determined by three disinterested persons, one thereof to be appointed by the said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

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

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

GENERAL UTILITY EASEMENT  
Stevens  
Page 2 of 2

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 29th day of June, 2000.

Joel Coy Stevens  
Joel Coy Stevens

Angela Colleen Stevens  
Angela Colleen Stevens

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 **Joel Coy Stevens and Angela Colleen Stevens**, husband and wife, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 29TH day of JUNE, 2000.

Jill S. Coddard  
Notary Public

MY COMMISSION EXPIRES:

09-18-2007



W. 6TH STREET (180)

SUNSET ADDITION, BLOCK 1

EASTERN AVENUE

BEECHWOOD AVENUE

PROPOSED 30' VACATION  
OLD FARMINGTON ROAD  
(VA00-6.00)

VFW  
Lot 6  
Parcel No. 765-11202-000  
Deed Ref. 936/259  
L&E Deed Ref. 1008/585

VFW  
Lot 5  
Parcel No. 765-11201-000  
Deed Ref. 97-007309

Stevens  
Lot 4  
Parcel No. 765-11201-000  
Deed Ref. 97-007309

Stevens  
Lot 3  
Parcel No. 765-11198-000  
Deed Ref. 97-007309

Stevens  
Lot 2  
Parcel No. 765-11198-000  
Deed Ref. 97-007309

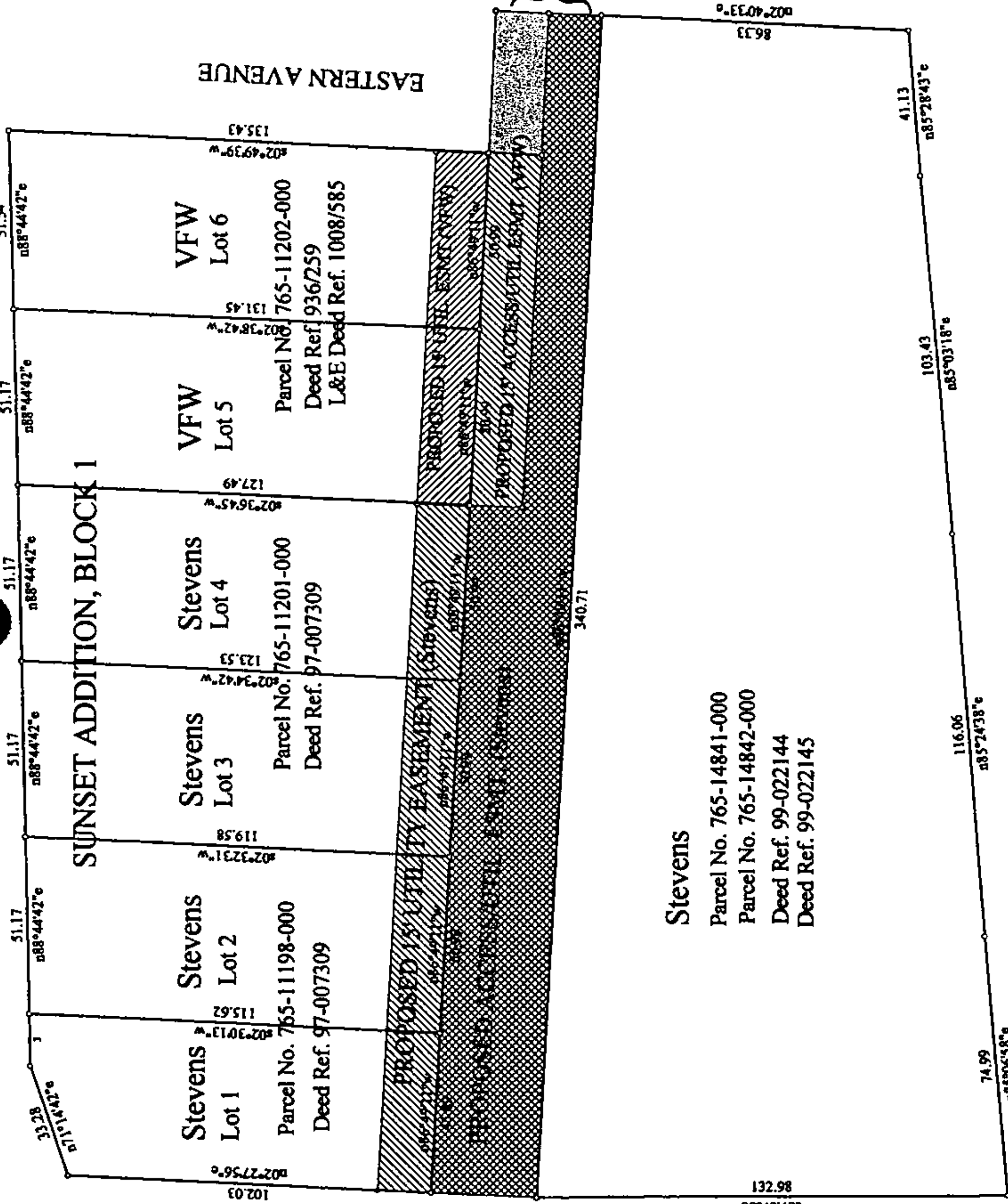
Stevens  
Lot 1  
Parcel No. 765-11198-000  
Deed Ref. 97-007309

Stevens

Parcel No. 765-14841-000  
Parcel No. 765-14842-000  
Deed Ref. 99-022144  
Deed Ref. 99-022145



Scale: 1" = 40'





Parcel No. 765-11198-000  
Parcel No. 765-11201-000  
Parcel No. 765-14841-000  
Parcel No. 765-14842-000

## ACCESS / GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT WE, Joel Coy Stevens and Angela Colleen Stevens, husband and wife, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent access easement and a permanent easement to construct, maintain, repair and/or replace, enlarge and operate a water and/or sanitary sewer pipe line or lines, manholes, natural gas, electrical power, telephone and television communication line or lines, and appurtenances thereto, on, over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION: (Document Reference: City of Fayetteville VA00-6.00)

That portion of vacated and abandoned right of way located at Old Farmington Road, between Beechwood Avenue and Eastern Avenue, being adjacent to Parcel Nos. 765-11198-000, 765-11201-000, 765-14841-000, and 765-14842-000.

PERMANENT ACCESS AND GENERAL UTILITY EASEMENT DESCRIPTION:

A part of the Southwest Quarter (SW¼) of the Southeast Quarter (SE¼) of Section 17, Township 16 North, Range 30 West, City of Fayetteville, Washington County, Arkansas, being more particularly described as follows:

That portion of vacated Old Farmington Road which extends from Beechwood Avenue to Eastern Avenue along the South line of Lots 1 through 4, Block 1, of the Sunset Addition to the City of Fayetteville (Parcel Nos. 765-11198-000 and 765-11201-000), and along the North line of the Stevens property as filed in Deed Ref. 99-22144 and 99-22145 (Parcel Nos. 765-14841-000 and 765-14842-000), of the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, said portion beginning at the Southwest corner of said Lot 1, Block 1, Sunset Addition; thence South 86° 49' 11" East 198.86 feet; thence South 02° 36' 45" West 15.0 feet; thence South 86° 49' 11" East 141.94 feet; thence South 02° 40' 33" West 15.0 feet; thence North 86° 49' 11" West 340.71 feet; thence North 02° 27' 56" East 30.0 feet, to the Point of Beginning, and containing 8,093 square feet (0.186 acre), more or less,

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

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, until the use of said permanent easement is relinquished, abandoned or vacated and so long as such pipe line or lines, electrical power, telephone and/or television lines or cables, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first 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, lines and/or cables, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above high water, and to pay any damages which may arise to growing crops or fences from the said construction, maintenance and operation as determined by three disinterested persons, one thereof to be appointed by the said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

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

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

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

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

ACCESS AND GENERAL UTILITY EASEMENT

Stevens

Page 2 of 2

WITNESS the execution hereof on this the 29th day of June, 2000.

Joel Coy Stevens  
Joel Coy Stevens

Angela Colleen Stevens  
Angela Colleen Stevens

ACKNOWLEDGMENT

STATE OF ARKANSAS )

ss.

COUNTY OF WASHINGTON )

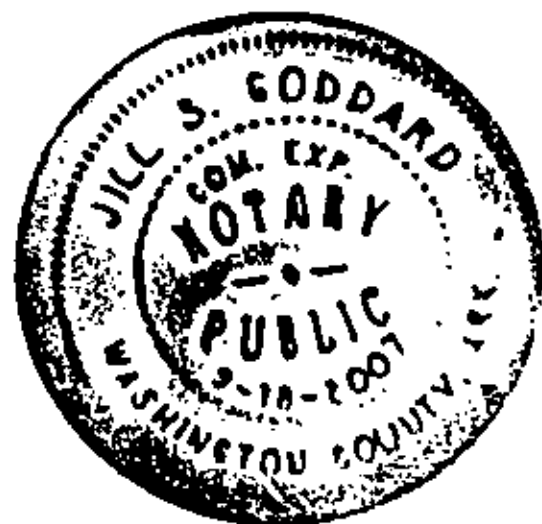
BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Joel Coy Stevens and Angela Colleen Stevens, husband and wife, to me well known as the persons who executed the foregoing document, and who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

WITNESS my hand and seal on this 29TH day of JUNE, 2000.

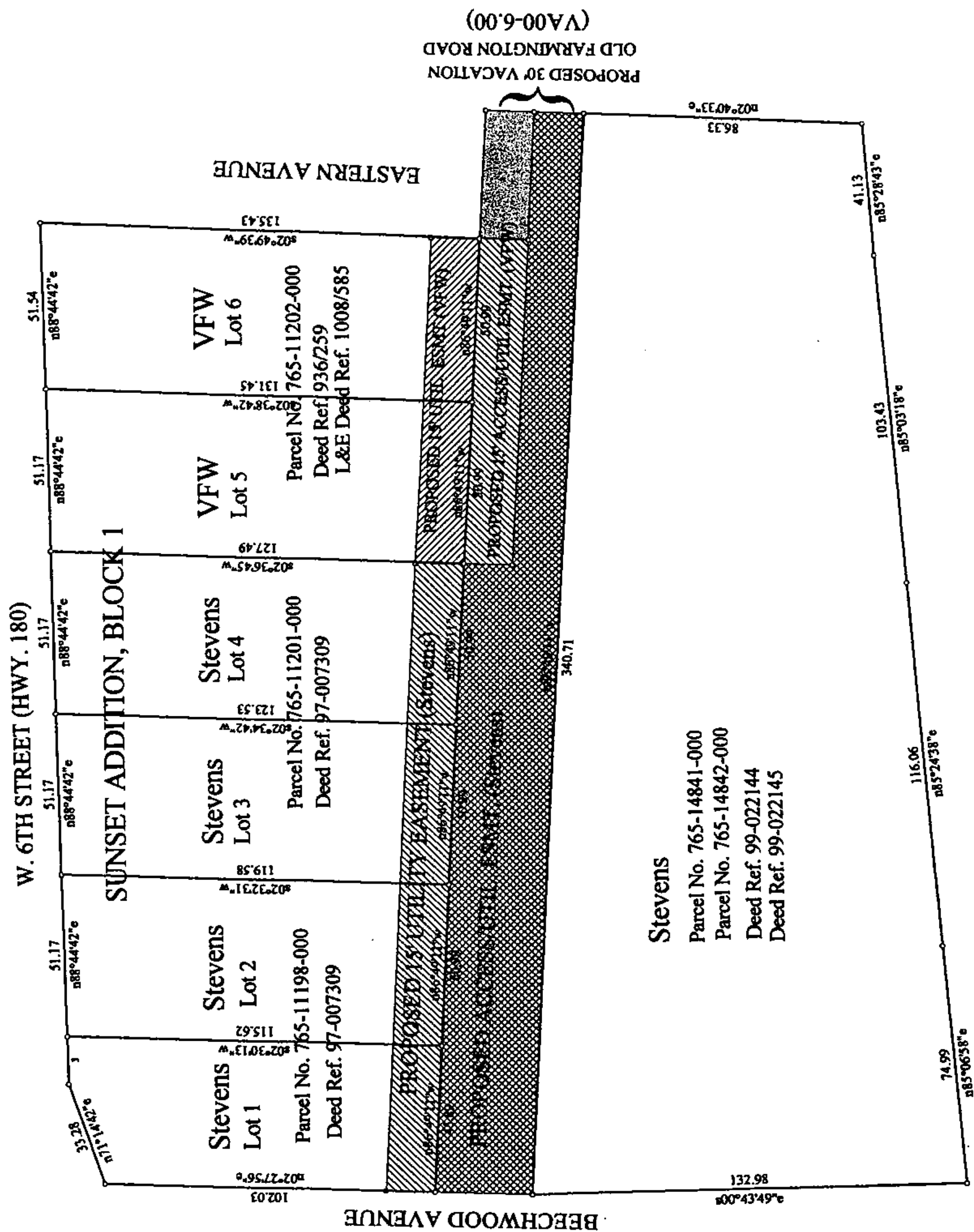
Jill S. Goddard  
Notary Public

COMMISSION EXPIRES:

09-18-2007







**Scale: 1" = 40'**

**GENERAL UTILITY EASEMENT**

IT KNOWN BY THESE PRESENTS:

THAT the Jack Tidball Post 2722, Veterans of Foreign Wars of the United States of America, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement to construct, maintain, repair and/or replace, enlarge and operate a water and/or sanitary sewer pipe line or lines, manholes, natural gas, electrical power, telephone and television communication line or lines, and appurtenances thereto, on, over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION: (Deed Book 936 at Page 259)

Lots Numbered Five (5) and Six (6) in Block Numbered One (1) in Sunset Addition to the City of Fayetteville, Arkansas, as designated upon the recorded plat of said Addition.

LESS AND EXCEPT (Deed Book 1008 at Page 585): Part of Lots 5 and 6, Block 1, Sunset Addition to the City of Fayetteville, Washington County, Arkansas, more particularly described as follows: Starting at the Southwest corner of Lot 1, Block 1, Sunset Addition; thence North 02° 32' East along the West line thereof a distance of 113.3 feet to a point on the existing Southerly right of way line of U.S. Highway #62; thence North 88° 46' East along said existing right of way line a distance of 195.4 feet to the point of beginning; thence continue North 88° 46' East along said existing right of way line a distance of 7.1 feet to a point; thence North 88° 11' East along said existing right of way line a distance of 93.2 feet to a point on the East line of Lot 6, Block 1; thence South 02° 32' West along said East line a distance of 15.0 feet to a point on the proposed Southerly right of way line of said U.S. Highway #62; thence South 88° 11' West along said proposed right of way line a distance of 92.1 feet to a point; thence South 88° 46' West along said proposed right of way line a distance of 8.2 feet to a point; thence North 02° 32' East a distance of 15.0 feet to the point of beginning and containing 1500 square feet, more or less.

PERMANENT EASEMENT DESCRIPTION:

A fifteen (15) foot wide permanent utility easement across the above described property, being parallel with and contiguous to the south property line and situated on the north side thereof. This permanent easement contains 1,530 square feet (0.035 acre), more or less,

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

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, until the use of said permanent easement is relinquished, abandoned or vacated and so long as such pipe line or lines, electrical power, telephone and/or television lines or cables, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first 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, lines and/or cables, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above high water, and to pay any damages which may arise to growing crops or fences from the said construction, maintenance and operation as determined by three disinterested persons, one thereof to be appointed by the said Grantor, one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

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

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

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

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

GENERAL UTILITY EASEMENT  
VFW  
Page 2 of 2

WITNESS the execution hereof on this the 29<sup>th</sup> day of JUNE, 2000.

JACK TIDBALL POST 2722  
VETERANS OF FOREIGN WARS OF THE UNITED STATES OF AMERICA

BY: Daniel E. Bannan Jr  
DANIEL E. BANNAN, JR. Commander  
[Please print or type Name and Title]

ATTEST:

\_\_\_\_\_  
[Please print or type Name and Title]

BY: Lonnie Hussey  
Lonnie Hussey Quartermaster  
[Please print or type Name and Title]

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 DANIEL E BANNAN, PC and LONNIE HUSSEY QM and \_\_\_\_\_, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the POST COMMANDER and QUARTERMASTER and \_\_\_\_\_, respectively, of the Jack Tidball Post 2722 Veterans of Foreign Wars of the United States of America, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said VFW Post 2722, 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 29<sup>th</sup> day of JUNE, 2000.

MY COMMISSION EXPIRES:  
7-23-07

Donald Donner  
Notary Public

Notary Public  
Donald Donner  
Notary Public, State of Arkansas  
Washington County  
My Commission Exp. 07/23/2007





Scale: 1" = 40'

W. 6TH STREET (Hwy 180)

SUNSET ADDITION, BLOCK 1

EASTERN AVENUE

BEECHWOOD AVENUE

PROPOSED 30' VACATION  
OLD FARMINGTON ROAD  
(VA00-6.00)

VFW  
Lot 6

VFW  
Lot 5

Stevens  
Lot 4

Stevens  
Lot 3

Stevens  
Lot 2

Stevens  
Lot 1

Parcel No. 765-11202-000  
Deed Ref. 936/259  
L&E Deed Ref. 1008/585

Parcel No. 765-11201-000  
Deed Ref. 97-007309

Parcel No. 765-11198-000  
Deed Ref. 97-007309

Stevens

Parcel No. 765-14841-000

Parcel No. 765-14842-000

Deed Ref. 99-022144

Deed Ref. 99-022145

PROPOSED 15' UTILITY EASEMENT (Stevens)  
PROPOSED 15' UTILITY EASEMENT (Stevens)  
PROPOSED 15' UTILITY EASEMENT (Stevens)

86.33  
002°40'33" E

41.13  
085°28'43" E

103.43  
085°03'18" E

116.06  
085°24'38" E

74.99  
085°06'58" E

132.98  
000°43'49" E

340.71

102.03  
002°27'56" E  
53.28  
001°11'14" E  
51.17  
088°44'42" E  
51.17  
088°44'42" E  
51.17  
088°44'42" E  
51.17  
088°44'42" E  
51.17  
088°44'42" E  
51.54  
088°44'42" E  
135.43  
002°49'39" W  
131.45  
002°38'42" W  
127.49  
002°36'45" W  
123.53  
002°34'42" W  
119.58  
002°32'31" W  
115.62  
002°30'13" W  
102.03  
002°27'56" E



Parcel No. 765-11202-000

## ACCESS / GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT the Jack Tidball Post 2722, Veterans of Foreign Wars of the United States of America, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent access easement and a permanent easement to construct, maintain, repair and/or replace, enlarge and operate a water and/or sanitary sewer pipe line or lines, manholes, natural gas, electrical power, telephone and television communication line or lines, and appurtenances thereto, on, over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION: (Document Reference: City of Fayetteville VA00-6.00)

That portion of vacated and abandoned right of way located at Old Farmington Road, between Beechwood Avenue and Eastern Avenue, being adjacent to Parcel No. 765-11202-000.

PERMANENT ACCESS AND GENERAL UTILITY EASEMENT DESCRIPTION:

A part of the Southwest Quarter (SW¼) of the Southeast Quarter (SE¼) of Section 17, Township 16 North, Range 30 West, City of Fayetteville, Washington County, Arkansas, being more particularly described as follows:

That portion of vacated Old Farmington Road along the South line of Lots 5 and 6, Block 1, of the Sunset Addition to the City of Fayetteville (Parcel No. 765-11202-000), said portion commencing at the Southwest corner of Lot 1, Block 1, Sunset Addition; thence South 86° 49' 11" East 198.86 feet, to the Point of Beginning, said point also being the Southwest corner of said Lot 5, Block 1, Sunset Addition; thence South 86° 49' 11" East 101.98 feet; thence South 02° 49' 39" West 15.0 feet; thence North 86° 49' 11" West 101.92 feet; thence North 02° 36' 45" East 15.0 feet, to the Point of Beginning and containing 1,529 square feet (0.035 acre), more or less,

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

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, until the use of said permanent easement is relinquished, abandoned or vacated and so long as such pipe line or lines, electrical power, telephone and/or television lines or cables, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first 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, lines and/or cables, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above high water, and to pay any damages which may arise to growing crops or fences from the said construction, maintenance and operation as determined by three disinterested persons, one thereof to be appointed by the said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

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

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

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

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

WITNESS the execution hereof on this the 29<sup>th</sup> day of JUNE, 2000.

JACK TIDBALL POST 2722  
VETERANS OF FOREIGN WARS OF THE UNITED STATES OF AMERICA

BY:

Daniel E. Bannan, Jr.

DANIEL E. BANNAN, JR., COMMANDER

[Please print or type Name and Title]

ATTEST:

BY:

Louise Hussey  
LOUISE HUSSEY, Chartermaster

[Please print or type Name and Title]

[Please print or type Name and Title]



ACCESS AND GENERAL UTILITY EASEMENT  
VFW  
Page 2 of 2

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 DANIEL E. BANWAL JR, P.C. and LOUIE HUSSEY, QM and \_\_\_\_\_, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the POST COMMANDER and QUARTERMASTER and \_\_\_\_\_, respectively, of the Jack Tidball Post 2722 Veterans of Foreign Wars of the United States of America, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said VFW Post 2722, 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.

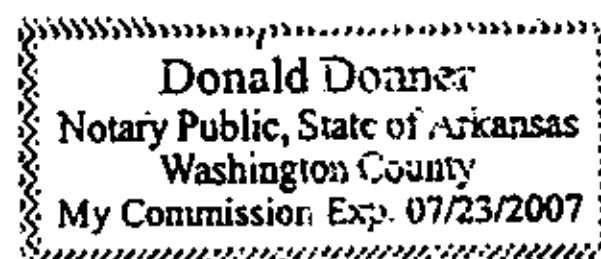
WITNESS my hand and seal on this 29<sup>th</sup> day of JUNE, 2000.

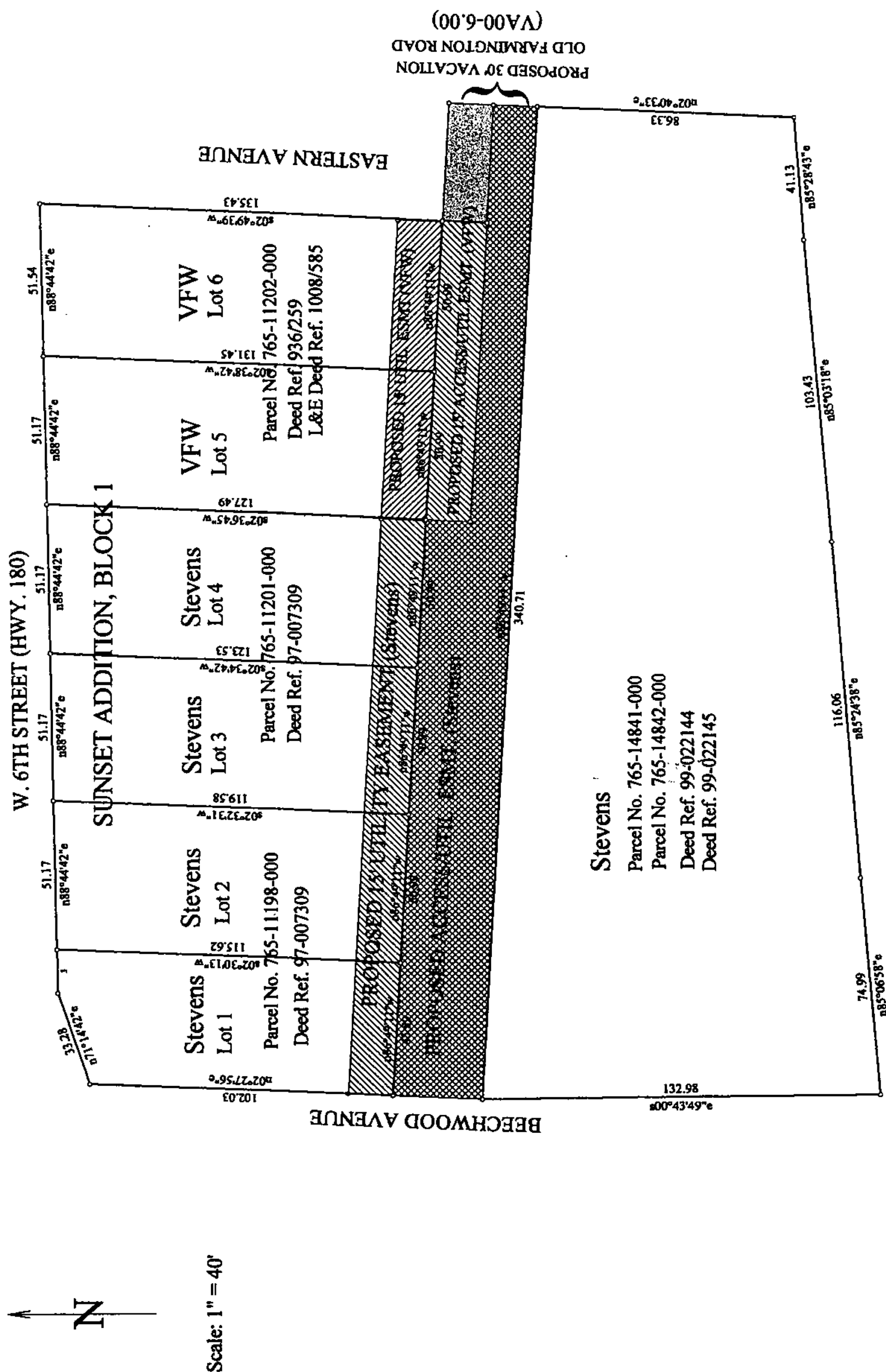
Donald Doaner

MY COMMISSION EXPIRES:

7-23-07

Notary Public





## STAFF REVIEW FORM

☒ AGENDA REQUEST  
☐ CONTRACT REVIEW  
☐ GRANT REVIEW

For the Fayetteville City Council meeting of July 3, 2000

FROM:

Tim Conklin  
NamePlanning  
DivisionPublic Works  
Department

**ACTION REQUIRED:** To approve an ordinance for AD 00-8.00: Administrative Item Amendment to Chapter 162 "Use Units" of the Unified Development Ordinance, Section 162.01 "Establishment and Listing" to allow additional retail uses in the C-1 Neighborhood Commercial District.

**COST TO CITY:**

\$

Cost of this Request

Category/Project Budget

Category/Project Name

Account Number

Funds Used To Date

Program Name

Project Number

Remaining Balance

Fund

**BUDGET REVIEW:** \_\_\_\_\_ Budgeted Item \_\_\_\_\_ Budget Adjustment Attached

Budget Manager

Administrative Services Director

**CONTRACT/GRANT/LEASE REVIEW:****GRANTING AGENCY:** \_\_\_\_\_

Accounting Manager

Date

Internal Auditor

Date

City Attorney

Date

ADA Coordinator

Date

Purchasing Officer

Date

**STAFF RECOMMENDATION:** Staff recommended approval and on June 12, 2000, Planning Commission unanimously voted 9-0-0 to recommend approval and forward the amendment to the City Council.

Division Head

Date

Cross Reference

Department Director

Date

New Item: **Yes**

Administrative Services Director

Date

Prev Ord/Res #: \_\_\_\_\_

Mayor

Date

Orig Contract Date: \_\_\_\_\_

Orig Contract Number: \_\_\_\_\_



Planning Commission Minutes  
June 12, 2000  
Page 30

**AD 00-8.00: Administrative Item** Amendment to Chapter 162 "Use Units" of the Unified Development Ordinance, Section 162.01 "Establishment and Listing" to allow additional retail uses in the C-1 Neighborhood Commercial District.

**Odom:** Item number 15 on tonight's agenda is another administrative item Amendment to Chapter 162 "Use Units" of the Unified Development Ordinance, § 162.01 "Establishment and Listing" to allow additional retail uses in the C-1 Neighborhood Commercial District. Staff recommends approval of amendment 162.01 (O) Use Unit 15 Neighborhood Shopping Goods, of the Unified Development Ordinance, to allow the additional retail uses as listed in the staff report. I will just to ahead for the record and note the following uses are proposed to be added to Use Unit 15 in the retail trade it is an Antique Shop, Apparel and accessory, Clothing, Shoe, Tailoring, Bicycle Shop, Camera Shop, Hobby Shop, Jewelry, Leather Goods and Luggage, Optical Goods, Pet Shop, Radio and Television Store, Record and Tape Shop, Sporting Goods, Stationary Store, and Toy Shop. Staff, are those the only additional uses that are proposed?

**Conklin:** Yes and the uses that are listed to be added to Use Unit 15 are being redesignated from Use Unit 16 which is Shopping Goods. This will not change what is allowed in other commercial zoning districts. Use Unit 15 is allowed under C-2, C-3 and C-4 zoning districts. What it is doing is taking uses that are compatible in a C-1 zoning and placing them in this use unit which will make them a use by right. Part of the problem we are having in our office when new businesses are opening up or going into these C-1 neighborhood commercial shopping centers are that they don't allow the clothing sales and the antique sales. We are running into situations where we have had to in the past actually rezone it to C-2 to allow clothing sales. This will take care of that.

**Odom:** And in that situation it allows for much more severe type retail that goes in.

**Conklin:** Yes. In C-2 when they apply for the C-2 rezoning we end up looking at the used car sales, gas stations, or adult entertainment type businesses and there are a lot of different uses that really are not compatible with neighborhoods. So, this will avoid having to take property from C-1 to C-2 to allow this type of uses. We have needed to do this for some time and I'm please to have it before you.

**Hoffman:** Mr. Chair, I have a question. Eating places would be permitted in C-1 and I think are now?

**Conklin:** Yes they are. That is unit 13.

Planning Commission Minutes  
June 12, 2000  
Page 31

Hoffman: We do not have any regulation that I know of over alcoholic beverage sales but would an eating place that included those, I'm trying to make sure that an applicant would understand that an eating place could be a restaurant that served beer or wine or something like that but could not be a bar. Are we opening ourselves up to any kind of vagary by this change? It is already in there I understand.

Conklin: It is already in there under use unit 13. They do allow alcohol sales. They do have to meet the standards that we have in our ordinances with regard to alcohol sales but this is not changing that.

Hoffman: This doesn't change that and this is not going to be something new that we have to explain?

Conklin: One thing I really looked at closely when you look at shopping centers such as Glennwood Shopping Center on Hwy 45 and Hwy 265 where Harps Grocery Store is, that is zoned C-2. We have Café Santa Fe in there, you have the Chinese restaurant in there that serves alcohol. You also have other uses, a jewelry store and directly caddy corner to that is a Wal-Mart Neighborhood Market zoned C-1. That wouldn't allow the jewelry store or the clothing store at this time. This pretty much cleans up the discrepancies between those two zoning districts without having to rezone that Wal-Mart Neighborhood Market to C-2 which would allow the used car lots and other type of uses that people have a lot of concerns with next to a neighborhood.

Hoffman: Thank you. I'm fine with this list. I just want to make sure everybody is clear on what it included and what it didn't. And C-2 heavy uses are not in it.

Bunch: Is our action here a recommendation to the Council? Is that what we are doing?

Conklin: Yes. It is a recommendation to the City Council. This will probably go to Ordinance Review Committee then to the City Council.

Odom: Should we recommend it go to the Ordinance Review Committee?

Conklin: My understanding is they typically refer everything to the Ordinance Review Committee so I would contact the Chairman of that Committee, Ron Austin, and ask for him to place this on their agenda.

Odom: Okay. I don't think we need them, but if that is what the rules say, that's fine.



Planning Commission Minutes  
June 12, 2000  
Page 32

Conklin: I'll check with the Chairman of the Ordinance Review Committee to see if they want to look at it first before it goes to City Council.

Odom: I'd say do that otherwise it will get kicked back. Did you make a motion?

**MOTION:**

Hoffman: I didn't but I can. I have been making motions all night so I don't see why I shouldn't do it on this one. I'll recommend this be forwarded on to the appropriate Board or Commission, whether that be City Council or the Ordinance Review Committee with a specific recommendation for approval from the Planning Commission.

Shackelford: I'll second.

Odom: We have a motion by Commissioner Hoffman and a second by Commissioner Shackelford for approval of AD 00-8.00.

**PUBLIC COMMENT:**

Odom: Is there any member of the audience that would like to address us on this issue? I forgot that. Seeing none I'll close the floor and call the question.

**ROLL CALL:**

Upon roll call the motion carries 9-0-0.

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.  
Fayetteville, AR 72701  
Telephone:

## PLANNING DIVISION CORRESPONDENCE

501-575-8264

TO: Fayetteville Planning Commission Members  
FROM: Tim Conklin, City Planner  
DATE: June 12, 2000

AD 00-8.00: (Administrative Item) Amendment to Chapter 162 "Use Units" of the Unified Development Ordinance, Section 162.01 "Establishment and Listing" to allow additional retail uses in the C-1 Neighborhood Commercial District.

### RECOMMENDED MOTION

Staff recommends approval to amend Section 162.01(O) Use Unit 15 Neighborhood Shopping Goods, of the Unified Development Ordinance, to allow the additional retail uses as listed in this staff report.

### BACKGROUND

The Planning Division has been approached recently by an individual who would like to open up a clothing and antiques business in the C-1 zoning district. Clothing and antique sales are allowed under Use Unit 16 which is not allowed in a C-1 zoning district. Staff believes this issue will continually come up as the new C-1 shopping centers (Kants/Walmart Neighborhood Market, Millennium Place, etc.) begin to lease space and develop. Staff is proposing to relocate several uses listed under use unit 16 (Shopping Goods) into Use Unit 15 (Neighborhood Shopping) that are compatible with existing C-1 uses and surrounding residential development.

The following uses are proposed to be added to Use Unit 15:

#### Retail Trade:

- Antique Shop
- Apparel and accessory
- Clothing
- Shoe
- Tailoring
- Bicycle Shop
- Camera Shop
- Hobby Shop
- Jewelry
- Leather Goods and Luggage
- Optical Goods
- Pet Shop
- Radio and Television Store
- Record and Tape Shop
- Sporting Goods
- Stationary Store
- Toy Shop

Planning Commission  
June 12, 2000  
AD00-8 City of Fayetteville  
15.1

USE UNIT 15 AND

O. Unit 15. Neighborhood Shopping Goods.

1. **Description.** Unit 15 includes a variety of frequently purchased commercial goods, where convenience of location is more important than comparative shopping. These uses are grouped in limited areas while prohibiting all others not necessary near the residential areas.

2. **Included Uses.**

|               |                         |                                                                                                                           |
|---------------|-------------------------|---------------------------------------------------------------------------------------------------------------------------|
| Retail Trade: | Bookstores              |                                                                                                                           |
|               | Food:                   | -Bakery<br>-Food specialties store<br>-Dairy products<br>-Grocery<br>-Supermarkets<br>-Delicatessen<br>-Health food store |
|               | Drugstore               |                                                                                                                           |
|               | Florist                 |                                                                                                                           |
|               | Hardware Store          |                                                                                                                           |
|               | Home Furniture Store    |                                                                                                                           |
|               | Service Establishment:  | -Dry cleaning<br>-Barber and beauty shop<br>-Laundry                                                                      |
|               | News and Magazine Stand |                                                                                                                           |
|               | Laundry-Coin Operated   |                                                                                                                           |
|               | Service Station         |                                                                                                                           |
|               | Picture Framing, retail |                                                                                                                           |



P. Unit 16. Shopping Goods. (Highlighted Uses to Be Re-designated to Use Unit 15)

1. Description. Unit 16 consists of stores selling retail goods which are ordinarily purchased less frequently and often have a community-wide or regional market.

2. Included Uses.

|                                         |                                                                                                                                                                          |
|-----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Retail Trade Establishments:            | -Antique shop<br>-Apparel and Accessory<br>-Clothing<br>-Fur Apparel<br>-Liquor Store<br>-Millinery<br>-Shoe<br>-Tailoring                                               |
| Automotive, Marine Craft Establishment: | -Auto Accessory Store<br>-Auto Sales<br>-Boat and Accessories<br>-Bicycle Shop<br>-Bookstore<br>-Camera Shop<br>-Dry Goods<br>-Garden Supply                             |
| General Merchandise Establishment:      | -Department Store<br>-Mail Order<br>-Trading Stamp Redemption Store<br>-Hardware Store<br>-Hobby Shop                                                                    |
| Home Furniture:                         | -Appliances<br>-China, Glassware<br>-Draperies, Curtains<br>-Floor Coverings<br>-Furniture<br>-Music Instruments<br>-Radio and Television Store<br>-Record and Tape Shop |
| Jewelry                                 |                                                                                                                                                                          |
| Leather Goods and Luggage               |                                                                                                                                                                          |
| Optical Goods                           |                                                                                                                                                                          |
| Pet Shop                                |                                                                                                                                                                          |
| Sporting Goods                          |                                                                                                                                                                          |
| Stationery Store                        |                                                                                                                                                                          |
| Toy Shop                                |                                                                                                                                                                          |
| Service Establishments                  | -Branch Community Facility<br>-Library<br>-Post Office                                                                                                                   |

|                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Personal Services:      | <ul style="list-style-type: none"> <li>-Auto Rental Agency Office</li> <li>-Barber and Beauty Shops (with more than 4 chairs)</li> <li>-Costume Rental Service</li> <li>-Detective Service</li> <li>-Dry-Cleaning Service</li> <li>-Interior Decorating</li> <li>-Optician/Optometrlist</li> <li>-Photo Finishing</li> <li>-Photographic Studio</li> <li>-Picture Framing</li> <li>-Reading Rooms</li> <li>-Reducing Salon</li> <li>-Sign Painting</li> <li>-Social and Welfare Agency</li> <li>-Gunsmith</li> <li>-Locksmith</li> <li>-Watch and Jewelry Repair</li> </ul> |
| Transportation Service: | <ul style="list-style-type: none"> <li>-Bus Station</li> <li>-Express Service</li> <li>-Helistop</li> <li>-Railway Terminal</li> <li>-Taxicab Station</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                            |

# **§161.13 DISTRICT C-1 NEIGHBORHOOD COMMERCIAL.**

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

## **B. Uses.**

### **1. Permitted Uses.**

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

### **2. Uses Permissible on Appeal to the Planning Commission.**

|        |                                          |
|--------|------------------------------------------|
| Unit 2 | City-Wide Uses by Conditional Use Permit |
|--------|------------------------------------------|



|        |                                          |
|--------|------------------------------------------|
| Unit 3 | Public Protection and Utility Facilities |
| Unit 4 | Cultural and Recreational Facilities     |

**C. Bulk and Area Regulations/Setbacks.** Setback lines shall meet the following minimum requirements:

|                                                                         |        |
|-------------------------------------------------------------------------|--------|
| From Street ROW                                                         | 50 ft. |
| From Side Property Line                                                 | None   |
| From Side Property Line<br>When Contiguous to a<br>Residential District | 10 ft. |
| From Back Property Line                                                 | 20 ft. |

**D. Building Area.** On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

**E. Height Regulations.** There shall be no maximum height limits in C-1 District, provided, however, that any building which exceeds the height of ten feet shall be set back from any boundary line of any residential district a distance of one foot for each foot of height in excess of ten feet.

(Code 1991, §160.035; Code 1965, App. A, Art. 5(V); Ord. No. 1747, 6-29-89; Ord. No. 2603, 2-19-80)

STAFF REVIEW FORM

☒ AGENDA REQUEST  
☐ CONTRACT REVIEW  
☐ GRANT REVIEW

the Fayetteville City Council meeting of July 3, 2000

FROM:

Tim Conklin  
Name

Planning  
Division

Public Works  
Department

**ACTION REQUIRED:** To approve an ordinance for RZ 00-16, submitted by Arden Gale for property located at 1530 Albright Road. The property is zoned A-1, Agricultural and contains approximately 4.21 acres. The request is to rezone to R-1, Low Density Residential.

**COST TO CITY:**

\$

Cost of this Request

Category/Project Budget

Category/Project Name

Account Number

Funds Used To Date

Program Name

Project Number

Remaining Balance

Fund

**BUDGET REVIEW:** \_\_\_\_\_ Budgeted Item \_\_\_\_\_ Budget Adjustment Attached

Budget Manager

Administrative Services Director

**CONTRACT/GRANT/LEASE REVIEW:**

**GRANTING AGENCY:** \_\_\_\_\_

Accounting Manager

Date

Internal Auditor

Date

City Attorney

Date

ADA Coordinator

Date

Purchasing Officer

Date

**STAFF RECOMMENDATION:** Staff recommended approval and on June 12, 2000, Planning Commission unanimously voted 9-0-0 to recommend approval and forward the rezoning request to the City Council.

Division Head

6-19-00  
Date

Department Director

6-21-00  
Date

Administrative Services Director

6-21-00  
Date

Mayor

6/21/00  
Date

Cross Reference

New Item: **Yes**

Prev Ord/Res #: \_\_\_\_\_

Orig Contract Date: \_\_\_\_\_

Orig Contract Number: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED  
IN REZONING PETITION RZ 00-16 FOR A PARCEL  
CONTAINING APPROXIMATELY 4.21 ACRES LOCATED AT  
1530 ALBRIGHT ROAD AS REQUESTED BY ARDEN GALE.

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

Section 1. That the zone classification of the following described property is hereby  
changed as follows:

From A-1, Agricultural District to R-1, Low Density Residential District for the real  
property described in Exhibit "A" attached hereto and made a part hereof.

Section 2. That the official zoning map of the City of Fayetteville, Arkansas, is hereby  
amended to reflect the zoning change provided in Section 1 above.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

APPROVED:

By: \_\_\_\_\_  
Fred Hanna, Mayor

ATTEST:

By: \_\_\_\_\_  
Heather Woodruff, City Clerk



## EXHIBIT "A"

## LEGAL DESCRIPTION FOR RZ 00-16

A part of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 18, Township 17 North, Range 29 West, being more particularly described as follows:

Beginning at a point that is N  $89^{\circ}43'E$  660.0 feet from the Southwest corner of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section 18, said point of beginning being on the South line of said 40 acre tract, and running thence N  $89^{\circ}43'E$  330.0 feet along said South line; thence leaving said South line and running N  $0^{\circ}24'W$  735.83 feet to the original centerline of Clear Creek; thence Southwesterly along said centerline the following: S  $34^{\circ}18'W$  98.4 feet, S  $40^{\circ}13'W$  109.2 feet, S  $46^{\circ}46'W$  121.3 feet, S  $68^{\circ}06'W$  50.0 feet, S  $84^{\circ}53'W$  67.65 feet; thence leaving said centerline and running S  $0^{\circ}24'E$  465.0 feet to the point of beginning, containing 4.21 acres, more or less, City of Fayetteville, Washington County, Arkansas.

Subject to Albright Road right-of-way along the South line; the City of Springdale water line easement running East and West through the South side; and any other easements and/or right-of-ways of record.

Planning Commission Minutes

June 12, 2000

Page 6

**RZ 00-16.00: Rezoning (Gale, pp 60)** was submitted by Arden Gale for property located at 1530 Albright Road. The property is zoned A-1, Agricultural and contains approximately 4.21 acres. The request is to rezone to R-1, Low Density Residential.

Odom: The next item on tonight's agenda is RZ 00-16.00 submitted by Arden Gale for property located at 1530 Albright Road. The property is zoned A-1, Agricultural and contains approximately 4.21 acres. The request is to rezone to R-1, Low Density Residential. Staff recommends approval of the requested rezoning based upon the findings in their report. Staff do you have anything further?

Conklin: This is a rezoning request from A-1 to R-1 and contains 4.21 acres on Albright Road in the northeast part of town. There is a single family home currently on this lot and they have requested the R-1 zoning to bring forward a future lot split on this property.

Odom: I would ask the applicant to please come forward at this time. Now, you don't have to but do you have any presentation that you would like to make to us?

Gale: No sir.

Odom: And your name for the record?

Gale: Arden Gale.

**PUBLIC COMMENT:**

Odom: Let me ask if there are any members of the audience that would like to address us on this rezoning request?

**COMMISSION DISCUSSION:**

Odom: Seeing none I will close the floor to public discussion and bring it back to the Planning Commission for questions, comments or motions.

**MOTION:**

Shackelford: Mr. Chairman, I make a motion we approve RZ 00-16 based upon staff recommendations.

Hoffman: Second.



Planning Commission Minutes  
June 12, 2000  
Page 7

Odom: We have a motion by Commissioner Shackelford and a second by Commissioner Hoffman. Do we have any further discussion:

Bunch: Mr. Chairman, this is more of a comment and primarily for the record. Since this does not have sewer service we need to take a strong look for it at the lot split as it comes through, should the City Council approve this, then the next action would be the lot split that has already been filed, to make sure we have the proper septic systems. Normally in the city we don't address septic issues so we need to make sure this is on the record to notify people when it does come up before Subdivision Committee that it is properly addressed with the septic considerations.

Odom: Thank you Commissioner Bunch. Any further discussion? Call the roll.

**ROLL CALL:**

Upon roll call the motion to recommend approval carries 9-0-0.

Odom: You have to go to the City Council now. They are the ones that make the decisions on the rezonings.

Gale: Thank you.

Odom: Thank you very much.

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.  
Fayetteville, AR 72701  
Telephone: (501) 575-8264

## PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission  
FROM: Dawn T. Warrick, Associate Planner  
THRU: Tim Conklin, City Planner  
DATE: June 12, 2000

RZ 00-16.00: Rezoning (Gale, pp 60) was submitted by Arden Gale for property located at 1530 Albright Road. The property is zoned A-1, Agricultural and contains approximately 4.21 acres. The request is to rezone to R-1, Low Density Residential.

### RECOMMENDATION:

Staff recommends approval of the requested rezoning based on the findings included as part of this report.

PLANNING COMMISSION ACTION: Required YES  
☐ Approved ☐ Denied

Date: June 12, 2000

|                             |                                                             |
|-----------------------------|-------------------------------------------------------------|
| <b>CITY COUNCIL ACTION:</b> | Required <u>YES</u>                                         |
|                             | <input type="radio"/> Approved <input type="radio"/> Denied |
| Date: <u>July 18, 2000</u>  |                                                             |

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **BACKGROUND:**

This property is located at the extreme northeastern boundary of the City of Fayetteville and adjoins Springdale on three sides. To the south, across Albright Road, the property adjoins large acreages with single family homes. This land to the south is located within Fayetteville and is zoned A-1, Agricultural.

At this time, the applicant is seeking R-1, Low Density Residential zoning, the 4.21 acre tract is currently zoned A-1, Agricultural. Currently there is one single family home on the property with accessory buildings. This home is located in the southwest corner of the acre tract. The property has quite a bit of topography, leading to Clear Creek which borders the tract to the north.

The applicant is seeking to rezone the acreage in order to split the property into two lots. While there is sufficient land area, the property does not have adequate frontage on Albright Rd. to create two lots within the A-1 district. A lot split request has been processed and is scheduled to be heard by the Subdivision Committee on June 29, 2000. This lot split request will be contingent upon approval of the rezoning by Planning Commission and City Council.

## **SURROUNDING LAND USE AND ZONING**

|        |                                               |
|--------|-----------------------------------------------|
| North: | Springdale, residential                       |
| South: | Large tract with single family residence, A-1 |
| East:  | Springdale, residential                       |
| West:  | Springdale, residential                       |

## **INFRASTRUCTURE:**

**Streets:** Access is provided via Albright Road. This is a county road and is not designated on the City's Master Street Plan. Albright Road connects to Crossover Road (Hwy 265) on the west which is designated as a principal arterial.

**Water:** Supplied by Springdale

**Sewer:** Not available - private septic system serves existing home

**LAND USE PLAN:** General Plan 2020 designates this site Residential. Rezoning this property to R-1, Low Density Residential is consistent with the land use plan and compatible with surrounding land uses in the area.



## FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

**Finding:** **This zoning is consistent with the City's General Plan and with land use planning objectives, principles and policies.**

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

**Finding:** **The requested zoning is justified and needed at this time.**

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

**Finding:** **The proposed zoning would not create or appreciable increase traffic danger or congestion.**

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

**Finding:** **The proposed zoning would not alter the population density in a manner which would undesirably increase the load on public services.**

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

**Finding:** **N/A**

# **§ 161.04 DISTRICT R-1: LOW DENSITY RESIDENTIAL.**

**A. Purpose.** The Low Density Residential District is designed to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

## **B. Uses.**

### **1. Permitted Uses.**

|         |                         |
|---------|-------------------------|
| Unit 1  | City-Wide Uses by Right |
| Unit 26 | Single-Family Dwelling  |

### **2. Uses Permissible on Appeal to the Planning Commission.**

|        |                                          |
|--------|------------------------------------------|
| Unit 2 | City-Wide Uses by Conditional Use Permit |
| Unit 3 | Public Protection and Utility Facilities |
| Unit 4 | Cultural and Recreational Facilities     |
| Unit 8 | Single-Family and Two-Family Dwellings   |

## **C. Density.**

|                             |                             |
|-----------------------------|-----------------------------|
| SINGLE-FAMILY DWELLINGS     | TWO FAMILY DWELLINGS        |
| 4 or Less Families Per Acre | 7 or Less Families Per Acre |

## **D. Bulk and Area Regulations.**

|                             | Single-Family | Two-Family    |
|-----------------------------|---------------|---------------|
| Lot Minimum Width           | 70 ft.        | 80 ft.        |
| Lot Area Minimum            | 8,000 sq. ft. | 12,000 sq.ft. |
| Land Area Per Dwelling Unit | 8,000 sq. ft. | 6,000 sq. ft. |

## **E. Yard Requirements (feet).**

| FRONT YARD | SIDE YARD | REAR YARD |
|------------|-----------|-----------|
| 25         | 8         | 20        |

**F. Building Area.** On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

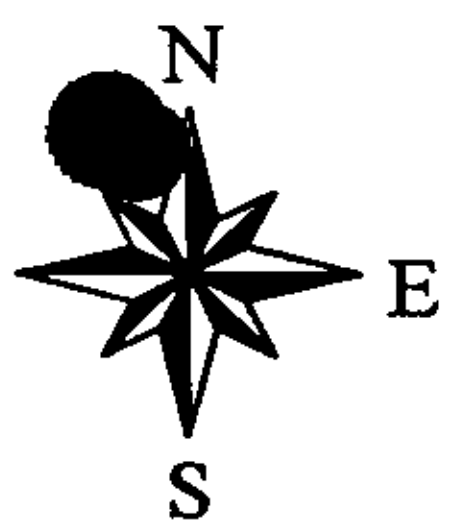
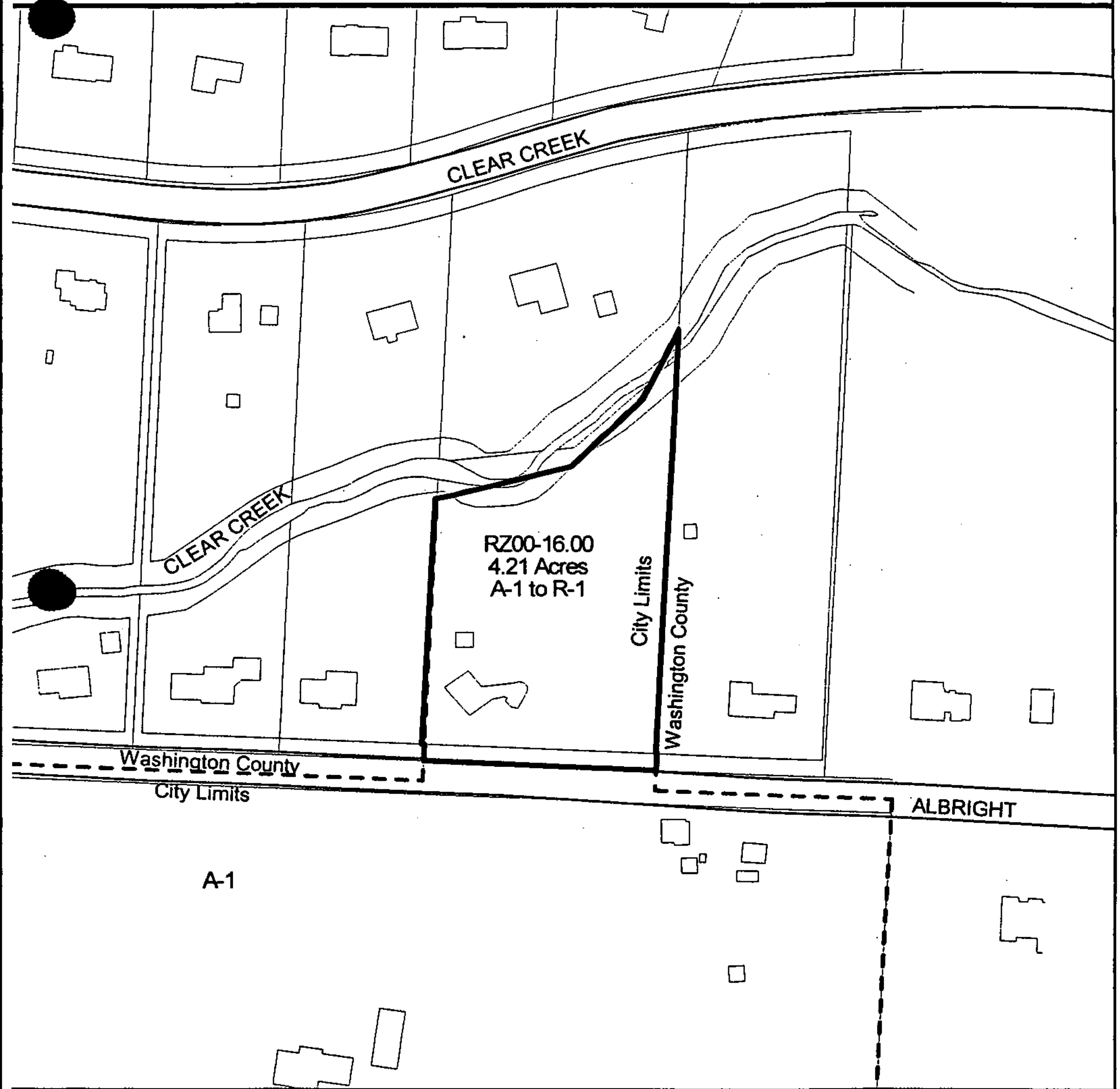
(Code 1991, §160.031)



Request for Re-Zoning  
1530 Albright Road, Springdale, AR 72764  
Owned by Arden U. Gale

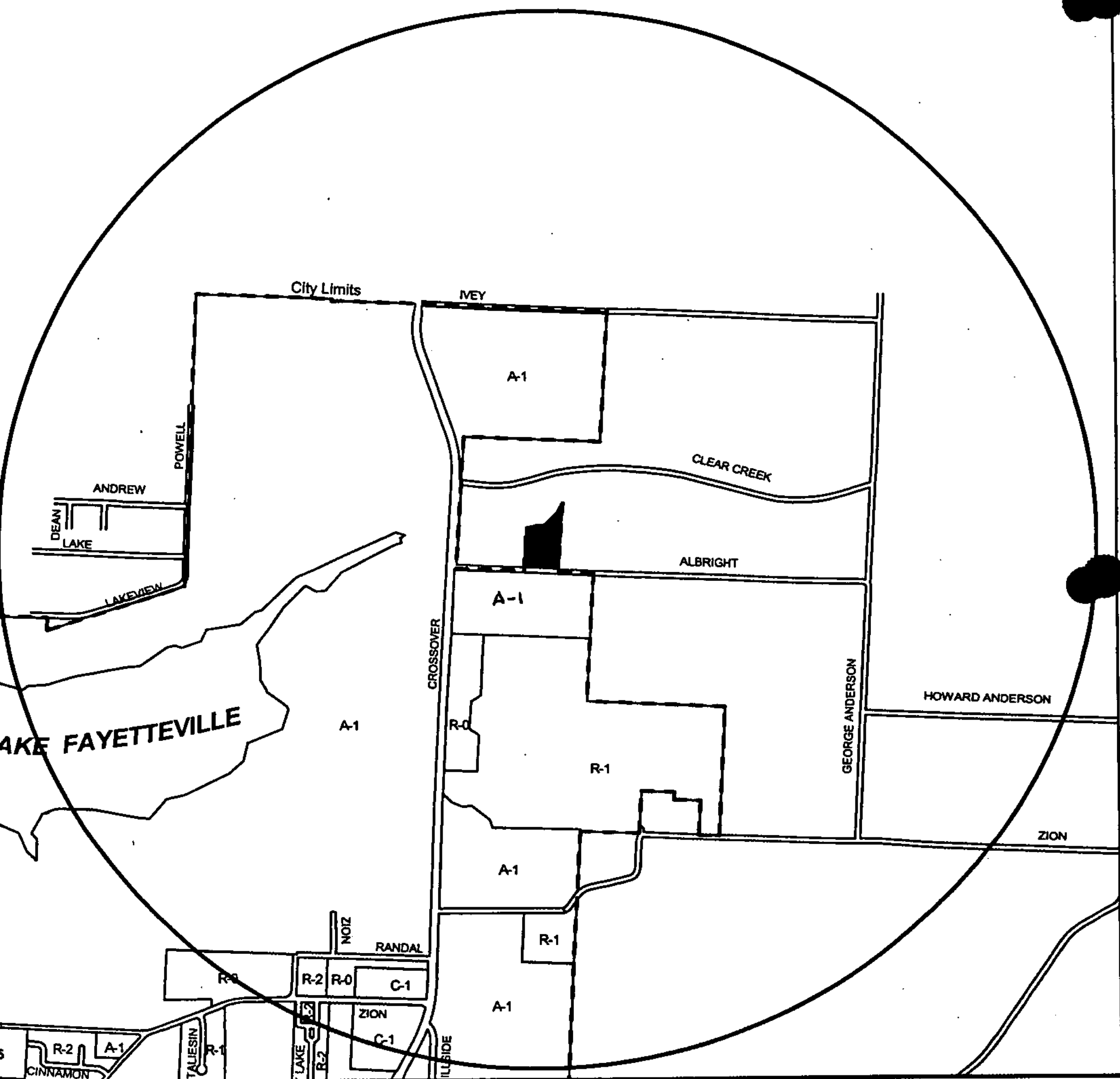
- a. This is a request to re-zone the property consisting of 4.2 acres at 1530 Albright Road. from agricultural to residential. Arden U. Gale is the current owner of this property. No property sales are either proposed or pending.
- b. A property split request has been made to divide one acre fronting Albright Road from the front of the property. In order for this property split request to be achieved, the property at 1530 Albright Road must be re-zone from agricultural to residential.
- c. The property at 1530 Albright is surrounded on its western, northern, and eastern sides by a subdivision in the town of Springdale. Residential zoning is more appropriate to this property than agricultural as it is in a residential suburban area with no agricultural activity surrounding it. Rezoning will not affect current land use, traffic, appearance, and/or signage.
- d. Water is supplied to 1530 Albright by the town of Springdale. No sewer service is available but the property has a private septic system.

# RZ00-16.00 - Gale - Close Up

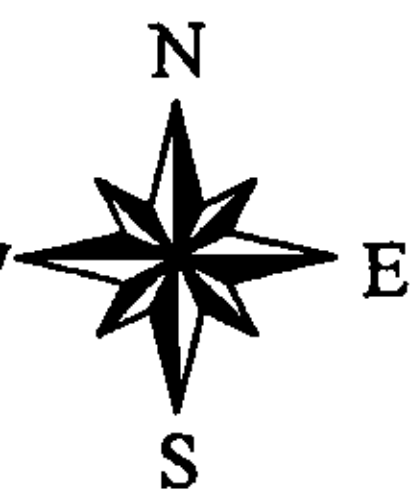


200 0 200 Feet

# RZ00-16.00 - Gale - One Mile Diameter

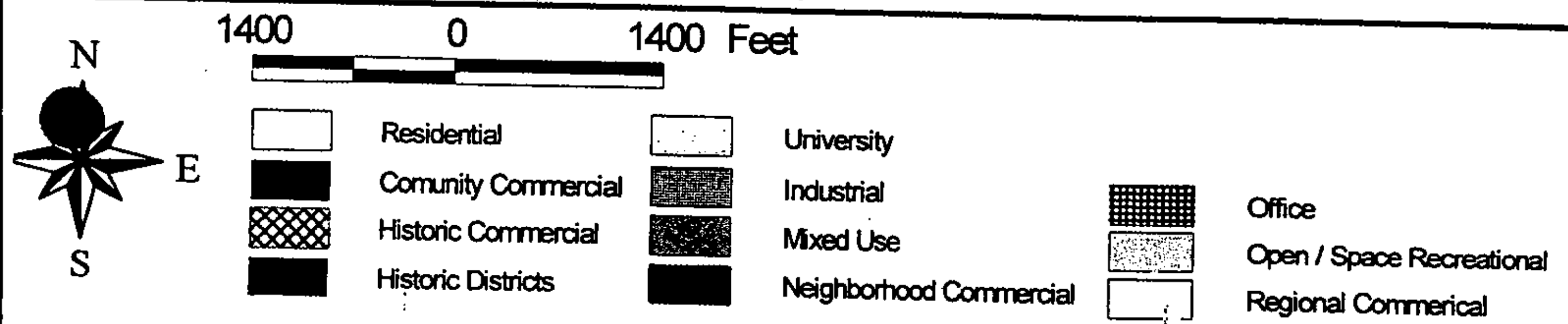
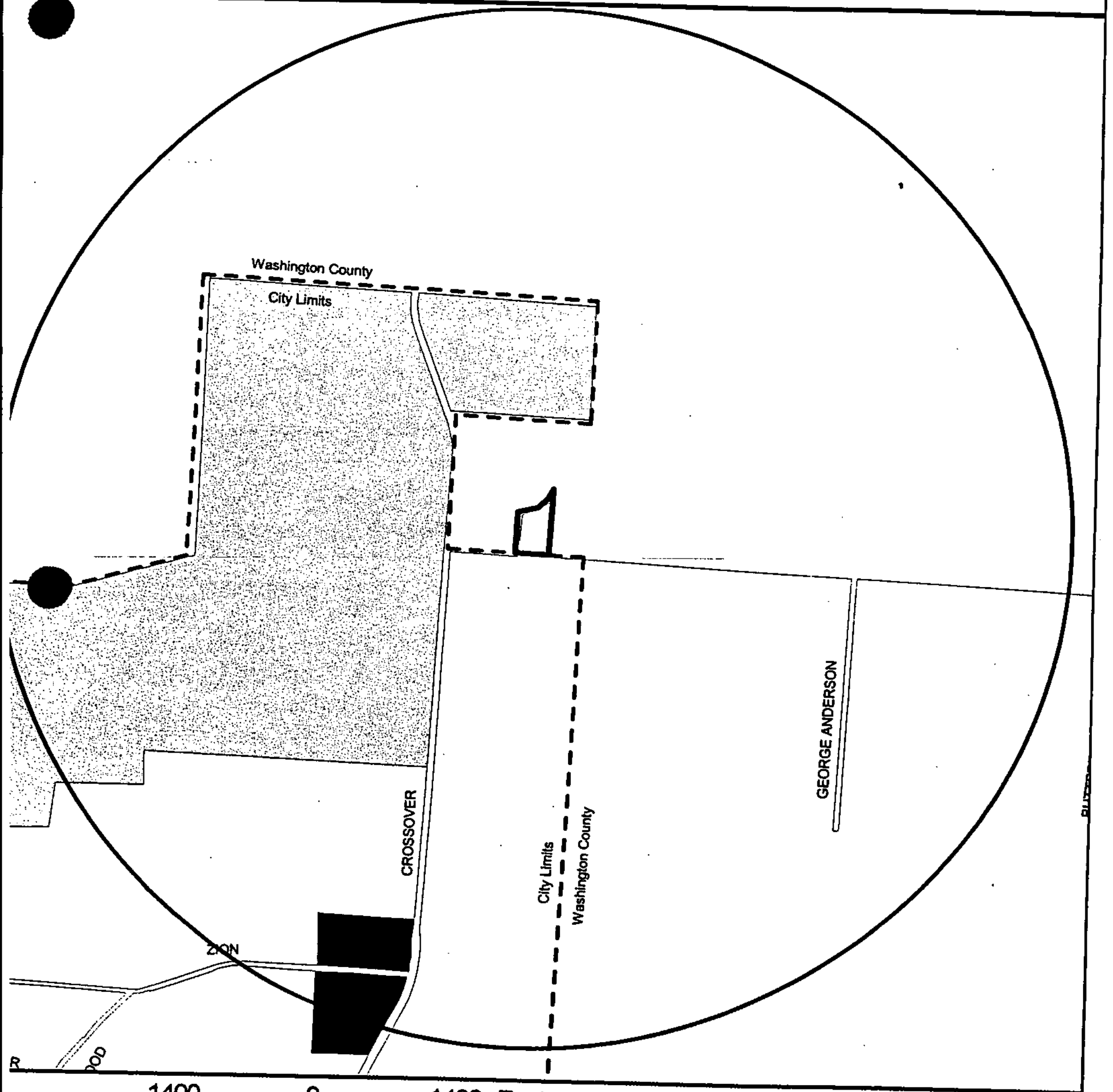


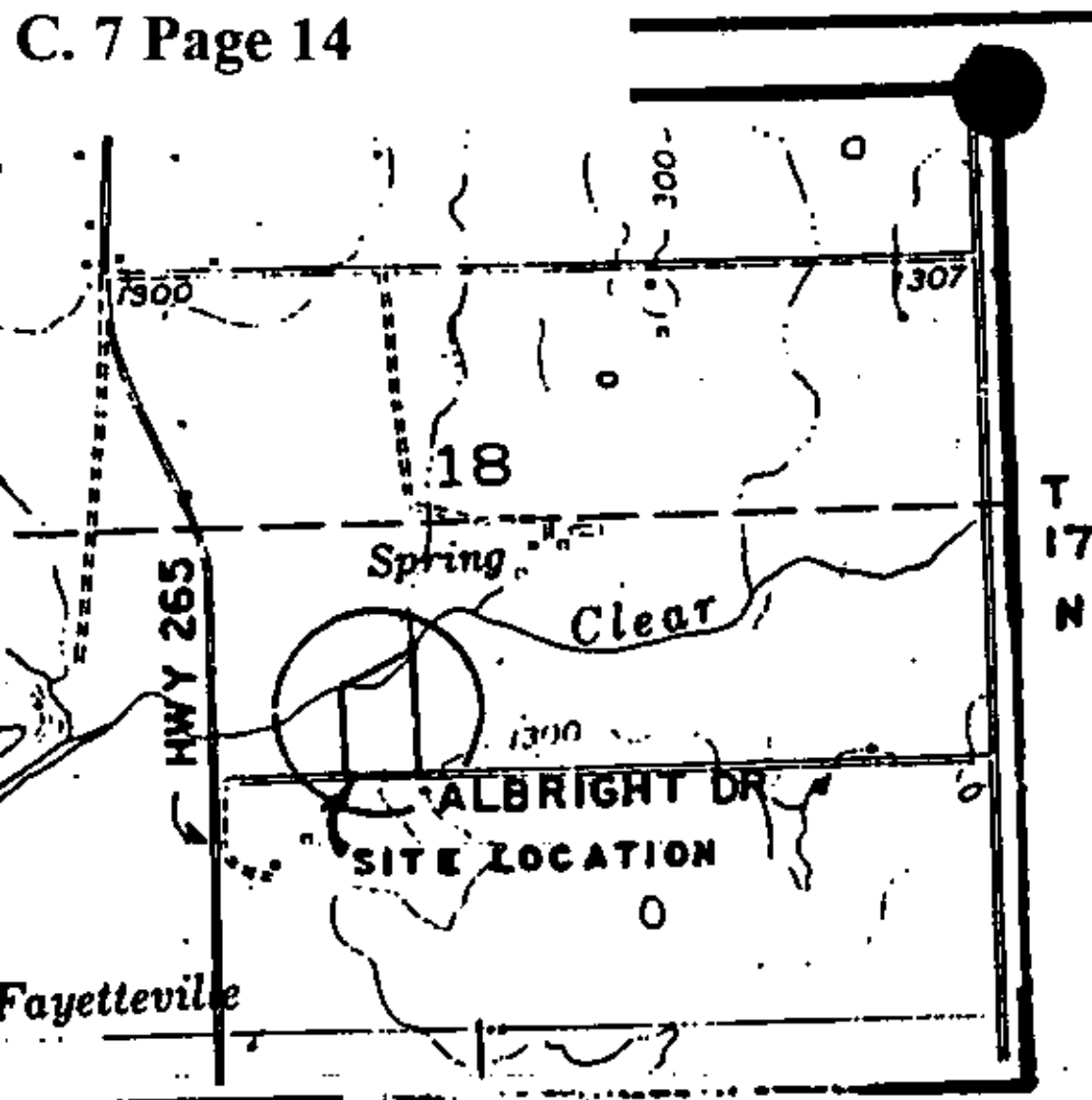
1400 0 1400 Feet





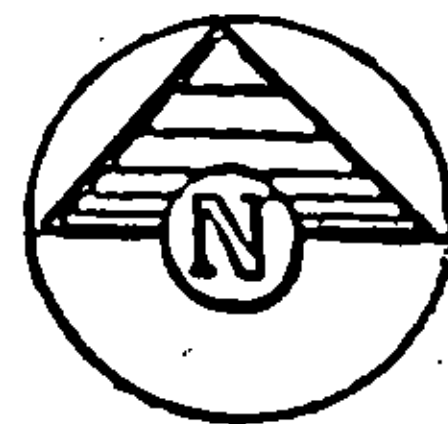
# RZ00-16.00 - Gale - 2020 Plan





VICINITY MAP

# PLAT OF SURVEY FOR DAVID McWETHY



SCALE 1"=100'

## LEGEND

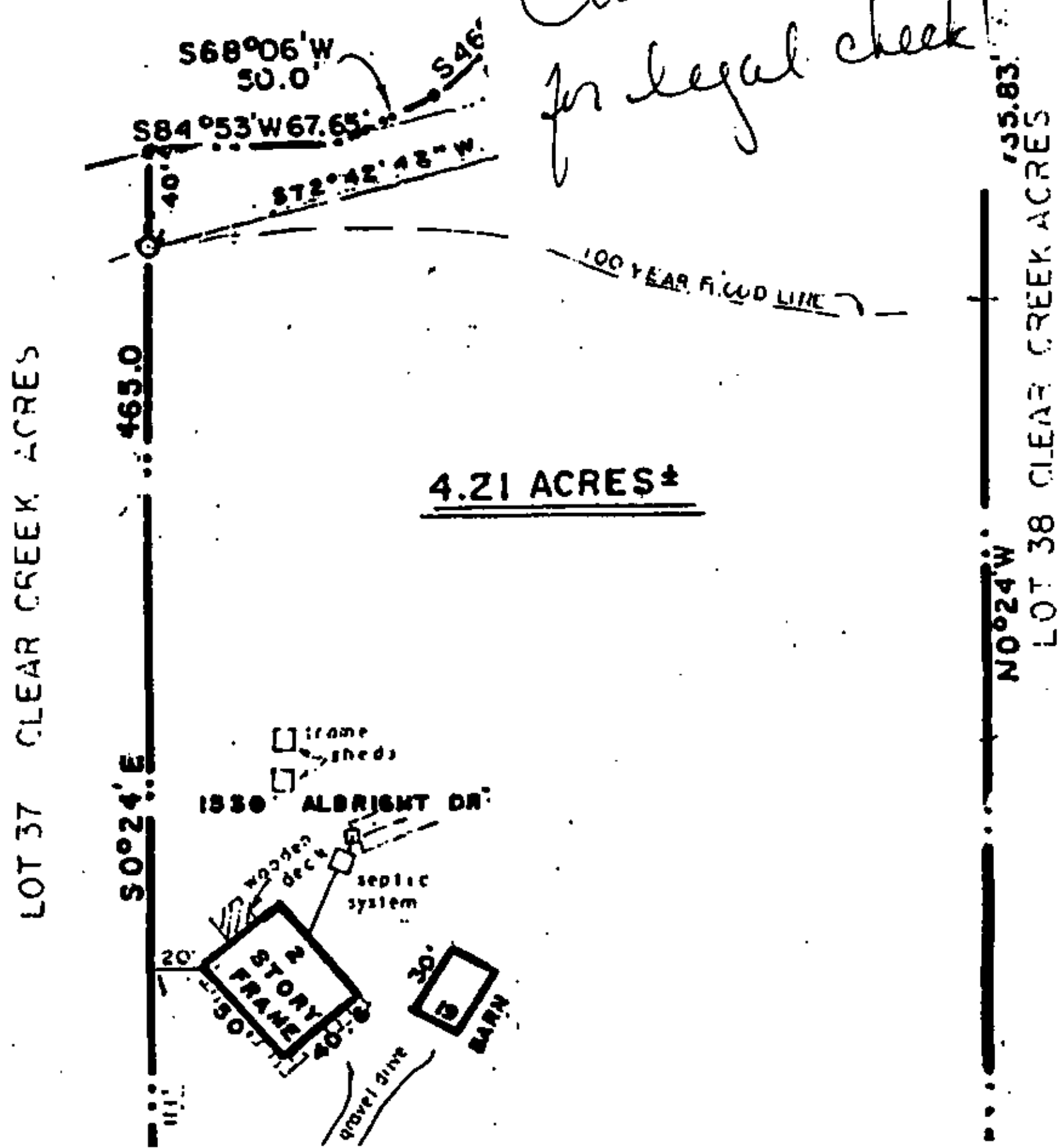
- · · — PROPERTY LINE
- FOUND IRON PIN
- SET IRON PIN
- x — FENCE
- POB POINT OF BEGINNING

*Chance  
for legal check*

## FLOOD CERTIFICATION:

Approximately the North 1/4 of the herein described 4.21 acre tract is in Flood Zone "A". Per FIRM Map 05143C 0101C, effective date Sept. 18, 1991.

Basis for Bearings: A 3.93 acre survey for David McWethy, dated 24 Aug 1976, by McClelland Consulting Engineers, Inc. Also, a plat of survey showing original centerline of Clear Creek dated 1-30-92 by Northwest Engineers, per Chancery Court of Washington County, Arkansas, case No. E 91-428, as filed May 7, 1992 for record in the Office of the Circuit Clerk and Ex-officio Recorder, Washington County, Arkansas.





STAFF REVIEW FORM

☒ AGENDA REQUEST  
☐ CONTRACT REVIEW  
☐ GRANT REVIEW

the Fayetteville City Council meeting of July 3, 2000

FROM:

Tim Conklin  
Name

Planning  
Division

Public Works  
Department

**ACTION REQUIRED:** To approve an ordinance for RZ 00-17, submitted by Northstar Engineering on behalf of Emad Damen for property located at 2323 Deane Street. The property is zoned R-1, Low Density Residential and contains approximately 1.47 acres. The request is to rezone to R-2, Medium Density Residential.

**COST TO CITY:**

|                      |                         |                       |
|----------------------|-------------------------|-----------------------|
| \$                   |                         |                       |
| Cost of this Request | Category/Project Budget | Category/Project Name |
| Account Number       | Funds Used To Date      | Program Name          |
| Project Number       | Remaining Balance       | Fund                  |

**BUDGET REVIEW:** \_\_\_\_\_ Budgeted Item \_\_\_\_\_ Budget Adjustment Attached

\_\_\_\_\_ Budget Manager \_\_\_\_\_ Administrative Services Director

**CONTRACT/GRANT/LEASE REVIEW:**

**GRANTING AGENCY:** \_\_\_\_\_

|                    |                |                  |      |
|--------------------|----------------|------------------|------|
| Accounting Manager | Date           | Internal Auditor | Date |
| <u>[Signature]</u> | <u>6-20-00</u> |                  |      |
| City Attorney      | Date           | ADA Coordinator  | Date |
|                    |                |                  |      |
| Purchasing Officer | Date           |                  |      |

**STAFF RECOMMENDATION:** Staff recommended approval and on June 12, 2000, Planning Commission unanimously voted 9-0-0 to recommend approval and forward the rezoning request with a Bill of Assurance, offered by the applicant's representatives for a total of 14 units on this property, to the City Council.

|                                  |                |
|----------------------------------|----------------|
| Division Head                    | Date           |
| <u>[Signature]</u>               | <u>6-19-00</u> |
| Department Director              | Date           |
| <u>[Signature]</u>               | <u>6-21-00</u> |
| Administrative Services Director | Date           |
| <u>[Signature]</u>               | <u>6-21-00</u> |
| Mayor                            | Date           |
| <u>[Signature]</u>               | <u>6/24/00</u> |

Cross Reference

New Item: **Yes**

Prev Ord/Res #: \_\_\_\_\_

Orig Contract Date: \_\_\_\_\_

Orig Contract Number: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED  
IN REZONING PETITION RZ 00-17 FOR A PARCEL  
CONTAINING APPROXIMATELY 1.47 ACRES LOCATED AT  
2323 DEANE STREET REQUESTED BY NORTHSTAR  
ENGINEERING ON BEHALF OF EMAD DAMEN.

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

Section 1. That the zone classification of the following described property is hereby  
changed as follows:

From R-1, Low Density Residential District to R-2, Medium Density Residential  
District for the real property described in Exhibit "A" attached hereto and made a  
part hereof with a Bill of Assurance limiting the number of units permitted on this  
1.47 acre tract to a total of 14 units also attached hereto and made a part hereof.

Section 2. — That the official zoning map of the City of Fayetteville, Arkansas, is hereby  
amended to reflect the zoning change provided in Section 1 above.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

APPROVED:

By: \_\_\_\_\_  
Fred Hanna, Mayor

ATTEST:

By: \_\_\_\_\_  
Heather Woodruff, City Clerk

EXHIBIT "A"

LEGAL DESCRIPTION FOR RZ 00-17

Lots numbered five (5) and six (6) of the re-plat of lots 11-16 inclusive, in University Acres Subdivision to the City of Fayetteville, Arkansas, as per plat on file in the office of the circuit clerk and ex-officio recorder of Washington County, Arkansas.



BILL OF ASSURANCE

This declaration of a Bill of Assurance is made this 19 day of June, 2000, by  
Emad Damen, owner of real property located at 2323 Dean Street, Fayetteville, Washington County,  
Arkansas, more particularly described as follows, to-wit:

LOTS NUMBERED 5 AND 6 OF THE RE-PLAT OF LOTS 11 - 16 INCLUSIVE,  
IN UNIVERSITY ACRES SUBDIVISION TO THE CITY OF FAYETTEVILLE,  
ARKANSAS, AS PER PLAT ON FILE IN THE OFFICE OF THE CIRCUIT  
CLERK, AND EX-OFFICIO RECORDER OF WASHINGTON COUNTY,  
ARKANSAS.

WHEREAS, Emad Damen applied to the City of Fayetteville for a rezoning of the above  
described real property from R-1 to R-2 on or about May 19, 2000; and

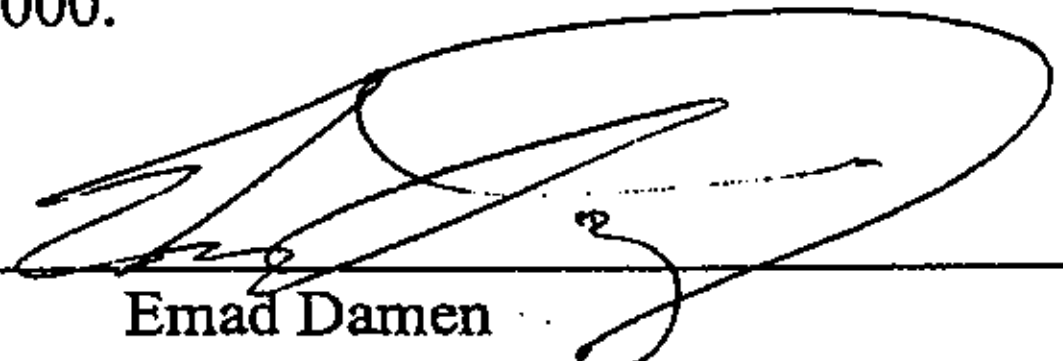
WHEREAS, said rezoning was approved by the City Council by Ordinance \_\_\_\_\_; and

WHEREAS, Emad Damen desires to restrict the use of the property described hereinabove  
to no more than fourteen residential units, to be comprised of a combination of duplex units and/or  
single family residences as otherwise allowable in an R-2 zoning.

NOW, THEREFORE, Emad Damen, present owner, hereby declares that the real property  
described herein shall be held, developed, transferred, sold, conveyed, and occupied subject to the  
restriction that if it is zoned R-2 by the City Council of the City of Fayetteville the use thereof shall  
be restricted as set forth above.

Nothing contained herein shall prohibit Emad Damen, or any successor in interest, from  
petitioning the City of Fayetteville for the removal of this Bill of Assurance or seeking a different  
zoning classification.

Executed this 19 day of June, 2000.

  
Emad Damen

STATE OF ARKANSAS                    )  
                                                  ) ss  
COUNTY OF WASHINGTON            )

BE IT REMEMBERED that on this day came before the undersigned, a Notary Public, duly qualified, commissioned and acting within and for the aforesaid State and County, Emad Damen, and states that he had executed the same .

WITNESS my hand and seal as such Notary Public this 19<sup>th</sup> day of June, 2000.

Lammy R. Barnes  
Notary Public

My Commission Expires:

12-21-2009



Planning Commission Minutes  
June 12, 2000  
Page 19

**RZ 00-17.00: Rezoning (Damen, pp 364)** was submitted by Northstar Engineering on behalf of Emad Damen for property located at 2323 Deane Street. The property is zoned R-1, Low Density Residential and contains approximately 1.47 acres. The request is to rezone to R-2, Medium Density Residential.

Odom: The next item we have on tonight's agenda is RZ 00-17 submitted by Northstar Engineering on behalf of Emad Damen for property located at 2323 Deane Street. The property is zoned R-1, Low Density Residential and contains approximately 1.47 acres. The request is to rezone to R-2, Medium Density Residential. Staff's recommendation is for approval of the requested rezoning based on the findings included as a part of this report. Staff, any further conditions?

Conklin: There are no further conditions.

Odom: I would ask the applicant to come forward at this time.

Scott: My name is John Scott. I'm the applicant's attorney actually. He was trying to make his way back from Neosho, Missouri and it appears he has not gotten here yet. We have a representative from Northstar who actually submitted the application so whoever you would prefer to hear from.

Odom: Whoever wishes to give a presentation should you wish to do so.

Scott: We really don't at this point unless there are any questions that we can address.

#### **PUBLIC COMMENT:**

Odom: Any member of the audience like to address us on this rezoning request? Please come forward and state your name and address for the record.

Maynard: Hi, My name is Richard Maynard and I live at 1717 Sang Avenue which is near but not adjacent to Mr. Damen's property. I also own the property where I reside. I want to start out by saying I'm not here just as a private citizen this time as I was a year ago when I came before this Commission about another rezoning issue but as President and spokesperson for the Asbell Neighborhood Association which extends from Deane Street to Wedington on the north and south with Lewis on the east and right beyond Porter almost to the bypass on the west. I mentioned this because these are not just arbitrary borders that we decided to set up but because our membership, now 65 members and growing each week, live in all four corners of that area and we came together last fall to object to another rezoning proposition; in fact the same one. Although not the same property, the same

Planning Commission Minutes  
June 12, 2000  
Page 20

request of R-1 to R-2, that we felt then and feel now would change the character of our neighborhood into something we could not live with. Out of that we formed this association because we felt we needed to have a more active voice in development zoning decisions that affect our lives and our neighborhood. I did not ask for a lot of people to come tonight, just our officers because I didn't want to waste their time. I want to say right up here, we are not here to necessarily oppose this request only that we are very concerned about it. We ask you to please, please to listen to these concerns. Whatever decision you make about any rezoning petition, no matter how small, affects those of us who live in the neighborhood in visible and, sometimes, not so visible ways. Our first concern is density. Now on the surface this petition, and the one I mentioned from last fall, would seem to be completely different, 11.5 acres as opposed to 1.5 acres, apartment complexes as opposed to a few duplexes. If that were all there was to it I would have to say this is probably a no brainer and you should approve it. Two thin lots sitting next to R-2 duplexes to the west and sitting right on top of a large development of duplexes to the south, Linda Jo Place, who could possibly object to that? But here is the problem. Once the zoning changes it changes for good and there is nothing in this petition that binds the developer or owner to do what he says he intends to do. Under R-2 zoning he can develop this property with far greater density. Far greater than would be possible than would be possible with these duplexes. In other words, he could change his mind or sell it to somebody else and they would have zoning with a lot of freedom to do what they like. Now by saying that, I am not by any means, and I want to make this clear, suggesting that there is any deception going on at all. I have no reason to believe that they are not going to do what they say they are going to do. We usually don't do things on a handshake. There is nothing to prevent them from doing that either. Our point is that certainly, anyone can do what they want with their property. In other words, as long as I meet building codes, I could paint my house pink and black if I wanted to and it would really be nobody else's business. The property is mine but the zoning is not. That is our point. It belongs to all of us and in this case I would argue it belongs primarily to those of us who live in the area. If we are asked to bend on our zoning then we would like to have some assurance that our property and our neighborhood, our homes, our quality of life, whatever, are protected. I think you get my point. This is primarily an R-1 neighborhood. And I'm going to say that because last fall that was really the basis of the argument before the City Council and the City Council agreed with us that the neighborhood was much larger than what the petitioners at that time wanted everyone to believe. That was really the basis of their decision not to grant that rezoning because it would adversely affect too many of the residents and owners. People who have lived in the neighborhood for years, sometimes 30 or 40 years and have an investment in their properties and in their homes. I don't want to

Planning Commission Minutes  
June 12, 2000  
Page 21

have to revisit that argument again. I hope we can accept the Council's decision that this is primarily R-1 and what happens in one section of that neighborhood does effect the entire neighborhood. Everything is connected which brings us to our second concern. Where does this stop. Now I think you know what I'm getting at. What we are afraid of is losing the very thing that we fought for and organized ourselves to protect ourselves from incrementally as lot by lot comes up for rezoning each pointing to a prior decision by this Board or by the City Council as the basis of approving their requests. The density getting a little greater each time until we are getting very close to R-3, which we also have in our neighborhood. Each time we as neighbors or as an association bend and try to be reasonable and not be perceived as 'aginnners, we make it harder for ourselves to defend our neighborhood and it slowly becomes what other people who don't live there want it to become. As sure as I am about death and taxes, I'm equally sure that the 11.5 acre question mark right in the middle of our neighborhood is going to come up for rezoning again after November 16, after one year has elapsed. I'll talk to you privately about how I know that. I don't think it would be appropriate for me to say that now. But when that happens you can bet that they will point to your decision tonight and any other zoning decision you make in the interim concerning our neighborhood, as a precedent because they will not recognize the difference between R-2 duplexes or R-2 College Park because they don't have to. It's all the same. That is why we are hesitant to give up a little of our zoning even for something that would seem to be as harmless or even compatible with the immediate area as a few duplexes. Now we do want to be reasonable. We just want some assurance that one, any development is compatible in density with the existing neighborhood and two, this does not start a trend where we see increasing density under R-2 or under R-3 zoning. I don't think what we are asking is unreasonable. What we ask you to do is look at the big picture and all the factors including the rights and welfare of those of us who chose to live and buy the property in the Low Density family oriented R-1 neighborhood. Zoning is one of the few safeguards we have to protect our property and our quality of life. We count too and we depend on you to look out for us. Thank you.

Odom: Thank you. Any other member of the audience like to address us on that issue?

**COMMISSION DISCUSSION:**

Odom: Seeing none, I'll close the floor to public discussion and bring it back to the applicant and to the staff. I think that Mr. Maynard has given a very eloquent presentation and has raised some concerns with regard to the density. Staff, do you want to just tell us real quickly what the difference in the density is between R-1 and R-2 so we are all clear.



Planning Commission Minutes  
June 12, 2000  
Page 22

Conklin: Sure. Under R-1 zoning the density allows 4 units per acre. Under R-2 zoning, Medium Density Residential it's 24 units per acre.

Odom: That is a pretty significant spread. It is my understanding that the person who is doing this property has some conceptional ideas with regard to what they are going to do with it, is that correct?

Conklin: That is correct. They did talk about that in their application to us. They would like to construct six additional duplex units. So twelve additional units plus the two existing houses which would be 14. I have informed the applicant of some of the concerns and questions that were asked at agenda session and did explain to them how bills of assurances do work. However, as staff, we never ask them to offer those as a condition of rezoning.

Bunch: Has R-1.5 been investigated as far as how it is applicable to the conceptional design for this project?

Conklin: One of the things that R-1.5 zoning requires are individual lots that meet the frontage and area requirements similar to the situation that we saw with the Planned Unit Development on Sycamore Street for Atlas Construction. It is going to limit the density and flexibility and design if you go with R-1.5. R-2 with multifamily, if you meet the lot frontage requirement, 90 feet or more, you can go with apartments without going and creating individual lots.

Hoffman: Mr. Chair, I have a question for staff that I forgot to ask at agenda session. Would it be possible to approach this as a conditional use in the existing zoning?

Conklin: No. Under R-1 you are required to have 80 feet of frontage and 12,000 square feet for each duplex so it would not meet the requirements.

Hoffman: That would not be something we could specify as a condition because it's seemingly in conditional use permits those run with the land.

Conklin: It's called out under our zoning ordinance and R-1 with the lot width is and what the lot area is. You would not be able to vary from that.

Hoffman: Thanks.

Estes: Mr. Chairman, Tim, I understand that staff does not routinely or ever recommend a bill of assurance as a condition for rezoning. With that said, would it be acceptable for the Commission to request of the applicant a bill of assurance as a



Planning Commission Minutes  
June 12, 2000  
Page 23

condition of approval?

Conklin: No. We are not supposed to ask the applicants to do things in order to obtain rezoning.

Hoover: Mr. Chair, a question for staff. Going back to the conditional use question which was also my question, I don't know the dimensions on these lots. Would you be able to get, if you are saying 80 foot frontage and they are going to have a private street here, so I'm assuming the frontage is not fronting on Deane, could that be considered fronting on the private street then?

Conklin: No. It has to be on a public street. Really, their project that they have drawn on a conceptional format, it does meet the R-2 zoning in my opinion, for them to develop in that manner. Putting those units that close together and using a private drive to access those units meets R-2 zoning.

Estes: Mr. Chairman, I have no disagreement with the applicants proposal that is presented to us for a total of 14 units. I am concerned about the permitted density and that would be my concern and would be a reason that I would at this point and time vote against the rezoning request.

Scott: In what way was the density a problem? Are you saying as far as the proposed plan and how it fits within an R-2?

Estes: The proposed density is 14 units. I have no problem with that but the permitted density is 24 units and that does concern me.

Scott: Sure and I think I can represent on behalf of my client whatever it's going to take to get that across, that it is not the intention to go above 8 units which would be comprised of duplex and single family housing. I think under any scenario we would not be going above 14 on 1.5 acres.

Odom: Mr. Scott, do you understand that as a Planning Commission and a staff we can not recommend that you, on behalf of your client, offer us a bill of assurance for that? That that actually has to come from you the applicant.

Scott: I can tell you my client is willing to execute a bill of assurance and the question I have to some degree is what exactly the contents and who is proposing what the bill of assurance would contain. That is what I'm not exactly certain of.

Odom: Typically, an applicant, you see we can't recommend this because that would be



Planning Commission Minutes  
June 12, 2000  
Page 24

an abuse of our power to try to limit your use to that right, but an applicant could offer a bill of assurance not to build more than "blank" units, I guess 14 units in this instance, should the rezoning be allowed.

Scott: I'm going to let the engineer speak as he seems to have something to say.

Al-Madhoun: Mr. Chairman, thank you very much. My name is Shawki Al-Madhoun. The geometrical property really dictates no more than eight units. When I looked at the property I thought about apartments. Being so small it just wouldn't work. The client did not really wish to have apartments. He wanted duplexes to be in line with what he has on the south side of this property. That is why we went to a private road, simply because, if it was to be dedicated as a public street, the property is only 200 foot wide. So if you have a 50 foot right-of-way then there is nothing left. It won't fit. He instructed me as late as last night, he said Shawki, this is what I want. These units that you have in there, the six, and the two existing houses. That is all we want to do. So what ever it takes to assure them we will do it. That is what I'm here on his behalf for, to assure you of that.

Odom: I hear you saying eight units.

Al-Madhoun: That would be the six duplexes and the two existing homes.

Odom: So we are actually talking about, Tim correct me if I'm wrong, 14 units?

Conklin: Fourteen units, yes. You do need to make that clear. It's 14 units on 1.47 acres which I calculate about 10 or 9.5 units per acre. I think for the record, if he is offering a bill of assurance, it's 14 units on 1.47 acres.

Odom: Okay.

Al-Madhoun: That will only fit reasonably on the property. It won't work any other way.

Odom: Okay. So is it my understanding then that the applicant is offering a bill of assurance for 14 units on 1.47 acres?

Scott: Yes sir.

Hoffman: Mr. Chair, the mechanics of the bill of assurance, I would just like to make sure that we understand on both sides what that means. Does this actually get recorded on the county plat in some manner? Tied to the lot so that 50 years from now when everybody is gone away and someone else has purchased this property and

Planning Commission Minutes  
June 12, 2000  
Page 25

it has this R-2 zoning in 50 years, they will understand when they buy land, the title company will have a way to find out that no more units are permitted.

Conklin: Yes. Once it goes to City Council and they pass the ordinance that gets attached to the ordinance and recorded at the county. We also in our office, make a note on our plat pages of these actions and what bills of assurances we do have and in the future we will be able to manage that better with our computer systems.

Odom: And staff, they run with the land, not the applicant.

Conklin: They run with the land. That is correct.

Hoffman: Okay. That is a major concern. I know I'm not asking for the public comment to reoccur, I think we have closed the floor to public comment, right?

Odom: We have closed public comment.

Hoffman: It appeared to me that the gentleman speaking for the neighborhood organization had heard of the proposed number of units and had no problem with that so...

Odom: Well, so we are clear, this is nothing more than a recommendation to the City Council and therefore, the public will be entitled to give their comment with regard to whether or not they feel that it's acceptable or not at the City Council Meeting.

**MOTION:**

Hoffman: That being said then, I'll go ahead and make a motion to approve this RZ 00-17 subject to receipt of a bill of assurance limiting development to no more than 14 units total on the two lots and that it be duly recorded. And that all other staff comments would apply.

Ward: I'll second.

Odom: We have a motion by Commissioner Hoffman and a second by Commissioner Ward to approve RZ 00-17 subject to a bill of assurance and all staff comments. Is there any further comments? Would you call the roll.

**ROLL CALL:**

Upon roll call the motion carries 9-0-0.

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.  
Fayetteville, AR 72701  
Telephone: (501) 575-8264

## PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission  
FROM: Dawn T. Warrick, Associate Planner  
THRU: Tim Conklin, City Planner  
DATE: June 12, 2000

**RZ 00-17.00: Rezoning (Damen, pp 364)** was submitted by Northstar Engineering on behalf of Emad Damen for property located at 2323 Deane Street. The property is zoned R-1, Low Density Residential and contains approximately 1.47 acres. The request is to rezone to R-2, Medium Density Residential.

### RECOMMENDATION:

Staff recommends approval of the requested rezoning based on the findings included as part of this report.

*Note: Consideration of a rezoning request does not constitute review or approval of development proposals.*

PLANNING COMMISSION ACTION: Required YES  
☐ Approved ☐ Denied

Date: June 12, 2000

|                             |                                                             |
|-----------------------------|-------------------------------------------------------------|
| <b>CITY COUNCIL ACTION:</b> | Required <u>YES</u>                                         |
|                             | <input type="radio"/> Approved <input type="radio"/> Denied |
| Date: <u>July 18, 2000</u>  |                                                             |



**LAND USE PLAN:** General Plan 2020 designates this site Residential. Rezoning this property to R-2, Medium Density Residential, is consistent with the land use plan and compatible with surrounding land uses in the area.

### **FINDINGS OF THE STAFF**

1. **A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.**

**Finding:** The Land Use Plan (General Plan 2020) shows this area as residential. The proposed zoning of R-2 (Medium Family Residential) is consistent with the plan.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

**Finding:** The proposed zoning R-2 is justified and needed at this time.

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

**Finding:** The proposed zoning would not create or appreciably increase traffic danger and congestion in this area. This property is situated very close to I-540 and is located on streets which are called out on the Master Street Plan to carry large volumes of traffic (Deane - minor arterial, Porter minor arterial/collector).

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

**Finding:** The proposed zoning would not alter the population density in a manner which would undesirably increase the load on public services including schools, water, and sewer facilities. On-site and off-site improvements including sewer will be required at the time of Large Scale Development and/or Preliminary Plat approval.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## BACKGROUND:

This property is located on Deane Street just south of the University Experimental Farm. It is just east of the intersection of Deane and Porter Road. The applicant is requesting to rezone this 1.47 acre tract to R-2, Medium Density Residential in order to develop six duplexes in addition to the two existing single family homes for a total of 14 units.

The property to the west and to the south is zoned R-2 and is developed into multi-family units. The University of Arkansas experimental farm property is north of this tract and the adjacent land to the east, zoned R-1, is developed with one single family home.

This area is called out on the General Plan 2020 as residential. Any further development of this property would constitute an infill project which would better utilize existing infrastructure and City facilities.

## SURROUNDING LAND USE AND ZONING

|        |                                         |
|--------|-----------------------------------------|
| North: | University experimental farm, not zoned |
| South: | Multi-family dwellings (duplexes), R-2  |
| East:  | Single family dwellings, R-1            |
| West:  | Multi-family dwellings, R-2             |

## INFRASTRUCTURE:

Access to this property is provided from Deane Street which runs along the northern property boundary. This part of Deane Street is classified as a minor arterial on the City's Master Street Plan. A minor arterial street is designed to accommodate 12,200 - 14,800 vehicles per day with a total right of way of 90'. At the time of development, this access will be evaluated with regard to the proposed project and the amount of traffic that it is expected to generate. The Planning Commission will then determine any necessary improvements or dedications.

Water: 12" line along Deane St.

Sewer: 6" line along the south property line which appears to serve Linda Jo Place, this line connects to another 6" line located along Porter Rd.



- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

**Finding:** N/A

## **§161.06 DISTRICT R-2 MEDIUM DENSITY RESIDENTIAL.**

**A. Purpose.** The High Density Residential District is designed to permit and encourage the developing of a variety of dwelling types in suitable environments in a variety of densities.

### **B. Uses.**

#### **1. Uses Permitted.**

|        |                                        |
|--------|----------------------------------------|
| Unit 1 | City-Wide Uses by Right                |
| Unit 8 | Single-Family Dwellings                |
| Unit 9 | Multifamily Dwellings - Medium Density |

#### **2. Uses Permissible on Appeal to the Planning Commission.**

|         |                                          |
|---------|------------------------------------------|
| Unit 2  | City-Wide Uses by Conditional Use Permit |
| Unit 3  | Public Protection and Utility Facilities |
| Unit 4  | Cultural and Recreational Facilities     |
| Unit 11 | Mobile Home Park                         |
| Unit 25 | Professional Offices                     |

### **C. Density.**

|                   |         |
|-------------------|---------|
| Families Per Acre | 4 to 24 |
|-------------------|---------|

### **D. Bulk and Area Regulations.**

#### **1. Lot Width Minimum.**

|                               |          |
|-------------------------------|----------|
| Mobile Home Park              | 100 Feet |
| Lot within a Mobile Home Park | 50 Feet  |
| One Family                    | 60 Feet  |
| Two Family                    | 60 Feet  |
| Three or More                 | 90 Feet  |
| Professional Offices          | 100 Feet |

#### **2. Lot Area Minimum.**

|                                             |                                 |
|---------------------------------------------|---------------------------------|
| Mobile Home Park                            | 3 Acres                         |
| Lot Within a Mobile Home Park               | 4,200 Sq. Ft.                   |
| Row House:<br>Development<br>Individual Lot | 10,000 Sq. Ft.<br>2,500 Sq. Ft. |
| Single-Family                               | 6,000 Sq. Ft.                   |
| Two-Family                                  | 7,000 Sq. Ft.                   |
| Three or More                               | 9,000 Sq. Ft.                   |

|                  |         |
|------------------|---------|
| Mobile Home Park | 3 Acres |
|------------------|---------|

|                        |         |
|------------------------|---------|
| Fraternity or Sorority | 2 Acres |
| Professional Offices   | 1 Acre  |

### 3. Land Area Per Dwelling

#### Unit.

|                        |                            |
|------------------------|----------------------------|
| Mobile Home            | 3,000 Sq. Ft.              |
| Apartments:            |                            |
| Two or More Bedrooms   | 2,000 Sq. Ft.              |
| One Bedroom            | 1,700 Sq. Ft.              |
| No Bedroom             | 1,700 Sq. Ft.              |
| Fraternity or Sorority | 1,000 Sq. Ft. per Resident |

### E. Yard Requirements (feet).

| FRONT YARD | SIDE YARD | REAR YARD |
|------------|-----------|-----------|
| 25         | 8         | 25        |

Cross Reference: Variances Chapter 156.

**F. Height Regulations.** Any building which exceeds the height of 20 feet shall be set back from any side boundary line an additional distance of one foot for each foot of height in excess of 20 feet.

(Code 1991, § 160.033; Code 1965, App. A, Art. 5(II); Ord. No. 2320, 4-5-77; Ord. No. 2700, 2-2-81)

May 19, 2000

Planning Department  
City of Fayetteville

Re: Request for rezone lots 5 & 6 of University Acres Subdivision

Dear Sir/Madam:

The purpose of this letter is to provide you with additional information as required by the rezoning application:

1. Attached with the rezoning application a cheque for the amount of \$ 325.00 for the application fee.
2. Attached is a copy of the latest mortgage survey prepared by Northstar Engineering Consultants.
3. Enclosed are two sets of typed mailing labels listing the names and addresses of each adjacent property owner. The list of names and addresses were obtained from the Assessors office records at Washington County Court House.
4. The attached copy of the latest mortgage survey shows the adjacent property owners and parcel number for every adjacent property.
5. Discussed below are specific information concerning the property owner:
  - a. Lots 5 & 6 of University Acres Subdivision on Dean Street are owned by Emad Damen. There is no pending sale of this property.
  - b. The rezoning of the property will enable me to construct six duplex units.
  - c. The property will be developed as one lot including a private street. Therefore, no individual duplex units can be sold and I will maintain sole architectural control since I plan to construct all the units. A strict covenant will be in place to maintain a high quality community theme. I plan to construct a fence along the east, west and south boundary of the property. The fence will provide screening and additional landscaping for my property and at the same time maintain compatibility with surrounding properties particularly to the south and east. The duplex units will be served by a dead end private street which connects to Deane Street, therefore, no through traffic will be allowed through adjacent properties. I believe my proposed duplex development will be compatible with existing developments surrounding my property to the east and south. A landscaped entrance including the development name will be constructed off of Deane Street.

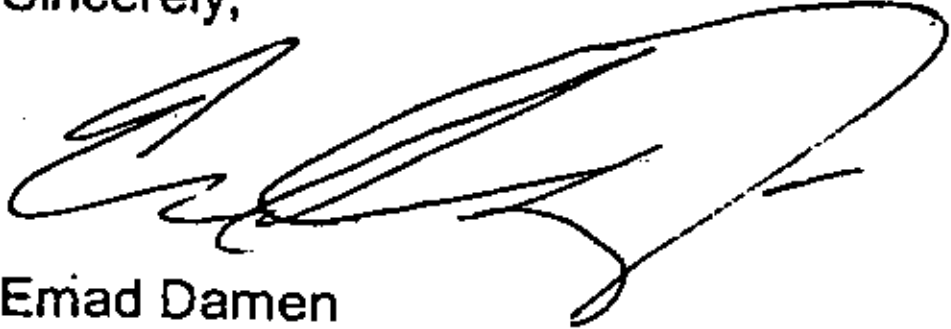


Planning Department  
City of Fayetteville  
5/19/2000  
Page 2 of 2

- d. Northstar Engineering met with the City engineer on 5/18/2000 and were informed that potable water and sanitary sewer service is available and adequate to serve my development.

I appreciate your assistance in my effort to rezone this property. Please call me at (501) 527-6626 if you have any questions or need additional information.

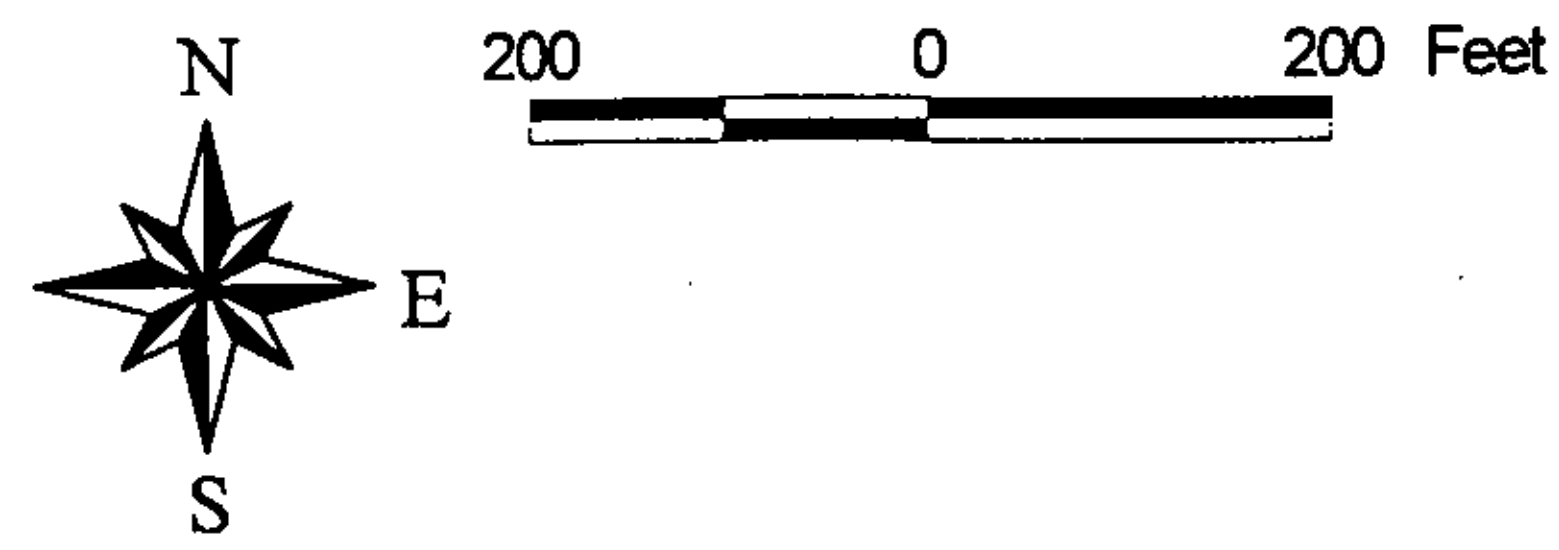
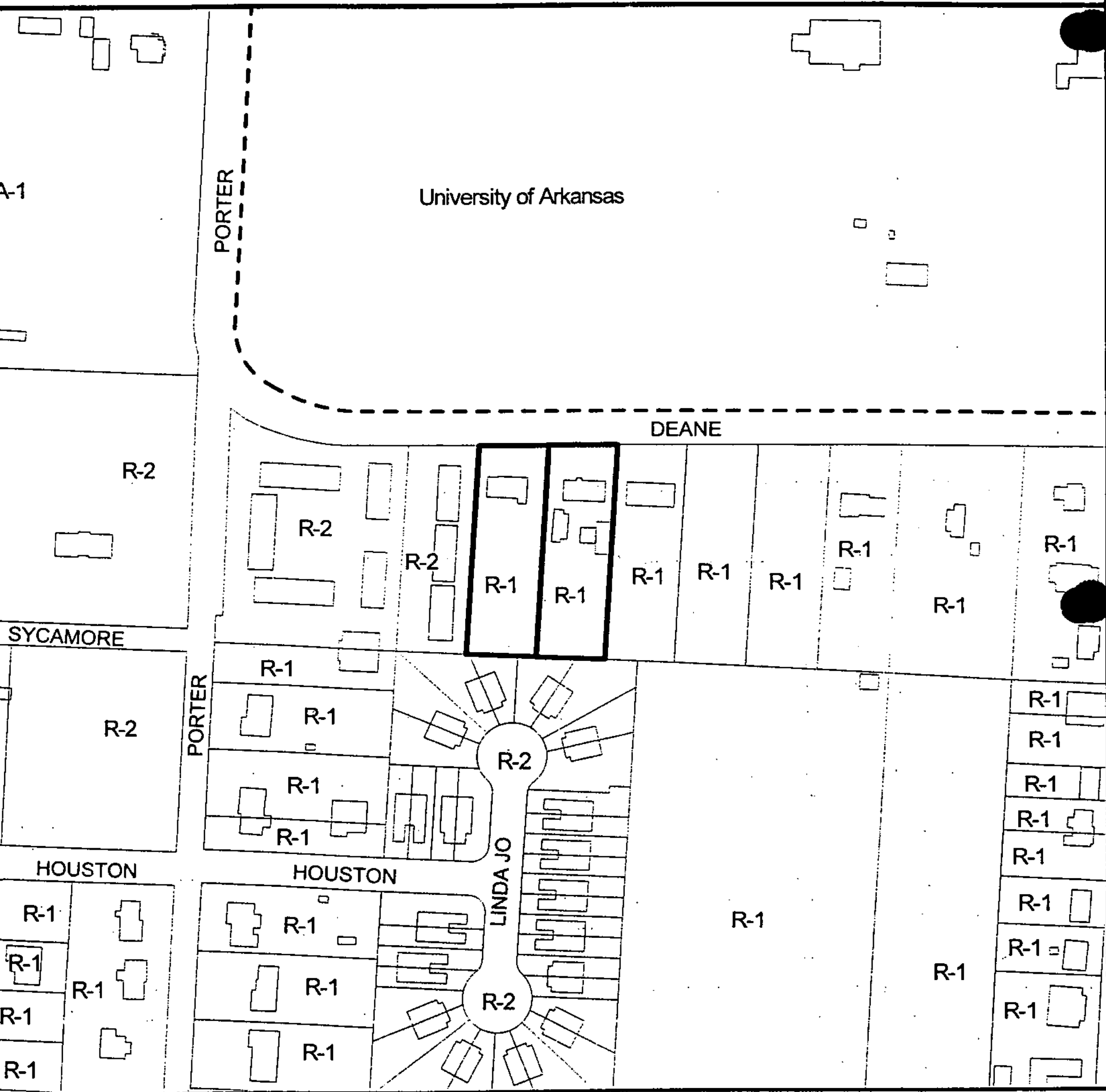
Sincerely,

A handwritten signature in black ink, appearing to read 'Emiad Damen', written in a cursive style.

Emiad Damen

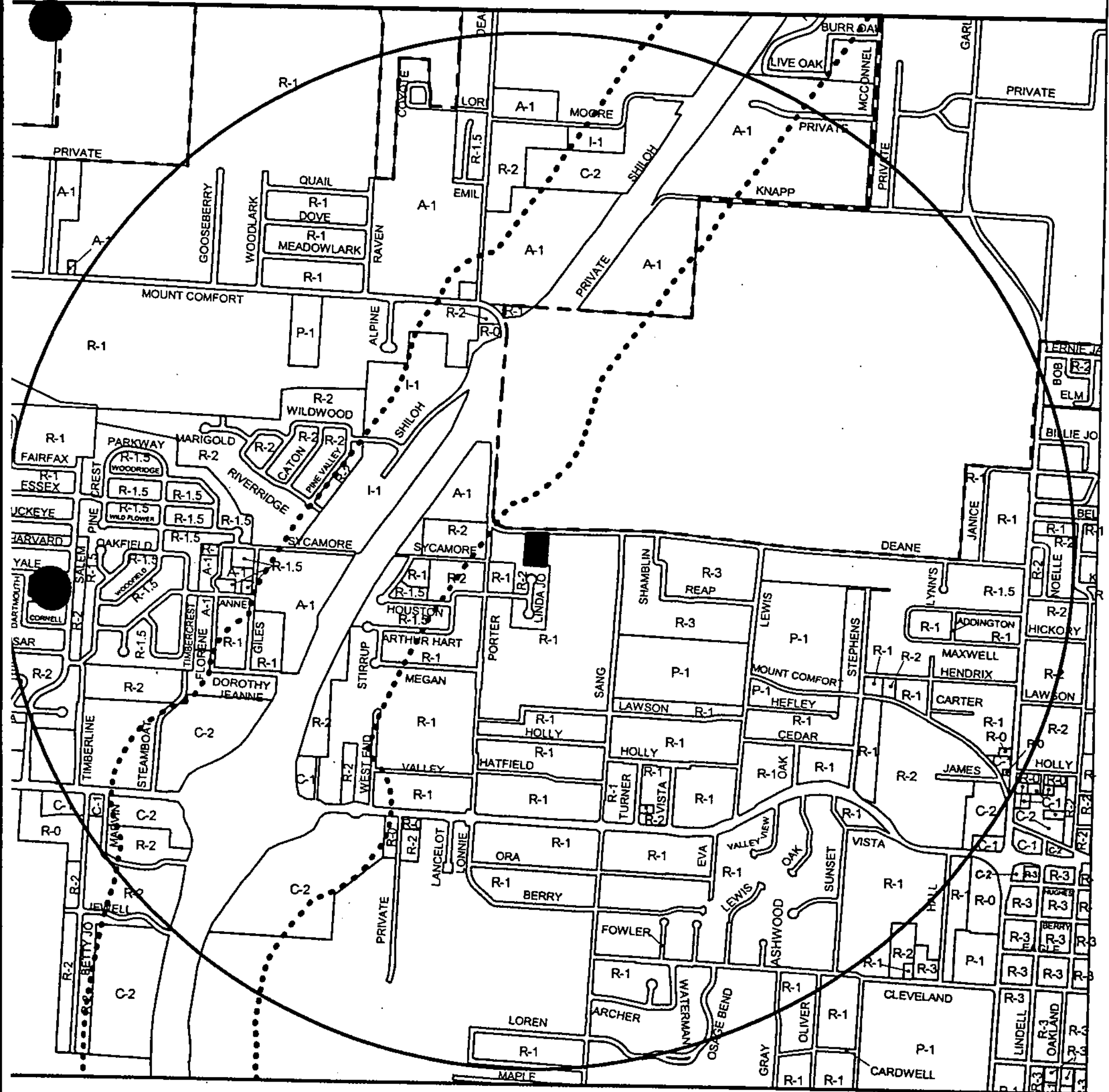
Attachments: As stated.

# RZ00-17.00 - Damen - Close Up





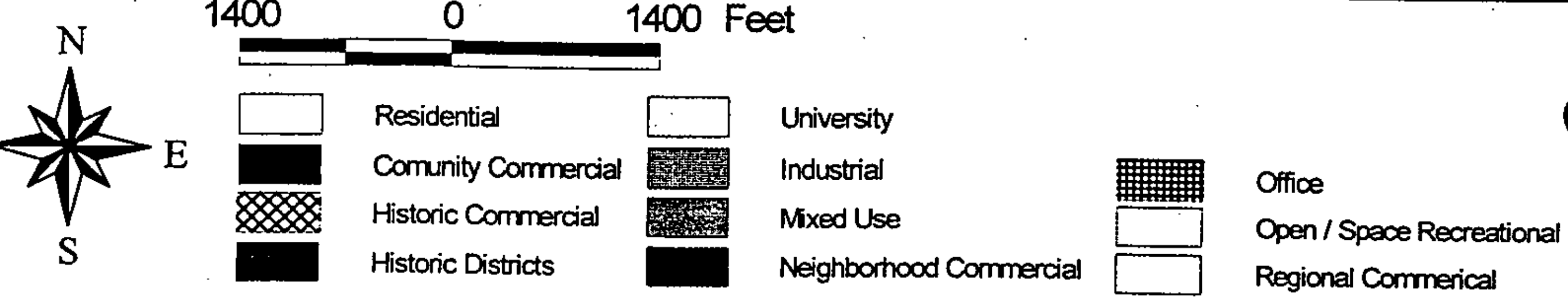
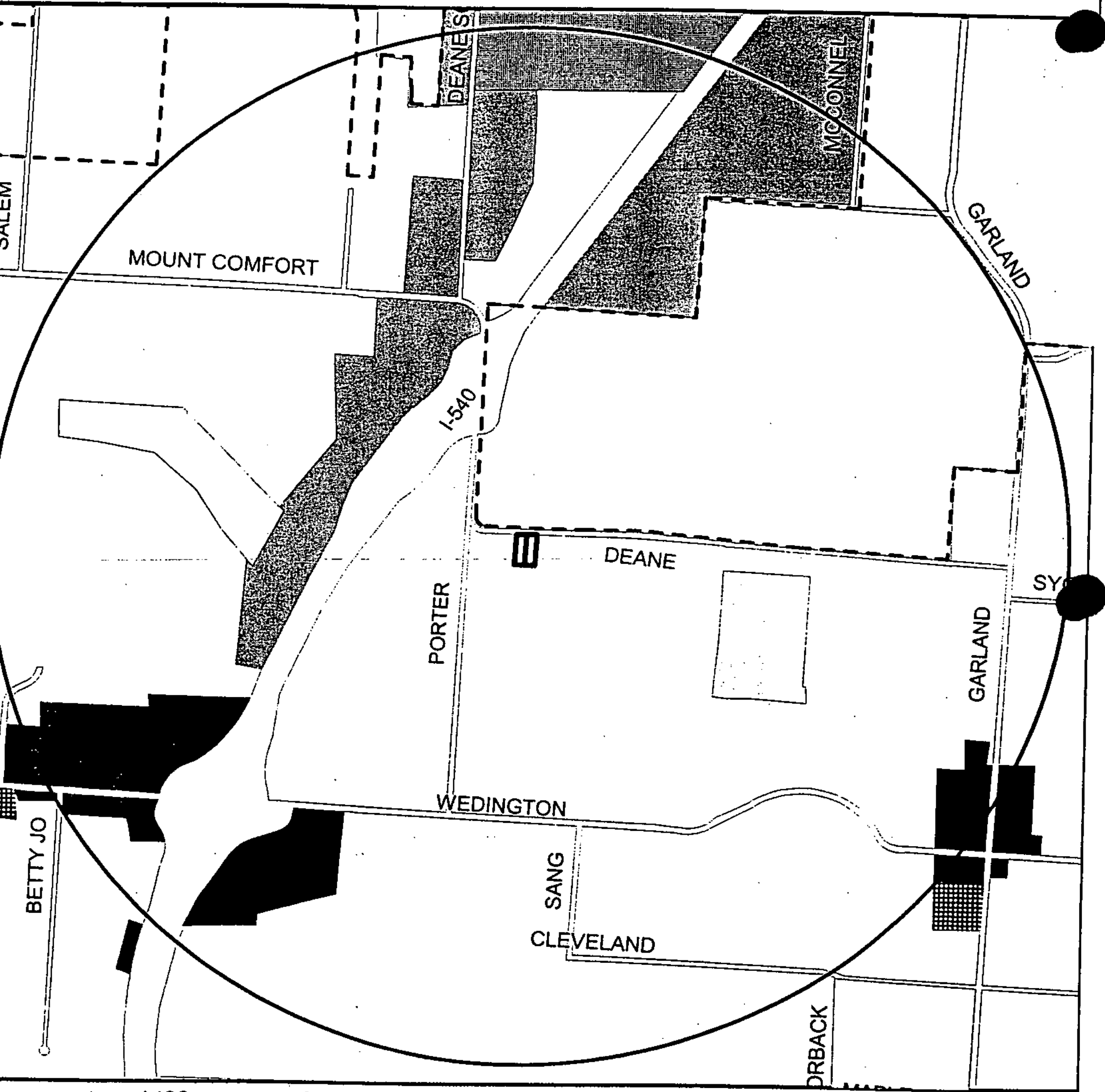
# RZ00-17.00 - Damen - One Mile Diameter



1400                      0                      1400 Feet

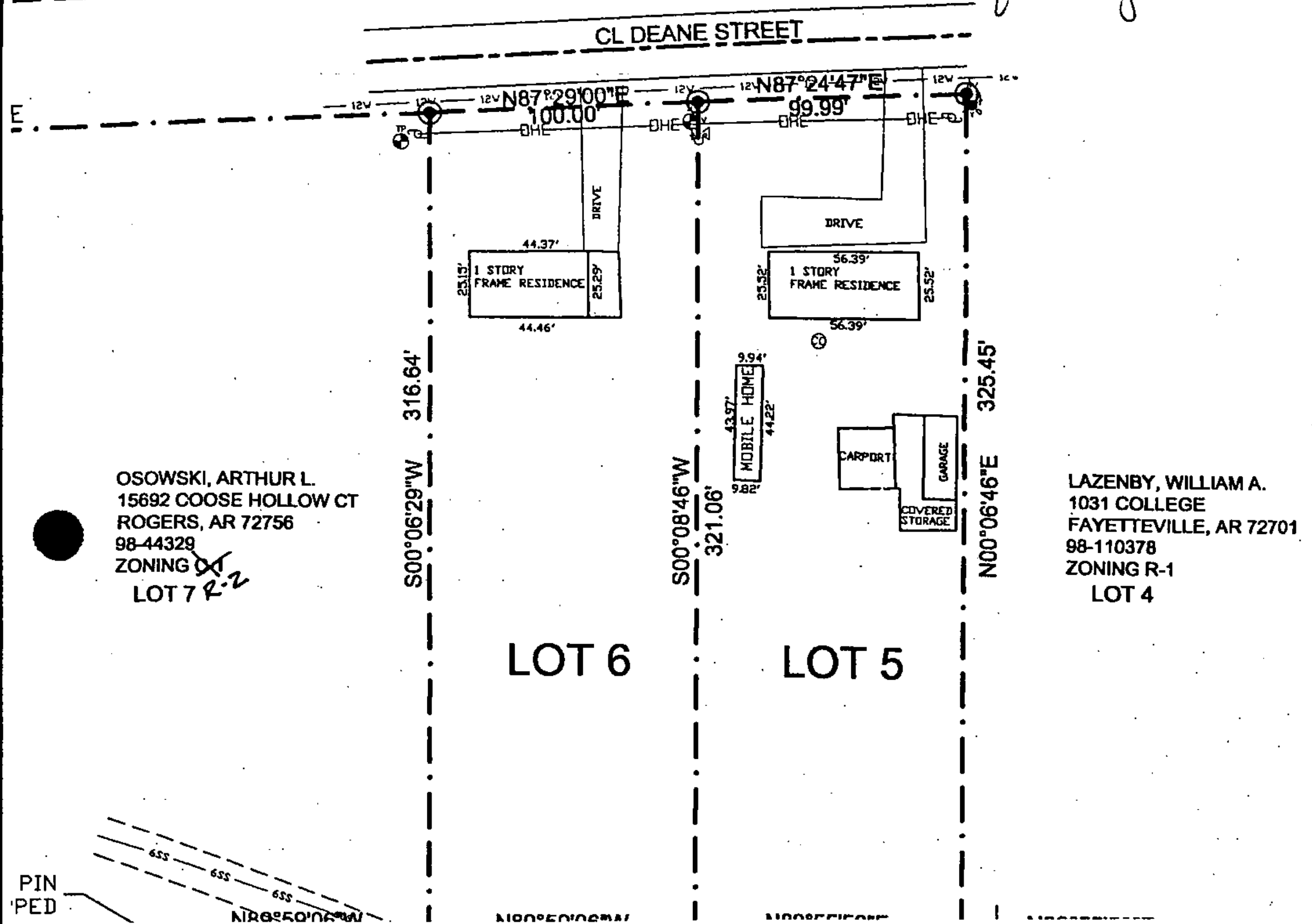


# RZ00-17.00 - Damen - 2020 Plan



UNIVERSITY OF ARKANSAS  
205 ADMINISTRATION BLDG  
FAYETTEVILLE, AR 72701  
0000-00000  
ZONING EXEMPT  
OUT LOT

*Clarified -  
for legal check*





## STAFF REVIEW FORM

☒ AGENDA REQUEST  
☐ CONTRACT REVIEW  
☐ GRANT REVIEW

of the Fayetteville City Council meeting of July 3, 2000

## FROM:

Tim Conklin  
Name

Planning  
Division

Public Works  
Department

**ACTION REQUIRED:** To approve an ordinance for RZ 00-18, submitted by Richard Grubbs of Arkansas Commercial Real Estate on behalf of Tommy & Jodi Holland and Richard & Mary Osborne for property located on east Appleby. The property is zoned R-1.5, Moderate Density Residential and contains approximately 2.544 acres. The request is to rezone to R-O, Residential Office.

## COST TO CITY:

\$

Cost of this Request

Category/Project Budget

Category/Project Name

Account Number

Funds Used To Date

Program Name

Project Number

Remaining Balance

Fund

## BUDGET REVIEW:

\_\_\_\_\_ Budgeted Item

\_\_\_\_\_ Budget Adjustment Attached

\_\_\_\_\_ Budget Manager

\_\_\_\_\_ Administrative Services Director

## CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY: \_\_\_\_\_

Accounting Manager

Date

Internal Auditor

Date

City Attorney

Date

ADA Coordinator

Date

Purchasing Officer

Date

## STAFF RECOMMENDATION:

Staff recommended approval and on June 12, 2000, Planning Commission unanimously voted 8-0-1 with Commissioner Ward abstaining to recommend approval and forward the rezoning to the City Council.

[Signature]  
Division Head

Date

[Signature]  
Department Director

Date

[Signature]  
Administrative Services Director

Date

[Signature]  
or

Date

## Cross Reference

New Item: **Yes**

Prev Ord/Res #: \_\_\_\_\_

Orig Contract Date: \_\_\_\_\_

Orig Contract Number: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED  
IN REZONING PETITION RZ 00-18 FOR A PARCEL  
CONTAINING APPROXIMATELY 2.544 ACRES LOCATED ON  
APPLEBY DRIVE REQUESTED BY RICHARD GRUBBS OF  
ARKANSAS COMMERCIAL REAL ESTATE ON BEHALF OF  
TOMMY AND JODI HOLLAND AND RICHARD AND MARY  
OSBORNE.

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

Section 1. That the zone classification of the following described property is hereby  
changed as follows:

From R-1.5, Moderate Density Residential District to R-O, Residential Office  
District for the real property described in Exhibit "A" attached hereto and made a  
part hereof.

Section 2. That the official zoning map of the City of Fayetteville, Arkansas, is hereby  
amended to reflect the zoning change provided in Section 1 above.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

APPROVED:

By:   
Fred Hanna, Mayor

ATTEST:

By: \_\_\_\_\_  
Heather Woodruff, City Clerk



EXHIBIT "A"

LEGAL DESCRIPTION FOR RZ 00-18

A part of the S  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 35, Township 17 North, Range 30 West in Washington County, Arkansas, being more particularly described as follows:

Commencing at the Northwest corner of said S  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ ; thence N  $88^{\circ}53'22''$  E, 383.17 feet to the Point of Beginning; thence N  $88^{\circ}53'22''$  E 348.17 feet; thence S  $1^{\circ}04'50''$  E 309.56 feet; thence S  $89^{\circ}13'$  W 39.56 feet; thence S  $1^{\circ}32'$  W 10.00 feet; thence S  $89^{\circ}13'$  W 309.93 feet; thence N  $0^{\circ}45'30''$  W 317.56 feet to the Point of Beginning containing 2.544 acres, more or less. Subject to road right-of-way for Appleby Road and all easements of record.

Planning Commission Minutes  
June 12, 2000  
Page 26

**RZ 00-18.00: Rezoning (Holland/Osborne, pp 251)** was submitted by Richard Grubbs of Arkansas Commercial Real Estate on behalf of Tommy & Jodi Holland and Richard & Mary Osborne for property located on east Appleby. The property is zoned R-1.5, Moderate Density Residential and contains approximately 2.54 acres. The request is to rezone to R-O, Residential Office.

Odom: The next item we have on tonight's agenda is RZ 00-18 submitted by Richard Grubbs of Arkansas Commercial Real Estate on behalf of Tommy & Jodi Holland and Richard & Mary Osborne for property located on east Appleby. The property is zoned R-1.5, Moderate Density Residential and contains approximately 2.53 acres. The request is to rezone to R-O, Residential Office. Staff's recommendation is for approval of the requested rezoning based upon the findings as a part of their reports. Staff, is there any further comments?

Conklin: No additional comments.

Odom: I will ask the applicant to please come forward at this time.

Ward: I would like to abstain on this particular issue.

Odom: Commissioner Ward will be abstaining from this particular issue. Go ahead.

Grubbs: Thank you. I'm Richard Grubbs and I will be speaking on behalf of the owners of this property. I really don't have any comments right now. If you have any questions I can answer.

#### **PUBLIC COMMENT:**

Odom: Any member of the audience that would like to address us on this issue? Charlie, you all have anything to share with us? You are visiting over there?

#### **COMMISSION DISCUSSION:**

Odom: I will close the floor to public comment and bring it back to the Planning Commission for questions or comments of the applicant.

Hoffman: Mr. Chair, a question regarding screening, and it's probably in my packet and I missed it, if this rezoning is granted will screening be required between it and the R-2 neighborhood to the south?

Conklin: Between non residential and residential uses we do require the screening.

Planning Commission Minutes  
June 12, 2000  
Page 27

**MOTION:**

Hoffman: Okay. I'll move for approval of RZ00-18 subject to staff comments.

Shackelford: I'll second.

Odom: We have a motion by Commissioner Hoffman and a second by Commissioner Shackelford to approve RZ 00-18. Any further discussion? Will you call the roll.

**ROLL CALL:**

Upon roll call the motion carries on a vote of 8-0-1 with Commissioner Ward abstaining.



# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.  
Fayetteville, AR 72701  
Telephone: (501) 575-8264

## PLANNING DIVISION CORRESPONDENCE

---

TO: Fayetteville Planning Commission  
FROM: Dawn T. Warrick, Associate Planner  
THRU: Tim Conklin, City Planner  
DATE: June 12, 2000

---

**RZ 00-18.00: Rezoning (Holland/Osborne, pp 251)** was submitted by Richard Grubbs of Arkansas Commercial Real Estate on behalf of Tommy & Jodi Holland and Richard & Mary Osborne for property located on east Appleby. The property is zoned R-1.5, Moderate Density Residential and contains approximately 2.544 acres. The request is to rezone to R-O, Residential Office.

### RECOMMENDATION:

Staff recommends approval of the requested rezoning based on the findings included as part of this report.

**PLANNING COMMISSION ACTION:** Required YES  
☐ Approved ☐ Denied

**Date:** June 12, 2000

**CITY COUNCIL ACTION:** Required YES  
☐ Approved ☐ Denied

**Date:** July 18, 2000

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### BACKGROUND:

This property is located immediately south of the new WRMC hospital facility which is currently under construction. Northwest Nursing Center is located to the east and a single family home is west of the tract. To the south, the property adjoins the North Heights development which consists of duplex/townhouse units which have been developed with a unified design theme and architecture.

The subject property is currently vacant and the applicant proposes the future development of "residential style offices." (See attached letter)

### SURROUNDING LAND USE AND ZONING

|        |                                 |
|--------|---------------------------------|
| North: | WRMC (under construction), R-O  |
| South: | North Heights duplexes, R-2     |
| East:  | Northwest Nursing Center, R-1.5 |
| West:  | Single Family Home, R-1.5       |

### INFRASTRUCTURE:

**Streets:** This property is adjacent to Appleby Dr. which is designated on the Master Street Plan as a collector. Collector streets are designed to handle 4,000 - 6,000 vehicles per day with a total right-of-way of 70'.

**Water:** 6" line along Appleby Dr.

**Sewer:** 10" line along Appleby Dr. to the east, sewer may also be accessible from the rear of the property

**LAND USE PLAN:** General Plan 2020 designates this site Residential. Rezoning this property to R-O, Residential Office is consistent with the land use plan.

### FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use



planning objectives, principles, and policies and with land use and zoning plans.

**Finding:** The proposed zoning is consistent with the General Plan 2020. R-O zoning will provide flexibility for the property owner to develop either residentially or in a manner consistent with neighboring office developments.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

**Finding:** The proposed zoning is justified and needed at this time. The need for medical and similar offices to serve the surrounding residential neighborhoods is increasing in this area due to the construction of the new hospital and other facilities in this area.

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

**Finding:** The proposed zoning would not create or appreciable increase traffic danger or congestion.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

**Finding:** The proposed zoning would not alter population density and thereby undesirably increase the load on public services.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

**Finding:** N/A

# **§161.12 DISTRICT R-O RESIDENTIAL OFFICE.**

**A. Purpose.** The Residential-Office District is designed primarily to provide area for offices without limitation to the nature or ~~size of the office, together with community~~ facilities, restaurants and compatible residential uses.

## **B. Uses.**

### **1. Uses Permitted.**

|         |                                        |
|---------|----------------------------------------|
| Unit 1  | City-Wide Uses by Right                |
| Unit 5  | Government Facilities                  |
| Unit 8  | Single-Family and Two-Family Dwellings |
| Unit 12 | Offices, Studios and Related Services  |
| Unit 25 | Professional Offices                   |

### **2. Uses Permissible on Appeal to the Planning Commission.**

|         |                                          |
|---------|------------------------------------------|
| Unit 2  | City-Wide Uses by Conditional Use Permit |
| Unit 3  | Public Protection and Utility Facilities |
| Unit 4  | Cultural and Recreational Facilities     |
| Unit 9  | Multi-Family Dwelling - Medium Density   |
| Unit 10 | Multi-Family Dwelling - High Density     |
| Unit 13 | Eating Places                            |

## **C. Bulk and Area Regulations. ( Per Dwelling Unit for Residential Structures)**

|                    |                               |                |
|--------------------|-------------------------------|----------------|
| Lot Minimum Width: | Mobile Home Park              | 100 ft.        |
|                    | Lot Within a Mobile Home Park | 50 ft.         |
|                    | One Family                    | 60 ft.         |
|                    | Two Family                    | 60 ft.         |
|                    | Three or More                 | 90 ft.         |
| Lot Area Minimum:  | Mobile Home Park              | 3 acres        |
|                    | Lot Within a Mobile Home Park | 4200 sq. ft.   |
|                    | Row Houses:                   |                |
|                    | Development                   | 10,000 sq. ft. |
|                    | Individual Lot                | 2500 sq. ft.   |
|                    | Single Family                 | 6000 sq. ft.   |
|                    | Two Family                    | 6500 sq. ft.   |
|                    | Three or More                 | 8000 sq. ft.   |
|                    | Fraternity or Sorority        | 1 acres        |

|                              |                          |                           |
|------------------------------|--------------------------|---------------------------|
| Land Area Per Dwelling Unit: | Mobile Home              | 3000 sq. ft.              |
|                              | Row Houses & Apartments: |                           |
|                              | Two or More Bedrooms     | 1200 sq. ft.              |
|                              | One Bedroom              | 1000 sq. ft.              |
|                              | No Bedroom               | 1000 sq. ft.              |
|                              | Fraternity or Sorority   | 500 sq. ft., per resident |

**D. Bulk and Area Regulations/ Setbacks.** Setback lines shall meet the following minimum requirements.

|                                                                        |        |
|------------------------------------------------------------------------|--------|
| From Street ROW                                                        | 30 ft. |
| From Street ROW if Parking is Allowed Between the ROW and the Building | 50 ft. |
| From Side Property Line                                                | 10 ft. |
| From Side Property Line When Contiguous to a R-1, R-2 or R-3 District  | 15 ft. |
| From Back Property Line Without Easement or Alley                      | 25 ft. |

|                                  |                  |         |
|----------------------------------|------------------|---------|
| Lot Minimum Width:               | Mobile Home Park | 100 ft. |
| From Center Line of Public Alley |                  | 10 ft.  |

**E. Building Area.** On any lot the area occupied by all buildings shall not exceed 60% of the total area of such lot.

**F. Height Regulations.** There shall be no maximum height limits in R-O Districts, provided, however, that any building which exceeds the height of 20 feet shall be set back from any boundary line of any R-1, R-2, or R-3 District an additional distance of one foot for each foot of height in excess of 20 feet.

(Code 1991, §160.041; Code 1965, App. A, Art. 5(x); Ord. No. 1747, 6-29-89; Ord. No. 2414, 2-7-78; Ord. No. 2603, 2-19-80; Ord. No. 2621, 4-1-80)



ARKANSAS COMMERCIAL  
REAL ESTATE  
11294 N HWY 170  
FARMINGTON, AR 72730  
(501) 530-1122

May 22, 2000

Fayetteville  
Office of City Planning  
113 West Mountain  
Fayetteville, AR 72701

Dear Friend:

The following information is for a zoning request change for property owned by Tommy/Jodi Holland and Richard/Mary Osborne.

The request is to rezone this property located immediately west of the Northwest Nursing Center on the south side of Appleby Road from its current zoning of R-1.5 to R-O zoning. By studying the enclosed vicinity map, you can see that the Northwest Nursing Center is located immediately east of this property and the new Washington Regional Hospital and North Park Medical Clinics is located immediately north across Appleby Road. In addition, a new medical facility is currently being built on R-O zoned property located across Appleby and immediately east of Northwest Nursing Center. It is the belief of the owners that R-O zoning would allow their property to serve at its highest and best use. Residential style offices would fit in well with the surrounding R-O zoning (see enclosed zoning map) and building architecture consisting of residential style medical facilities and residential duplexes.

The eventual development of this 2.54 acres will have little or no effect on traffic. Signage for this eventual development would be very similar to the split faced brick monument sign owned by Northwest Nursing Center. Availability of water and sewer is shown on the enclosed map supplied by the engineering department. The water line on the north side of Appleby Road and the Sewer line located on the west side of the North Heights Subdivision duplexes would most likely serve this property. These proposed connections are shown on the map. Mr. Bob Younkin has given a verbal approval for an easement for a sewer connection to the man whole located on his property east of the North Heights Subdivision.

Please also refer to the two property line adjustment requests that have also been turned in for this property.

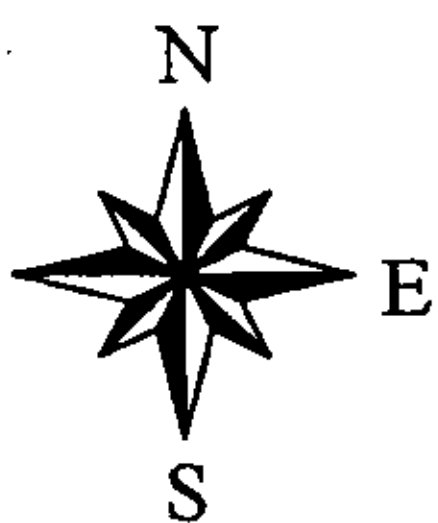
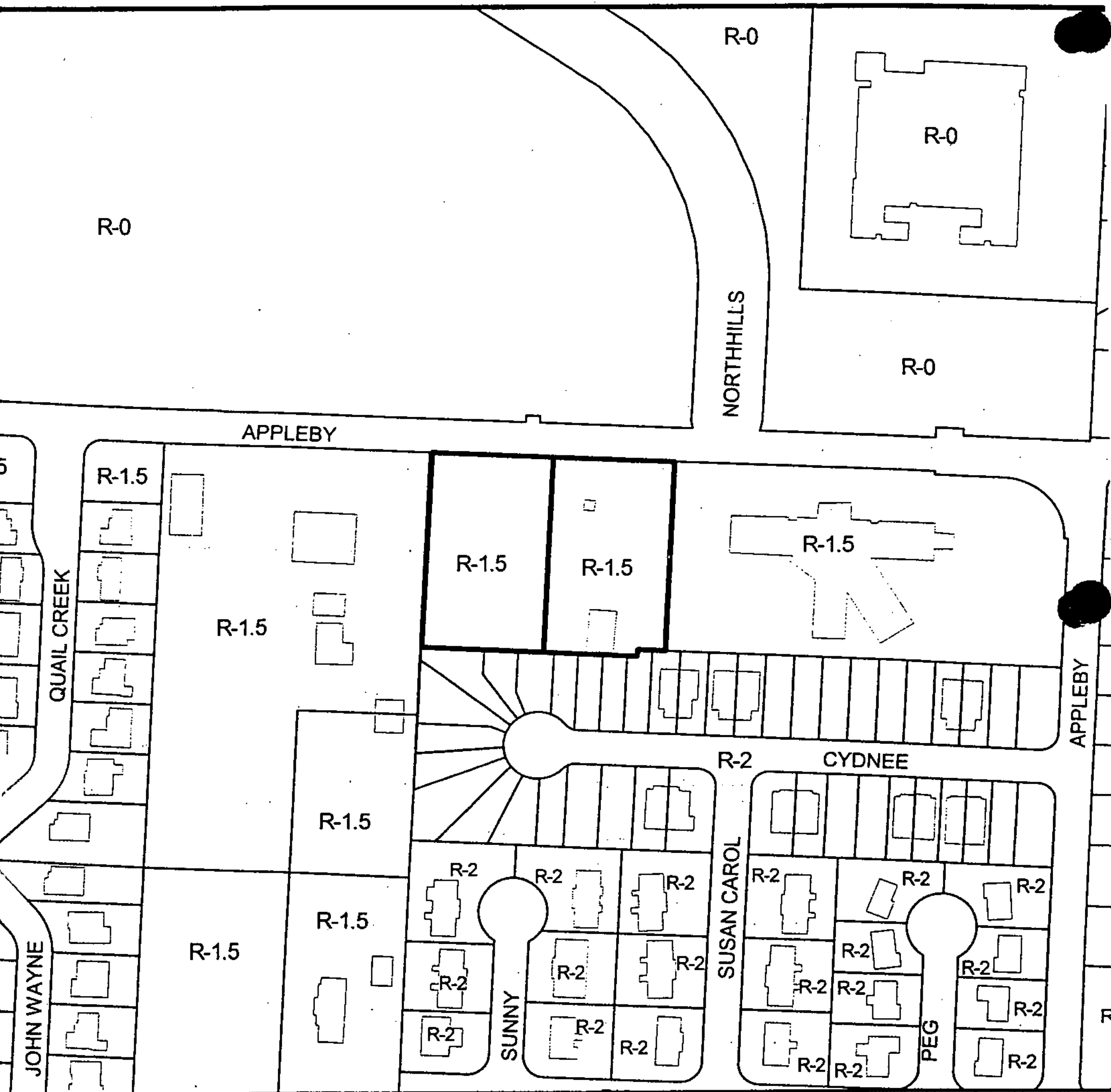
This request to rezone is to allow this property to be sold for R-O development. Thank you for your time and consideration.

Sincerely,

  
Richard L. Grubbs  
Owner/Principal Broker

Enclosure

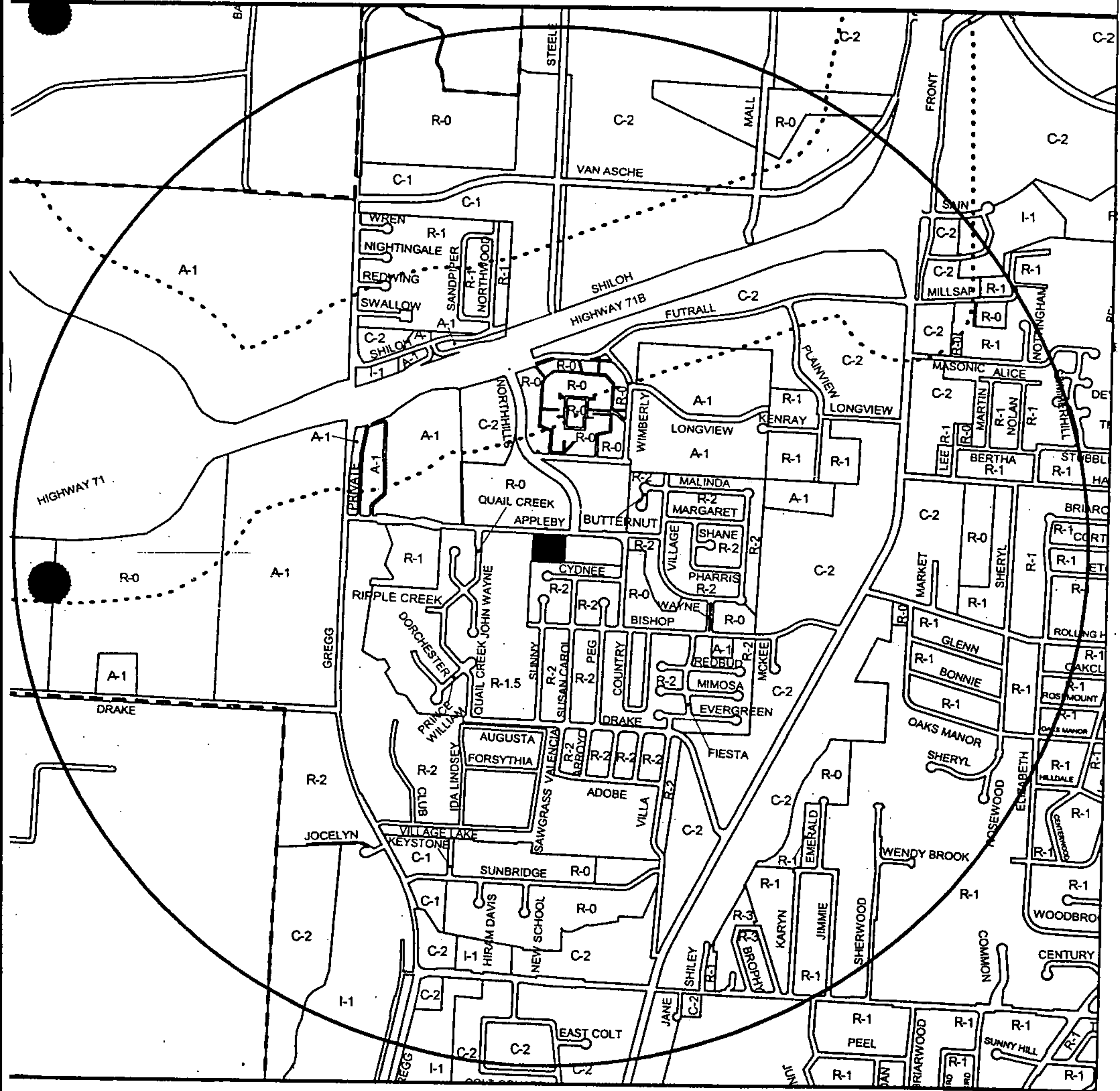
# RZ00-19.00 - Holland/Osburne - Close Up



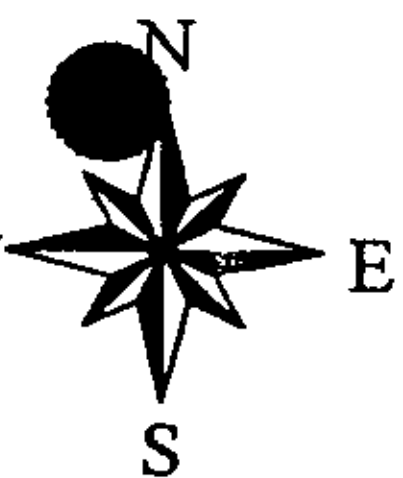
200 0 200 Feet



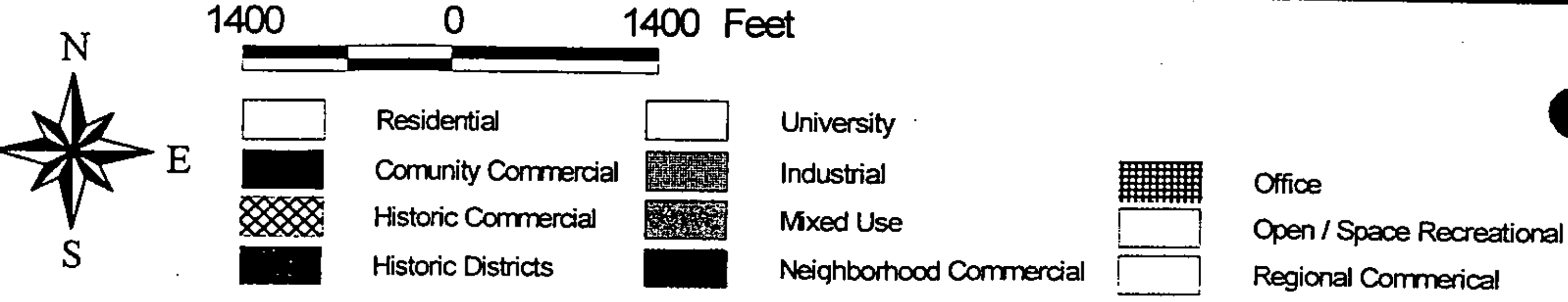
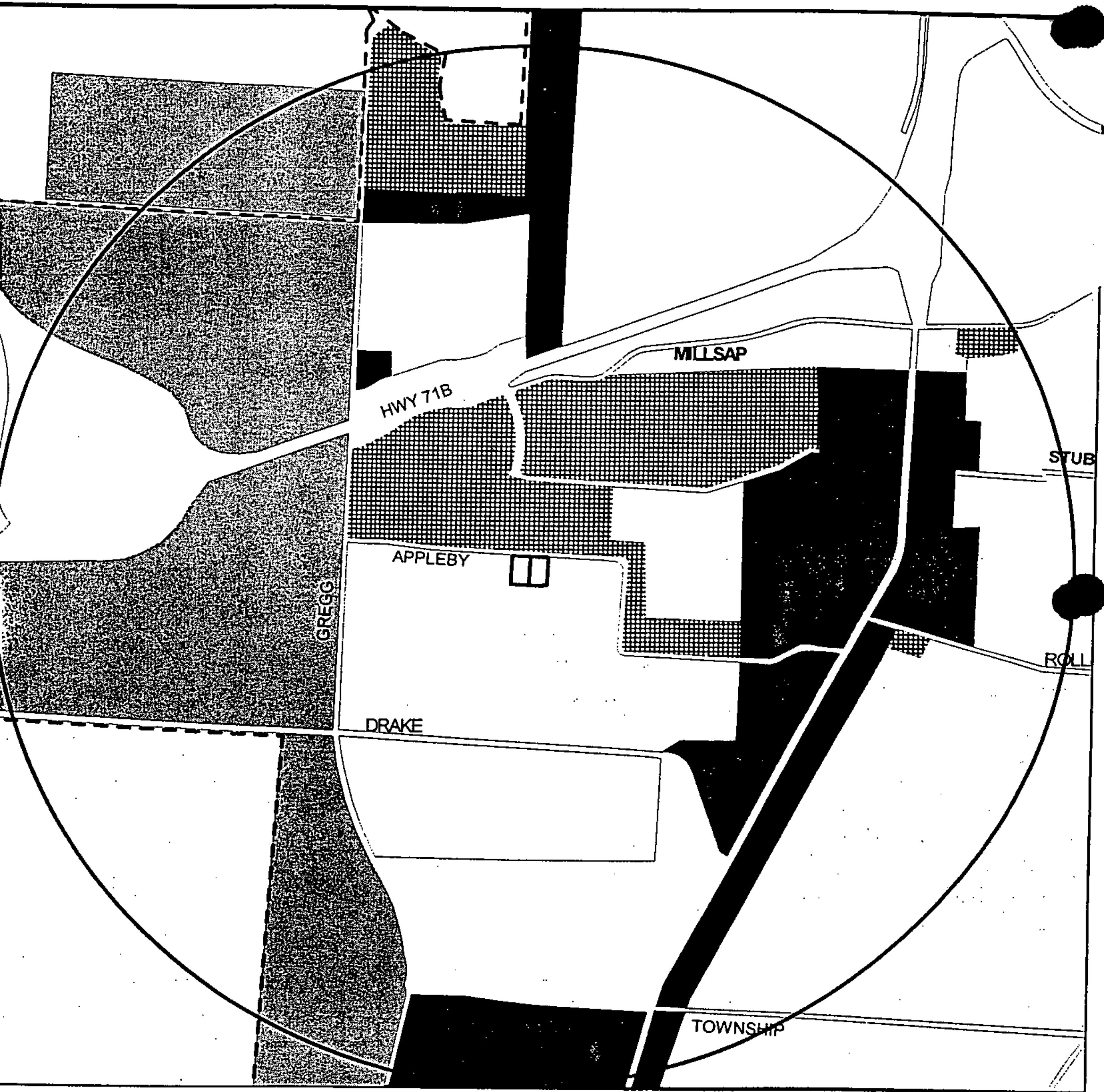
RZ00-19.00 - Holland/Osburne - One Mile Diameter



1400                      0                      1400 Feet



# RZ00-19.00 - Holland/Osborne - 2020 Plan



Total Legal Description  
(Revised Tracts 2 & 3)

A part of the S1/2 of the NW1/4 of the NW1/4 of Section 35, Township 17 North, Range 30 West in Washington County, Arkansas, being more particularly described as follows: Commencing at the Northwest corner of said S1/2 of the NW1/4 of the NW1/4; thence N 88°53'22" E, 383.17 feet to the Point of Beginning; thence N 88°53'22" E 348.17 feet; thence S 1°04'50" E 309.56 feet; thence S 89°13' W 39.56 feet; thence S 1°32' W 10.00 feet; thence S 89°13' W 309.93 feet; thence N 0°45'30" W 317.56 feet to the Point of Beginning, containing 2.544 acres, more or less. Subject to road right-of-way for Appleby Road and all easements of record.

*Clarified  
for legal  
check*

Prepared by  
Crafton, Tull & Associates  
6/16/00





STAFF REVIEW FORM

☒ AGENDA REQUEST  
☐ CONTRACT REVIEW  
☐ GRANT REVIEW

For the Fayetteville City Council meeting of July 3, 2000

FROM:

Tim Conklin  
Name

Planning  
Division

Public Works  
Department

**ACTION REQUIRED:** To approve an ordinance for AD 98-8.00: Administrative Amendment to Chapter 172 "Parking and Loading" of the Unified Development Ordinance, Section 172.01 (D)(1) "Standards for the Number of Spaces by Use - Off-street Parking" to revise the required parking for eating places (restaurants).

**COST TO CITY:**

\$

Cost of this Request

Category/Project Budget

Category/Project Name

Account Number

Funds Used To Date

Program Name

Project Number

Remaining Balance

Fund

**BUDGET REVIEW:** \_\_\_\_\_ Budgeted Item \_\_\_\_\_ Budget Adjustment Attached

\_\_\_\_\_ Budget Manager

\_\_\_\_\_ Administrative Services Director

**CONTRACT/GRANT/LEASE REVIEW:**

**GRANTING AGENCY:** \_\_\_\_\_

Accounting Manager

Date

Internal Auditor

Date

City Attorney

Date

ADA Coordinator

Date

Purchasing Officer

Date

**STAFF RECOMMENDATION:** Staff recommended approval and on June 12, 2000, Planning Commission unanimously voted 9-0-0 to recommend approval and forward the amendment to the City Council.

Division Head

Date

Department Director

Date

Administrative Services Director

Date

Mayor

Date

Cross Reference

New Item: **Yes**

Prev Ord/Res #: \_\_\_\_\_

Orig Contract Date: \_\_\_\_\_

Orig Contract Number: \_\_\_\_\_



Planning Commission Minutes  
June 12, 2000  
Page 28

**AD 98-8.00: Administrative Amendment** to Chapter 172 "Parking and Loading" of the Unified Development Ordinance, Section 172.01 (D)(1) "Standards for the Number of Spaces by Use - Off-street Parking" to revise the minimum required parking for eating places (restaurants) from 1 space per 200 square feet of floor area to 1 space per 4 seats plus one space per employee on the maximum shift.

**Odom:** Item number 14, which is the next item on tonight's agenda is an Administrative Amendment to Chapter 172 "Parking and Loading" of the Unified Development Ordinance, § 172.01 (D)(1) "Standards for the Number of Spaces by Use - Off-street Parking" to revise the minimum required parking for eating places from 1 space per 200 square feet of floor area to 1 space per 4 seats plus one space per employee on the maximum shift. Staff recommends approval of the amendment to revise § 172.01(D)(1) to make the 1 space per 4 seats plus one space per employee on the maximum shift the maximum number of spaces allowed and retain the 1 spaces per 200 square feet of floor area as the minimum number of parking spaces required for eating places. Staff do you have any presentation you would like to make?

**Conklin:** Commissioner Marr asked about when we could look at our parking lot ordinance with regard to increasing the amount of parking allowed for restaurants. As many of you probably recall we do typically have to grant waivers over and beyond what the maximum number of parking is allowed for restaurants. I went back and looked at our April 13, 1998 Planning Commission meeting where we did discuss this item and it did not pass. The biggest concern at that time was with regard to how this would impact restaurant development in our downtown square and Dickson Street area. Looking at that, I think the solution is to keep our existing parking requirements, which is 1 space for 200 square feet of floor area, and add as a maximum number the 1 space per 4 seats plus 1 space per employee on the maximum shift. That will allow restaurants in our downtown area not to have to meet the higher number of spaces that newer restaurants in our newer commercial areas are requesting. Staff is recommending approval. In approving this item it will have to go to City Council. It is only a recommendation and the City Attorney will prepare an ordinance to amend the current ordinance we have. That's all I have.

**PUBLIC COMMENT:**

**Odom:** Let me ask if there is any member of the audience that would like to address us on this issue?

Planning Commission Minutes  
June 12, 2000  
Page 29

**COMMISSION DISCUSSION:**

Odom: Seeing none, I'll close the floor to public discussion and bring it back to the Planning Commission. Commissioner Marr, do you want the floor or do you need an ambulance?

**MOTION:**

Marr: No, I am so excited that we actually are presenting this that I'm all choked up. I'm in full support of this motion to make this change and send it to the City Council. So, I'm going to move approval of AD 98-8.00.

Hoffman: And I'll add a hardy second to that. It sounds like a good plan.

Bunch: For the record, this is the recommended motion as opposed to what is described after AD 98-8?

Conklin: That is correct. Looking through and doing the research for staff report, I did make that change to reflect not to require the additional parking for restaurants that would be in our Dickson Street area or Square area.

Hoover: Mr. Chair, I have a comment. I just want to thank staff for looking carefully at this whole situation. Originally I was not for this when it came in 1998 because of the downtown area and how it would affect all that parking. I think you have done a grand job here of solving problems in the downtown and the new restaurants that are outside that area. So, I am very much in support of this.

Odom: I would just like to comment that we get so many of these waiver requests on restaurants and we routinely grant them that it only makes sense to take care of this by this motion. It also does take care of the concerns that were raised before so I think it is a good motion. Any further discussion? Call the roll.

**ROLL CALL:**

Upon roll call for the first time in the history of the Planning Commission Don Marr has a motion that passes unanimously 9-0-0.

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.  
Fayetteville, AR 72701  
Telephone: 501-575-3264

## PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commissioners  
FROM: Tim Conklin, City Planner  
DATE: June 8, 2000

**AD 98-8.00: Administrative Amendment to Chapter 172 "Parking and Loading" of the Unified Development Ordinance, Section 172.01 (D)(1) "Standards for the Number of Spaces by Use - Off-street Parking" to revise the minimum required parking for eating places (restaurants) from 1 space per 200 square feet of floor area to 1 space per 4 seats plus one space per employee on the maximum shift.**

### RECOMMENDED MOTION

Staff recommends approval of the amendment to revise Section 172.01(D)(1) to make the 1 space per 4 seats plus one space per employee on the maximum shift the maximum number of spaces allowed and retain the 1 spaces per 200 square feet of floor area as the minimum number of parking spaces required for eating places (restaurants).

### BACKGROUND

This item was heard at the April 13, 1998 Planning Commission meeting where a motion to approve the new standard was denied by a 3-5-0 vote (please see attached minutes). There was considerable discussion regarding the impact this change in required parking would have on new restaurant construction within the Downtown/Dickson street area. Staff has proposed retaining the 1 space per 200 sf. as the minimum number required and set the maximum at 1 space per 4 seats plus one space per employee on the maximum shift. This change would not penalize restaurants that don't need as much parking by not requiring the additional parking under this proposed change.

Attached you will find a survey, published by the American Planning Association, depicting off-street parking requirements for restaurants in other cities which contains numerous methods of calculating parking requirements. The proposed amendment is comparable to other cities parking requirements.



### **Residential, Multifamily, Studio**

- One space per dwelling unit (Orange Co., Calif.)
- 2 spaces per unit (Bellevue, Wash.)
- 2.5 spaces per dwelling unit (Savannah, Ga.)

### **Residential, Single-Family, Townhouse**

- 1.5 spaces per dwelling unit (Clifton Forge, Va.)
- Two spaces per dwelling unit (Lexington Co., S.C.)
- 2.25 spaces for each dwelling unit (Plano, Tex.)

### **Residential, Single-Family**

- One space per dwelling unit (Clifton Forge, Va.)
- Two spaces for each dwelling unit (Northport, Ala.)
- Detached two spaces per dwelling if access to the lot is on to a public street; 2.5 spaces per dwelling if access to the lot is from a private street, common drive, or common parking court (Leesburg, Va.)
- Comment. Nearly every code examined required two spaces per unit.

### **Restaurant**

- One space per 150 sq.ft. (St. Charles Parish, La.)
- One space per each 100 sq.ft. of floor area (Glendale, Calif.)
- One space for each 75 sq.ft. of usable floor area or one for each two persons allowed within the maximum occupancy load, whichever is the greater (Alpena, Mich.)
- Fourteen spaces per 1,000 net sq.ft. (Bellevue, Wash.)
- Two spaces per 100 sq.ft. of floor area (Clifton Forge, Va.)
- One parking space for every four seats. (Salisbury Township, Pa.)
- One space for every three seats, plus two spaces for every three employees on the maximum shift (St. Louis Co., Mo.)
- One space for each three persons for the first 150 persons, and one for each two persons over 150 as determined by the fire marshall to be the maximum capacity of the establishment (Bay City, Mich.)
- One space per each three seating accommodations, plus one space per each two employees on shift of greatest employment (Charlotte-Mecklenburg Co., N.C.)
- One space for each three fixed seats provided for patron use, plus one space for each 200 sq.ft. of floor area provided for patron use but not containing fixed seats (South Burlington, Vt.)
- Four spaces, plus one space for each three seating accommodations (Northport, Ala.)
- One space for each 2.5 seats or 40 sq.ft. of dining and/or drinking space or area (Bozeman, Mont.)

### **Restaurant, Fast-Food**

- One space per 100 sq.ft. of gross floor area (Norman, Okla.)
- One parking space per each 80 sq.ft. of floor area (Glendale, Calif.)

Thirteen spaces per each 1,000 sq.ft. of gross floor area (Albemarle Co., Va.)

Sixteen spaces per 1,000 net sq.ft. (Bellevue, Wash.)

One space for each 60 sq.ft. of usable floor area with a minimum of four spaces (Alpena, Mich.)

One space per 50 sq.ft. of eating area, plus one space for each employee on the largest working shift (St. Clair Shores, Mich.)

Fourteen spaces per 1,000 sq.ft. of gross floor area, plus five off-street waiting spaces per drive-in lane (Lake Co., Ill.)

Thirty spaces per 1,000 sq.ft. (Lake Forest, Ill.)

The greater of one space per 40 sq.ft. of customer service or dining area or one space per 150 sq.ft. of gross building area (Omaha, Nebr.)

One space for each 25 sq.ft. of usable floor area (Alpena, Mich.)

Ten spaces per 100 sq.ft. gross leasable area, plus one additional space for every four outside seats (Leesburg, Va.)

One space for every two seats, plus two spaces for every three employees on the maximum shift (St. Louis Co., Mo.)

One space per four seats, plus one space per two employees where seating is at tables, or one space per two seats, plus one space per two employees where seating is at a counter. For a fast-food restaurant with no seating facilities: one space per 60 sq.ft. of net floor area with a minimum of 10 spaces. For a fast-food restaurant with drive-in facilities: in addition to the parking requirements presented above, 11 stacking spaces for the drive-in window, with a minimum of five such spaces designated for the ordering station. Such spaces shall be designed so as not to impede pedestrian or vehicular circulation on the site or on any abutting street. (Fairfax Co., Va.)

Five spaces, plus one space per three seats in dining area or 10 per 1,000 sq.ft. gross floor area, whichever is greater (Long Beach, Calif.)

### **Retail, Outdoor**

- One space per each 1,000 sq.ft. of lot or floor area used for display purposes (Bozeman, Mont.)
- One space for each 600 sq.ft. of lot area (Bay City, Mich.)
- One space per 500 sq.ft. of open sales/display area, plus one space per employee (Fairfax Co., Va.)
- Three spaces per 1,000 sq.ft. of gross floor area (Hillsborough Co., Fla.)
- One space for each 200 sq.ft. of stall space and customer circulation area (Albuquerque, N.M.)

### **Retail Store**

- One space per 1,000 net sq.ft.; if more than 15,000 net sq.ft., 1.5 spaces per 1,000 net sq.ft. (Bellevue, Wash.)
- One space per 300 sq.ft. of gross floor area (Orange Co., Calif.)
- If less than 5,000 sq.ft. of floor area, one space per



STAFF REVIEW FORM

☒ AGENDA REQUEST  
☒ CONTRACT REVIEW  
☐ GRANT REVIEW

For the Fayetteville City Council meeting of July 3, 2000

FROM:

|                    |                    |                     |
|--------------------|--------------------|---------------------|
| <u>Jim Beavers</u> | <u>Engineering</u> | <u>Public Works</u> |
| Name               | Division           | Department          |

ACTION REQUIRED:

1. Approval of a bid waiver with McClinton-Anchor, the contractor at CMN, to allow the reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the new Shiloh Drive extension at the CMN property line, including the radius and intersection of Northwood Avenue;
2. Approval of a construction contract with McClinton-Anchor in the estimated amount of \$43,300.00 for the above described street reconstruction;
3. Approval of a 15% project contingency of \$6,495.00 for material/construction testing and variations in final quantities.

COST TO CITY:

|                          |                    |                                |
|--------------------------|--------------------|--------------------------------|
| <u>\$49,795.00</u>       | <u>\$276,247</u>   | <u>Street/ROW/Intersection</u> |
| cost of this Request     | Project Budget     | Cost shares                    |
|                          |                    | Project Name                   |
| <u>4470-9470-5809.00</u> | <u>\$167,629</u>   | <u>Street Improvements</u>     |
| Account Number           | Funds Used To Date | Program Name                   |
| <u>98033-20</u>          | <u>\$108,618 *</u> | <u>Sales Tax</u>               |
| Project Number           | Remaining Balance  | Fund                           |

\* Prior to this request and prior to the accompanying engineering (\$5000)

BUDGET REVIEW: ☒ Budgeted Item ☐ Budget Adjustment Attached

[Signature]  
Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY: \_\_\_\_\_

Marilyn J. Cramer  
Accounting Manager

6-19-00  
Date

ADA Coordinator

Date

[Signature]  
City Attorney

6-20-00 Yolanda Gilds  
Date Internal Auditor

6-21-00  
Date

[Signature]  
Purchasing Officer

6-20-00  
Date



STAFF RECOMMENDATION: Approval

*Jim Beavers*  
Division Head

6/19/00  
Date

Cross Reference

*Charles Unal*  
Department Director

6-21-00  
Date

New Item: **Yes**

\_\_\_\_\_  
Administrative Services Director

\_\_\_\_\_  
Date

Prev Ord/Res # \_\_\_\_\_

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

Orig Contract Date: \_\_\_\_\_

Contract number \_\_\_\_\_

## DEPARTMENTAL CORRESPONDENCE

---

To: Fred Hanna, Mayor

Thru: Charles Venable, Public Works Director  
Contract Review

From: Jim Beavers, City Engineer *JB*

Date: June 15, 2000

Re: Council Meeting July 3, 2000

Proposed improvements to Shiloh Drive between CMN and the AHTD right-of-way  
Proposed construction contract with McClinton-Anchor  
Proposed bid waiver  
Proposed contingency

The section of Shiloh Drive between the AHTD right-of-way and the CMN property near Northwood Avenue (approximately 240 lf) is failing and needs to be replaced prior to the new section of Shiloh Drive on the CMN property being completed and opened to the public. The Traffic Engineer for the development, Peters and Associates, estimates the ultimate future traffic on this section to be approximately 10,000 vehicles per day.

McClinton-Anchor is the contractor for CMN constructing the Shiloh Drive extension, Steel Boulevard, Mall Avenue and Van Asche. Staff recommends a bid waiver and contracting the replacement of Shiloh Drive between the AHTD right-of-way and the CMN property near Northwood Avenue (approximately 240 lf) with McClinton-Anchor. The basis for recommendation of the bid waiver is that the reconstruction is on a segment of street immediately adjacent to the new Shiloh construction and the additional time and costs of bidding the project, including mobilization and earthwork makes a separate design and bid process impractical and unfeasible.

Staff has reviewed the plan drawing by Milholland and the proposed costs from McClinton-Anchor and believe them to be fair and reasonable.

Staff specifically requests approval of two agenda items to include:

Agenda item 1, McClinton- Anchor:

1. Approval of a bid waiver with McClinton-Anchor, the contractor at CMN, to allow the reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the new Shiloh Drive extension at the CMN property line, including the radius and intersection of Northwood Avenue per the plan by Milholland Engineering (drawing E-526, sheet 17);
2. Approval of a construction contract with McClinton-Anchor in the estimated amount of \$43,300.00 for the above described street reconstruction;
3. Approval of a 15% project contingency of \$6,495.00 for material/construction testing and variations in final quantities.

Agenda item 2, Milholland Engineering:

1. Approval of a letter contract with Milholland Company for engineering design, construction staking, construction management and as-built drawings in the not-to exceed amount of \$5000.00 for the above described street reconstruction;

Enclosures for Agenda Item one:

1. Vicinity Map
2. Project plan (partial)
3. Quote from McClinton-Anchor
4. Proposed letter contract with McClinton-Anchor

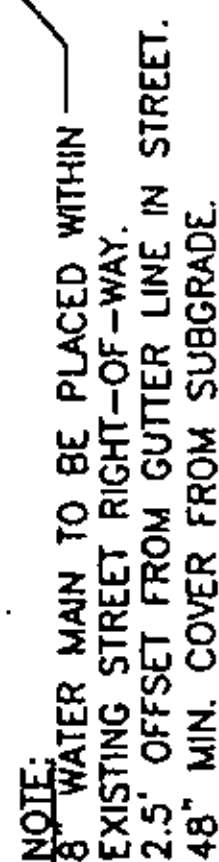






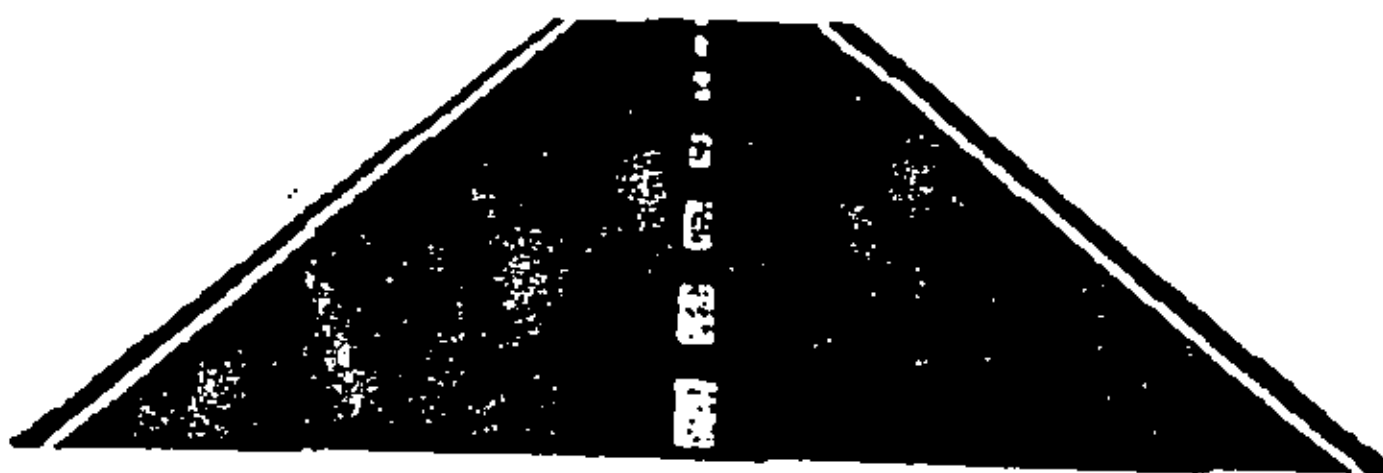
Vicinity Map





# McClinton-Anchor

A Division of APAC-Arkansas, Inc.



COPY

P. O. BOX 1367, 240 NORTH BLOCK  
FAYETTEVILLE, ARKANSAS 72702  
PHONE: (501) 587-3300 FAX: (501) 521-2826

## FAX TRANSMITTAL FORM

DATE: JUNE 12, 2000

TIME: PM

NUMBER OF PAGES INCLUDING COVER SHEET: 1

TO: MEL

COMPANY: MILHOLLAND COMPANY

FAX: 443-4707

FROM: JIM COLE

IF YOU HAVE PROBLEMS WITH THIS TRANSMISSION PLEASE CALL (501) 587-3330.

## MESSAGE

RE: CMN II - SHILOH DRIVE REPLACEMENT

|                             |            |                       |
|-----------------------------|------------|-----------------------|
| REMOVE AND DISPOSE CURB     | 520 L.F.   | @ \$5.00 PER L.F.     |
| REMOVE AND DISPOSE PAVEMENT | 1,000 S.Y. | @ \$3.00 PER S.Y.     |
| UNDERCUT                    | 850 C.Y.   | @ \$6.50 PER C.Y.     |
| BORROW                      | 750 C.Y.   | @ \$8.50 PER C.Y.     |
| PAVING                      | 1,000 S.Y. | @ \$16.60 PER S.Y.    |
| CURB BACKFILL               | 520 L.F.   | @ \$1.50 PER L.F.     |
| CURB AND GUTTER             | 520 L.F.   | @ \$8.50 PER L.F.     |
| SEEDING                     | 1 L.S.     | @ \$1,500.00 PER L.S. |
| MAINTENANCE OF TRAFFIC      | 1 L.S.     | @ \$2,500.00 PER L.S. |

TOTAL: \$43,300.00

PAYMENT TO BE BASED ON IN-PLACE MEASUREMENTS AT THE ABOVE STATED UNIT PRICES.

NOTICE OF CONFIDENTIALITY This facsimile may contain information that is privileged and confidential and/or exempt from disclosure under applicable law. This transmission is intended solely for the individual or entity designated above. If you are not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you should understand that any distribution, copying or use of the information contained in this facsimile by anyone other than the designated recipient is unauthorized and strictly prohibited. If you have received this facsimile in error, please immediately notify the sender by telephone.

THE CITY OF FAYETTEVILLE, ARKANSAS

June 15, 2000

Mr. Jim Cole  
McClinton-Anchor Company  
P.O. Box 1367  
240 North Block  
Fayetteville, Arkansas 72702

Re: Proposed reconstruction of approximately 240 lf of Shiloh Drive from the AHTD right-of-way east to the new Shiloh Drive extension at the CMN property line including the radius and intersection of Northwood Avenue.

Dear Sir,

This letter shall serve as the formal agreement to be presented to the City Council for consideration for the City of Fayetteville to:

1. Approval of a bid waiver with McClinton-Anchor, the contractor at CMN, to allow the reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the new Shiloh Drive extension at the CMN property line, including the radius and intersection of Northwood Avenue per the plan by Milholland Engineering (sheet E-526, sheet 17, received 06/13/00);
2. Approve this letter contract in the estimated amount of \$43,300.00 based upon the quote from McClinton-Anchor dated June 12, 2000 (copy attached).

If the proposed reconstruction of Shiloh Drive as described above is approved by the City Council, the City agrees to pay the actual and verified construction costs to reconstruct approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the new Shiloh Drive extension at the CMN property line west to the AHTD right-of-way, including the radius and intersection of Northwood Avenue per the plans by Milholland Engineering and in compliance with the City's Street Standards. The design, construction staking, construction inspection and as-built drawings will be furnished by Milholland Company. Material/construction testing will be paid by the owner. A separate formal agreement with Milholland will be presented to the City Council for consideration. If the proposed reconstruction of Shiloh Drive as described above is approved by the City Council such reconstruction should be completed no later than the completion of the adjacent Shiloh Drive extension at the CMN II development west property line.



The final costs to the City shall be based upon actual quantities verified by the City's Public Works inspector and invoices/tickets/records furnished by McClinton-Anchor and/or Milholland Engineering. Upon final acceptance by the City of the reconstructed Shiloh Drive and the furnishing of invoices/tickets/records from McClinton-Anchor, the City will strive to make payment to McClinton-Anchor within thirty (30) days but cannot guarantee the thirty day schedule.

Please note: This is a request for approval of a bid waiver and letter contract only. The Mayor and/or City Council will not normally consider a proposed contract for approval without a formal agreement signed in advance by the contracting parties. **Do not** proceed with the proposed street reconstruction unless/until the proposed contract is approved by the City Council and a copy signed by the Mayor is furnished to you.

If you agree with these provisions please sign the three original letters in the space provided and return all three to me. I will proceed to schedule this on the next available City Council Agenda (July 3, 2000). Should you need any additional information please call me at 575-8208.

Thank you,

  
Jim Beavers, P.E.  
City Engineer

---

Approved City of Fayetteville  
Fred Hanna, Mayor

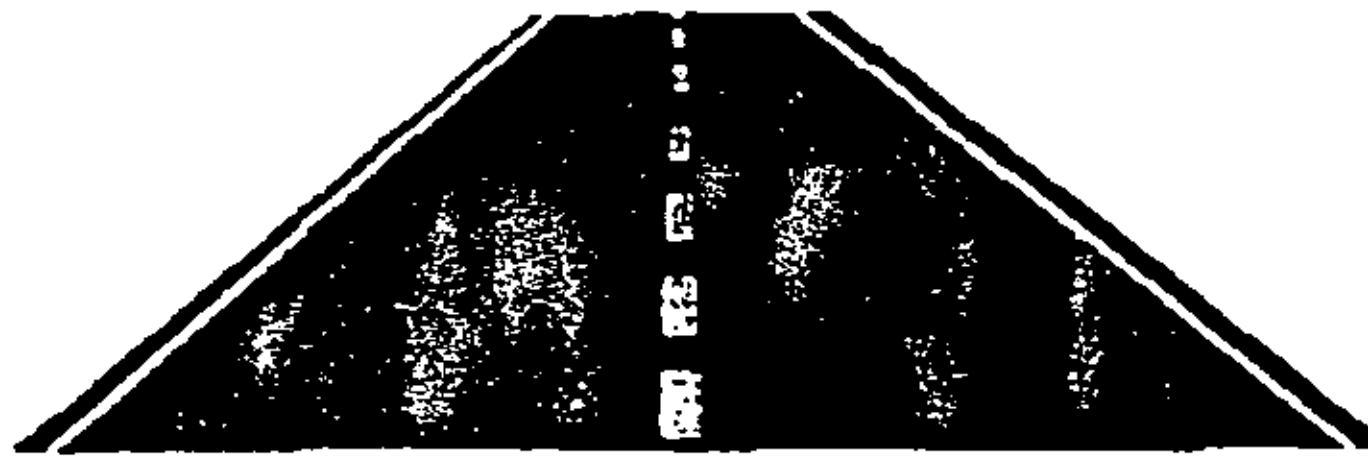
 6/15/00  
Jim Cole  
McClinton-Anchor

enclosure:

Quote from McClinton-Anchor dated June 12, 2000

# McClinton-Anchor

A Division of APAC-Arkansas, Inc.



COPY

P. O. BOX 1367, 240 NORTH BLOCK  
FAYETTEVILLE, ARKANSAS 72702  
PHONE: (501) 587-3300 FAX: (501) 521-2826

## FAX TRANSMITTAL FORM

DATE: JUNE 12, 2000

TIME: PM

NUMBER OF PAGES INCLUDING COVER SHEET: 1

TO: MEL

COMPANY: MILHOLLAND COMPANY

FAX: 443-4707

FROM: JIM COLE

IF YOU HAVE PROBLEMS WITH THIS TRANSMISSION PLEASE CALL (501) 587-3330.

## MESSAGE

RE: CMN II - SHILOH DRIVE REPLACEMENT

|                                   |            |                       |
|-----------------------------------|------------|-----------------------|
| REMOVE AND DISPOSE CURB .....     | 520 L.F.   | @ \$5.00 PER L.F.     |
| REMOVE AND DISPOSE PAVEMENT ..... | 1,000 S.Y. | @ \$3.00 PER S.Y.     |
| UNDERCUT .....                    | 850 C.Y.   | @ \$6.50 PER C.Y.     |
| BORROW .....                      | 750 C.Y.   | @ \$8.50 PER C.Y.     |
| PAVING .....                      | 1,000 S.Y. | @ \$16.60 PER S.Y.    |
| CURB BACKFILL .....               | 520 L.F.   | @ \$1.50 PER L.F.     |
| CURB AND GUTTER .....             | 520 L.F.   | @ \$8.50 PER L.F.     |
| SEEDING .....                     | 1 L.S.     | @ \$1,500.00 PER L.S. |
| MAINTENANCE OF TRAFFIC .....      | 1 L.S.     | @ \$2,500.00 PER L.S. |

TOTAL: \$43,300.00

PAYMENT TO BE BASED ON IN-PLACE MEASUREMENTS AT THE ABOVE STATED UNIT PRICES.

NOTICE OF CONFIDENTIALITY This facsimile may contain information that is privileged and confidential and/or exempt from disclosure under applicable law. This transmission is intended solely for the individual or entity designated above. If you are not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you should understand that any distribution, copying or use of the information contained in this facsimile by anyone other than the designated recipient is unauthorized and strictly prohibited. If you have received this facsimile in error, please immediately notify the sender by telephone.



THE CITY OF FAYETTEVILLE, ARKANSAS

June 15, 2000

Mr. Jim Cole  
McClinton-Anchor Company  
P.O. Box 1367  
240 North Block  
Fayetteville, Arkansas 72702

Re: Proposed reconstruction of approximately 240 lf of Shiloh Drive from the AHTD right-of-way east to the new Shiloh Drive extension at the CMN property line including the radius and intersection of Northwood Avenue.

Dear Sir,

This letter shall serve as the formal agreement to be presented to the City Council for consideration for the City of Fayetteville to:

1. Approval of a bid waiver with McClinton-Anchor, the contractor at CMN, to allow the reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the new Shiloh Drive extension at the CMN property line, including the radius and intersection of Northwood Avenue per the plan by Milholland Engineering (sheet E-526, sheet 17, received 06/13/00);
2. Approve this letter contract in the estimated amount of \$43,300.00 based upon the quote from McClinton-Anchor dated June 12, 2000 (copy attached).

If the proposed reconstruction of Shiloh Drive as described above is approved by the City Council, the City agrees to pay the actual and verified construction costs to reconstruct approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the new Shiloh Drive extension at the CMN property line west to the AHTD right-of-way, including the radius and intersection of Northwood Avenue per the plans by Milholland Engineering and in compliance with the City's Street Standards. The design, construction staking, construction inspection and as-built drawings will be furnished by Milholland Company. Material/construction testing will be paid by the owner. A separate formal agreement with Milholland will be presented to the City Council for consideration. If the proposed reconstruction of Shiloh Drive as described above is approved by the City Council such reconstruction should be completed no later than the completion of the adjacent Shiloh Drive extension at the CMN II development west property line.

The final costs to the City shall be based upon actual quantities verified by the City's Public Works inspector and invoices/tickets/records furnished by McClinton-Anchor and/or Milholland Engineering. Upon final acceptance by the City of the reconstructed Shiloh Drive and the furnishing of invoices/tickets/records from McClinton-Anchor, the City will strive to make payment to McClinton-Anchor within thirty (30) days but cannot guarantee the thirty day schedule.

Please note: This is a request for approval of a bid waiver and letter contract only. The Mayor and/or City Council will not normally consider a proposed contract for approval without a formal agreement signed in advance by the contracting parties. **Do not** proceed with the proposed street reconstruction unless/until the proposed contract is approved by the City Council and a copy signed by the Mayor is furnished to you.

If you agree with these provisions please sign the three original letters in the space provided and return all three to me. I will proceed to schedule this on the next available City Council Agenda (July 3, 2000). Should you need any additional information please call me at 575-8208.

Thank you,

  
Jim Beavers, P.E.  
City Engineer

---

Approved City of Fayetteville  
Fred Hanna, Mayor

 6/15/00  
Jim Cole  
McClinton-Anchor

enclosure:

Quote from McClinton-Anchor dated June 12, 2000

# McClinton-Anchor

A Division of APAC-Arkansas, Inc.



COPY

P. O. BOX 1367, 240 NORTH BLOCK  
FAYETTEVILLE, ARKANSAS 72702  
PHONE: (501) 587-3300 FAX: (501) 521-2826

## FAX TRANSMITTAL FORM

DATE: JUNE 12, 2000

TIME: PM

NUMBER OF PAGES INCLUDING COVER SHEET: 1

TO: MEL

COMPANY: MILHOLLAND COMPANY

FAX: 443-4707

FROM: JIM COLE

IF YOU HAVE PROBLEMS WITH THIS TRANSMISSION PLEASE CALL (501) 587-3330.

## MESSAGE

RE: CMN II - SHILOH DRIVE REPLACEMENT

|                                   |            |                       |
|-----------------------------------|------------|-----------------------|
| REMOVE AND DISPOSE CURB .....     | 520 L.F.   | @ \$5.00 PER L.F.     |
| REMOVE AND DISPOSE PAVEMENT ..... | 1,000 S.Y. | @ \$3.00 PER S.Y.     |
| UNDERCUT .....                    | 850 C.Y.   | @ \$6.50 PER C.Y.     |
| BORROW .....                      | 750 C.Y.   | @ \$8.50 PER C.Y.     |
| PAVING .....                      | 1,000 S.Y. | @ \$16.60 PER S.Y.    |
| CURB BACKFILL .....               | 520 L.F.   | @ \$1.50 PER L.F.     |
| CURB AND GUTTER .....             | 520 L.F.   | @ \$8.50 PER L.F.     |
| SEEDING .....                     | 1 L.S.     | @ \$1,500.00 PER L.S. |
| MAINTENANCE OF TRAFFIC .....      | 1 L.S.     | @ \$2,500.00 PER L.S. |

TOTAL: \$43,300.00

PAYMENT TO BE BASED ON IN-PLACE MEASUREMENTS AT THE ABOVE STATED UNIT PRICES.

NOTICE OF CONFIDENTIALITY This facsimile may contain information that is privileged and confidential and/or exempt from disclosure under applicable law. This transmission is intended solely for the individual or entity designated above. If you are not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you should understand that any distribution, copying or use of the information contained in this facsimile by anyone other than the designated recipient is unauthorized and strictly prohibited. If you have received this facsimile in error, please immediately notify the sender by telephone.



**FF RECOMMENDATION:** Approval

*Jim Beavers*  
Division Head

6/19/00  
Date

Cross Reference

*Richard Vance*  
Department Director

6-21-00  
Date

New Item: **Yes**

Administrative Services Director

          
Date

Prev Ord/Res #         

Mayor

          
Date

Orig Contract Date:         

Contract number



# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

## DEPARTMENTAL CORRESPONDENCE

---

To: Fred Hanna, Mayor

Thru: Charles Venable, Public Works Director  
Contract Review

From: Jim Beavers, City Engineer *JB*

Date: June 15, 2000

Re: Council Meeting July 3, 2000  
Proposed improvements to Shiloh Drive between CMN and the AHTD right-of-way.  
Proposed engineering contract with Milholland Company

The section of Shiloh Drive between the AHTD right-of-way and the CMN property near Northwood Avenue (approximately 240 lf) is failing and needs to be replaced prior to the new section of Shiloh Drive on the CMN property being completed and opened to the public. The Traffic Engineer for the development, Peters and Associates, estimates the ultimate future traffic on this section to be approximately 10,000 vehicles per day.

McClinton-Anchor is the contractor for CMN constructing the Shiloh Drive extension, Steel Boulevard, Mall Avenue and Van Asche. Staff recommends a bid waiver and contracting the replacement of Shiloh Drive between the AHTD right-of-way and the CMN property near Northwood Avenue (approximately 240 lf) with McClinton-Anchor. The basis for recommendation of the bid waiver is that the reconstruction is on a segment of street immediately adjacent to the new Shiloh construction and the additional time and costs of bidding the project, including mobilization and earthwork makes a separate design and bid process impractical and unfeasible.

For similar reasons to save time and money, Staff has selected Milholland Company to provide the engineering services for this street reconstruction. Milholland Company will provide the design, construction staking, construction management and as-built drawings for the not-to-exceed amount of \$5000.00 for the above described street reconstruction;

Staff has reviewed the plan drawing by Milholland and the proposed costs from McClinton-Anchor and believe them to be fair and reasonable.

Staff specifically requests approval of two agenda items to include:

Agenda item 1, McClinton- Anchor:

1. Approval of a bid waiver with McClinton-Anchor, the contractor at CMN, to allow the reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the new Shiloh Drive extension at the CMN property line, including the radius and intersection of Northwood Avenue per the plan by Milholland Engineering (drawing E-526, sheet 17);
2. Approval of a construction contract with McClinton-Anchor in the estimated amount of \$43,300.00 for the above described street reconstruction;
3. Approval of a 15% project contingency of \$6,495.00 for material/construction testing and variations in final quantities.

Agenda item 2, Milholland Company (Engineering):

1. Approval of a letter contract with Milholland Company for engineering design, construction staking, construction management and as-built drawings in the not-to exceed amount of \$5000.00 for the above described street reconstruction;

Enclosures for Agenda Item two:

1. Letter proposal from Milholland Company dated June 15, 2000
2. Proposed letter contract with Milholland Company

## Purchase Requisition

**(not a purchase order)**

**Milholland Company**

205 W. Center

**FOB Point:**

| Yes | No | X |
|-----|----|---|
|-----|----|---|

Date: 6-19-00

Expected Delivery Date:

ASAP

Zip: 72701

Ship To Code: 090

Division Head Approval:

Jim Beavers

**-Requester's Employee#:**

**Extension:**

327

208

[illegible]

PLEASE RETURN PO TO ENGINEERING

### Subtotal:

Tax:

|        |            |
|--------|------------|
| TOTAL: | \$5,000.00 |
|--------|------------|

**Mayor**

**Admin. Services Director:**

**(for purchasing office use only)**

**Department Director:**

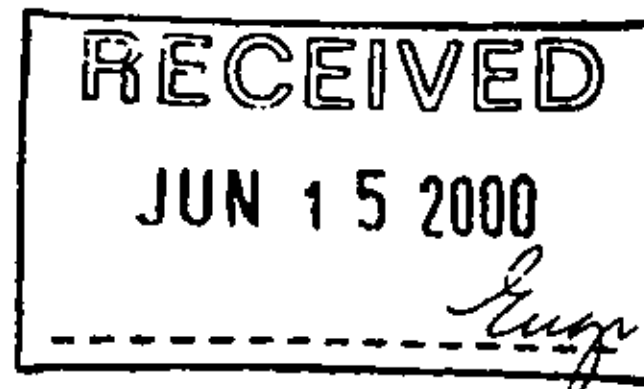
**Budget Coordinator;**

**Purchasing Manager:**

**Data Processing Mgr:**



*Milholland Company*  
*Engineering & Surveying*  
Melvin L. Milholland, PE, PLS



REGISTRATIONS:  
PE: AR, OK, MO  
PLS: AR, OK

---

## PROPOSAL

---

DATE: JUNE 15, 2000  
PROJECT: SHILOH RECONSTRUCTION  
LOCATION: INTERSECT SHILOH & NORTHWOOD  
RE: ENGINEERING FEES

Dear Mr. Beavers:

Milholland Company proposes to perform all Engineering Services for the construction of said project for a Maximum-Not-To-Exceed Figure of \$5,000.

Compensation for said services shall be invoiced monthly, based on an hourly rate per attached EXHIBIT "A" with said Maximum-Not-To-Exceed amount of \$5,000.00

The opportunity to be of assistance is appreciated!

Sincerely,

A handwritten signature in cursive script, appearing to read "Melvin L. Milholland".

Melvin L. Milholland, PE

# Miltholland Company

Engineering & Surveying

Melvin L. Miltholland, Owner

REGISTRATIONS:

PE: AR, OK, MO

PLS: AR, OK

---

## HOURLY RATE PER CLASSIFICATION

---

### EXHIBIT "A"

|                                                                |                            |
|----------------------------------------------------------------|----------------------------|
| Survey Crew .....                                              | 3 men @ \$110.00 per hour  |
| Survey Crew .....                                              | 2 men @ \$86.00 per hour   |
| Professional Land Surveyor .....                               | \$70.00 per hour           |
| AutoCAD/Drafting .....                                         | \$50.00 per hour           |
| Professional Engineer .....                                    | \$95.00 per hour           |
| Engineer's Aide .....                                          | \$65.00 per hour           |
| Inspector .....                                                | \$50.00 per hour           |
| Office Computations .....                                      | \$45.00 per hour           |
| Research and Compiling Data .....                              | \$42.50 per hour           |
| Secretary .....                                                | \$30.00 per hour           |
| Printing: 8-1/2" X 11": .....                                  | \$00.25 per sheet          |
| Blueprints (any size) .....                                    | \$03.50 per sheet          |
| Mylar (any size) .....                                         | \$15.00 per sheet          |
| Mileage .....                                                  | \$00.30 per mile           |
| Out-of-Pocket Expenses (Long-distance phone calls, etc.) ..... | Actual Cost                |
| All fees for Review by Governmental Agencies ...               | Paid by Owner, upon demand |



THE CITY OF FAYETTEVILLE, ARKANSAS

---

June 15, 2000

Mr. Mel Milholland, P.E.  
Milholland Company, Engineering and Surveying  
205 West Center Street  
Fayetteville, Arkansas 72701

Re: The proposed design and reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the new Shiloh Drive extension at the CMN property line, including the radius and intersection of Northwood Avenue per the plan by Milholland Engineering (sheet E-526, sheet 17, received 06/13/00).

Dear Sir,

This letter shall serve as the formal agreement to be presented to the City Council for consideration for the City of Fayetteville to:

Approve a bid waiver/letter contract with Milholland Company for engineering design, construction staking, construction management and as-built drawings in the not-to exceed amount of \$5,000.00 for the above described street reconstruction.

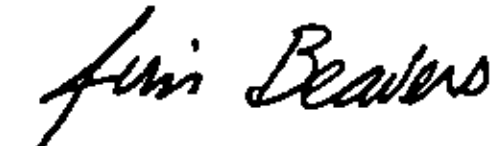
If the proposed design and reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the new Shiloh Drive extension at the CMN property line, including the radius and intersection of Northwood Avenue per the plan by Milholland Engineering (sheet E-526, sheet 17, received 06/13/00) is approved by the City Council, the City agrees to pay the actual and verified engineering costs associated with this specific reconstruction and as further described in the attached letter received from Milholland Engineering on June 15, 2000.

Milholland Company will provide design services, construction staking, construction inspection and as-built drawings. Material/construction testing will be paid by the owner. A separate formal agreement with McClinton-Anchor will be presented to the City Council for consideration for the reconstruction of the above described segment of Shiloh Drive. If the proposed reconstruction of Shiloh Drive as described above is approved by the City Council such reconstruction should be completed no later than the completion of the adjacent Shiloh Drive extension at the CMN II development west property line.

Please note: This is a request for approval of a bid waiver/letter contract only. The Mayor and/or City Council will not normally consider a proposed contract for approval without a formal agreement signed in advance by the contracting parties. **Do not** proceed with any work for these proposed improvements unless/until the proposed contract is approved by the City Council and a copy signed by the Mayor is furnished to you.

If you agree with these provisions please sign the four original letters in the space provided and return all four to me. I will proceed to schedule this on the next available City Council Agenda (July 3 or July 17, 2000). Should you need any additional information please call me at 575-8208.

Thank you,

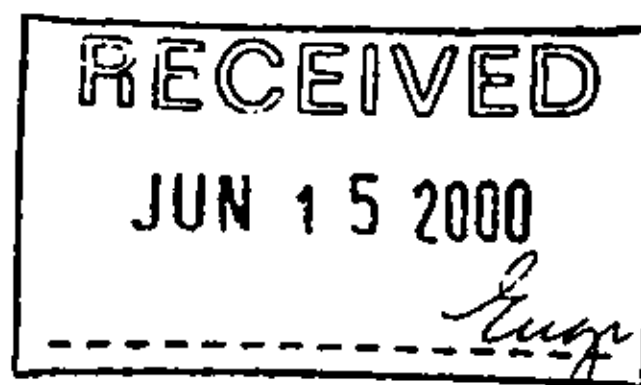


Jim Beavers, P.E.  
City Engineer

\_\_\_\_\_  
Approved City of Fayetteville      date  
Fred Hanna, Mayor

  
\_\_\_\_\_  
Melvin Milholland, P.E.      06/15/2000  
Milholland Company      date

*Milholland Company*  
*Engineering & Surveying*  
Melvin L. Milholland, PE, PLS



REGISTRATIONS:  
PE: AR, OK, MO  
PLS: AR, OK

---

## PROPOSAL

---

DATE: JUNE 15, 2000  
PROJECT: SHILOH RECONSTRUCTION  
LOCATION: INTERSECT SHILOH & NORTHWOOD  
RE: ENGINEERING FEES

Dear Mr. Beavers:

Milholland Company proposes to perform all Engineering Services for the construction of said project for a Maximum-Not-To-Exceed Figure of \$5,000.

Compensation for said services shall be invoiced monthly, based on an hourly rate per attached EXHIBIT "A" with said Maximum-Not-To-Exceed amount of \$5,000.00

The opportunity to be of assistance is appreciated!

Sincerely,

A handwritten signature in cursive script, appearing to read "Melvin L. Milholland".

Melvin L. Milholland, PE



*Miltholland Company*  
*Engineering & Surveying*  
Melvin L. Miltholland, Owner

REGISTRATIONS:  
PE: AR, OK, MO  
PLS: AR, OK

---

## HOURLY RATE PER CLASSIFICATION

---

### EXHIBIT "A"

|                                                                |                            |
|----------------------------------------------------------------|----------------------------|
| Survey Crew .....                                              | 3 men @ \$110.00 per hour  |
| Survey Crew .....                                              | 2 men @ \$86.00 per hour   |
| Professional Land Surveyor .....                               | \$70.00 per hour           |
| AutoCAD/Drafting .....                                         | \$50.00 per hour           |
| Professional Engineer .....                                    | \$95.00 per hour           |
| Engineer's Aide .....                                          | \$65.00 per hour           |
| Inspector .....                                                | \$50.00 per hour           |
| Office Computations .....                                      | \$45.00 per hour           |
| Research and Compiling Data .....                              | \$42.50 per hour           |
| Secretary .....                                                | \$30.00 per hour           |
| Printing: 8-1/2" X 11": .....                                  | \$00.25 per sheet          |
| Blueprints (any size) .....                                    | \$03.50 per sheet          |
| Mylar (any size) .....                                         | \$15.00 per sheet          |
| Mileage .....                                                  | \$00.30 per mile           |
| Out-of-Pocket Expenses (Long-distance phone calls, etc.) ..... | Actual Cost                |
| All fees for Review by Governmental Agencies ...               | Paid by Owner, upon demand |

To: Honorable Mayor Fred Hanna and Fayetteville City Council  
From: Louis Gottsponer, President, Fayetteville Public Library Board of Trustees  
Louise Schaper, Library Director  
Date: June 27, 2000

Re: Request for a referendum for a 1 cent sales tax for eighteen months to fund a portion of a new Fayetteville library.

We are writing to ask the Mayor and Fayetteville City Council to support and approve an ordinance authorizing a referendum for a 1 cent sales tax for eighteen months for the purpose of funding a portion of a new main library facility.

Funding the library via the sales tax under Arkansas Statute 871 of 1985 provides some clear advantages over the property tax as a funding vehicle:

- 1) We will eliminate the need for a 30-year property tax millage increase to support the sale of bonds. This saves the citizens approximately \$19M in costs associated with bonds including interest, bond insurance and cost of issuance.
- 2) The 1 penny temporary sales tax would be paid by anyone who shops in Fayetteville.
- 3) Because the sales tax generated \$10,985,041 in 1999 and is estimated to generate \$11,322,000 this year, we anticipate the library can be built on a pay-as-you-go basis without City indebtedness. Over eighteen months, the sales tax is likely to generate \$16,477,561 based on the 1999 actuals or \$16,983,000 based on the 2000 estimate.

The project (i.e. turnkey), including most furnishings, computers and landscape, is estimated to cost \$22.3M, leaving approximately \$5M to \$5.9M to raise via private donations or other government sources.

To take advantage of two holiday shopping seasons, we need to aim for an October 1 start date for the sales tax. (Sales tax is initiated on a quarterly basis; the next start date is January 1.) The October 1 start date will avoid any conflict with the sewage treatment plant project. To allow an October 1 start date, the referendum would need to take place on Tuesday, August 15.





**Board of Trustees**

Louis Gottsponer,  
President  
Michael H. Thomas,  
Vice-President  
Richard Alexander,  
Treasurer  
Steve Singleton,  
Secretary

Lorraine Brewer  
Rev. Maurice Roberts  
Beverly Shaffer

We, the Fayetteville Public Library Board of Trustees, authorize and support a request to the Fayetteville City Council to approve an ordinance authorizing a referendum for a 1 cent sales tax for eighteen months for the purpose of funding a new Fayetteville Public Library facility.

Passed unanimously by the FPL Board of Trustees at a regular meeting of the Board of Trustees on June 27, 2000

Signed,

A handwritten signature in black ink, appearing to read "Louis Gottsponer". The signature is written in a cursive, flowing style.

Louis Gottsponer, President

June 27, 2000

**AGENDA SESSION  
FOR  
CITY COUNCIL MEETING  
WEDNESDAY, JULY 5, 2000**

**NEW ITEMS:**

1. **J.D.G. TELEVISION:** A resolution approving a lease agreement with J.D.G. Television, Inc. to lease an area that contains thirteen parking spaces in the Fayetteville Municipal Parking Lot located west of the Campbell Bell Building between Mountain, Church, and Center Streets. This lease agreement will allow J.D.G. Television, Inc. to construct a covered parking canopy for thirteen employee parking spaces and be designed to incorporate and screen three proposed satellite 'receive-only' dishes.  
*CONSENT.*
2. **CENTER PRAIRIE TRAIL:** A resolution approving the purchase of an abandoned railroad right-of-way in the amount of \$50,000 with the intent to build a multi-use trail within the abandoned railroad right-of-way between Prairie Street and the Walton Arts Center parking lot.  
*? PRESENTATION.*
3. **SALES TAX FOR LIBRARY:** Consideration of an ordinance levying a one cent sales tax for a period of eighteen months for the construction of a new Fayetteville Library and setting an election therefore.  
*New business.*

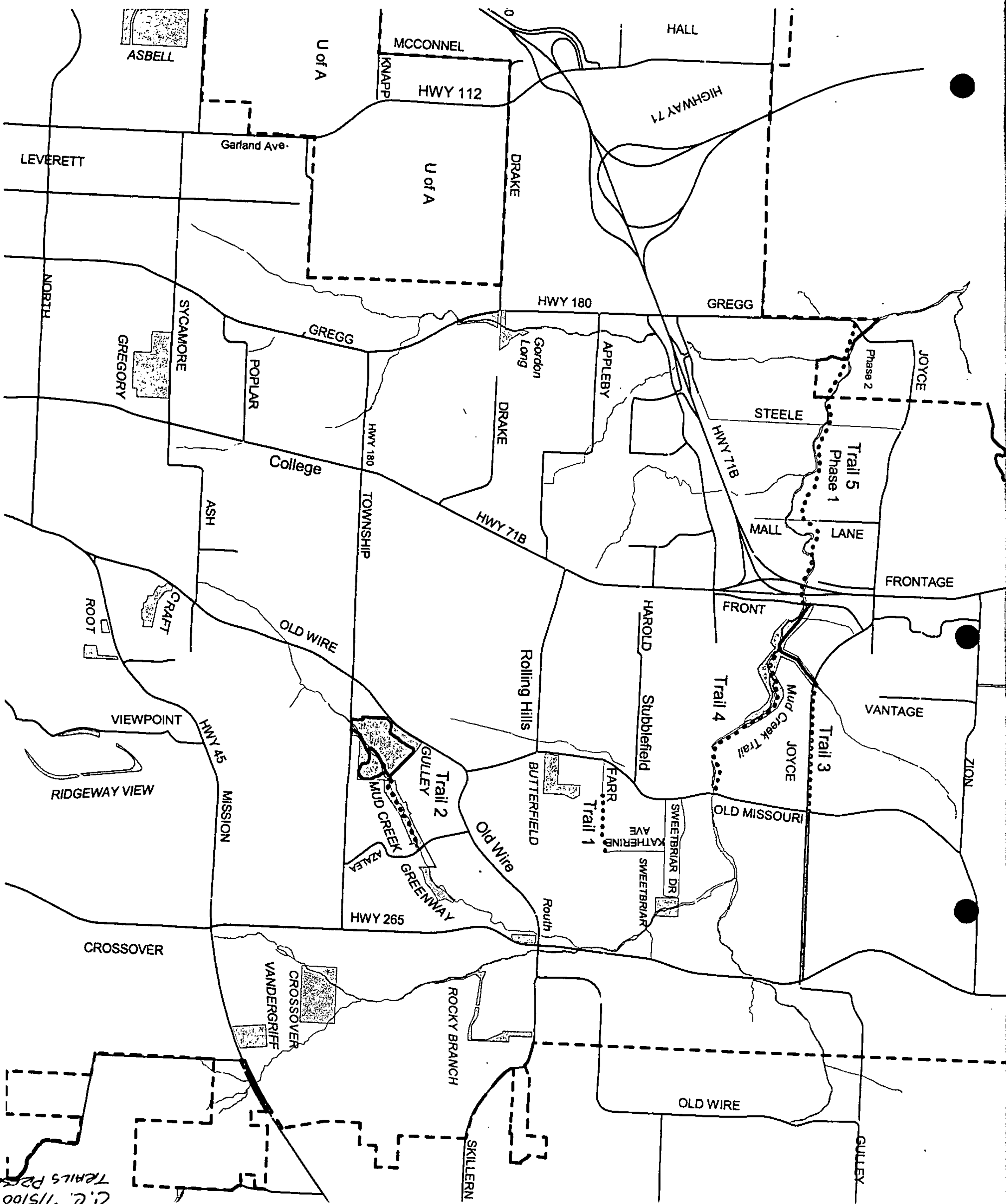
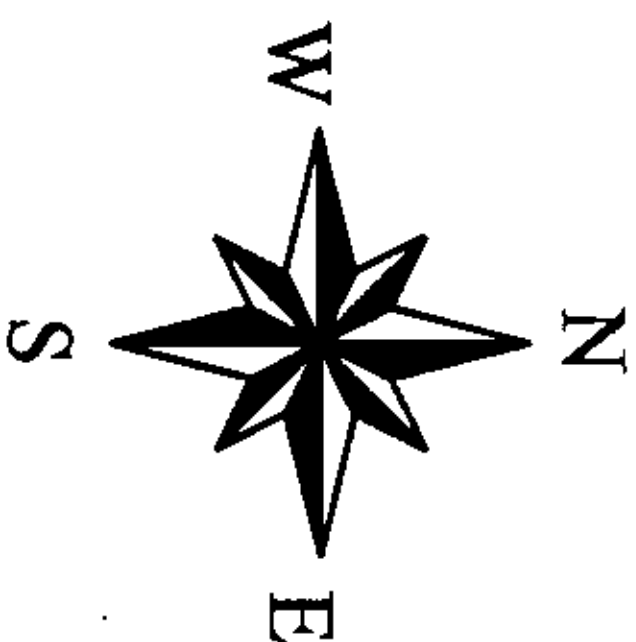
**ADDITIONAL INFORMATION:**

1. **DICKSON STREET:** Remove information for item number A. 5. and replace with new packet.



# Fayetteville Multi-Use Trails

- Proposed Trail
- Existing Trail
- Streets
- City Limits
- Hydro
- Parks



A.C. 7/5/00  
TRAILS PERSON

Wednesday, July 05, 2000

Dear Mayor and Council,

The enclosed copies of emails include the names of many of the citizens who have complained to me about noise generated by Tony C's Club Millennium on US 62 West near Farmington. The residents of the Magnolia Crossing subdivision have been bothered by loud music, especially loud, low frequency bass sounds, since Club Millennium opened. Nearby Club West has installed some type of soundproofing, and does not create the nuisance that the uninsulated Club Millennium creates.

The people being bothered by the noise have repeatedly called the Fayetteville Police Department, and they suspect that the Club Millennium must monitor a police scanner because the club apparently turns down the thumping music just long enough to pass a dB meter test before cranking it back up again.

I will ask the Ordinance Review Committee to consider revising the Noise Ordinance to protect our citizens from low-frequency booms emitted by this club, as well as those produced by "Boom Cars." In the meantime, people in the vicinity of Club Millennium are suffering and their property values are diminishing. I feel we must do something to help these people.

I am asking that we schedule a discussion of this problem for our July 18 City Council meeting. I would like to see the City Attorney and the Police Department reach an agreement with the club before then. If that is not possible, I will ask that we declare the club a public nuisance and recommend to the Alcoholic Beverage Control Board that their license be revoked.

Sincerely,

A handwritten signature in black ink, appearing to read 'K Santos', written over the printed name.

Kevin Santos



X-Sender: zacharns@popd.ipa.net (Unverified)  
X-Mailer: QUALCOMM Windows Eudora Light Version 3.0.6 (32)  
Date: Sat, 01 Jul 2000 00:07:40 -0500  
To: KSantos@UAFPHPL.uark.edu  
From: Zach <zacharns@ipa.net>  
Subject: Club Millenium

Kevin-

Here is a list of names of residents in the Magnolia Crossing Sub-Division that have complaints against Club Millenium.

I have spoken with all of the following, and all are eager to speak with you about them.

As I type this it is nearly midnight Friday and I was shaken awake by the bass at 11:20 pm.

I spoke with the manager of Club Millenium on Thursday night. He assured me that they would be considerate of the homeowners in the division. This has turned out not to be the case.

Please call me when you receive this. I would like to pursue the harshest penalty possible. Whatever that may be.

|                   |                  |                        |
|-------------------|------------------|------------------------|
| Peter Duncan      | 1146 China Berry | (H)587-1439(W)575-7450 |
| Shari Rickard     | 1162 China Berry | (H)442-0017(W)442-6800 |
| Trenda Weaver     | 1171 China Berry | (H)527-9371            |
| Lance England     | 1200 China Berry | (H)575-9291            |
| Alicia Wantz      | 1274 China Berry | (H)973-9364            |
| Daniel Stephenson | 1326 China Berry | (H)442-3569            |
| Zach Arns         | 3743 Gardenia    | (H)582-0096            |
| Chris McFarland   | 3763 Gardenia    | (H)582-5192            |

In speaking with several of my neighbors they have assured me there would be more people interested in speaking with you, but as yet I have not been able to get a hold of them to get their permission for you to call. When I do I will forward you more names and addresses ASAP.

Now the only question I have for you is: How quickly can we pursue this? I hope to speak with you soon. Thanks again.

Zach



X-Sender: zacharns@popd.ipa.net (Unverified)  
X-Mailer: QUALCOMM Windows Eudora Light Version 3.0.6 (32)  
Date: Sun, 02 Jul 2000 10:18:57 -0500  
To: KSantos@uafphpl.uark.edu  
From: Zach <zacharns@ipa.net>  
Subject: Club Millenium

Kevin-

Following are several more neighbors I was able to contact on Staurday who also have complaints about Club Millenium.

Saturday night may have been their worst night yet. I spoke with the manager (Chuck) around 11:30. I asked him to turn it down just a little. Instead, they turned the music up.

Maybe more disheartening than that, was the call I made to the Police. I asked to speak to an officer (I placed the call at around 11:40). No one came by. Finally at 12:45am I gave up. Club Millenium then flagrantly began abusing the noise ordinance until 2:30 in the morning. This after my wife placed a call to the Police around 1:30 asking the FPD to shut them down.

I'm no longer asking. I'm begging you to please help, not only me but my neighbors. My wife and I spoke about this subject last night. We bascially have two options at this point. A) Try to have something done about the noise or B) Move. I like my house Kevin and I know now as long as they are there my property value will continue to decrease along with all of the houses in this neighborhood. I can't afford to buy a house for 79K and sell it for 69. Please help.

Wade Kamps 1328 Pepper Tree 582-2297  
Bill Nelson 3843 Gardenia Dr 443-5264 @2pm  
John Ramierez 3767 Gardenia Dr. 521-1505

Incidentally all of the names I have given you cover about 1000 yards in either direction.

Please call me when you get this (582-0096). Thanks.

Zach

X-Sender: zacharns@popd.ipa.net (Unverified)  
X-Mailer: QUALCOMM Windows Eudora Light Version 3.0.6 (32)  
Date: Sun, 02 Jul 2000 19:04:59 -0500  
To: Ksantos@uafphpl.uark.edu  
From: Zach <zacharns@ipa.net>  
Subject: Club Millenium

More names for you.

Tad and Marisa Scott 1265 China Berry 442-7266  
Jill and John Sharpe 1264 Pepper Tree Ln 443-5874  
Jerimah Washburn 1265 Pepper Tree Ln 575-9051

I have now given you the names and numbers of 15 homeowners in the Magnolia Crossing subdivision.

I am still trying to contact six more homeowners on my street, and between 20 and thirty more on the surrounding streets. I have a feeling that most of the people I talk to will have the same response.

Thanks,  
Zach

## LEASE

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by and between the City of Fayetteville, Arkansas, a Municipal Corporation, 113 W. Mountain, Fayetteville, Arkansas, hereinafter called "Lessor", and J.D.G. Television, Inc., 111 South Cherokee, Muskogee, OK 74403, ATTN: John W. Griffin, hereinafter called "Lessee", Witnesseth:

1. Leased Premises. For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by the Lessee as obligations to the Lessor, the Lessor lets, leases and demises unto Lessee, subject to the terms and conditions contained herein, the following described property situated in Washington County, Arkansas:

Thirteen (13) parking spaces, as set forth on Exhibit "A" attached hereto, located in the Fayetteville Municipal Parking Lot, west of the Campbell Bell Building between Mountain, Church, and Center Streets, a/k/a 160 West Mountain Street, Fayetteville, Arkansas.

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

2. Term. This lease shall commence on July 15, 2000, and shall extend for a term of 5 years, ending at midnight on July 14, 2005.

3. Rent. Lessee agrees to pay to Lessor as rental for the first year of this lease the sum of \$50 per space per month. Thereafter, the rent shall be adjusted each year at the lease anniversary date to an amount charged for comparable lease spaces in this lot. If no comparables exist, rates will be the same as the Town Center parking deck rates. Each monthly payment is due and payable on or before the fifteen of each month. A late fee shall be imposed, at the highest rate allowable by law, on all payments which are not received by Lessor within 5 business days from the due date.

4. Use. Lessee agrees to use the lease premises only for the purpose of vehicle parking and placement of three proposed satellite 'receive-only' dishes. Such use shall include construction of a covered parking canopy designed to incorporate and screen the three proposed satellite 'receive-only' dishes.

5. Lessor Improvements. Lessee may construct a covered parking canopy for the 13 employee parking spaces and may be designed to incorporate and screen three proposed satellite 'receive-only' dishes. Any such improvement shall be solely at the Lessee's expense. Upon termination or expiration of this lease, such improvements shall be considered affixed to the premises and shall remain unless Lessor requires removal.

6. Assignment. Lessee shall not assign this lease or sublet the leased premises without prior written consent of the Lessor. Consent for any assignment or subletting shall only be considered at the same rates as established in Paragraph 3. above. Any such assignment or



subletting shall in no way relieve Lessee from liability for the obligation imposed by this lease. Lessee may only be released from liability by a specific written release executed by Lessor.

7. Holdover. Lessee hereby agrees that upon the termination of this lease by expiration or by earlier termination for any reason whatsoever, Lessee will peaceably deliver possession of the leased premises to Lessor. In the event Lessee shall be permitted by Lessor to hold over after the expiration or termination of this lease, said holding over, in the absence of any written agreement to the contrary, shall be construed as a tenancy from calendar month to calendar month at a monthly rental equal to the rental for the last month paid under this lease, or as may be amended on the anniversary of the term set forth in Paragraph 2. above. A month-to-month tenancy arising by Lessee's holding over under this paragraph may be terminated by written notice from either party to the other party on or before the day on which any monthly rent is due with termination not becoming effective until the day on which the next following monthly rental would have otherwise become due. In the event it should become necessary for Lessor to institute any action at law to recover possession at the time of termination, whenever and however termination may occur, Lessee agrees that it will pay all costs and expenses of such action, including reasonable attorneys' fees.

8. Termination. Lessor hereby reserves the right to terminate this Lease at anytime during the term of this Lease if it is determined by the Fayetteville City Council that the leased premises is needed for a valid public purpose. If Lessor terminates the lease prior to expiration of the 5 year term in Paragraph 2., Lessor shall compensate Lessee on a prorated basis of the actual cost to make such improvements to the premises.

9. Compliance with Laws. Lessee agrees not to violate any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the leased premises.

10. Non-Waiver. It is agreed that the failure of Lessor to invoke any of the available remedies under this lease or under law in the event of one or more breaches or defaults by Lessee under the lease shall not be construed as a waiver of such provisions and conditions and shall not prevent Lessor from invoking such remedies in the event of any future breach or default.

11. Insurance. Lessee shall be solely responsible for maintaining insurance on any improvements made to the leased premises, as well as for general public liability insurance.

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

13. Severability. Each paragraph of this lease agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs will remain in full force and effect.

14. Interpretation. This lease agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

15. Entire Agreement. This lease agreement 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 understandings of any kind between the parties relating to the subject matter hereof. This agreement may be executed in all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this \_\_\_\_ day of \_\_\_\_\_, 2000.

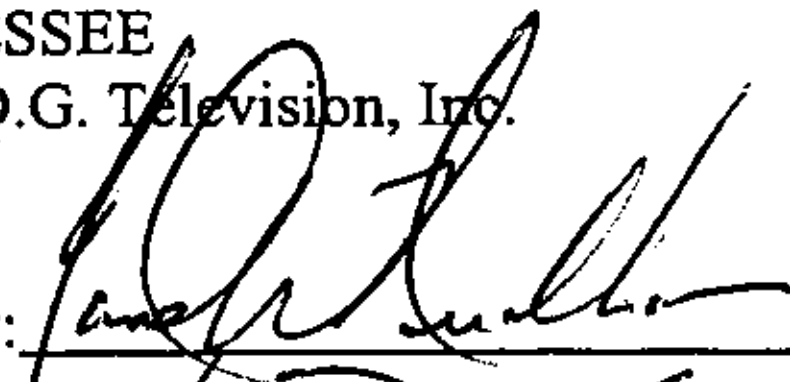
LESSOR  
City of Fayetteville, Arkansas

By: \_\_\_\_\_  
Fred Hanna, Mayor

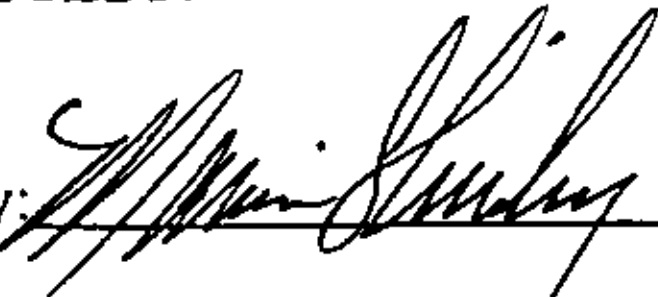
ATTEST:

By: \_\_\_\_\_  
Heather Woodruff, City Clerk

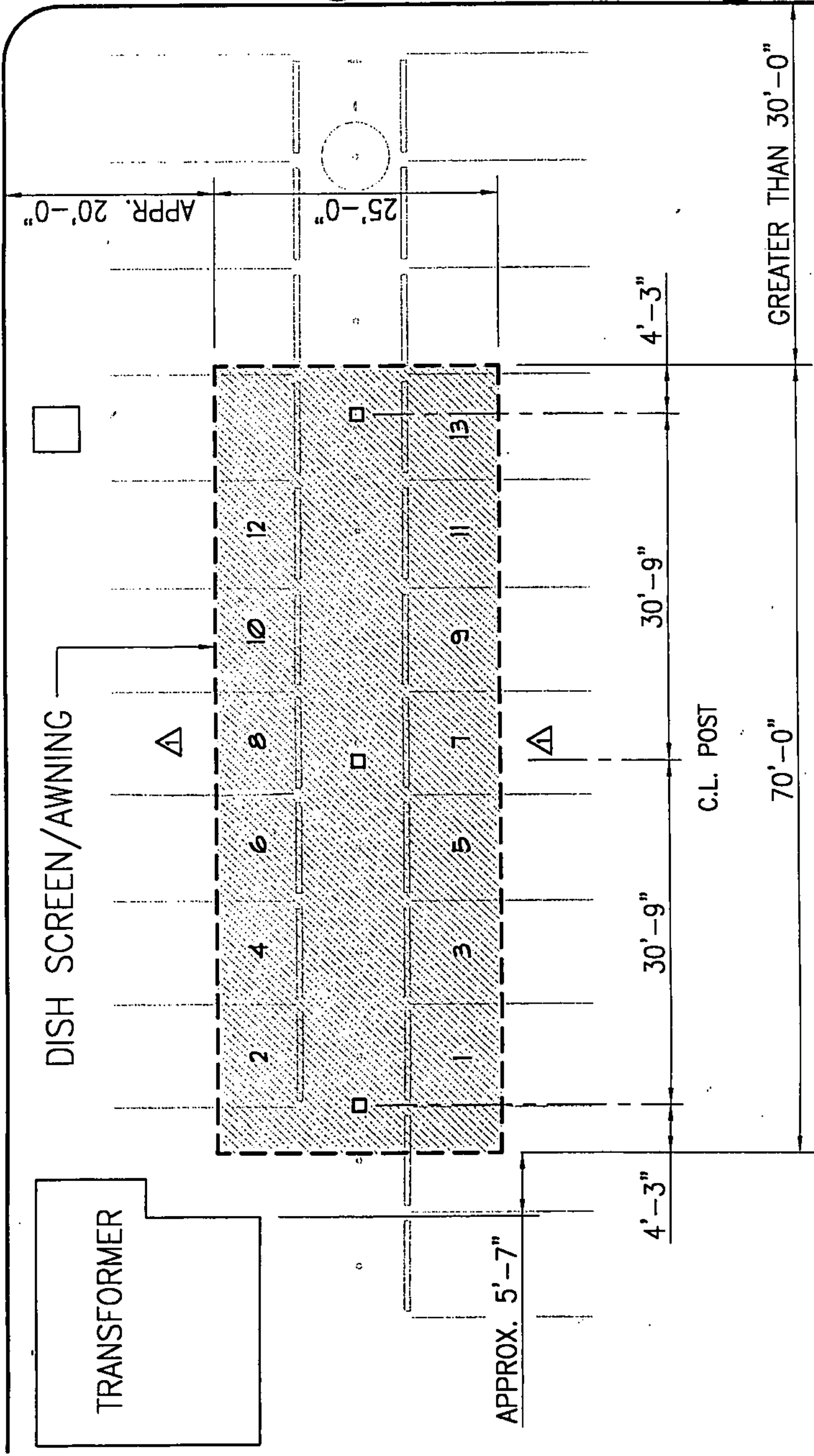
LESSEE  
J.D.G. Television, Inc.

By:   
Title: Vice Pres. / Gen. Mgr.

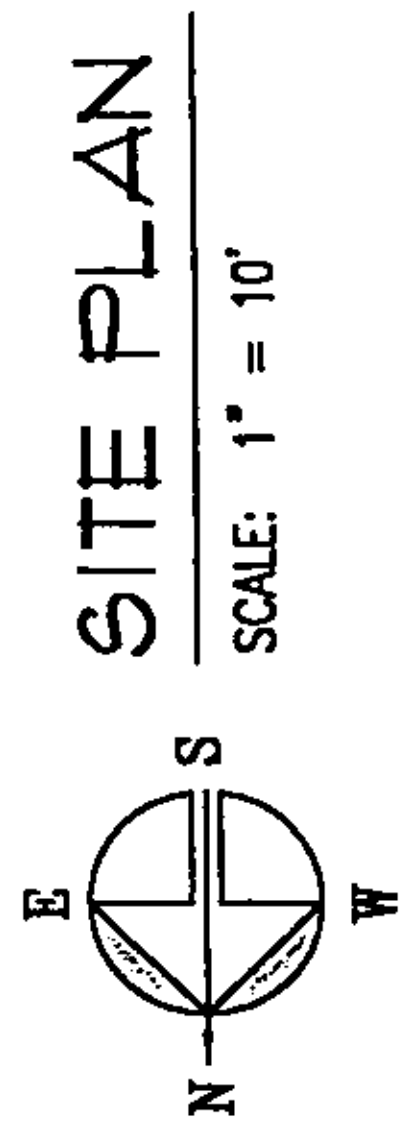
ATTEST:

By:   
Title: \_\_\_\_\_





NOTE:  
RELOCATE OR REPLACE  
EXISTING TREES PER THE  
DIRECTIONS OF THE LANDSCAPE  
COORDINATOR.



SITE PLAN  
SCALE: 1" = 10'

## LEASE

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by and between the City of Fayetteville, Arkansas, a Municipal Corporation, 113 W. Mountain, Fayetteville, Arkansas, hereinafter called "Lessor", and J.D.G. Television, Inc., 111 South Cherokee, Muskogee, OK 74403, ATTN: John W. Griffin, hereinafter called "Lessee", Witnesseth:

1. Leased Premises. For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by the Lessee as obligations to the Lessor, the Lessor lets, leases and demises unto Lessee, subject to the terms and conditions contained herein, the following described property situated in Washington County, Arkansas:

Thirteen (13) parking spaces, as set forth on Exhibit "A" attached hereto, located in the Fayetteville Municipal Parking Lot, west of the Campbell Bell Building between Mountain, Church, and Center Streets, a/k/a 160 West Mountain Street, Fayetteville, Arkansas.

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

2. Term. This lease shall commence on July 15, 2000, and shall extend for a term of 5 years, ending at midnight on July 14, 2005.

3. Rent. Lessee agrees to pay to Lessor as rental for the first year of this lease the sum of \$50 per space per month. Thereafter, the rent shall be adjusted each year at the lease anniversary date to an amount charged for comparable lease spaces in this lot. If no comparables exist, rates will be the same as the Town Center parking deck rates. Each monthly payment is due and payable on or before the fifteen of each month. A late fee shall be imposed, at the highest rate allowable by law, on all payments which are not received by Lessor within 5 business days from the due date.

4. Use. Lessee agrees to use the lease premises only for the purpose of vehicle parking and placement of three proposed satellite 'receive-only' dishes. Such use shall include construction of a covered parking canopy designed to incorporate and screen the three proposed satellite 'receive-only' dishes.

5. Lessor Improvements. Lessee may construct a covered parking canopy for the 13 employee parking spaces and may be designed to incorporate and screen three proposed satellite 'receive-only' dishes. Any such improvement shall be solely at the Lessee's expense. Upon termination or expiration of this lease, such improvements shall be considered affixed to the premises and shall remain unless Lessor requires removal.

6. Assignment. Lessee shall not assign this lease or sublet the leased premises without prior written consent of the Lessor. Consent for any assignment or subletting shall only be considered at the same rates as established in Paragraph 3. above. Any such assignment or

subletting shall in no way relieve Lessee from liability for the obligation imposed by this lease. Lessee may only be released from liability by a specific written release executed by Lessor.

7. Holdover. Lessee hereby agrees that upon the termination of this lease by expiration or by earlier termination for any reason whatsoever, Lessee will peaceably deliver possession of the leased premises to Lessor. In the event Lessee shall be permitted by Lessor to hold over after the expiration or termination of this lease, said holding over, in the absence of any written agreement to the contrary, shall be construed as a tenancy from calendar month to calendar month at a monthly rental equal to the rental for the last month paid under this lease, or as may be amended on the anniversary of the term set forth in Paragraph 2. above. A month-to-month tenancy arising by Lessee's holding over under this paragraph may be terminated by written notice from either party to the other party on or before the day on which any monthly rent is due with termination not becoming effective until the day on which the next following monthly rental would have otherwise become due. In the event it should become necessary for Lessor to institute any action at law to recover possession at the time of termination, whenever and however termination may occur, Lessee agrees that it will pay all costs and expenses of such action, including reasonable attorneys' fees.

8. Termination. Lessor hereby reserves the right to terminate this Lease at anytime during the term of this Lease if it is determined by the Fayetteville City Council that the leased premises is needed for a valid public purpose. If Lessor terminates the lease prior to expiration of the 5 year term in Paragraph 2., Lessor shall compensate Lessee on a prorated basis of the actual cost to make such improvements to the premises.

9. Compliance with Laws. Lessee agrees not to violate any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the leased premises.

10. Non-Waiver. It is agreed that the failure of Lessor to invoke any of the available remedies under this lease or under law in the event of one or more breaches or defaults by Lessee under the lease shall not be construed as a waiver of such provisions and conditions and shall not prevent Lessor from invoking such remedies in the event of any future breach or default.

11. Insurance. Lessee shall be solely responsible for maintaining insurance on any improvements made to the leased premises, as well as for general public liability insurance.

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

13. Severability. Each paragraph of this lease agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs will remain in full force and effect.

14. Interpretation. This lease agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.



15. Entire Agreement. This lease agreement 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 understandings of any kind between the parties relating to the subject matter hereof. This agreement may be executed in all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this \_\_\_\_ day of \_\_\_\_\_, 2000.

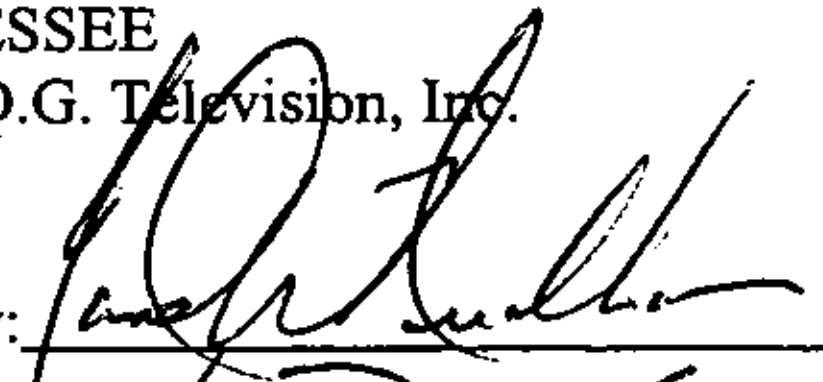
LESSOR  
City of Fayetteville, Arkansas

By: \_\_\_\_\_  
Fred Hanna, Mayor

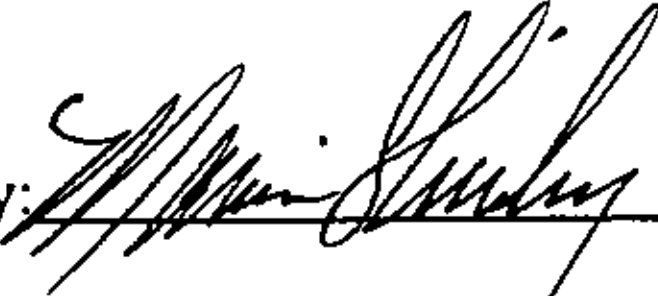
ATTEST:

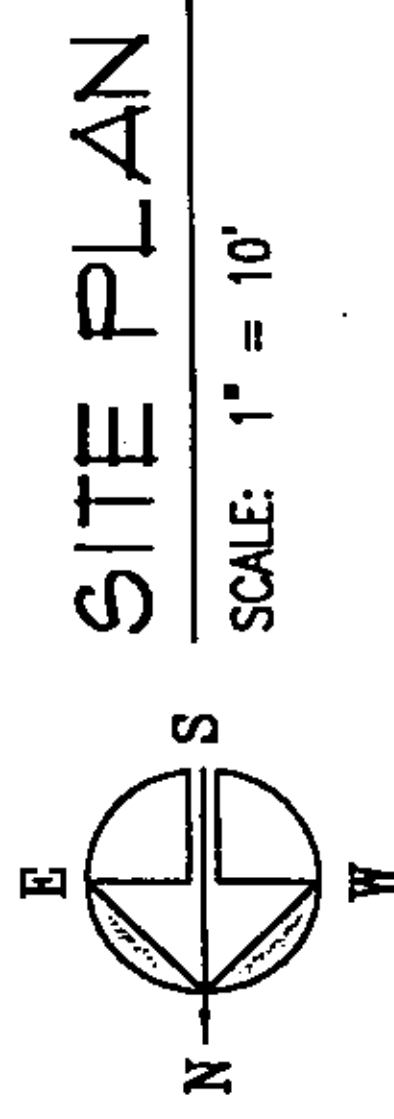
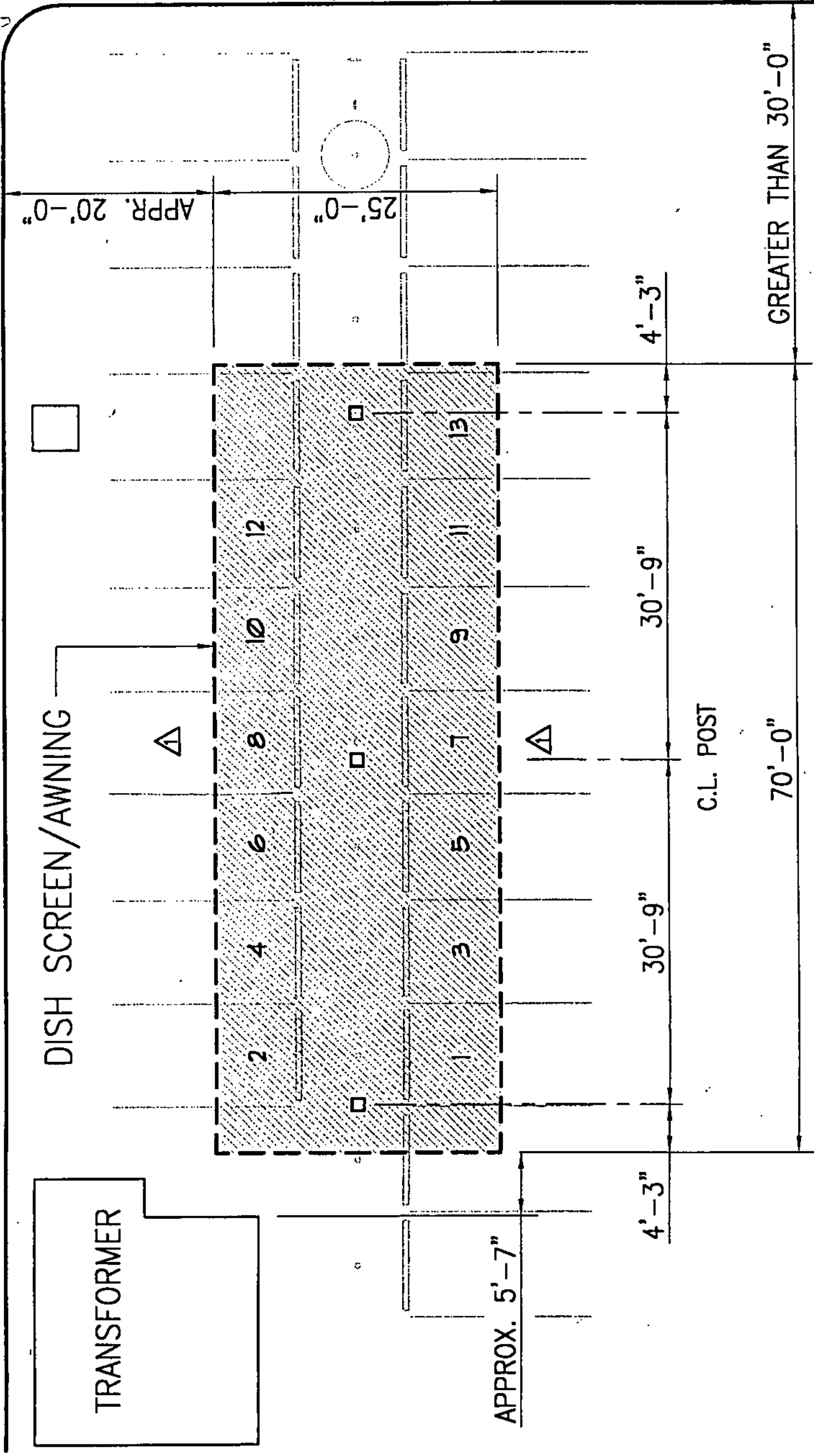
By: \_\_\_\_\_  
Heather Woodruff, City Clerk

LESSEE  
J.D.G. Television, Inc.

By:   
Title: Vice Pres. / Gen. Mgr.

ATTEST:

By:   
Title: \_\_\_\_\_



**SITE PLAN**  
 SCALE: 1" = 10'

NOTE:  
 RELOCATE OR REPLACE  
 EXISTING TREES PER THE  
 DIRECTIONS OF THE LANDSCAPE  
 COORDINATOR.



## LEASE

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by and between the City of Fayetteville, Arkansas, a Municipal Corporation, 113 W. Mountain, Fayetteville, Arkansas, hereinafter called "Lessor", and J.D.G. Television, Inc., 111 South Cherokee, Muskogee, OK 74403, ATTN: John W. Griffin, hereinafter called "Lessee", Witnesseth:

1. Leased Premises. For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by the Lessee as obligations to the Lessor, the Lessor lets, leases and demises unto Lessee, subject to the terms and conditions contained herein, the following described property situated in Washington County, Arkansas:

Thirteen (13) parking spaces, as set forth on Exhibit "A" attached hereto, located in the Fayetteville Municipal Parking Lot, west of the Campbell Bell Building between Mountain, Church, and Center Streets, a/k/a 160 West Mountain Street, Fayetteville, Arkansas.

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

2. Term. This lease shall commence on July 15, 2000, and shall extend for a term of 5 years, ending at midnight on July 14, 2005.

3. Rent. Lessee agrees to pay to Lessor as rental for the first year of this lease the sum of \$50 per space per month. Thereafter, the rent shall be adjusted each year at the lease anniversary date to an amount charged for comparable lease spaces in this lot. If no comparables exist, rates will be the same as the Town Center parking deck rates. Each monthly payment is due and payable on or before the fifteen of each month. A late fee shall be imposed, at the highest rate allowable by law, on all payments which are not received by Lessor within 5 business days from the due date.

4. Use. Lessee agrees to use the lease premises only for the purpose of vehicle parking and placement of three proposed satellite 'receive-only' dishes. Such use shall include construction of a covered parking canopy designed to incorporate and screen the three proposed satellite 'receive-only' dishes.

5. Lessor Improvements. Lessee may construct a covered parking canopy for the 13 employee parking spaces and may be designed to incorporate and screen three proposed satellite 'receive-only' dishes. Any such improvement shall be solely at the Lessee's expense. Upon termination or expiration of this lease, such improvements shall be considered affixed to the premises and shall remain unless Lessor requires removal.

6. Assignment. Lessee shall not assign this lease or sublet the leased premises without prior written consent of the Lessor. Consent for any assignment or subletting shall only be considered at the same rates as established in Paragraph 3. above. Any such assignment or

subletting shall in no way relieve Lessee from liability for the obligation imposed by this lease. Lessee may only be released from liability by a specific written release executed by Lessor.

7. Holdover. Lessee hereby agrees that upon the termination of this lease by expiration or by earlier termination for any reason whatsoever, Lessee will peaceably deliver possession of the leased premises to Lessor. In the event Lessee shall be permitted by Lessor to hold over after the expiration or termination of this lease, said holding over, in the absence of any written agreement to the contrary, shall be construed as a tenancy from calendar month to calendar month at a monthly rental equal to the rental for the last month paid under this lease, or as may be amended on the anniversary of the term set forth in Paragraph 2. above. A month-to-month tenancy arising by Lessee's holding over under this paragraph may be terminated by written notice from either party to the other party on or before the day on which any monthly rent is due with termination not becoming effective until the day on which the next following monthly rental would have otherwise become due. In the event it should become necessary for Lessor to institute any action at law to recover possession at the time of termination, whenever and however termination may occur, Lessee agrees that it will pay all costs and expenses of such action, including reasonable attorneys' fees.

8. Termination. Lessor hereby reserves the right to terminate this Lease at anytime during the term of this Lease if it is determined by the Fayetteville City Council that the leased premises is needed for a valid public purpose. If Lessor terminates the lease prior to expiration of the 5 year term in Paragraph 2., Lessor shall compensate Lessee on a prorated basis of the actual cost to make such improvements to the premises.

9. Compliance with Laws. Lessee agrees not to violate any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the leased premises.

10. Non-Waiver. It is agreed that the failure of Lessor to invoke any of the available remedies under this lease or under law in the event of one or more breaches or defaults by Lessee under the lease shall not be construed as a waiver of such provisions and conditions and shall not prevent Lessor from invoking such remedies in the event of any future breach or default.

11. Insurance. Lessee shall be solely responsible for maintaining insurance on any improvements made to the leased premises, as well as for general public liability insurance.

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

13. Severability. Each paragraph of this lease agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs will remain in full force and effect.

14. Interpretation. This lease agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

15. Entire Agreement. This lease agreement 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 understandings of any kind between the parties relating to the subject matter hereof. This agreement may be executed in all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this \_\_\_\_ day of \_\_\_\_\_, 2000.

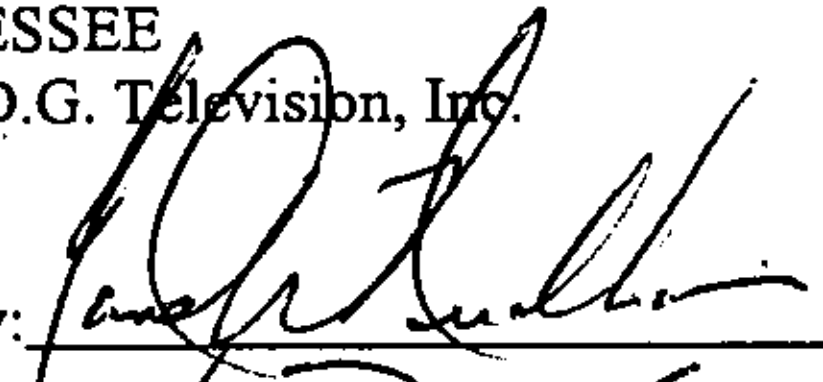
LESSOR  
City of Fayetteville, Arkansas

By: \_\_\_\_\_  
Fred Hanna, Mayor

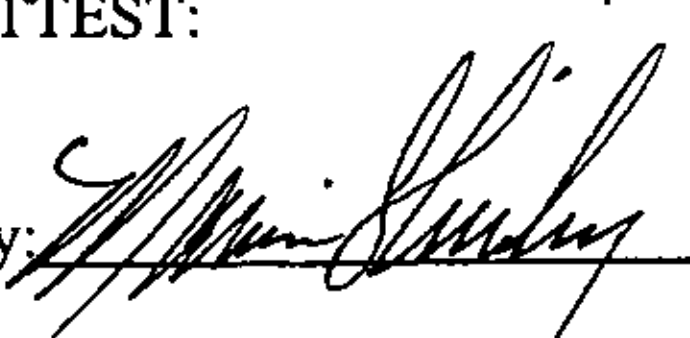
ATTEST:

By: \_\_\_\_\_  
Heather Woodruff, City Clerk

LESSEE  
J.D.G. Television, Inc.

By:   
Title: Vice Pres. / Gen. Mgr.

ATTEST:

By:   
Title: \_\_\_\_\_



TRANSFORMER

DISH SCREEN/AWNING

TRANSFORMER

TRANSFORMER

TRANSFORMER

TRANSFORMER

TRANSFORMER

TRANSFORMER

TRANSFORMER

TRANSFORMER

TRANSFORMER

TRANSFORMER

TRANSFORMER

TRANSFORMER

TRANSFORMER

TRANSFORMER

TRANSFORMER

TRANSFORMER

TRANSFORMER

APPROX. 5'-7"

4'-3"

30'-9"

30'-9"

4'-3"

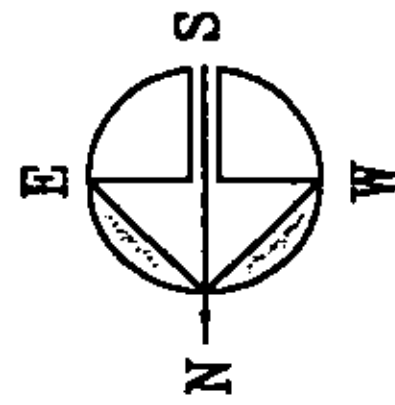
C.L. POST

70'-0"

GREATER THAN 30'-0"

APPR. 20'-0"

25'-0"



# SITE PLAN

SCALE: 1" = 10'

NOTE:  
RELOCATE OR REPLACE  
EXISTING TREES PER THE  
DIRECTIONS OF THE LANDSCAPE  
COORDINATOR.

## LEASE

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by and between the City of Fayetteville, Arkansas, a Municipal Corporation, 113 W. Mountain, Fayetteville, Arkansas, hereinafter called "Lessor", and J.D.G. Television, Inc., 111 South Cherokee, Muskogee, OK 74403, ATTN: John W. Griffin, hereinafter called "Lessee", Witnesseth:

1. Leased Premises. For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by the Lessee as obligations to the Lessor, the Lessor lets, leases and demises unto Lessee, subject to the terms and conditions contained herein, the following described property situated in Washington County, Arkansas:

Thirteen (13) parking spaces, as set forth on Exhibit "A" attached hereto, located in the Fayetteville Municipal Parking Lot, west of the Campbell Bell Building between Mountain, Church, and Center Streets, a/k/a 160 West Mountain Street, Fayetteville, Arkansas.

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

2. Term. This lease shall commence on July 15, 2000, and shall extend for a term of 5 years, ending at midnight on July 14, 2005.

3. Rent. Lessee agrees to pay to Lessor as rental for the first year of this lease the sum of \$50 per space per month. Thereafter, the rent shall be adjusted each year at the lease anniversary date to an amount charged for comparable lease spaces in this lot. If no comparables exist, rates will be the same as the Town Center parking deck rates. Each monthly payment is due and payable on or before the fifteen of each month. A late fee shall be imposed, at the highest rate allowable by law, on all payments which are not received by Lessor within 5 business days from the due date.

4. Use. Lessee agrees to use the lease premises only for the purpose of vehicle parking and placement of three proposed satellite 'receive-only' dishes. Such use shall include construction of a covered parking canopy designed to incorporate and screen the three proposed satellite 'receive-only' dishes.

5. Lessor Improvements. Lessee may construct a covered parking canopy for the 13 employee parking spaces and may be designed to incorporate and screen three proposed satellite 'receive-only' dishes. Any such improvement shall be solely at the Lessee's expense. Upon termination or expiration of this lease, such improvements shall be considered affixed to the premises and shall remain unless Lessor requires removal.

6. Assignment. Lessee shall not assign this lease or sublet the leased premises without prior written consent of the Lessor. Consent for any assignment or subletting shall only be considered at the same rates as established in Paragraph 3. above. Any such assignment or



subletting shall in no way relieve Lessee from liability for the obligation imposed by this lease. Lessee may only be released from liability by a specific written release executed by Lessor.

7. Holdover. Lessee hereby agrees that upon the termination of this lease by expiration or by earlier termination for any reason whatsoever, Lessee will peaceably deliver possession of the leased premises to Lessor. In the event Lessee shall be permitted by Lessor to hold over after the expiration or termination of this lease, said holding over, in the absence of any written agreement to the contrary, shall be construed as a tenancy from calendar month to calendar month at a monthly rental equal to the rental for the last month paid under this lease, or as may be amended on the anniversary of the term set forth in Paragraph 2. above. A month-to-month tenancy arising by Lessee's holding over under this paragraph may be terminated by written notice from either party to the other party on or before the day on which any monthly rent is due with termination not becoming effective until the day on which the next following monthly rental would have otherwise become due. In the event it should become necessary for Lessor to institute any action at law to recover possession at the time of termination, whenever and however termination may occur, Lessee agrees that it will pay all costs and expenses of such action, including reasonable attorneys' fees.

8. Termination. Lessor hereby reserves the right to terminate this Lease at anytime during the term of this Lease if it is determined by the Fayetteville City Council that the leased premises is needed for a valid public purpose. If Lessor terminates the lease prior to expiration of the 5 year term in Paragraph 2., Lessor shall compensate Lessee on a prorated basis of the actual cost to make such improvements to the premises.

9. Compliance with Laws. Lessee agrees not to violate any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the leased premises.

10. Non-Waiver. It is agreed that the failure of Lessor to invoke any of the available remedies under this lease or under law in the event of one or more breaches or defaults by Lessee under the lease shall not be construed as a waiver of such provisions and conditions and shall not prevent Lessor from invoking such remedies in the event of any future breach or default.

11. Insurance. Lessee shall be solely responsible for maintaining insurance on any improvements made to the leased premises, as well as for general public liability insurance.

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

13. Severability. Each paragraph of this lease agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs will remain in full force and effect.

14. Interpretation. This lease agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

15. Entire Agreement. This lease agreement 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 understandings of any kind between the parties relating to the subject matter hereof. This agreement may be executed in all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this \_\_\_\_ day of \_\_\_\_\_, 2000.

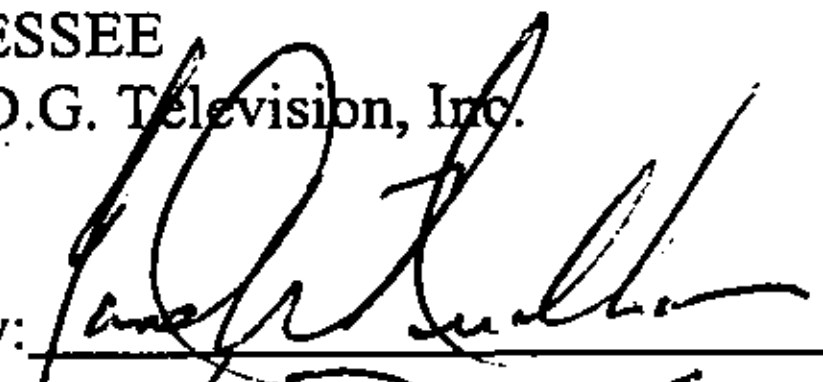
LESSOR  
City of Fayetteville, Arkansas

By: \_\_\_\_\_  
Fred Hanna, Mayor

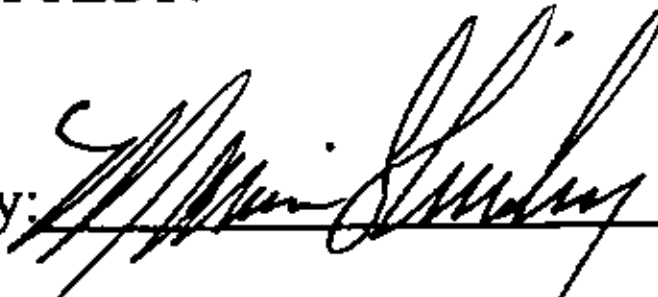
ATTEST:

By: \_\_\_\_\_  
Heather Woodruff, City Clerk

LESSEE  
J.D.G. Television, Inc.

By:   
Title: Vice Pres. / Gen. Mgr.

ATTEST:

By:   
Title: \_\_\_\_\_

TRANSFORMER

DISH SCREEN/AWNING

TRANSFORMER



APPROX. 5'-7"

4'-3"

30'-9"

C.L. POST

70'-0"

30'-9"

4'-3"

GREATER THAN 30'-0"

APPR. 20'-0"

25'-0"

2

4

6

8

10

12

1

3

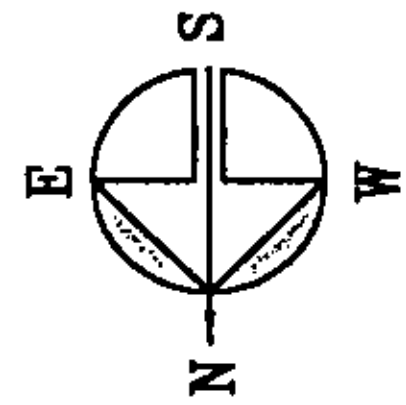
5

7

9

11

13



# SITE PLAN

SCALE: 1" = 10'

NOTE:  
RELOCATE OR REPLACE  
EXISTING TREES PER THE  
DIRECTIONS OF THE LANDSCAPE  
COORDINATOR.



**TENTATIVE AGENDA  
CITY COUNCIL  
JULY 5, 2000**

A meeting of the Fayetteville City Council will be held on Wednesday, July 5, 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 City Council minutes from the meetings of June 1, June 6, and June 20, 2000.
2. **BID 00-48:** A resolution awarding Bid 00-48 to Chris King Electric for electrical services for the remainder of the year 2000 with five one year renewal options.
3. **BID 00-49:** A resolution awarding Bid 00-49 to Synthetic Designs Stucco for the Engineering Building at 125 W. Mountain Street in the amount of \$45,900.00 plus a 10% contingency of \$4,590.00.
4. **BID 00-50:** A resolution awarding Bid 00-50 in the amount of \$26,860.00 with a 10% contingency to Airworks a Division of Multi-Craft Inc. for the installation of Phase II HVAC System, City Prosecutor's Office and the Jail.
5. **DICKSON STREET:** A resolution approving Change Order No. 2 (Final) in connection with the Dickson Street Water and Sewer Relocations in the amount of \$46,279.00 and a budget adjustment.
6. **T-HANGARS:** A resolution awarding a contract to Harrison Davis Construction, Inc. in the amount of \$489,865.50 with a 10% contingency for the construction of two eight-bay T-Hangars at Drake Field and approval of a budget adjustment.
7. **SHILOH DRIVE:** A resolution approving a letter contract in the amount of \$5,000.00 with Milholland Company for engineering design, construction staking, construction management, and as-built drawings for the reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the CMN property line and the intersection with Northwood Avenue

## **B. OLD BUSINESS**

1. **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 second reading at the June 20, 2000 meeting.

## **C. NEW BUSINESS**

1. **VA 00-4.00:** An ordinance approving vacation request VA 00-4.00 submitted by Henry Kelly, Jr. of Millsap Road Investments for property located at 665 Millsap Road, Lot 9 of CMN Business Park Phase I. The property is zoned C-2, Thoroughfare Commercial and contains approximately 2.58 acres. The request is to vacate a portion of an existing water line easement within lot 19.
2. **VA 00-5.00:** An ordinance approving vacation request VA 00-5.00 submitted by Harvey Luttrell on behalf of Wiggins Memorial United Methodist Church for property located at 205 W. 6<sup>th</sup> Street. The property is zoned R-2, Medium Density Residential and contains approximately 0.18 acres. The request is to vacate a portion of the City right-of-way.
3. **VA 00-6:** An ordinance approving vacation request VA 00-6.00 submitted by Joe and Angela Stevens for property located on Old Farmington Road between Beechwood and Eastern. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately .23 acres. The request is to vacate a portion of Old Farmington Road.
4. **AD 00-8.00:** An ordinance for AD 00-8.00, Administrative Item Amendment to Chapter 162 "Use Unite" of the Unified Development Ordinance, Section 162.01 "Establishment and Listing" to allow additional retail uses in the C-1 Neighborhood Commercial District.
5. **RZ 00-16.00:** An ordinance approving rezoning request RZ 00-16.00, submitted by Arden Gale for property located at 1530 Albright Road. The property is zoned A-1, Agricultural and contains approximately 4.21 acres. The request is to rezone to R-1, Low Density Residential.
6. **RZ 00-17.00:** An ordinance approving rezoning request RZ 00-17.00 submitted by Northstar Engineering on behalf of Emad Damen for property located at 2323 Deane Street. The property is zoned R-1, Low Density Residential and contains approximately 1.47 acres. The request is to9 rezone to R-2, Medium Density Residential.



7. **RZ 00-18.00:** An ordinance approving rezoning request RZ 00-18.00, submitted by Richard Grubbs on behalf of Tommy and Jodi Holland and Richard and Mary Osborne for property located on east Appleby. The property is zoned R-1.5, Moderate Density Residential and contains approximately 2.5 acres. The request is to rezone to R-O, Residential Office.
8. **AD 98-8.00:** An ordinance approving AD 98-8.00, Administrative amendment to Chapter 172 "Parking and Loading" of the Unified Development Ordinance, Section 172.01 (D)(1) "Standards for the Number of Spaces by Use- Off Street Parking" to revise the required parking for eating places (restaurants).
9. **SHILOH DRIVE:** 1) An ordinance approving a bid waiver with McClinton-Anchor, to allow the reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the new Shiloh Drive extension at the CMN property line, including the radius and intersection of Northwood Avenue; 2) Approval of a construction contract with McClinton-Anchor in the estimated amount of \$43,300.00 for the above described street reconstruction; 3) Approval of a 15% project contingency of \$6,495.00 for material/construction testing and variations in final quantities.

Monday, July 3, 2000

Northwest Arkansas TIMES A7



## CITY OF FAYETTEVILLE CITY COUNCIL FINAL AGENDA

A meeting of the Fayetteville City Council will be held on  
Wednesday, July 5, 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 MINUTES:** Approval of City Council minutes from the meetings of June 1 and June 6, 2000 minutes.
2. **BID 00-48:** A resolution awarding Bid 00-48 to Chris King Electric for electrical services for the remainder of the year 2000 with five one-year renewal options.
3. **BID 00-49:** A resolution awarding Bid 00-49 to Synthetic Designs Stucco for the Engineering Building at 125 W. Mountain Street in the amount of \$45,900.00 plus a 10% contingency of \$4,590.00.
4. **BID 00-50:** A resolution awarding Bid 00-50 in the amount of \$26,860.00 with a 10% contingency to Airworks a Division of Multi-Craft, Inc. for the installation of Phase II HVAC System, City Prosecutor's Office and the Jail.
5. **DICKSON STREET:** A resolution approving Change Order No. 2 (Final) in connection with the Dickson Street Water and Sewer Relocations in the amount of \$46,279.00 and a budget adjustment.
6. **T-HANGARS:** A resolution awarding a contract to Harrison Davis Construction, Inc. in the amount of \$489,865.50 with a 15% contingency for the construction of two eight-bay T-Hangars at Drake Field and approval of a budget adjustment.
7. **J.D.G. TELEVISION:** A resolution approving a lease agreement with J.D.G. Television, Inc. to lease an area that contains thirteen parking spaces in the Fayetteville Municipal Parking Lot located west of the Campbell Bell Building between Mountain, Church, and Center Streets. This lease agreement will allow J.D.G. Television, Inc. to construct a covered parking canopy for thirteen employee parking spaces and will be designed to incorporate and screen three proposed satellite 'receive only' dishes.

### B. OLD BUSINESS

1. **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 second reading at the June 20, 2000 meeting.

### C. NEW BUSINESS

1. **CITY TRAILS:** Presentation from Chuck Rutherford on the city's trials.
2. **CENTER PRAIRIE TRAIL:** A resolution approving the purchase of an abandoned railroad right-of-way in the amount of \$50,000 with the intent to build a multi-use trail within the abandoned railroad right-of-way between Prairie Street and Walton Art Center parking lot.
3. **VA 00-4.00:** An ordinance approving vacation request VA 00-4.00 submitted by Henry Kelly, Jr. of Millsap Road Investments for property located at 665 Millsap Road, Lot 19 of CMN Business Park Phase I. The property is zoned C-2, Thoroughfare Commercial and contains approximately 2.58 acres. The request is to vacate a portion of an existing water line easement within lot 19.
4. **VA 00-5.00:** An ordinance approving vacation request VA 00-5.00 submitted by Harvey Luttrell on behalf of Wiggins Memorial United Methodist Church for property located at 205 W. 6th Street. The property is zoned R-2, Medium Density Residential and contains approximately 0.18 acres. The request is to vacate a portion of the City right-of-way.
5. **VA 00-6.00:** An ordinance approving vacation request VA 00-6.00 submitted by Joe and Angela Stevens for property located on Old Farmington Road between Beechwood and Eastern. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately .23 acres. The request is to vacate a portion of Old Farmington Road.
6. **AD 00-8.00:** An ordinance for AD 00-8.00, Administrative Item Amendment to Chapter 162 "Use Units" of the Unified Development Ordinance, Section 162.01 "Establishment and Listing" to allow additional retail uses in the C-1 Neighborhood Commercial District.
7. **RZ 00-16.00:** An ordinance approving rezoning request RZ 00-16.00, submitted by Arden Gale for property located at 1530 Albright Road. The property is zoned A-1, Agricultural and contains approximately 4.21 acres. The request is to rezone to R-1, Low Density Residential.
8. **RZ 00-17.00:** An ordinance approving rezoning request RZ 00-17.00 submitted by Northstar Engineering on behalf of Emad Damen for property located at 2323 Deane Street. The property is zoned R-1, Low Density Residential and contains approximately 1.47 acres. The request is to rezone to R-2, Medium Density Residential.
9. **RZ 00-18.00:** An ordinance approving rezoning request RZ 00-18.00, submitted by Richard Grubbs on behalf of Tommy and Jodi Holland and Richard and Mary Osborne for property located on east Appleby. The property is zoned R-1.5, Moderate Density Residential and contains approximately 2.5 acres. The request is to rezone to R-0, Residential Office.
10. **AD 98-8.00:** An ordinance approving AD 98-8.00, Administrative amendment to Chapter 172 "Parking and Loading" of the Unified Development Ordinance, Section 172.01 (D) (1) "Standards for the Number of Spaces by Use-Off Street Parking" to revise the required parking for eating places (restaurants).
11. **SHILOH DRIVE:** 1) An ordinance approving a bid waiver with McClinton-Anchor, to allow the reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the new Shiloh Drive extension at the CMN property line, including the radius and intersection of Northwood Avenue; 2) Approval of a construction contract with McClinton-Anchor in the estimated amount of \$43,300.00 for the above described street reconstruction; 3) Approval of a 15% project contingency of \$6,495.00 for material/construction testing and variations in final quantities.
12. **SHILOH DRIVE:** A resolution approving a letter contract in the amount of \$5,000.00 with Milholland Company for engineering design, construction staking, construction management, and as-built drawings for the reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the CMN property line and the intersection with Northwood Avenue.
13. **SALES TAX FOR LIBRARY:** Consideration of an ordinance levying a one cent sales tax for a period of eighteen months for the consideration of a new Fayetteville Library and setting an election therefore.
14. **FIRE WORKS:** An ordinance allowing Tyson Foods to use fireworks for the singular occasion of their 65th anniversary celebration at the Washington County Fair Grounds on July 27, 2000.