FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

SPECIAL CITY COUNCIL
AGENDA
JULY 30, 2002

A special meeting of the Fayetteville City Council will be held on July 30, 2002 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

1. **WATER SERVICE AREA:** A resolution to modify the existing exclusive water service area line between Fayetteville and Springdale to transfer approximately 340 acres in the City of Johnson into Springdale's service area. The item was tabled at the July 16, 2002 meeting.

2. **IMPACT FEE STUDY:** Duncan Associates presentation of the Final Impact Fee Study: Wastewater, Water, and Roads, including update of the existing Parkland Dedication and Fee-in-Lieu requirements.

113 WEST MOUNTAIN 72701 479-521-7700
FAX 479-575-8257

From: Carole Jones <cjones@mcclelland-engrs.com>
To: Gary Dumas <gdumas@ci.fayetteville.ar.us>
Date: 8/14/02 11:19AM
Subject: Revised Cost Estimates

Gary:

Please find attached the revised cost estimates. Please note that the TOTAL for the No Impact Option was WRONG on the other estimate that I gave you before. I am very sorry about this! The formula in the cell was incorrect & I caught it today when I checked it by hand. I thought I had checked it by hand before, but I guess I missed it. Unfortunately, the cost for the No Impact Option is LESS than what we gave the council before. Again, I am very sorry about this.

Please feel free to call if you have any questions. If these look like what you're after, please notify me by phone or e-mail & I will bring hard copies to you.

Thank you,
Carole
MCE

CC: Joe Tarvin <jtarvin@mcclelland-engrs.com>, Johnny Quinn <jquinn@mcclelland-engrs.com>

PRELIMINARY COST ESTIMATE
WILSON SPRING BUSINESS TECHNOLOGY PARK
No Impact Option
FY022108
August 14, 2002

Item	Quantity	Unit	Unit Price	Extended
General:				
Mobilization	1	LS	$5,000.00	$5,000.00
Trenching and Safety	1	LS	$500.00	$500.00
Erosion Control	1	LS	$100,000.00	$100,000.00
Clearing and Grubbing	1	LS	$3,500.00	$3,500.00
			Subtotal	$109,000.00
Street Construction:				
33' Collector Street	3040	LF	$291.00	$884,640.00
25' Local Street	3440	LF	$243.00	$835,920.00
24" CMP	840	LF	$31.00	$26,040.00
Headwalls	14	EA	$1,000.00	$14,000.00
Street Lighting	22	EA	$2,500.00	$55,000.00
Electrical Service	1	LS	$4,000.00	$4,000.00
Street Striping - 4" white edges	12960	LF	$3.50	$45,360.00
Signage	1	LS	$2,500.00	$2,500.00
Retaining Wall	1	LS	$84,000.00	$84,000.00
Boulevard Entrance off Shiloh	200	LF	$400.00	$80,000.00
			Subtotal	$2,031,460.00
Sidewalks:				
Compacted Hillside/ Embankment	500	CY	$15.00	$7,500.00
Concrete Sidewalk (10' x 6")	6400	LF	$30.50	$195,200.00
Earthwork for Swale Crossings	9	EA	$1,500.00	$13,500.00
24" CMP	360	LF	$31.00	$11,160.00
			Subtotal	$227,360.00
Sewer:				$1,163,200.00
Water:				$708,000.00
Total				$4,239,020.00
Contingency (20%)				$847,804.00
Construction Cost				$5,086,824.00
Mitigation Cost				$0.00
Total Project Cost				**$5,086,824.00**

PRELIMINARY COST ESTIMATE
WILSON SPRING BUSINESS TECHNOLOGY PARK
0.5-Acre Impact Option
CITY OF FAYETTEVILLE
FY022108
August 14, 2002

Item	Quantity	Unit	Unit Price	Extended
General:				
Mobilization	1	LS	$5,000.00	$5,000.00
Trenching and Safety	1	LS	$500.00	$500.00
Erosion Control	1	LS	$100,000.00	$100,000.00
Clearing and Grubbing	1	LS	$5,000.00	$5,000.00
			Subtotal	$110,500.00
Street Construction:				
33' Collector Street	5360	LF	$291.00	$1,559,760.00
25' Local Street	6080	LF	$243.00	$1,477,440.00
24" CMP	1860	LF	$31.00	$57,660.00
Headwalls	31	EA	$1,000.00	$31,000.00
Street Lighting	39	EA	$2,500.00	$97,500.00
Electrical Service	1	LS	$5,000.00	$5,000.00
Street Striping - 4" white edges	22880	LF	$3.50	$80,080.00
Signage	1	LS	$5,000.00	$5,000.00
Retaining Wall	1	LS	$84,000.00	$84,000.00
Boulevard Entrance off Shiloh	200	LF	$400.00	$80,000.00
			Subtotal	$3,477,440.00
Bridges:				
100' Clear Span - 13' wide with 8' sidewalk on one side	2100	SF	$70.00	$147,000.00
50' Clear Span - 33' wide with 8' sidewalk on one side	2050	SF	$85.00	$174,250.00
			Subtotal	$321,250.00
Sidewalks:				
Compacted Hillside/ Embankment	700	CY	$15.00	$10,500.00
Concrete Sidewalk (10' x 6")	11200	LF	$30.50	$341,600.00
Earthwork for Swale Crossings	12	EA	$1,500.00	$18,000.00
18" CMP	120	LF	$25.00	$3,000.00
24" CMP	440	LF	$31.00	$13,640.00
			Subtotal	$386,740.00
Sewer:				$1,153,000.00
Water:				$1,224,000.00
Total				$6,672,930.00
Contingency (20%)				$1,334,586.00
Construction Cost				$8,007,516.00
Mitigation Cost		Est.		$6,250.00 to $12,500.00
Total Project Cost			**$8,013,766.00 to $8,020,016.00**	

PRELIMINARY COST ESTIMATE
WILSON SPRING BUSINESS TECHNOLOGY PARK
17-Acre Impact Option
CITY OF FAYETTEVILLE
FY022108
August 14, 2002

Item	Quantity	Unit	Unit Price	Extended
General:				
Mobilization	1	LS	$5,000.00	$5,000.00
Trenching and Safety	1	LS	$500.00	$500.00
Erosion Control	1	LS	$100,000.00	$100,000.00
Clearing and Grubbing	1	LS	$5,000.00	$5,000.00
			Subtotal	$110,500.00
Street Construction:				
33' Collector Street	4960	LF	$291.00	$1,443,360.00
25' Local Street	6520	LF	$243.00	$1,584,360.00
24" CMP	1860	LF	$31.00	$57,660.00
Headwalls	31	EA	$1,000.00	$31,000.00
Street Lighting	39	EA	$2,500.00	$97,500.00
Electrical Service	1	LS	$5,000.00	$5,000.00
Street Striping - 4" white edges	22960	LF	$3.50	$80,360.00
Signage	1	LS	$5,000.00	$5,000.00
Retaining Wall	1	LS	$84,000.00	$84,000.00
Boulevard Entrance off Shiloh	200	LF	$400.00	$80,000.00
			Subtotal	$3,468,240.00
Bridges:				
100' Clear Span - 13' wide with 8' sidewalk on one side	2100	SF	$70.00	$147,000.00
50' Clear Span - 33' wide with 8' sidewalk on one side	2050	SF	$85.00	$174,250.00
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Sidewalks:				
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24" CMP	440	LF	$31.00	$13,640.00
			Subtotal	$386,740.00
Sewer:				$1,153,000.00
Water:				$1,224,000.00
Total				$6,663,730.00
Contingency (20%)				$1,332,746.00
Construction Cost				$7,996,476.00
Mitigation Cost		Est.	$212,500.00 to $425,000.00	
Total Project Cost			**$8,208,976.00 to $8,421,476.00**	

August 7, 2002

Job No. FY022108

Mr. Gary Dumas
City of Fayetteville
113 W. Mountain
Fayetteville, AR 72701

FOR: **Engineering Services**
Preliminary Plat & Infrastructure Design
Wilson Spring Business Technology Park

Not To Exceed **$128,158.00**

Description			Estimated to Be Fee		Fee Billed to Date
1. Team Planning and Coordination Meetings:			***$6,875.00***		
Project Director	7.00 Hours @	$104.00 /HR		$728.00	
Principal Engineer	15.50 Hours @	$96.00 /HR		$1,488.00	
Project Engineer	15.50 Hours @	$58.00 /HR		$899.00	
Lunch for Team Meeting				$62.17	
					$3,177.17
2. Preparation for and Presentations at Public Meetings:			***$4,461.00***		
Project Director	2.50 Hours @	$104.00 /HR		$260.00	
Principal Engineer	88.25 Hours @	$96.00 /HR		$8,472.00	
Project Engineer	167.50 Hours @	$58.00 /HR		$9,715.00	
Computer Technician	12.75 Hours @	$53.00 /HR		$675.75	
CADD Technician II	0.50 Hours @	$47.00 /HR		$23.50	
CADD Technician I	74.00 Hours @	$30.00 /HR		$2,220.00	
Miscellaneous Expenses				$22.22	
					$21,388.47
3. Field trip to Observe a Similar Preserved Wetlands Project:			***$1,380.00***		
Principal Engineer	8.00 Hours @	$96.00 /HR		$768.00	
Project Engineer	8.00 Hours @	$58.00 /HR		$464.00	
Lunch				$67.12	
Toll Charges to Tulsa				$4.50	
Mileage	200.00 Miles @	$0.34 /Mile		$68.00	
					$1,371.62
			Total		**$25,937.26**

PRELIMINARY COST ESTIMATE
I-540 BUSINESS TECHNOLOGY PARK
No Impact Option
FY022108
14-May-02

Item	Quantity	Unit	Unit Price	Extended
General:				
Mobilization	1	LS	$5,000.00	$5,000.00
Trenching and Safety	1	LS	$500.00	$500.00
Erosion Control	1	LS	$100,000.00	$100,000.00
Clearing and Grubbing	1	LS	$3,500.00	$3,500.00
			Subtotal	$109,000.00
Street Construction:				
33' Collector Street	3040	LF	$291.00	$884,640.00
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24" CMP	360	LF	$31.00	$11,160.00
			Subtotal	$227,360.00
Sewer:				$1,163,200.00
Water:				$708,000.00
			Total	$4,965,940.00
			Contingency (20%)	$993,188.00
			Total	**$5,959,128.00**

PRELIMINARY COST ESTIMATE
I-540 BUSINESS TECHNOLOGY PARK
0.5-Acre Impact Option
CITY OF FAYETTEVILLE
FY022108
14-May-02

Item	Quantity	Unit	Unit Price	Extended
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17-Acre Impact Option
CITY OF FAYETTEVILLE
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			Contingency (20%)	$1,332,746.00
			Total	**$7,996,476.00**

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TO:	Mayor Dan Coody Fayetteville City Council Press
FROM:	Hugh Earnest, Urban Development Director Tim Conklin, City Planner, AICP
DATE:	July 22, 2002
SUBJECT:	Special City Council Meeting – Final Impact Fee Study Presentation

Special City Council Meeting

Duncan Associates
Presentation of the Final Impact Fee Study:

Wastewater, Water, and Roads

Including an Update of the Existing Parkland Dedication and Fee-in-Lieu Requirements

By

James B. Duncan, FAICP
Eric Damian Kelly, Esq., FAICP

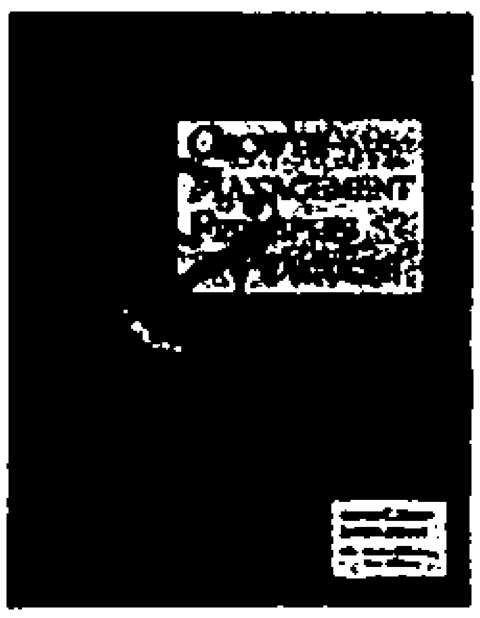
Date:	**July 30, 2002**
Time:	**6:30 p.m. (After City Council Agenda Session)**
Location:	**Room 219, Council Room** **City Administration Building** **113 W. Mountain Street** **Fayetteville, AR 72701**

For more information please contact Tim Conklin, City Planner, at 575-8264. The final study is available on the City's website at www.accessfayetteville.org and in the Planning Division.

James B. Duncan, FAICP
President

Mr. Duncan, a past president of the American Planning Association, is one of the nation's leading urban planning and growth management practitioners. His career as a city planner has spanned almost four decades of service to more than 150 cities, counties, regions and states throughout the nation. During his career, he has also held several key public sector positions, including director of land development services for the City of Austin; director of growth management for the City of Hollywood, Florida; director of development management for Broward County, Florida; and chief of local planning services for Dade County, Florida.

Throughout his career, Mr. Duncan has focused his primary interests and energies on the development of innovative growth management techniques, the streamlining of land-use controls and the advancement of development impact assessment methodologies. He has prepared a series of award-winning comprehensive plans and development codes that were honored by the Florida, Texas and Louisiana Chapters of the American Planning Association. Mr. Duncan served as a growth management advisor to two Florida Governors, co-wrote the nation's first state impact fee enabling act (Texas), prepared one of the first comprehensive plans to embody the dual concepts of consistency and concurrency, and introduced many user-friendly, easy-find techniques to simplify regulations.



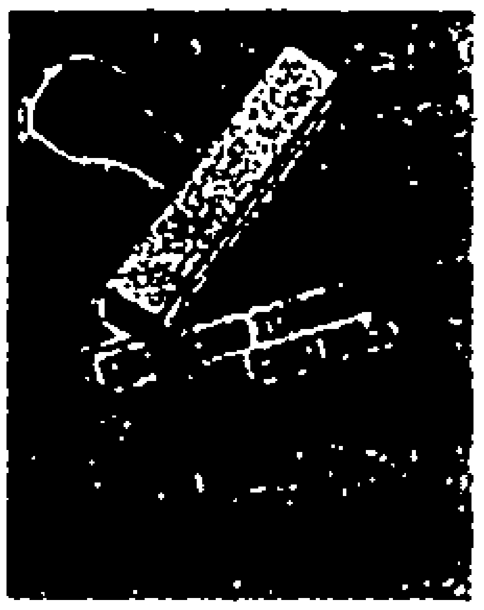
For APA, Mr. Duncan has also served as vice-chair of its Chapter Presidents Council, as president of its Florida chapter, as professional development liasion of its Texas chapter; and as a member of its national governance committee. Mr. Duncan is the co-author of the best-selling APA publication, **GROWTH MANAGEMENT PRINCIPLES AND PRACTICES**, and a frequent conference speaker on growth management, land-use regulations, infrastructure financing and impact fees. While in south Florida, he also served as an adjunct professor of city planning at Florida Atlantic University; and as vice chair of the planning and zoning board and chair of the code enforcement board for the City of Davie.

Education:	M.S. Regional and City Planning, 1965 UNIVERSITY OF OKLAHOMA B.A. Journalism and Political Science, 1961 UNIVERSITY OF TEXAS AT AUSTIN
Certification:	College of Fellows, American Institute of Certified Planners

Eric Damian Kelly, Esq., FAICP

Vice-President

Dr. Kelly, one of the nation's foremost land-use attorneys and growth management specialists, and a noted specialist in the areas of sign regulations and zoning enforcement. A long-time informal associate of Duncan Associates, he formally joined the firm as an officer and shareholder in 1999. He is a former dean of the College of Architecture and Urban Planning at Ball State, where he still teaches several urban planning courses, while engaging in an active consultant role with Duncan Associates.



Dr. Kelly has personally drafted sign controls for numerous cities, including current assignments for Cary, North Carolina and Fort Lauderdale, Florida. He also recently completed a detailed study of sexually-oriented businesses for Kansas City, including an analysis of ordinances in 20 other cities and counties. He first participated in drafting development regulations as vice president of a Philadelphia firm that developed the innovative "Impact Zoning" concept during the early 1970s. He then went on to establish his own land use law firm in Colorado in 1976 and operated it until 1990, when he accepted a full-time faculty position at Iowa State University. He has prepared new land-use controls for local governments in over 25 states and has conducted many training sessions for public officials.

Dr. Kelly is general editor of the 10-volume Matthew Bender series on ZONING AND LAND USE CONTROLS. Other publications include MANAGING COMMUNITY GROWTH (Preager, 1993), the "Zoning" chapter in the ICMA "Planner's Greenbook;" Planning Advisory Service reports on zoning enforcement and adequate public facilities; and numerous articles on growth management. He is the author of recent articles on the "taking" issue and the treatment of cellular towers and satellite dishes under local ordinances. Dr. Kelly received the Colorado APA chapter's award for "Outstanding Service and Educational Leadership" in 1989, and the University of Pennsylvania listed him among its "100 Graduates Who Epitomize Our Future." He, like long-time friend and colleague Jim Duncan, is one of 46 people selected as the first members of the College of Fellows of the American Institute of Certified Planners (FAICP).

Education: Ph.D. in Public Policy, 1992
THE UNION INSTITUTE
Juris Doctor and Master of City Planning, 1975
UNIVERSITY OF PENNSYLVANIA
B.A. in political economy, 1969
WILLIAMS COLLEGE

Affiliations: American Bar Association
College of Fellows, American Institute of Certified Planners

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

SPECIAL CITY COUNCIL
AGENDA
JULY 30, 2002

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PASS

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2. **IMPACT FEE STUDY:** Duncan Associates presentation of the Final Impact Fee Study: Wastewater, Water, and Roads, including update of the existing Parkland Dedication and Fee-in-Lieu requirements.

113 WEST MOUNTAIN 72701 479-521-7700
FAX 479-575-8257

LEGEND

- EXISTING SANITARY SEWER
- EXISTING WATER LINE
- EXISTING SWEPT EASEMENT
- FIBER OPTIC CONNECTION
- WOODLAND AREA
- PROPOSED STREET CENTERLINE
- PROPOSED STREET
- PROPOSED STREET RIGHT OF WAY
- 100 YR. FLOOD PLAIN
- 500 YR. FLOOD PLAIN
- EXISTING WETLANDS PRESERVED
- PROPOSED DEVELOPMENT AREA
- PROPOSED BUFFER AREA

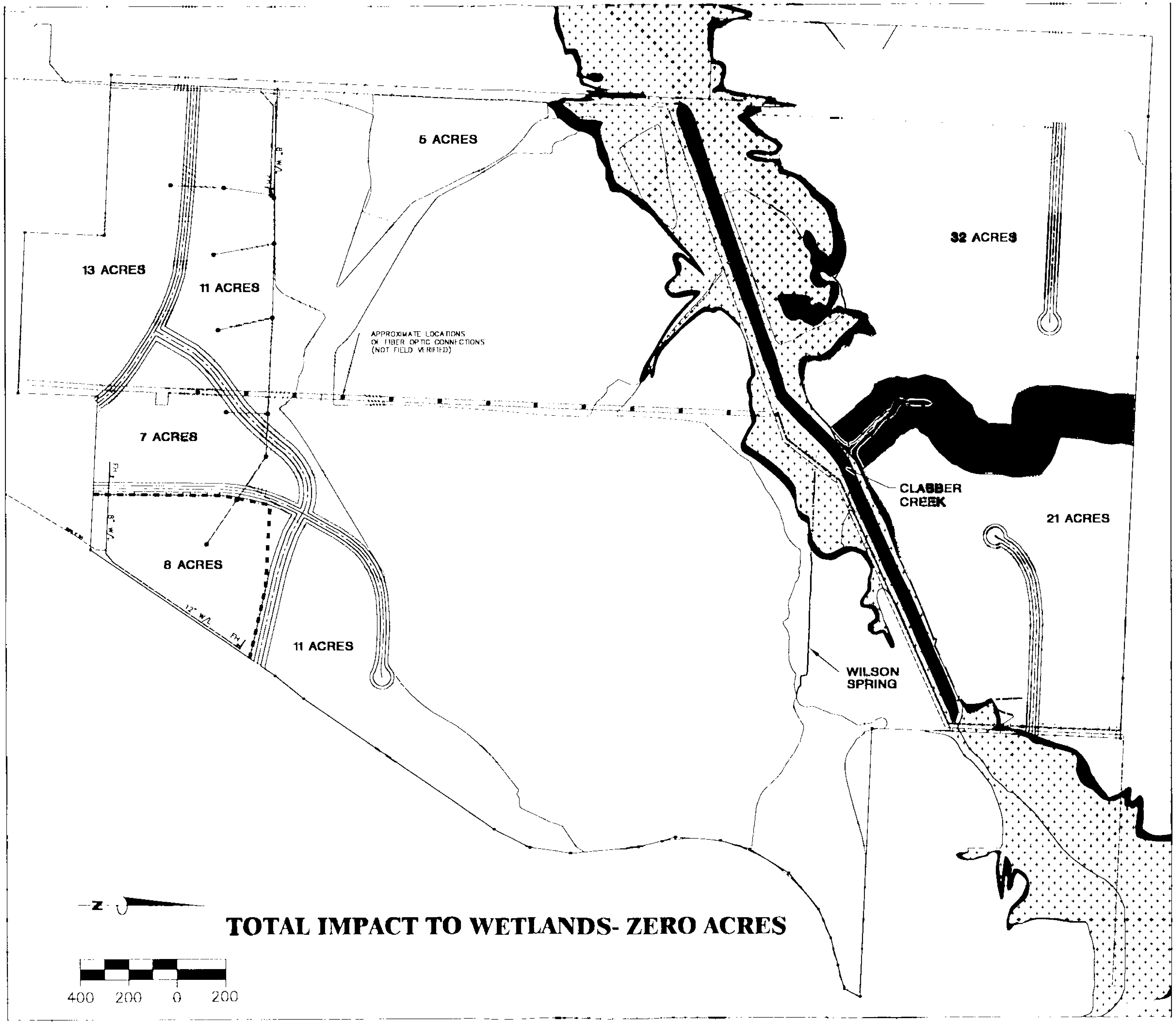
COLLECTOR STREETS
33' PAVEMENT
70' RIGHT OF WAY

LOCAL STREETS
25' PAVEMENT
50' RIGHT OF WAY

AREA SOUTH OF CREEK
AREA= ± 55 ACRES

AREA NORTH OF CREEK
AREA= ± 53 ACRES

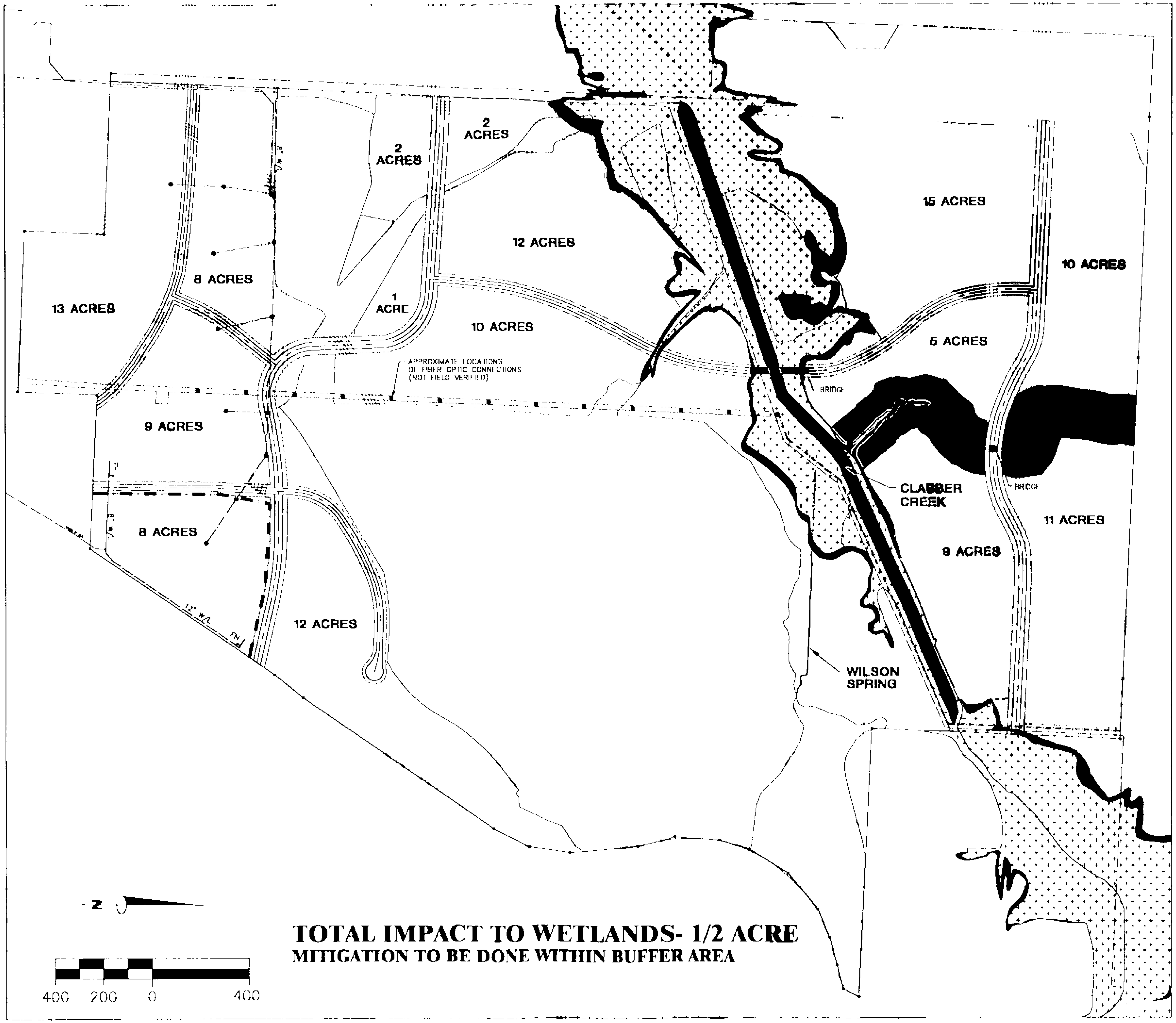
APPROXIMATE DEVELOPMENT
AREA= ± 108 ACRES



TOTAL IMPACT TO WETLANDS- ZERO ACRES

MCE Designed To Serve
McClelland
Consulting
Engineers
Incorporated

ColorNoImpact.dwg



LEGEND

EXISTING SANITARY SEWER
EXISTING WATER LINE
EXISTING SWEPCO EASEMENT
FIBER OPTIC CONNECTION
WOODLAND AREA
PROPOSED STREET CENTERLINE
PROPOSED STREET
PROPOSED STREET RIGHT OF WAY
100 YR. FLOOD PLAIN
500 YR. FLOOD PLAIN
EXISTING WETLANDS - PRESERVED
PROPOSED DEVELOPMENT AREA
PROPOSED BUFFER AREA

COLLECTOR STREETS
33' PAVEMENT
70' RIGHT OF WAY

LOCAL STREETS
25' PAVEMENT
50' RIGHT OF WAY

AREA SOUTH OF CREEK
AREA ± 77 ACRES

AREA NORTH OF CREEK
AREA ± 50 ACRES

APPROXIMATE DEVELOPMENT
AREA ± 127 ACRES

TOTAL IMPACT TO WETLANDS- 1/2 ACRE
MITIGATION TO BE DONE WITHIN BUFFER AREA

McClelland Consulting Engineers Incorporated
Designed to Serve

colorInBetw.dwg

LEGEND

EXISTING SANITARY SEWER
EXISTING WATER LINE
EXISTING SWBT EASEMENT
FIBER OPTIC CONNECTION
WOODLAND AREA
PROPOSED STREET CENTERLINE
PROPOSED STREET
PROPOSED STREET RIGHT OF WAY

100 YR. FLOOD PLAIN
500 YR. FLOOD PLAIN
EXISTING WETLANDS - PRESERVED
PROPOSED DEVELOPMENT AREA
PROPOSED MITIGATION AREAS

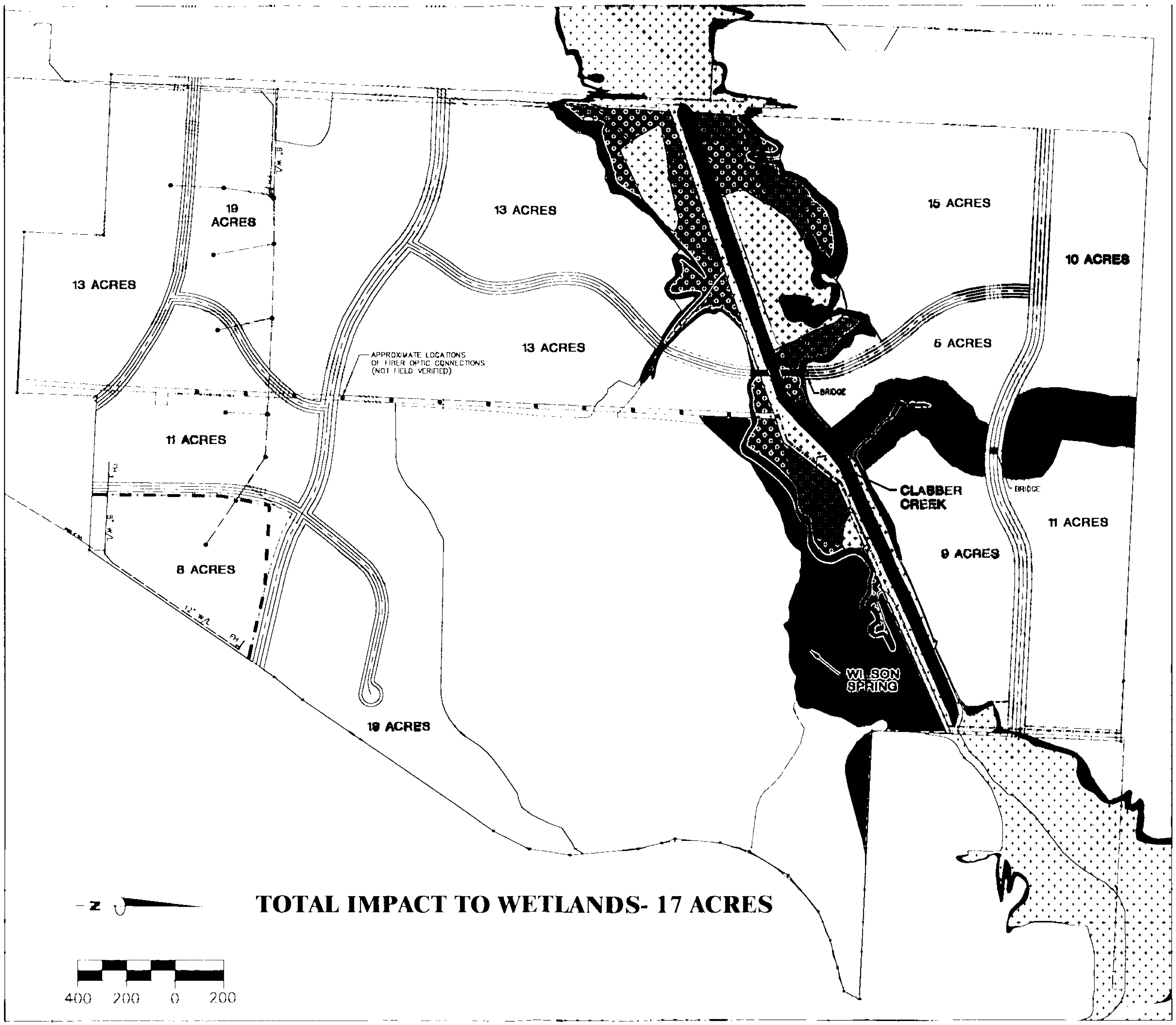
COLLECTOR STREETS
33' PAVEMENT
70' RIGHT OF WAY

LOCAL STREETS
25' PAVEMENT
50' RIGHT OF WAY

AREA SOUTH OF CREEK
AREA= ± 96 ACRES

AREA NORTH OF CREEK
AREA= ± 50 ACRES

APPROXIMATE DEVELOPMENT
AREA ± 146 ACRES



TOTAL IMPACT TO WETLANDS- 17 ACRES

McClelland Consulting Engineers Incorporated
Designed To Serve

Color17AcreImpact.dwg

Springdale Water Utilities
526 Oak Avenue P.O. Box 769 Springdale, Arkansas 72765-0769 (479) 751-5751

RECEIVED
JUL 19 2002
CITY OF FAYETTEVILLE
MAYOR'S OFFICE

HAND DELIVERY

July 18, 2002

Mr. Greg Boettcher, P.E.
Public Works Director
City of Fayetteville, Arkansas
113 West Mountain
Fayetteville, Arkansas 72701

RE: Water Service Boundary
Fayetteville/Springdale

Dear Mr. Boettcher:

Reference is made to your letter of July 15, 2002, concerning a proposed amendment to the current water service boundary between the cities of Springdale and Fayetteville. As indicated, the developer of Clear Creek Club Subdivision is requesting water and sanitary sewer services from Springdale Water Utilities even though a portion of the property is located within the designated water service area of Fayetteville. This request is being made since the developer was led to believe sanitary sewer service could not be obtained from the City of Fayetteville and due to the fact that the proposed development will encompass land that is in the service areas of both cities. It certainly makes sense for each development to be provided both water and sewer services from one source.

In past years, our respective cities have worked together to amend the water service boundary whenever it became necessary to accommodate water service for property owners. Indications are that Fayetteville initially provided water service to the City of Johnson; however, the boundary map attached to the 1967 Beaver Water District Memorandum of Understanding clearly shows the City of Johnson to be in the Springdale service area. Please note on the attachment that a portion of the Springdale service area dips south of Clear Creek in Sections 22 and 27 which more than likely coincided with the Johnson city limits that existed back in 1967. Obviously, the boundary line was amended at some point in time allowing Fayetteville to serve that portion of Johnson lying south of Clear Creek. Our files do not indicate when this happened, and it might have well been an informal agreement between the cities that was never recorded. Knowing this area was being served by Fayetteville, we formally adjusted the boundary line in 1996 when the two cities jointly acquired the White River Rural Water System in order to delineate service areas that were not covered in the BWD Memorandum. The adjusted boundary line also reflected amendments that were made allowing Springdale to provide needed water service to the Washington County United Way office on Highway 265 and to residents along Albright Road. Although these areas were in the Fayetteville service area, water service was easily attainable from Springdale due to the existence of water lines that were already in place, eliminating costly water line extensions of several hundred feet to the nearest Fayetteville water main.

Rather than establishing a bank of territory credits, it is hoped that the two cities can continue to work together and consider the merits of a boundary amendment on a case by case basis. This concept has worked well in the past. Collectively, it is our common goal to provide water service to as many customers as possible with existing facilities and to assist property owners whenever possible to reduce their cost of obtaining water service.

Your suggestion to meet and evaluate other areas where an amendment is needed is an excellent idea and we welcome that opportunity. In that regard we have prepared a larger map showing the current water service areas with indication of the proposed boundary amendment for the Clear Creek Club Subdivision. A copy of the map is being provided for your review. It would be helpful if we could indicate the size and location of existing water mains of the respective cities on the map to identify areas where the water service boundary should be evaluated for amendment. A "meeting of the minds" could also reveal planning for specific areas where future water <u>and</u> sewer improvements are proposed.

I understand a special meeting of the Fayetteville City Council has been scheduled in a couple of weeks to consider the boundary amendment. Therefore, time is of the essence and we need to meet as soon as possible. Please call me at your earliest convenience to set a time and date for the meeting.

Very truly yours,

Rene Langston

Attachment

CC: Springdale Water & Sewer Commission
Mayor Jerre Van Hoose
Mayor Dan Coody
Mr. Brandon Rogers
Mr. Kit Williams
Mr. Charles Harwell

'FAYETTEVILLE

CITY OF FAYETTEVILLE, ARKANSAS

July 15, 2002

Mr. Rene Langston
Springdale Utilities
P.O. Box 769, 525 Oak Avenue
Springdale, AR 72765-0769

RE: **Clear Creek Club Subdivision – Johnson
Water Service Territory Amendment**

Dear Mr. Langston:

On July 16, 2002 the Fayetteville City Council is expected to approve a resolution amending the water service boundary agreement between Springdale and Fayetteville. In essence, this amendment shall transfer 339.22 acres of water service territory to the City of Springdale, enabling the entire Clear Creek Club subdivision to be served with water and sanitary sewer service from Springdale Utilities. This action is deemed in the best interests of both the developers and the communities.

Discussions on territorial arrangements have brought to light the need for an updated evaluation of the current water service territory boundary. Other changes may be prudent to provide for the orderly and cost-effective provision of utility services in other undeveloped area. These service boundary adjustments should be based upon such factors as current utility system locations, infrastructure capacities, and topographic features. The configurations of Springdale's and Fayetteville's utility systems have changed dramatically since the 1967 territory agreement, therefore, updates to this boundary may be justified.

The Fayetteville City Council shall relinquish its right to the 339.22 acres with the understanding that Springdale shall approve equal and offsetting territorial area increases to Fayetteville should future conditions justify this action. In essence, the City of Fayetteville's approval will create a banking of a service territory credits that could be later claimed by Fayetteville. In any subsequent territorial exchanges, the core justifications should be based upon the capacity and ability of selected utility to serve the area in a cost-effective manner.

As schedules permit, we should arrange for a meeting to discuss service boundary limits and to evaluate amendments. I shall forward a copy of the approved resolution for your records following the City Council's approval on July 16, 2002. Should there be any questions on this matter; feel free to contact my office at 575-8330.

Very truly yours,

City of Fayetteville

Greg Boettcher

Greg Boettcher, P.E.,
Public Works Director

GB/pkh

cc: Alderman Robert Davis, Jim Beavers
David Jurgens, Kit Williams
Brandon Rogers, Tim Conklin
Hugh Earnest

Fayetteville Impact Fees
Questions for City Council
July 25, 2002

General

1. Do alderman support all or any of the following fees: water, wastewater and roads?
(City Attorney Kit Williams)

2. What services should be applied to these fees? (water, wastewater, roads, police, fire, schools etc.)
(Alderman Kevin Santos; Impact Fee Stakeholder Advisory Group)

3. If City Council decides to proceed with drafting an impact fee ordinance, who should draft it?
(City Attorney Kit Williams)

4. How to reward developers that instill measures that have less impact?
(Impact Fee Stakeholder Advisory Group)

Graduation/Phasing of Fees

5. Should fees be instituted in phases to reduce "impact" and rush before effective date of ordinance?
(City Attorney Kit Williams)

6. Should we institute a grace period after the ordinance is adopted before we start collecting the fees?
(Alderman Kevin Santos)

7. Should a graduated, or sliding scale fee, for larger houses that create a larger impact and greater mitigation be used?
(Alderman Kevin Santos)

8. Should a graduated fee based on distance from the town core or existing infrastructure, using the fee as a growth management tool be developed?
(Alderman Kevin Santos)

9. Should graduating fees over time – starting at the low end of the range recommended and over the course of a year raise the fees to the recommended midpoint be used.
(Alderman Kevin Santos)

10. Who will pay impact fees and when will they be collected?
(City Attorney Kit Williams, Alderman Kevin Santos)

    (1) Developer – Preliminary plat approval or large scale development approval
    (2) Owner – building permit, water tap, sewer tap

Amount of Fee

11. Consultants presented maximum supportable (after all possible reductions for sales tax paid in construction, etc.), does the City Council wish to use this maximum or a smaller amount?
(City Attorney Kit Williams)

12. Will the cost of the fees increase over the years?
(Impact Fee Stakeholder Advisory Group)

Water and Wastewater

13. Graduated or identical fee? If graduated, by what method and what fee for each level?
(City Attorney Kit Williams)

Streets and Roads

14. In light of shaky legal authority, is cost shifting between developers worth likely litigation?
(City Attorney Kit Williams)

15. How far off-site of a subdivision or a future adjacent subdivision would a road impact fee be applicable to improve the access to that specific area of the city?
(Impact Fee Stakeholder Advisory Group)

Parks

16. Should we keep the established ordinance or change to new valuation methodology suggested by consultants? Will the City have to pay consultants for regular updates if new methodology is adopted?
(City Attorney Kit Williams)

Fee Applicability

17. Will fees be charged to infill development?
(Impact Fee Stakeholder Advisory Group)

18. Should surrounding communities be included in the impact fees?
(Impact Fee Stakeholder Advisory Group)

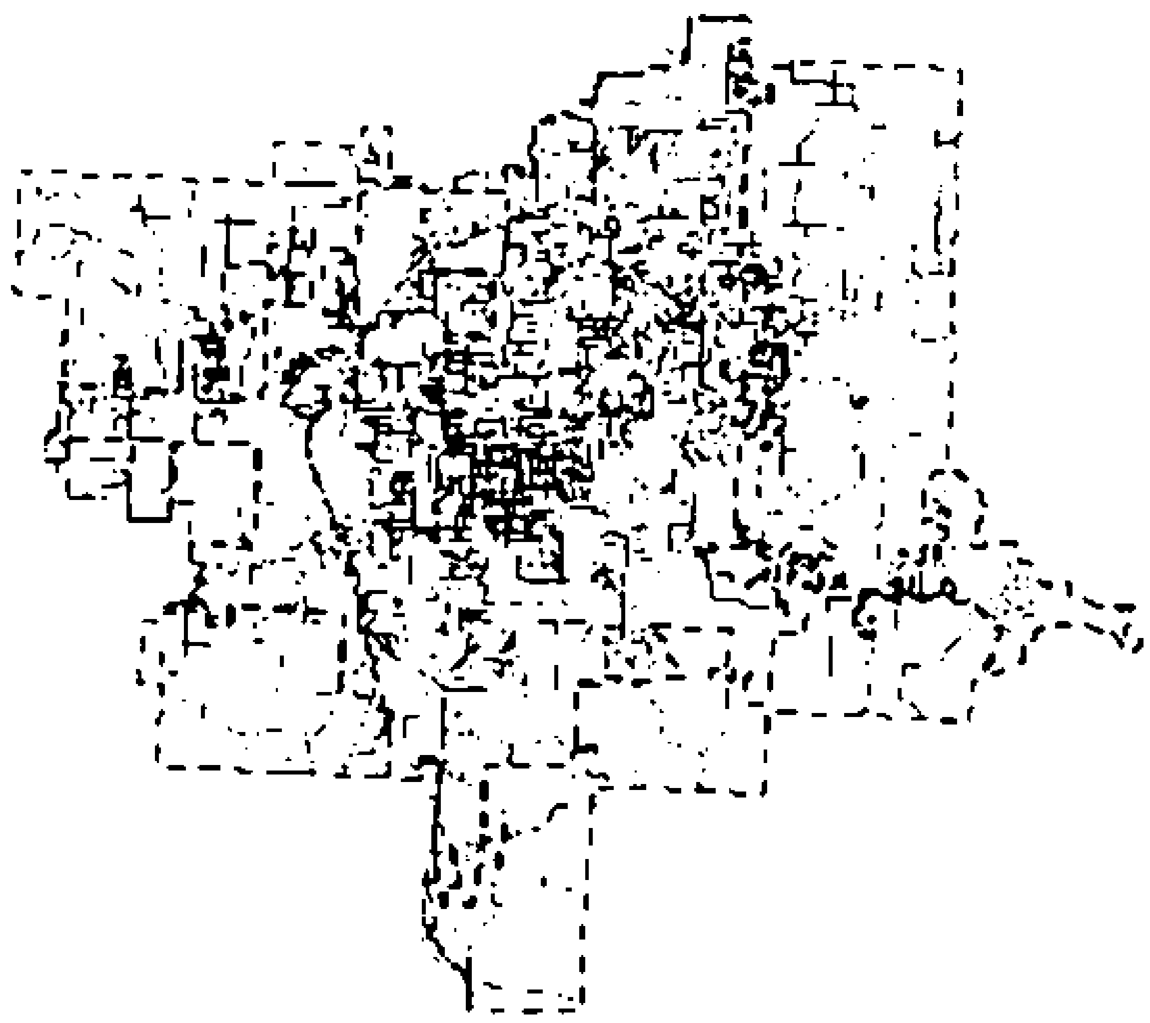
19. Will there be any subsiding or waiver of fees for "low income housing"?
(Impact Fee Stakeholder Advisory Group)

20. Should schools be exempt since they are a public service provider?
(Impact Fee Stakeholder Advisory Group)

21. If fees are collected at building permit, will that apply to renovations?
(Impact Fee Stakeholder Advisory Group)

Impact Fee Study:
Policy Directions Memorandum

Fayetteville, Arkansas



submitted by **duncan** associates

in association with
Cooper Consulting Company

April 2001

CONTENTS

LIST OF TABLES AND FIGURES

INTRODUCTION

The purpose of this project is to assist the City of Fayetteville in developing a system of development impact fees to ensure that new development pays a fair share of the cost of infrastructure needed to serve it. The project has been divided into two phases. This first phase, termed a "feasibility study," reviews the legal framework, local data and potential fees, and determines in conjunction with local officials the type of impact fee system that should be developed in the second phase.

This phase includes a review of applicable statutory and case law, and outlines the legal framework for impact fees in Arkansas. We also analyze Fayetteville's current development exaction policies, existing capital facilities and levels of service, growth projections, capital improvements programs, and existing debt load as additional background data for the policy recommendations.

Another part of this phase of the project is a survey of impact fees and development exactions in comparable communities. This is provided in a separate report.

The most critical policy issue to be decided is the types of impact fees that should be developed for the City in Phase II. The evaluation is based on selected criteria, including legal authority, general plan implementation, net revenue potential over current exactions, fairness between existing and future residents, equity between developers, regional competitiveness, and ease of administration.

Summary of Findings and Recommendations

Our review of relevant statutory and case law demonstrates that cities in Arkansas clearly have the authority to impose water and wastewater impact fees, to require dedication of land for community facilities, and to require fees in lieu of land dedication. The City does not currently charge water or wastewater impact fees, and these could be developed in Phase II. The City already has a court-tested park land dedication and fee-in-lieu requirement, which we could review and update in Phase II.

Any other type of impact fee is on less firm ground, although roads would be the next best bet. The City could consider adopting a land dedication/fee-in-lieu system for arterial and collector street right-of-way (ROW) to replace the current system of roadway exactions. This would in some sense be a step backward, however, as the City now requires half-street improvements to adjacent roadways in many cases. Of all the facility types, a road impact fee would probably have the strongest chance of being upheld by the Arkansas courts. There is also sufficient information and planning data to develop road impact fees, but whether to include this in Phase II is a policy issue for the City Council.

The City had expressed an interest in exploring impact fees for a variety of other facilities, including fire and police protection, solid waste, trails, fleet management and radio sites. Due to questions regarding the authority of municipalities in Arkansas to use such techniques, we do not recommend proceeding with development of any of these types of fees at this time.

In summary, we would recommend that the City proceed with the development of water and wastewater impact fees and an update of the existing park dedication and fee in-lieu requirements in Phase II of this project. A water impact fee, covering the cost of distribution and storage facilities, could generate up to $1 million annually, while an impact fee for the cost of the new wastewater treatment plant could generate $2 million annually. An update to the park dedication and fee-in-lieu requirements would not necessarily generate additional revenue, but could help to ensure that the requirements reflect the existing level of service and the actual demand of new residential development on the need for park facilities.

LEGAL FRAMEWORK

An impact fee is a form of "exaction," through which a developer or builder is required to contribute to the costs of public improvements. Typically the fee is levied on some easily measurable unit of activity, such as the construction of one dwelling unit or of a specified number of square feet of commercial or industrial space. As the next section of this memorandum explains, such fees are a logical outgrowth of long-standing exactions practice.

This section examines the legal issues involved in the implementation of impact fees in Arkansas.[1] In brief, any impact fee should have the following characteristics:

- The fee should be based on actual costs of public improvements, obtained from recent experience in Fayetteville or, for facilities for which there are no recent, local figures, from comparable markets;
- The cost calculations should exclude from (or credit against) the calculated cost of improvements any funds likely to come from outside sources (such as the state gasoline tax) to pay for the related improvements;
- The fee imposed on any development should not exceed the cost of providing the related public improvements necessary to serve that development;
- No part of the fee should be based on the cost of curing existing capacity deficiencies or inadequacies in current treatment levels;
- Following principles of municipal fund accounting, the fees collected should be maintained in a fund designated only for use on improvements to be supported by the fee, serving the area in which the fee is collected;
- There should be appropriate refund provisions in case the fees are not used for the intended purposes within a reasonable time.

The importance of these characteristics will become clearer in the rest of this section.

Exactions and Impact Fees

Following the advent of zoning and subdivision controls, subdividers typically made only minimal improvements to their projects. Projects were usually built where they could depend on existing parks and schools. Streets were often simply graded, without such further improvements as curbs and

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[1] This chapter has been prepared for the use of the City of Fayetteville by Eric Damian Kelly, Ph.D., FAICP. Dr. Kelly is both a lawyer and a planner, but he is not licensed to practice law in Arkansas and offers no formal legal opinion on these matters. Dr. Kelly holds Master of City Planning and Juris Doctor degrees from the University of Pennsylvania and a Ph.D. in public policy from The Union Institute, Cincinnati. Dr. Kelly maintains an active membership in the Colorado bar, although in his current position he does not practice.

gutters. Local water companies often provided water lines, and many homes were built with septic systems. Sewers were even provided by private parties in some early Arkansas developments.[2] Gradually, often in response to citizen complaints, local governments would pave the streets, install curb, gutter and even sidewalk, and, in some instances, even provide public sewer.

During the 1950s, the system began to change, as local governments became increasingly frustrated at having to provide public facilities at public expense for private developments on which the developers had, presumably, made a profit. Thus, communities began to require that streets at least be paved and, in many cases, that curb and gutter and sidewalks also be provided by the developer. Communities also began to require that public water and sewer lines be installed under the new streets—sometimes as "dry" lines for future use, where direct links to existing public services were not yet available. Many communities began to require other, related public facilities, such as street signs and street trees.

It had become widely accepted by the 1960s and early 70s that land developers would provide all public improvements within a subdivision that were designed to serve that subdivision. However, clearly the improvements within a subdivision are only a part of the total public improvements that are needed or affected by a new subdivision. Such off-site facilities as schools and parks typically serve residents of a number of different subdivisions. Streets in new subdivisions will always connect to a network of collector and arterial roads outside the subdivision. Similarly, most subdivisions tie into large networks of sewer systems, water lines and drainage facilities.

It is useless to have roads and sewer and water lines existing in isolation within a subdivision. It is essential not only to the community but also to the subdivider and to those who purchase lots or homes from the subdivider that the larger network of roads and pipes not only exist, but that it be adequate to serve the needs of the new subdivision, as well as the rest of the community. As communities grow, country roads and commercial collectors that were once adequate to serve needs along them become overwhelmed with traffic from new developments using those roads to connect to the larger road network.

Early exactions for schools, parks and off-site facilities potentially serving more than the subdivision or project on which they are levied fell into two categories: land dedication requirements and negotiated exactions. Land dedication requirements ultimately raised practical, legal and policy problems. Under ordinances requiring developers to dedicate seven percent (or some other specified percentage) of their property for park purposes, communities wound up with large inventories of small parcels that were inefficient to develop and expensive to maintain if developed; those same communities sometimes had to buy the parkland or school sites that they needed. Fayetteville's own park dedication requirement has been considered by the Arkansas Supreme Court in *City of Fayetteville v. I.B.I., Inc.*[3] As a matter of policy, land dedications for facilities such as trails sometimes fell unevenly on landowners, raising issues of equity in public policy and equal protection under the law.[4]

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[2] See *Pulaski Heights Sewerage Co. v. Loughborough*, 95 Ark. 264, 129 S.W. 536 (1910)

[3] *City of Fayetteville v. I.B.I., Inc.*, 280 Ark. 484; 659 S.W.2d 505 (1983)

[4] See, for example, *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 114 S. Ct. 2309 (1994), discussed below.

In other cases, a community might have a plan for a park, a school or a major roadway affecting the site of a proposed project. In those cases, communities sometimes required dedication of the site as a condition of rezoning or subdivision approval. This raised serious questions of equity and equal protection and ultimately ran afoul of the "rough proportionality" test established by the Supreme Court in *Dolan v. City of Tigard*, discussed below. In *City of Fayetteville v. I.B.I., Inc.*, the Arkansas Supreme Court raised related concerns about the relationship between the fee and the eventual benefit to the developer paying the fee.

The next generation of exactions for parks, schools and off-site improvements added a layer of fees in lieu of dedication (often called simply "fees in lieu"), in which all development was made subject to the exaction requirement but in which the local government could in appropriate cases substitute a fee equal to a calculated or stipulated value of the land that would otherwise be dedicated. Such a fee was the actual exaction proposed to be applied to the subdivider in *City of Fayetteville v. I.B.I., Inc.*

Another important thread in the history of impact fees involves charges imposed by providers of water and sewer service for connecting to the system. Such charges can be traced back more than 90 years in Arkansas;[5] and, much more recently, *City of Marion v. Baioni* (1983).[6] Those cases are interesting in that there seemed little question in the minds of the judges as to whether such a fee could be imposed; the issue in these cases was how much the fee should be.

During the 1970s, building on the base of "fees in lieu" and on the long practice of charging fees for the privilege of connecting to water and sewer lines, some communities began imposing calculated impact fees on all new development. This approach resolves most of the policy and equity questions at the local level and, if carefully done, falls squarely within the legal guidelines established by the U.S. Supreme Court and several state courts.

The law related to impact fees has evolved from litigation over local regulatory measures involving dedication requirements, fees imposed in lieu of dedication, and impact fees, all of which are collectively called "exactions." The first reported "impact fee" systems were developed in Florida to create a system charge for roads, similar to the common system buy-in charges for water and sewer systems. However , such fees were more difficult to implement than similar fees for utility services for two reasons-first, road fees related to a general governmental service rather than to an enterprise that happened to be run by the government; second, there was no specific, controllable event (like the physical connection to the water system) which could be conditioned upon payment of the fee, except for the approval of a development or subdivision or the later approval of a building permit or certificate of occupancy.

That distinction becomes more important later in this analysis, as it approaches more sophisticated and complex issues of impact fee law. The early principles of that law, however, were applicable to all types of impact fees. Specifically, the Florida courts developed a detailed series of legal guidelines for impact fees in that state. The Florida cases established law as well as policy that have guided other courts and even legislatures in addressing the issue. The landmark case on impact fees is

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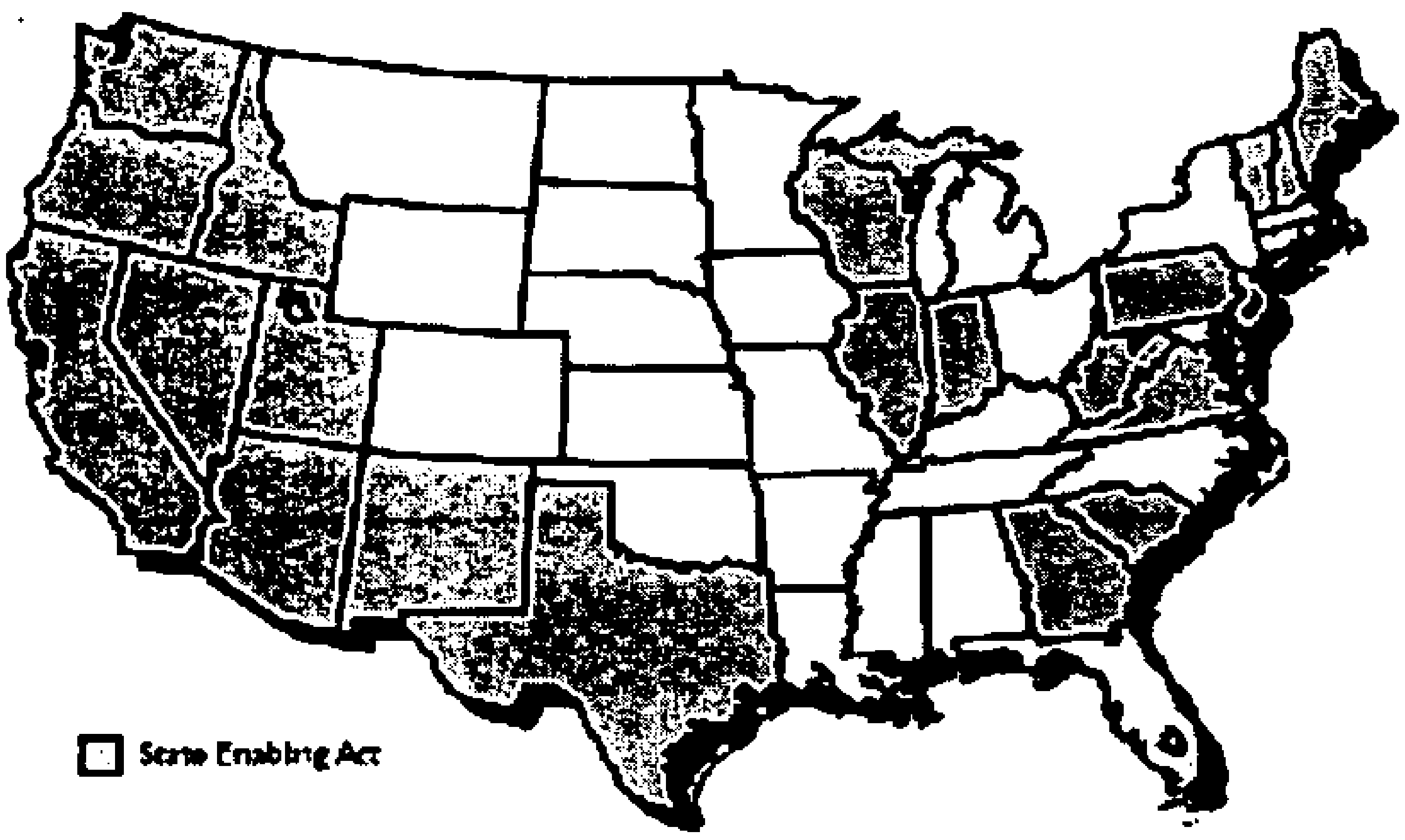
[5] *Pulaski Heights Sewerage Co. v. Loughborough*, 95 Ark. 264, 129 S.W. 536, (1910); and *Hinton v. Bowman*, 101 Ark. 306; 142 S.W. 174 (1911)

[6] *City of Marion v. Baioni*, 312 Ark. 423; 850 S.W.2d 1 (1983)

Contractors & Builders Assoc of Pinellas County vs. City of Dunedin.[7] In that 1976 case, the Florida court struck down a system development fee, but in doing so it gave guidelines for designing an acceptable fee system. Those guidelines were: the fee to be charged may not exceed the reasonable cost to the system of absorbing the new users; the fees must be reserved for the purpose for which they are charged; the fees must actually be used for the designated purpose and used in an area which will directly benefit (or absorb the impacts from) the development on which the fees are imposed. A system in Broward County was struck down by an appellate court in 1983 because fees from the entire county were collected in one fund and there was no assurance that the fees collected would be used in the vicinity of the development paying the fees.[8] Also in 1983, a Florida court upheld a fee system in Palm Beach County, finding that it passed the tests set out in the Dunedin and Broward County cases.[9] The Palm Beach County fee was a road fee and was based on a complex formula related to traffic generation and road construction costs. The fee was allocated to a road zone of about six square miles which included the proposed development. The fee was to be used specifically to build roads.

Figure 1
IMPACT FEE ENABLING ACTS



The Florida cases remain important today. These cases are often cited in litigation and articles today, but they established the impact fee policy that has guided other courts in considering the issue of impact fees and that has guided committees that have developed impact fee legislation in a number of states. To date, 23 states have adopted impact fee enabling legislation. These acts have tended to embody the constitutional standards that have been developed by the courts. However, some states where impact fees are popular, such as Florida, still do not have impact fee enabling legislation. One of the reasons that Florida does not have an impact fee enabling act is that local governments felt that they had more freedom under Florida and national case law than they would under an explicit enabling statute. Indeed, one of the provisions in most state enabling acts is a limitation on the types of facilities for which impact fees can be assessed. The types of facilities that are eligible for impact fees are listed in Table 1.

What is interesting about these new state statutes is that they have largely followed the tests evolving from the Florida line of cases. Most contain requirements for the computation of the fees, based on the actual costs of the facilities; some include detailed specifications about what planning and management charges can be included. Several prohibit the use of the fees to cure existing deficiencies in the system or to upgrade the level of service in developed parts of a community. All require that

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7 *Contractors & Builders Assoc of Pinellas County vs. City of Dunedin*, 326 So.2d 314 (Fla 1976)

8 *Hollywood, Inc. v. Broward County*, 431 So.2d 606 (Fla. 4th DCA 1983)

9 *Homebuilders and Contractors Assoc. of Palm Beach County vs. Board of County Commissioners*, 446 So.2d 140 (Fla.App. 1983)

the fees be segregated for actual use for the purpose for which they are collected. Virtually all require that the fees be refundable if not actually used for that purpose.

As the local case citations in the preceding section and the discussion below suggest, the evolution of exactions law in Arkansas has paralleled these developments, referring to some of the leading cases from other jurisdictions in establishing principles similar to those set out in the Florida cases.

Table 1
FACILITIES ELIGIBLE FOR IMPACT FEES

State	Roads	Water	Sewer	Storm Water	Parks	Fire	Police	Library	Solid Waste	School
Arizona (cities)	■	■	■	■	■	■	■	■	■	
Arizona (counties)	■	■	■	■	■					
California	■	■	■	■	■	■	■	■	■	■
Georgia	■	■	■	■	■	■	■	■		
Hawaii	■	■	■	■	■	■	■	■	■	■
Idaho	■	■	■	■	■	■	■			
Illinois	■									
Indiana	■	■	■	■	■					
Maine	■	■	■		■	■			■	
Nevada	■	■	■	■						
New Hampshire	■	■	■	■	■	■	■	■	■	■
New Jersey	■	■	■	■						
New Mexico	■	■	■	■	■	■	■			
Oregon	■	■	■	■	■					
Pennsylvania	■									
Rhode Island	■	■	■	■	■	■	■	■	■	■
South Carolina	■	■	■	■	■	■	■			
Texas	■	■	■	■						
Utah	■	■	■	■	■	■	■			
Vermont	■	■	■	■	■	■	■	■	■	■
Virginia	■									
Washington	■				■	■				■
West Virginia	■	■	■	■	■	■	■			■
Wisconsin (cities)	■	■	■	■	■	■	■	■	■	
Wisconsin (counties)		■	■	■	■	■	■	■	■	

Source: Ariz. Rev. Stat. Ann., § 9-463.05 (cities), § 9-11-1101 et seq. (counties); Cal. Gov't Code, § 66000 et seq.; Colo. Rev. Stat., § 29-1-801 et seq.*; Ga. Code Ann., § 36-71-1 et seq.; Haw. Rev. Stat., § 46-141 et seq.; Idaho Code, § 67-8201 et seq.; 605 Ill. Comp. Stat. Ann., § 5-901 et seq.; Ind. Code Ann., § 36-7-4-1300 et seq.; Me. Rev. State. Ann., Title 30-A, § 4354; Nev. Rev. Stat., § 278B; N.H. Rev. Stat. Ann., § 674:21; N.J. Perm. Stat., § 27:1C-1 et seq.; § 40:55D-42; New Mexico Stat. Ann., § 5-8-1 et seq.; Or. Rev. State. § 223.297 et seq.; Pa. Stat. Ann., Title 53, § 10501-A et seq.; General Laws of Rhode Island, §45-22.4; Code of Laws of S.C., § 6-1-910 et seq.; Tex. Local Gov't Code Ann., Title 12, § 395.001 et seq.; Utah Code, § 11-36-101 et. seq.; Vt. Stat. Ann., Title 24, § 5200 et seq.; Va. Code Ann., § 15.1-498.1 et seq.; Wash. Rev. Code Ann., § 82.02.050 et seq.; W. Va. Code, § 7-20-1 et seq.; Wis. Stats., § 66.55

Rulings of the U.S. Supreme Court

The most important recent legal development regarding development fees is the 1994 decision of the U.S. Supreme Court in *Dolan v. City of Tigard.* In that case, the Court held that Tigard, Oregon's, requirement that Florence Dolan dedicate land to the city for use as a floodway, a greenway and a bike path amounted to an unconstitutional taking of her land. The case arose when Dolan applied for a building permit to expand an existing hardware and plumbing supply store from 9,000 square feet to 17,000 square feet and to pave a 39-car parking lot. The project conformed with existing zoning, but the city imposed the exactions as conditions on the issuance of a building permit.

This was the first exactions case to be decided by the Court since its 1987 ruling in *Nollan v. California Coastal Commission.* The Nollans wanted to demolish an existing single-family dwelling and replace it with another, larger, single-family dwelling on valuable beachfront property. Their proposal conformed with local zoning and subdivision regulations, but it also required approval under the state's coastal zone regulatory program. The Coastal Commission was willing to approve the building permit, but it conditioned issuance of the permit on the dedication of a trail across the Nollans' beach, connecting into a larger trail system. In that case, the U.S. Supreme Court created the "rational nexus" test, suggesting that there was in fact no "rational nexus," or reasonable connection between the proposal to replace one house with another and the need for additional trails in the area.

In *Dolan*, the Supreme Court expanded upon the rational nexus test, adding to it a requirement that there be a "rough proportionality" between the impact of a proposed development and the burden of the exaction imposed on it. In *Dolan*, there clearly was a rational nexus—the expansion of a commercial enterprise is bound to lead to some increase in runoff and some increase in traffic, probably even in bicycle and pedestrian traffic. Thus, the City of Tigard satisfied the basic requirement of the *Nollan* test. The Supreme Court sought more.

The City of Tigard's goal in seeking trail dedication was to develop a trail network as part of its transportation system. That is a perfectly reasonable public goal. The problem was not with the goal. The problem was with its implementation. The City did not seek an impact fee. It wanted land. The amount of land it wanted had nothing to do with the probable trail usage of customers of the hardware store. It was not even based on the probable traffic generation of customers of the hardware store. That might have provided a reasonable basis for dedication, if the City had argued that it had a public policy of encouraging at least XX percent of all trips to be by bicycle or foot and that some bicycle and foot traffic would thus be imputed to every traffic generator. That is not what the City did, however—at least not initially. What it did was to map its trails. The Dolans' hardware store lay along a mapped trail. The City needed the land to link up the trail. The amount of land and the route of the land that the city sought in the dedication was based on the trail routing and design, not on traffic impact.

Tigard's city staff ultimately computed some traffic generation figures for the hardware store and even argued that some trips might be by bicycle. The argument failed, as it should have. All of that figuring was spurious. There is every indication that the city would have sought precisely the same exaction for the trail if the hardware store expansion had been 1/10 the proposed size or twice the proposed size. The City wanted that land, because it provided a key link in the trail—regardless of the extent of the impact of the proposed development.

The Supreme Court has not invalidated all forms of exactions. In *Dolan*, it simply clarified its earlier holding in *Nollan*, adding to it a requirement that exactions should bear a "rough proportionality" between the exaction and the impact of the proposed development. The Court suggested that the calculation of proportionality should be based on an "individualized determination." That is exactly what an impact fee system does. An impact fee system takes the individualized facts of a proposed development and computes the estimated traffic impact of that development (an individualized determination) and then bases the fee on that computation (giving us something that we hope is actually better than a "rough" proportionality). Although critics of the *Dolan* decision have argued that it can be interpreted as requiring a complete impact study of every development, there is nothing in the Court's language to indicate that. In fact, given the anti-regulatory bias of some members of the Court, it seems likely that they would find the simplicity of an impact fee system far preferable to a regulation that required complex impact assessments of every project.

Arkansas Statutes

Cities in Arkansas have relatively broad general authority to manage their own affairs. By statute, cities in Arkansas with a population greater than 2,500 people (defined as "cities of the first class" under Ark. Code Ann. §14-37-104) have been given authority "to perform any function and exercise full legislative power in any and all matters of whatsoever nature pertaining to its municipal affairs including, but not limited to, the power to tax."[10] The preceding section defines "municipal affairs" essentially by exclusion, saying that such affairs include "all matters and affairs of government germane to, affecting or concerning the municipality or its government" except for a list of 15 excluded items. That list ranges from those to be expected—governmental tort immunity, public meetings, and regulation of alcohol and gambling—to some surprising ones—like hours and vacation policies for governmental employees—but none of the items on the list relate to the subject of development exactions or fees. Thus, by omission from this broad enactment, municipalities in Arkansas appear to retain broad authority to deal with the issues of financing the costs of growth.

In addition, the state has given municipal governments express authority regarding the construction, opening and laying out of streets and public grounds (Ark. Code Ann. §14-54-601); drainage of property (Ark. Code Ann. §14-54-601); to construct and acquire waterworks and "prevent the pollution of water," which presumably authorizes the operation of sewage collection and treatment systems (Ark. Code Ann. §14-54-702). The statute providing authority to local governments to act broadly in dealing with municipal affairs has apparently been subsequently clarified with language making it clear that "emergency medical services, ambulances and emergency medical technicians" fall within the scope of municipal affairs.

Most directly relevant to this memo is the more specific authority given to municipalities to "control the development of land." (Ark. Code Ann. §14-56-417). It is important to note that, like many early subdivision acts, the Arkansas law makes the adoption of a "master street plan" a condition precedent to the regulation of the development of land.[11] Relevant statutory provisions governing the master street plan say:

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[10] Ark. Code Ann. §14-43-602.

[11] Ark. Code Ann. §14-56-417(a)(1)

(1) Master Street Plan. The commission may prepare and adopt a master street plan which shall designate the general location, characteristics, and functions of streets and highways.

(2) (A) The plan shall include the general locations of streets and highways to be reserved for future public acquisition.

(B) The plan may provide for the removal, relocation, widening, narrowing, vacating, abandonment, and change of use or extension of any public ways.[12]

The authority to regulate development under Ark. Code Ann. §14-56-417 includes the following:

(b) (1) The regulations controlling the development of land may establish or provide for the minimum requirements as to:

(A) ...

(B) The design and layout of the subdivision, including standards for lots and blocks, street rights-of-way, street and utility grades, and other similar items; and

(C) The standards for improvements to be installed by the developer at his own expense such as street grading and paving; curbs, gutters, and sidewalks; water, storm and, sewer mains; street lighting; and other amenities.

(2) (A) ....

(B) They may provide for the dedication of all rights-of-way to the public.

....

(5) (A) The regulations shall require the developer to conform to the plan currently in effect.

(B) (i) The regulations may require the reservation, for future public acquisition of land for community or public facilities indicated in the plan.

(ii) This reservation may extend over a period of not more than one (1) year from the time the public body responsible for the acquisition of reserved land is notified of the developer's intent.

[12] Ark. Code Ann. §14-56-414(d)(1)

(6) When a proposed subdivision does not provide areas for a community or public facility based on the plans in effect, the regulations may provide for reasonable dedication of land for such public or community facilities, or for a reasonable equivalent contribution in lieu of dedication of land, such contribution to be used for the acquisition of facilities that serve the subdivision.

Note that in striking down the park fee requirement in Fayetteville in *City of Fayetteville v. I.B.I., Inc.*, the Arkansas Supreme Court relied on the language in (b)(5)(A), above, combined with that in (b)(6). See discussion above and analysis below.

Extraterritorial Jurisdiction

Cities of the first class in Arkansas have relatively broad extraterritorial jurisdiction, as set out in Ark. Code Ann. §14-56-413. The language reads specifically:

(a) (1) (A) The territorial jurisdiction of the legislative body of the city having a planning commission, for the purpose of this subchapter, shall be exclusive and shall include all land lying within five (5) miles of the corporate limits.

The "subchapter" to which this sentence refers is headed "municipal planning" and includes the statute discussed above dealing with the regulation of the "development" of land (see Ark. Code Ann. §14-56-417). There are some limitations on the five-mile limit where the extraterritorial jurisdiction of another city would encroach on that area.[13] Fayetteville appears to be subject to a separate limitation, restricting the extraterritorial jurisdiction of cities with populations from 50,000 to 150,000 as of 1989 to 2-mile extraterritorial jurisdiction.[14] There is a savings clause allowing the city to continue to exercise jurisdiction over any area over which it had exercised jurisdiction prior to a date that appears to be July 3, 1989.[15]

The planning commission must designate the area subject to such jurisdiction.[16] A separate section of the subchapter indicates that the designation of the territorial jurisdiction should occur in the context of a "planning area map," which should also show "the general location of streets, public ways, and public property."[17]

The Arkansas Supreme Court has addressed tangentially the issue of exactions imposed by a municipality outside the city limits in one case. In *City of Marion v. Baioni*, discussed below, the city had adopted impact fees that applied to sewer and water connections within the city but had not applied those fees to five contract users outside the city; based on the city's finding that the city

[13] Ark. Code Ann. §14-56-413(a)(1)(B)

[14] Ark. Code Ann. §14-56-413(a)(2)(A)(ii)

[15] Ark. Code Ann. §14-56-413(a)(2)(C)

[16] Ark. Code Ann. §14-56-413((b)(1)

[17] Ark. Code Ann. §14-56-412.

incurred no operating or maintenance costs for such users, the court found no constitutional objection to the city's disparate treatment of these two groups.

Arkansas Case Law

The Arkansas Supreme Court first upheld an impact-like fee in 1910 in *Branch v. Gerlach*.[18] The authority of the city of Argenta to impose the fee was not seriously at issue in the case. A property owner proposed to make one connection to the system-and offered to pay the fee for one connection-but then intended to connect several houses on different lots to the system through that one connection. The city required that there be one connection, accompanied by the required fee, for each lot to which there was a connection. The court held:

> The only question raised, therefore, is whether or not the city had the right to require a separate connection for each lot. We hold that it did have such power. It is a reasonable exercise of the police power. Sound reason may be discovered why the houses on different lots should have separate connection with the sewer, so that the supervision may be more effective, and so that the stoppage of one connection will not affect other premises. (p. 451)

This is very much like the "rational nexus" requirement established by the Supreme Court in *Nollan* and was sufficient to sustain the one lot/one connection/one fee formula used by the city in this early case.

Another early case, *Hinton v. Bowman* (1911),[19] involved a connection charge for tying into a privately constructed sewer line-but it dealt directly with the reasonableness of the fee in language that is relevant today. The facts were somewhat similar to *Branch v. Gerlach*, discussed immediately above, in that a property owner held 12 lots and had extended a sewer line behind all of them but now proposed to connect only one residence located on three lots. The court provided this basic fiscal analysis and contrasted the positions of the parties:

> It appears that about one hundred lots can be served by this sewer, and that its construction cost about $1,600. It is therefore insisted by defendant that $16 for each lot, making $192 for the twelve lots, is a reasonable charge for such connection. The plaintiff, however, contends that he only wishes to make one connection, and that his residence is only situated upon three lots; and he therefore insists that $48 would be a reasonable charge for such connection. (pp. 174-75)

After a good deal of discussion of related issues and of the extent to which it had the authority to deal with the reasonableness of fees, the court held:

> It appears from the testimony that in the city of Little Rock the average cost for similar sewer connections is from $ 50 to $ 60. The testimony further shows that the plaintiff, believing the city had a right to give to him the connection he desired for the

[18] *Branch v. Gerlach*, 94 Ark. 378, 127 S.W. 451 (1910)

[19] *Hinton v. Bowman*, 101 Ark. 306, 142 S.W. 174 (1911)

> three lots, agreed to pay $ 75 therefor, which was the price fixed by the city as a compensation for such connection. In his answer, which is duly sworn to, defendant stated that he was willing before this suit was instituted to permit this connection to be made for these three lots for the sum of $ 60, and he also stated therein that this was a reasonable charge therefor. Upon a consideration of all the testimony and the circumstances of this case, we think that $ 60 should be allowed for making this connection with the residence and the three lots. But this will not give a license to plaintiff or any grantee from him to make connection for any of the other lots, either directly with the main sewer, or indirectly by means of the lateral sewer. Any connection made by any of the other lots with the lateral sewer is in effect a connection with the main sewer, and whenever that is done defendant will be entitled to a reasonable compensation therefore. (p. 175)

In reaching that conclusion, the court relied in part on its earlier 1910 decision in *Pulaski Heights Sewerage Co. v. Longborough*, where a property owner had physically connected to a sewer operated by a private company, under the authority of the city government, and refused to pay the required fee. The corporation claimed the right to set the fee without interference. The court held that, because the corporation provided a public service under authority of the city, it could review the reasonableness of the fees. After some analysis of rate-setting principles applied in other cases, the court held:

> The evidence in this case fails to furnish a satisfactory standard to determine what compensation for connection of plaintiff's residence with the sewer of Pulaski Heights Sewerage Company would be reasonable and just to all parties. The nearest approach is the average costs of connections with sewers in Little Rock. The sewer in question is in the vicinity of that city. In Little Rock the average cost is about fifty or sixty dollars for a connection, mostly $50. One charge was as high as $83. As the cost of the sewer in question was expensive, more so than the average in Little Rock, we think that $60 should be allowed for a connection with it in this case, the highest average in Little Rock; and it is so ordered. (p. 537)

A somewhat difficult case in Arkansas exactions law is one involving Fayetteville. *City of Fayetteville v. I.B.I., Inc.* struck down as unconstitutional a fee-in-lieu of dedication required by the city as a condition of subdivision approval. The court provided this description of the fee requirement, which was adopted in accordance with Fayetteville's comprehensive plan, as applied to I.B.I.:

> With respect to public parks, the planning commission projected the maximum possible residential population for each neighborhood by 1990. It then determined the number of acres of public parks that would be needed in each neighborhood if and when that maximum was reached. By subtracting the existing park acreage from the projected need, the planning commission determined the park acreage that would be needed in each neighborhood if it reached its maximum residential population.
>
> IBI's specific neighborhood comprises more than a thousand acres, the exact figure not being shown. Twenty-eight acres of parks will be needed if that neighborhood reaches its projected maximum population. There being now only twelve acres of parks in the neighborhood, there may be a deficit of sixteen acres. To provide for the acquisition of the needed acreage, every developer of a new residential subdivision must dedicate

> a specified fraction of an acre for each residential unit or make a cash contribution in a specified amount in lieu of the dedicated land. No dedication of land will be accepted unless the planning commission finds it to be suitable for park purposes and consistent with the city's general plan. (p. 506)

The court held that the program was too vague to be enforceable:

> The two planning commission witnesses made no pretense of saying that any definite plan for the specific location of future parks now exists. IBI could not have offered any land, presumably anywhere, in the required fractional acreage that would have been accepted by the city. No land has been accepted from any developer; only contributions of money are acceptable. No location for any future park has been determined. Such locations will be decided on a case-by-case basis, as the particular area develops in the future. This is said to be good planning, which no doubt it is. The money contributed will be placed in an interest-bearing account, but there is no way of saying just when it will be spent, or even for what, since it may be used not only for the acquisition of land but also for equipping existing or future parks.
>
> As we read the statute, it contemplates something more specific than the Fayetteville plan in its present stage. The statute requires the developer "to conform to the plan or plans currently in effect." § 19-2829, supra. In effect there is no plan in effect in Fayetteville, unless a map and a statement of projected deficiencies in park acreage can be regarded as a plan currently in effect. (p. 507)

One of the clear concerns of the court was with the lack of any time limit on when the funds could be spent:

> There is apparently no way of determining when, if ever, the contributed money will be spent, or where, other than in the district, or for what, except as the planning commission may eventually decide. Yet IBI must make its contributions now, with no way of assuring its purchasers of residential lots that the increased price they must pay will result in their access to a public park within ten years or even within fifty years.
>
> The statute confirms the view that something reasonably definite is essential to a plan requiring the dedication of land or the contribution of money. (p. 507)

In language immediately following that quoted, the court refers to the one-year time limit established on the acquisition of lands "reserved" for future acquisition under the same statute, perhaps hinting that one year might be the relevant measure-but it does not say that. The opinion concludes with this statement:

> We are unwilling to say that the legislature intended for the cash contributions to be made in return for a vague assurance that the money would be spent at some time in the future, somewhere in the neighborhood, for some public park purpose, with no provision for a refund to the contributor even if the residential area should never be developed as expected. (p. 508)

What appears to be the leading case on the subject of exactions and fees in Arkansas is *City of Marion v. Baioni* (1993). The first paragraph of the court's opinion reflects the parallels between the evolution of this fee and the history of exactions provided above:

> This case involves certain sewer and water "tap and access fees" the City of Marion has charged appellees, as developers of residential land in and around the city. Marion has experienced a considerable growth in population since 1975, and this influx of new people has resulted in the city exceeding the design capacity of both its water and sewer systems. Between July of 1988 and August of 1990, the city enacted a series of ordinances that placed "tapping fees" on builders or lot owners connecting on to the city's existing water and sewer systems and required "access fees" from any person or entity connecting to the city's transmission lines. These fees only apply to new development. The ordinances, as amended, provide that the funds collected from these respective fees must be placed in separate accounts designed as the "water expansion account" and "sewer expansion account," and used solely to expand the city's water and sewer systems. (pp. 1-2)

Local builders challenged the constitutionality and validity of the system under Arkansas law. As the case evolved, it focused on one what is probably the most critical question regarding the validity of such a fee under state law-that question is, "Is this a fee, which the governing body may simply adopt by ordinance, or is it a tax, subject to procedural and substantive limits imposed on taxation under the state constitution and state law?" A chancellor found that the fee system amounted to a tax that had not been approved by a vote of the people, as required under Ark. Code Ann. §26-73-103. The appellate court ultimately ruled for the city. In doing so, it began with this generalized statement of the rule for distinguishing taxes from fees:

> The distinction between a tax and a fee is that government imposes a tax for general revenue purposes, but a fee is imposed in the government's exercise of its police powers. (p. 2)[20]

The court continued with this analysis:

> In this case, the chancellor reviewed considerable legal authority leading him to the general conclusion that a governmental levy or fee, in order not to be denominated a tax, must be fair and reasonable and bear a reasonable relationship to the benefits conferred on those receiving the services. We agree with the chancellor's conclusion, which seems to be the prevailing rule in other jurisdictions. However, the rule's application is not always an easy one for the courts. (p. 2, citing several impact fee and related cases from other states)

The court provided this more specific analysis:

> Under the City of Marion ordinances, sewer and water fees total $950.00 for each single family unit. While $150.00 of this amount is required to tap-in to the sewer system, the actual cost of tapping-in is about fifteen or twenty dollars. The chancellor

[20] Citing *City of North Little Rock v. Graham*, 278 Ark. 547, 647 S.W.2d 452 (1983)

held, and appellees argue on appeal, that because the fees imposed by the city exceed the services provided, the fees are in actuality taxes. Such a conclusion ignores the fact that the tapping and access fees established by Marion are for the raising of funds to pay for the extension of existing water and sewer systems to developments where new users reside. Raising such expansion capital by setting connection charges, which do not exceed a pro rata share of reasonably anticipated costs of expansion, is permissible where expansion is reasonably required, if the use of the money is limited to meeting the cost of that extension. [emphasis in the original] (p. 3)[21]

The court went on to uphold the validity of the fee ordinances, applying what amounts to a "rough proportionality" analysis under *Dolan*, although the case mentions neither *Nollan* nor *Dolan*:

> Here, the city's expert witness, John Sheahen, testified that he determined an appropriate level of fees to developers that justified the projected costs of water and sewer facilities needed to serve future customers. He said that the projected costs for extending the water system would require $805.00 per single family unit and sewer costs would require $808.00 per unit. Obviously, the city's combined water and sewer connection fees, $950.00, imposed on builders and developers for new users is considerably less than the costs projected by Sheahen—$1,613.00 per single family unit. Such evidence certainly supports the chancellor's finding that the city's fees are reasonably related to the benefits conferred on the appellees, and in our de novo review of the record, we also conclude the fee amounts established by the city are more than reasonable.
>
> Of major importance, we point out that the city ordinances require the tapping and access fees to be segregated and placed into accounts to be used solely and exclusively to expand the capacity of the city's water and sewer systems. In other words, these funds will be used directly to benefit the new users and for no other purposes. *Graham*, 278 Ark. 547, 647 S.W.2d 452; *Contractors & Builders Ass'n*, 329 So.2d 314; *Amherst Builders Assn*, 61 Ohio 345, 402 N.E.2d 1181. This fund restriction distinguishes this case from those situations where municipalities have imposed fees to underwrite the costs of a special service to a new development but instead the monies benefited the general public. (p. 3)

Because the Arkansas court cited it several times in upholding the Marion fees, it is worth a brief discussion of the 1980 Ohio case, *Amherst Builders' Association v. City of Amherst.* In that case, the court considered a challenge to a sewer tap-in fee of about $400 per single-family dwelling unit, where the evidence showed that the cost of inspection was approximately $140. In discussing the fee, the court cited the appellate court's decision in (upholding total water and sewer connection charges of $450 as "fair and reasonable")[22] with approval and also referred to one of its own earlier decisions:

> In *State, ex rel. Stoeckle, v. Jones* (1954), 161 Ohio St. 391, we endorsed this concept of cost equalization in an analogous situation. There the municipality had partially

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[21] citing *Contractors & Builders Assoc of Pinellas County vs. City of Dunedin*, 326 So.2d 314 (Fla 1976), and *Amherst Builders Assn*, 61 Ohio St. 345, 402 N.E.2d 1181 (1980).

[22] *Englewood Hills, Inc., v. Village of Englewood*, 14 Ohio.App.2d 195, at 198, 237 N.E.2d 621, at 624 (1967)

> funded the construction of a sewage system by levying special assessments. However, the assessments on unimproved property were only a fraction of those on improved property. In order to rectify this inequity, the village adopted an ordinance which established a $300 tap-in charge on subsequently improved property. (p. 1184)

After examining the care with which the fee was developed, relying both on EPA estimates of relative burden placed on the plant and the "investment value" of the plant, and after noting that the actual fee was significantly lower than the precise calculations might have justified, the court upheld the fee as a valid exercise of the police power.

In 1995, the Arkansas Supreme Court revisited the tax versus fee issue in *Barnhart v. City of Fayetteville*,[23] where it held that a $2.02 monthly "fee" imposed by the city for the purpose of paying off bonded indebtedness related to the construction of a waste incineration plant by a special authority, was an unauthorized tax:

> Under the terms of the Ordinance, each residence in Fayetteville is assessed the monthly surcharge until the year 2003, and, in addition, each residence is assessed a fee for the sanitation services that are actually provided. Fayetteville was neither acquiring, owning, maintaining, nor operating the plant. It was acquired, owned, to be maintained, and to be operated by the Authority. The surcharge is not related to providing sanitation services in Fayetteville, but instead is a fee imposed to pay the debt for the Authority's acquisition of the plant. Since the surcharge is not related to services provided by Fayetteville, it is not a "fee," but rather is a "tax." (p. 542)

The court went on, however, to reiterate the core of its policy holding in *Baioni*:

> A governmental levy of a fee, in order not to be denominated a tax by the courts, must be fair and reasonable and bear a reasonable relationship to the benefits conferred on those receiving the services. (pp. 542-43, quoting *City of Marion v. Baion*)

Similarly, in another case, the court held that a $3 monthly fee added to the water and sewer bill and denominated a "public safety fee" was actually a tax where it was used to pay for salary increases for police officers and firefighters.[24]

A 1992 Arkansas appellate cases raises questions about the stage at which dedication requirements and related fees can be imposed. In *Jonesboro v. Vuncannon*,[25] Vuncannon was proposing a shopping center on land that had previously been subdivided. Under the Jonesboro ordinance, Vuncannon was required to resubdivide the land and the city required that Vuncannon dedicate additional right-of-way along the road on which the project faced. The court struggled with the issue of whether the statute is broad enough in scope to allow application to this situation:

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[23] *Barnhart v. City of Fayetteville*, 321 Ark. 197, 900 S.W.2d 539 (1995)

[24] *City of North Little Rock v. Graham*, 278 Ark. 547, 647 S.W.2d 452 (1983)

[25] *Jonesboro v. Vuncannon*, 310 Ark. 366, 837 S.W.2d 286,(Ark. 1992)

> Section 14-56-417 thus gives a planning commission authority to promulgate a regulation "controlling development of land" which requires dedication of rights-of-way to the public. If a replatting of land to combine lots as the Vuncannons wished to do constitutes "development of land" under a valid regulation, then the Statute could provide authority for requiring reasonable rights-of-way dedication. Obviously the "development of land" contemplated in the subsection (a)(2)(A) through (D) has to do with land which is not yet developed. That was the situation in *Newton Circuit Clerk v. American Security Co.*, 201 Ark. 943, 148 S.W.2d 311 (1941), which is cited by the City. No one questions the power of the City to require dedication of rights-of-way in land which is the subject of an initial subdivision plat. References in the record make it unmistakable that the Vuncannons' property is part of land which has already been platted as Turtle Creek Ranch Addition.
>
> We do not know if the Jonesboro Planning Commission has a regulation governing the replatting of land. We have no idea whether a replatting of land which has already been the subject of a platted addition constitutes "development of land" under an applicable regulation. The point is that the Statute gives authority to promulgate a regulation. It does not directly authorize taking land without compensation, nor does it authorize the trading of a waiver of a zoning fire safety requirement for a right of way dedication.

The court affirmed an award of damages in inverse condemnation in the amount of $5,282.90 for a 9-foot strip of land given to the city.

It is important to examine one 8th Circuit decision applying *Nollan* and *Dolan* to a regulatory exaction in Arkansas. The material facts of *Goss v. City of Little Rock*[26] are summarized by the 8th Circuit the first time the case reached it:

> In September 1971, Charles Goss purchased 3.7 acres located next to a two-lane state highway in a rural, unincorporated area outside Little Rock. Goss has operated a convenience store, gas station, laundromat, and car wash on the premises ever since. In 1985, Little Rock annexed a portion of its surrounding area that included the Goss property. In accordance with the city code, the annexed area was classified by default as an "R-2" district for single-family residences. Under the city ordinances, Goss' business activity would be limited to "C-3" general commercial district zones; nevertheless, Goss was permitted to continue his operations pursuant to a nonconforming use exception.
>
> Although Goss continues to utilize his property in the same commercial capacity in which it has been used for the past twenty years, he asserts that sale of his commercial enterprise and property is contingent on rezoning. (Jt. App. 31). In April 1993, Goss petitioned Little Rock to have his property rezoned as a "C-3" zone. In May, Little Rock's Staff and Planning Commission agreed to recommend to the Little Rock Board of Directors that the area be rezoned, but only on the condition that Goss dedicate a portion of his property to Little Rock for future expansion of the adjacent highway.

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[26] *Goss v. City of Little Rock*, 90 F.3d 306 (8th Circ. 1996); appeal after remand, 151 F.3d 861 (8th Circ. 1998), reh. den. 1998 U.S. App. LEXIS 25465; cert. den. 526 U.S. 1050, 143 L. Ed. 2d 517, 119 S. Ct. 1355 (1999)

> The demanded dedication ran the entire length of Goss' property (633.68 feet) and 55 feet into the lot. The total acreage of the demanded dedication approximates eight-tenths of an acre, or twenty-two percent of the total property. Goss objected to the condition. (p. 307)

The planning commission and city board of directors approved the subdivision subject to the condition recommended by the staff. Goss filed a federal suit claiming an unconstitutional taking, among other things. The district court dismissed Goss's action and Goss appealed. The 8th Circuit reversed the dismissal and remanded to the district court for consideration of the case on its merits. The appellate court relied extensively on *Nollan* and *Dolan* in concluding that "the allegation of facts might entitle relief in this case."

On remand, the district court held that the exaction in this case met the nexus test of *Nollan* but failed to meet the *Dolan* test:

> The District Court's conclusion is correct: the dedication could alleviate the problems associated with increased traffic if it were used, as planned, to expand the highway adjacent to Goss's land. Applying *Dolan*, the District Court held that Little Rock had not met its burden of proving that the dedication was roughly proportionate to the impact that the proposed rezoning would have on traffic. The court found that Little Rock's assessment of the impact of rezoning was too speculative because that assessment was based on traffic that could, as said by the city's witness, "conceivably" be generated at some unknown point in the future if a strip mall were erected on Goss's land, although there are no plans to build a strip mall on the property and there is no reason to expect one to be built. (p. 863)

Although agreeing with the district court's analysis, the appellate court rejected the lower court's proposed remedy:

> Next we consider the question of remedy. The District Court ordered that, because the dedication requirement was a taking, Little Rock must rezone Goss's property without the requirement. We reverse this order. As discussed above, Little Rock has a legitimate interest in declining to rezone Goss's property, and the city may pursue that interest by denying Goss's rezoning application outright, as opposed to denying it because of Goss's refusal to agree to an unconstitutional condition, as the city did here. (pp. 863-4)

The appellate court agreed with the district court that Goss was not entitled to damages; he based his damage claim on the failure of a contract of purchase that was contingent on the rezoning, but the "contract" was an oral one with his son and a partner and was not legally binding under the Arkansas Statute of Frauds.

Conclusions

Impact fees are the form of exaction that best meets the constitutional tests for exactions established by the U.S. Supreme Court and, on separate principles, by the Arkansas courts. Some of the principles that must be incorporated in such a system are as follows.

☐ There must be a clear relationship, or nexus, between the impacts of the proposed development and the burdens placed on it (*Nollan v. California Coastal Commission, Goss v. City of Little Rock, City of Marion v. Baioni, City of Fayetteville v. I.B.I., Inc.*).

☐ The burden imposed on the developer must be "roughly proportional" to the impacts of the proposed development (Supreme Court rule) or, under different language of similar effect in Arkansas, "fair and reasonable" (*City of Marion v. Baioni*; similar principles applied in *Hinton v.Bowman, Branch v. Gerlach* and *Pulaski Heights Sewerage Co. v. Longborough*, where the court used the similar phrase "reasonable and just to all parties").

☐ The exaction must be based on a plan (Ark. Code Ann. §14-56-417(5), construed in *City of Fayetteville v. I.B.I.., Inc.*).

☐ There must be considerable certainty in the plan regarding not only the benefit to the developer from the proposed facility but also an assurance that the funds paid will be refunded if not used for the designated purpose within a reasonable time (*Dolan v. City of Tigard, City of Fayetteville v. I.B.I., Inc.*; national case-law regarding impact fees, discussed in first part of this memo).

☐ There appears to be no difference in authority to impose such fees for different types of facilities, except that there is a 91-year history of judicial support for sewer and water connection fees that simply does not exist for fees charged for other facilities (*City of Marion v. Baioni*; similar principles applied in *Hinton v.Bowman, Branch v. Gerlach* and *Pulaski Heights Sewerage Co. v. Longborough*).

☐ Impact fees or other exactions for parks, roads and stormwater drainage facilities should be rooted in Ark. Code Ann. §14-56-417, which allows a city to require land dedication, or on Ark. Code Ann. §14-56-414(6), which allows a city to impose fees in lieu of dedication "When a proposed subdivision does not provide areas for a community or public facility based on the plans in effect..."

☐ Exactions for other facilities, such as libraries and public safety facilities, may be harder to defend than for parks, stormwater drainage or roads in light of the language in Ark. Code Ann. §14-56-417(6) requiring that contributions in lieu be "used for the acquisition of facilities that serve the subdivision," since it is easier to relate specific improvements for these types of facilities to specific developments.

☐ The root of the statutory authority to impose such fees is in the authority of the city to regulate development, authority which extends beyond the city's boundaries. Thus, there appears to be adequate authority to impose impact fees on new development in any area which the city has designated as subject to its development regulation through its inclusion in an "area planning map."[27]

☐ Although "development" is defined in the statutes by reference to a non-exclusive list of activities, only one of which is platting of land, impact fees should probably be assessed at platting, even if actual collection of fees is deferred until time of building permit.

[27] Ark. Code Ann. §§14-56-412, 14-56-413

BACKGROUND

The major impetus for this project is the need for a major wastewater treatment plant expansion. With an estimated total project cost of $100 million, the wastewater improvements could well be the most costly and extensive capital project ever undertaken by the City.

The City finances most capital improvements on a pay-as-you-go basis. This is done utilizing revenues from the one-percent City sales tax adopted in 1993 (of which, by City Council resolution, at least 75 percent is used to fund capital projects), the one-percent Hotel, Motel, Restaurant sales tax adopted in 1996 to fund park improvements, and operating revenues from the City's enterprise funds, including water, wastewater and solid waste.

Long-term debt is used sparingly by the City. In 1989, a bond issue passed overwhelmingly, but included money to build a high school for the school district. The developers sued and won in the Arkansas Supreme Court. Since then, the City's Capital Improvements Program has been funded primarily with a one-cent sales tax, which was passed in 1993. Recently, however, voters approved a $6.95 million bond issue for the Town Center convention center, with debt service to be paid with the Advertising and Promotion Hotel, Motel and Restaurant Tax.

The current five-year capital improvements program (CIP) is somewhat unusual because of the inclusion of $106 million in bond funding, most of it for the new wastewater treatment plant. Excluding that water and sewer bond funding, the CIP includes almost $86 million in capital funding for the five-year period. Over half of the pay-as-you-go funding is from the one-percent sales tax, as shown in Table 2.

Table 2
CAPITAL FUNDING BY SOURCE, 2000-2004

Revenue Source	Amount	Percent
Sales Tax	$45,758,000	53.3%
Water & Sewer Fund	$14,472,000	16.8%
Shop Fund	$8,690,000	10.1%
Off-Street Parking Fund	$6,564,000	7.6%
Airport Fund	$3,486,000	4.1%
Parks Development Fund	$3,457,000	4.0%
Community Dev't Block Grant Fund	$2,015,000	2.3%
Solid Waste Fund	$756,000	0.9%
General Fund	$700,000	0.8%
Total	$85,898,000	100.0%

Source: City of Fayetteville, *Five Year Capital Improvements Program, 2000-2004*, November 1999 (excludes bond funding).

The City's largest capital expenditures are in the areas of water and wastewater, streets and drainage, as shown in Table 3.

Table 3
CAPITAL EXPENDITURES, 2000-2004

Project Type	Amount	Percent
Water & Wastewater	$25,646,000	29.9%
Street	$20,090,000	23.4%
Bridge, Drainage & Transportation	$10,256,000	11.9%
Shop	$8,690,000	10.1%
Parks and Recreation	$6,850,000	8.0%
Other	$5,349,000	6.2%
Public Safety	$3,516,000	4.1%
Airport	$3,486,000	4.1%
CDBG Fund	$2,015,000	2.3%
Total	$85,898,000	100.0%

Source: City of Fayetteville, *Fire Year Capital Improvements Program, 2000-2004*, November 1999 (excludes bond-funded wastewater treatment plant project).

The City's sales tax capital funding is spent on a wide variety of improvements. Foremost among these are streets, water and wastewater and parks, as shown in Table 4.

Table 4
SALES TAX CAPITAL FUNDING, 2000-2004

Project Type	Amount	Percent
Streets	$19,390,000	42.4%
Water & Sewer	$11,174,000	24.4%
Other	$3,741,000	8.2%
Parks	$3,393,000	7.4%
Bridge & Drainage	$3,042,000	6.6%
Fire	$2,121,000	4.6%
Police	$1,395,000	3.0%
Library	$852,000	1.9%
Transportation	$650,000	1.4%
Total	$45,758,000	100.0%

Source: City of Fayetteville, *Fire Year Capital Improvements Program, 2000-2004*, November 1999.

The City has about $30 million in outstanding debt. Two-thirds of that is in water and sewer revenue bonds, as shown in Table 5.

Table 5
OUTSTANDING DEBT

Bond Issue	Original Issue	Original Amount	Outstanding*
Hotel & Restaurant, Series 1995 (Continuing Ed Center)	1979	$2,675,000	$1,335,000
Sales Tax, Series 1997 (Walton Arts Center)	1986	$2,610,000	$1,700,000
Water & Sewer, Series 1999 (Water Main/Tanks)	1992	$8,365,000	$7,815,000
Water & Sewer, Series 1994 (Water Main/Tanks)	1994	$5,500,000	$3,585,000
Hotel & Restaurant, Series 1998 (Town Center)	1998	$6,950,000	$6,765,000
Water & Sewer, Series 2000 (New Wastewater Plant)	2000	$10,000,000	$10,000,000
Total		$33,425,000	$29,865,000

* as of December 31, 2000
Source: City of Fayetteville, *Annual Budget and Work Program, 2001*, December 2000.

Impact fees are most appropriate for communities that are experiencing rapid growth. The Fayetteville-Springdale-Rogers Metropolitan Statistical Area (MSA), comprised of Washington and Benton Counties, is the fifth fastest growing MSA in the country, based on its population growth between 1990 and 1998.[28] Washington County, of which Fayetteville is the county seat, has been growing at a compound annual growth rate of 2.9 percent since 1990, and over half of the population added since then has been in Fayetteville. The city itself has been growing at 3.6 percent annually, about four times faster that the state as a whole. It is not surprising that this pace of growth has created problems in terms of the City's ability to finance the capital improvements needed to accommodate new development.

Table 5
POPULATION GROWTH, 1990-1999

	1990	1999	Increase	Annual Rate
Fayetteville	42,249	58,163	15,914	3.62%
Springdale *	29,941	42,339	12,398	3.92%
Other Municipalities	10,503	17,411	6,908	5.78%
Unincorporated	30,716	28,680	(2,036)	-0.76%
Washington County:	113,409	146,593	33,184	2.89%
State of Arkansas	2,350,624	2,551,373	200,749	0.91%

* Washington County portion only
Source: U.S. Census Bureau, Population Estimates Program, "Population Estimates for Places: Annual Time Series, July 1, 1990 to July 1, 1999 (includes April 1, 1990 Population Estimates Base)" (SU-99-7), Oct. 20, 2000 internet release date (1990 figure shown is for April 1).

[28]U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Table No. 34, p. 33.

In recent years, the City has been issuing permits for an average of about 580 new dwelling units annually, as shown in Table 6.

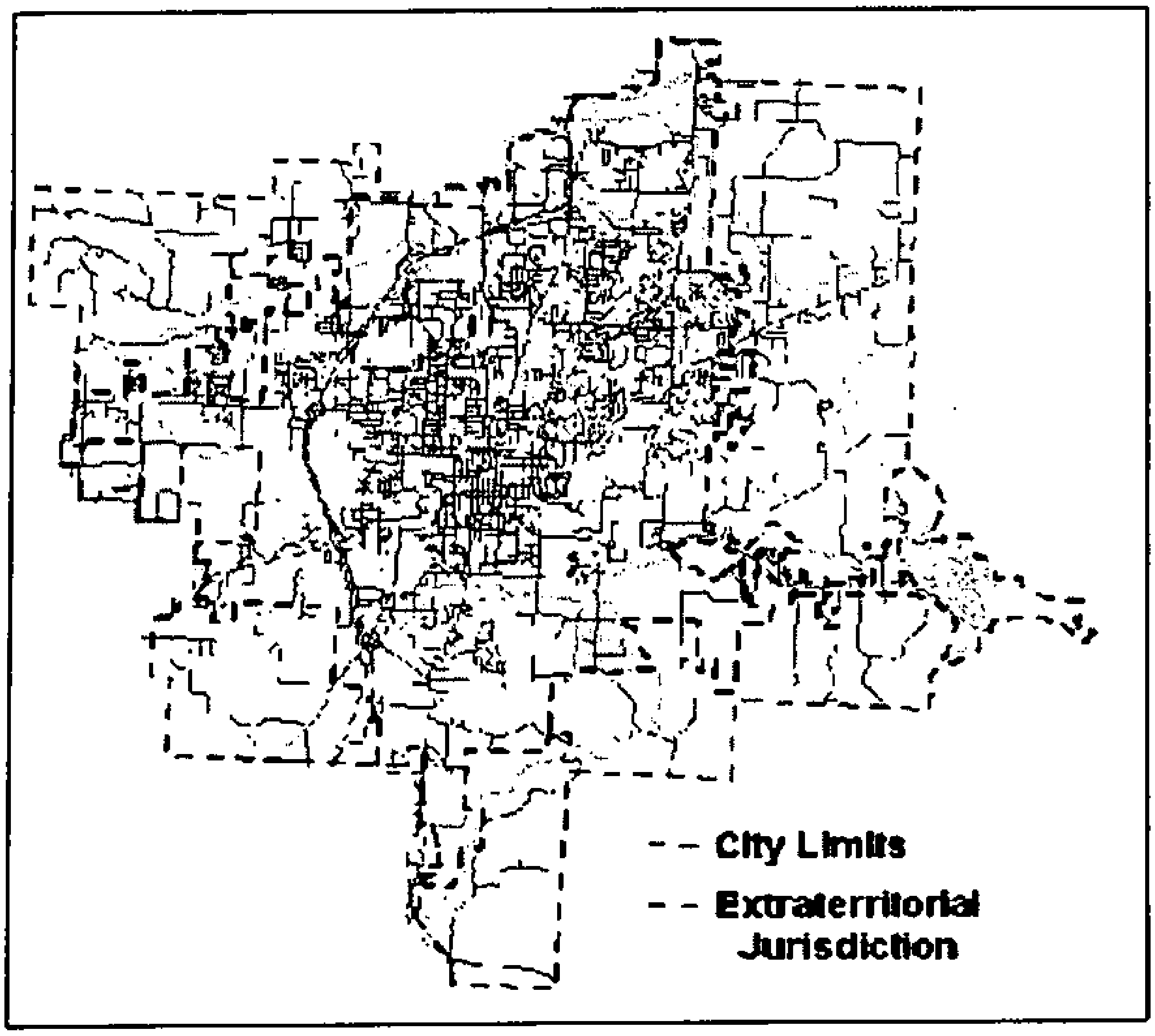
Table 6
RESIDENTIAL BUILDING PERMITS, 1996-1999

Year	Single-Family	Multi-Family	Total
1996	445	154	599
1997	265	281	546
1998	272	40	312
1999	357	515	872
Average	335	248	583

Source: City of Fayetteville, Inspection Department.

In addition to development within its incorporated limits, the City is also affected by, and has some control over, development in unincorporated areas within its extraterritorial jurisdiction. Within this area, which extends five miles from the corporate limits or half the distance to any adjoining municipality, the City exercises joint subdivision authority with the County. The area covered by the City's extraterritorial jurisdiction is larger than the area within its corporate limits. The combined corporate and extraterritorial jurisdictions are referred to as the City's planning area, which covers approximately 92 square miles.

Figure 2
PLANNING AREA



A recent impact fee survey of over one hundred jurisdictions across the country provides a representative sample of typical fees by type of facility and type of land use. As shown in Table 7, the highest fees, as well as the most commonly charged, are for water and wastewater facilities. Road and park impact fees are also fairly substantial, while fees for public safety facilities are generally modest, reflecting the more labor-intensive nature of public safety services.

Table 7
NATIONAL AVERAGE IMPACT FEES

Facility	Single-Family (per unit)	Multi-Family (per unit)	Retail (per 1,000 sq. ft.)	Office (per 1,000 sq. ft.)	Industrial (per 1,000 sq. ft.)
Water	$2,189	$1,599	$765	$961	$487
Wastewater	$1,956	$1,599	$815	$809	$522
Road	$1,535	$1,065	$3,116	$1,792	$881
Park	$1,218	$1,018	$0	$0	$0
Public Safety	$493	$493	$190	$155	$68
School	$2,750	$1,467	$0	$0	$0

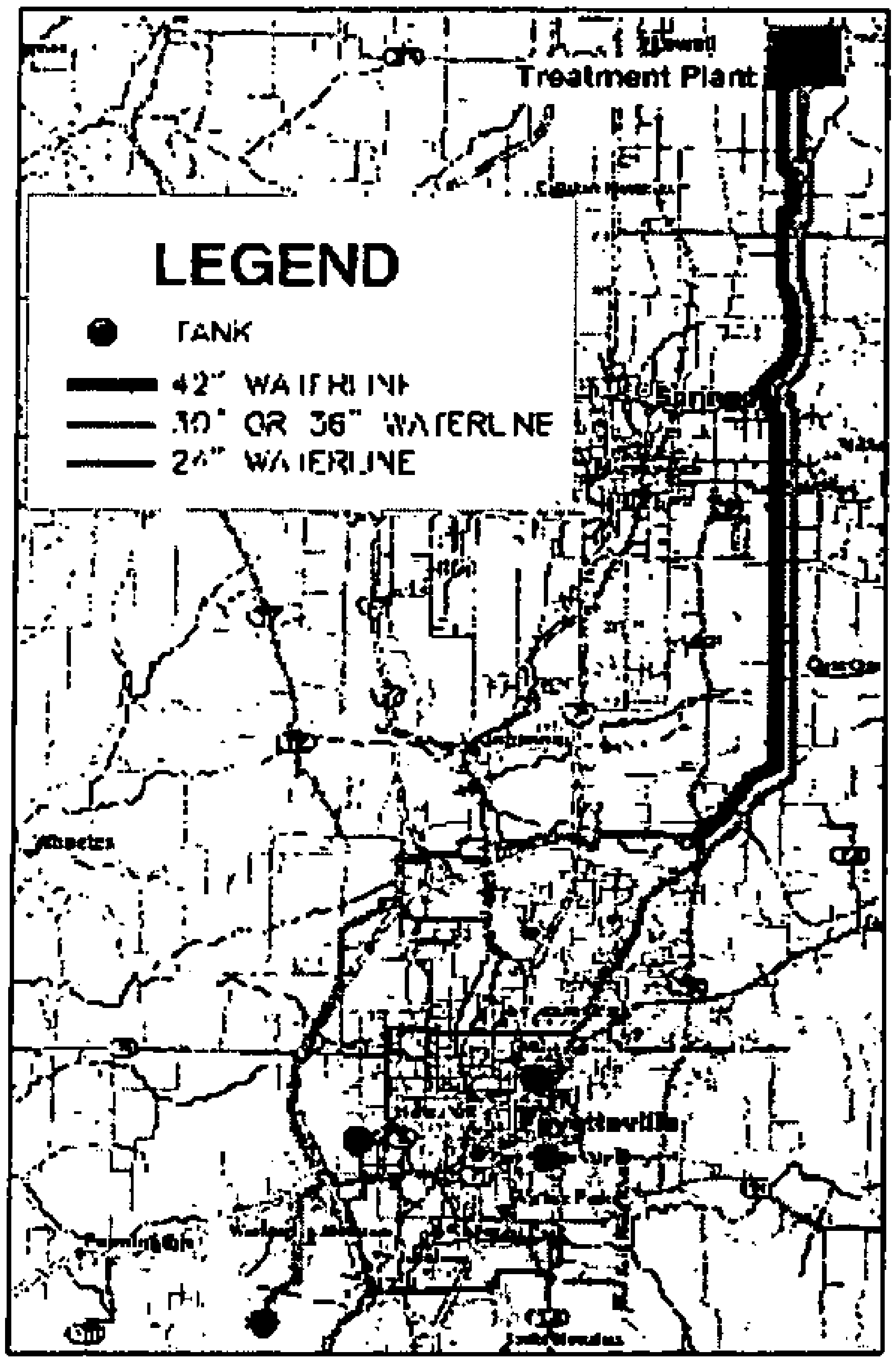
Source: Dr. James C. Nicholas, Holland Law Center, University of Florida at Gainesville, 2000.

TYPES OF FACILITIES

Water

The City does not currently charge new water customers a connection fee to help defray the off-site capital costs to the utility system associated with a new customer. Such a one-time, up-front fee, called by many names including capital recovery fee and system development charge, is one of the most common forms of development impact fees. While cities lack explicit statutory authority to impose water or wastewater impact fees in Arkansas, these fees have a long history and have been litigated in Arkansas. Consequently, there appears to be adequate legal authority for the City to impose water impact fees.

Figure 3
WATER FACILITIES



The City of Fayetteville and three other cities make up the Beaver Water District, which operates two regional water treatment plants located east of Lowell, Arkansas (see Figure 3). The District owns all of the municipal and industrial water allocation in Beaver Reservoir, which averages 120 million gallons per day (mgd). The District pays only for the plant, with the cities responsible for constructing the transmission lines needed to get the water from the plant to their distribution systems. The regional water treatment plant was expanded about five years ago.

The treated water supplied by the Beaver Water District is pumped through parallel 36-inch and 42-inch diameter transmission lines. The high service pump station at the Beaver Water District is equipped with four vertical turbine pumps, capable of delivering about 30.6 mgd of treated water to the City of Fayetteville each day. The pump station and the new 42-inch line were put into full-time operation in 1993. The lines run south from the plant, over Fitzgerald Mountain and into the Fayetteville system east of Lake Fayetteville. A surge tank 20 feet in diameter by 100 feet tall is located on top of Fitzgerald Mountain. The surge tank has a capacity of 0.25 million gallons (mg) and functions as a buffer for the operation of the high service pumps at the Beaver Water District. A hydraulic model indicates that the maximum capacity of the parallel transmission lines is approximately 46 mgd.

The City's water distribution system is divided into five pressure planes. The primary pressure plane, which receives all of the water delivered from the Beaver Water District, currently has six ground storage tanks and one elevated storage tank located at four sites with a total capacity of 27 mg.

Because many areas of the city are above the overflow elevation of the primary pressure plane, water must be repumped to supply four additional areas of high elevation.

The City sells water on a wholesale basis to four customers: the Washington Water Authority, the Mount Olive Water Association, the City of Elkins and the City of West Fork. In addition, the City provides retail water service, including water pipes, meters and billing, to development in the cities of Farmington and Greenland, as well as a portion of Johnson. As shown in Table 8, 84 percent of the City's water customers are within Fayetteville's city limits.

Table 8
CURRENT WATER CUSTOMERS

Jurisdiction	Number	Percent
Fayetteville	23,453	84%
Elkins (wholesale)	1	0%
Farmington	1383	5%
Greenland	349	1%
Growth Area	1850	7%
Mount Olive (wholesale)	2	0%
West Fork (wholesale)	1	0%
Wheeler	203	1%
RDA/WWA (wholesale)	4	0%
White River	540	2%
Total	27,786	100%

Source: Fayetteville Water and Sewer Department, "Number of Water Customers, Active Only, February 2001"

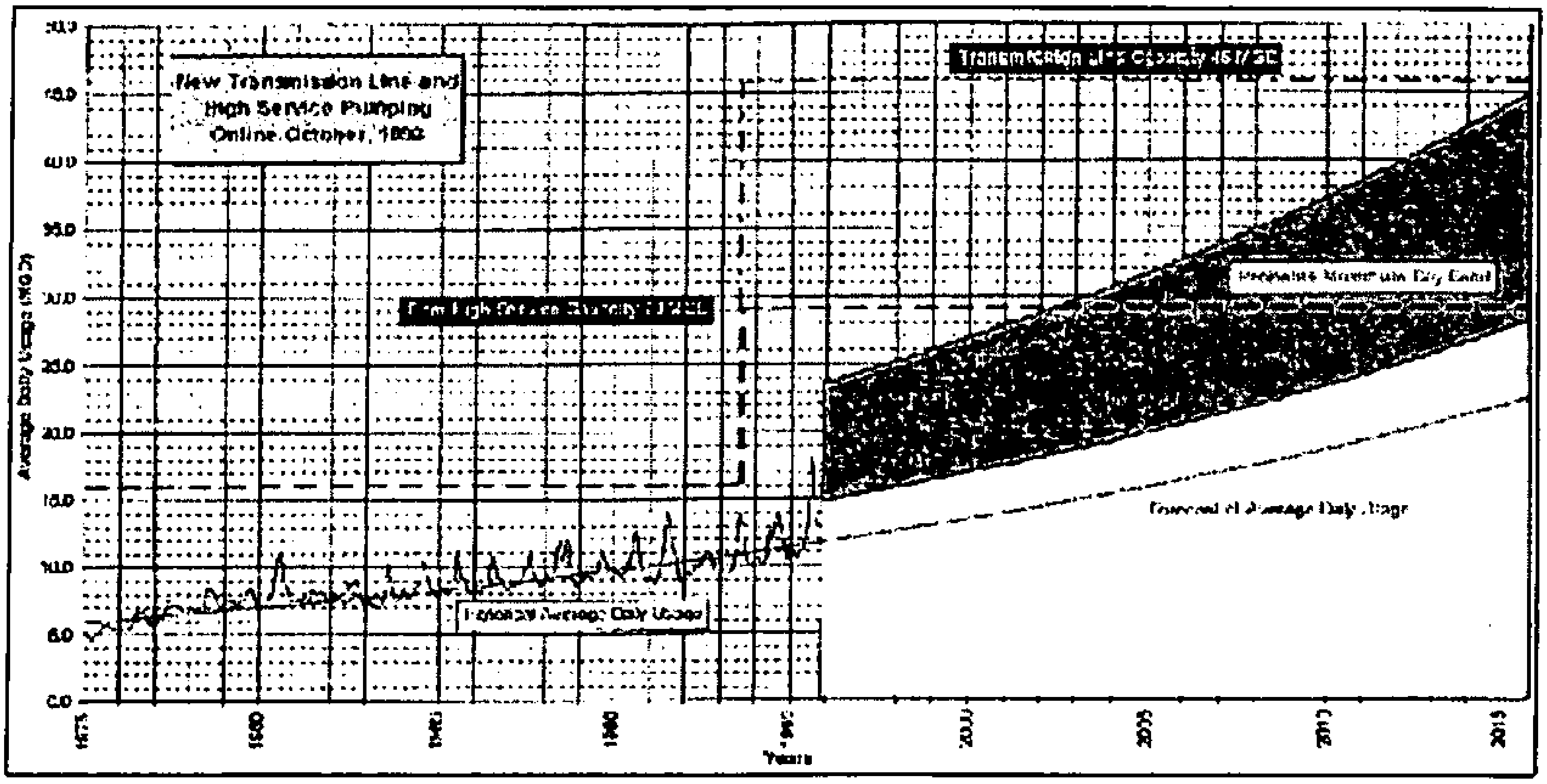
The City's 1996 *Water Master Planning Study* analyzed historic water usage, and noted that water usage has been growing significantly faster than population.[29] In 1995, average water demand was 12.44 mgd, and maximum day usage that year was the highest on record at 21.56 mgd. The ratio of maximum to average day water demand over the last twenty years ranged from 1.25 in 1992 to 1.85 in 1990. The study determined that the capacity of the transmission lines from the Beaver Water District would be adequate to accommodate projected growth in water demand through 2015, but that the capacity of the pumping station would be reached shortly after the year 2000 (see Figure 4). However, it noted that facilities are in place for adding a new pump or pumps to meet this demand. The study's major recommendation was for the City to establish a policy for constructing a transmission grid of 12-inch and larger water lines spaced generally on a one-mile grid in the growth areas of the eastern and western planning jurisdictions.

The City's current policies on line extensions and developer cost participation can be briefly described as follows. When a line needs to be extended to provide service to a new development, developers pay only the cost of the line needed to serve the subdivision, which in most cases is an eight-inch line (six-inch water lines are acceptable under some situations). If the line needs to be oversized to serve other developments, the City pays for the cost of the oversizing. In a few cases, the City has required

[29] McGoodwin, Williams and Yates, Inc., *Fayetteville Water Master Planning Study*, October 1996

a developer to front the entire cost of a water line, and used a pro rata agreement to recoup some of line cost from subsequent developers benefitting from the line, which is then remitted to the original developer.

Figure 4
WATER SUPPLY AND DEMAND FORECAST



The water master plan did not provide costs for centralized facilities, since the City does not own the water treatment plants, and the two major transmission lines from the treatment plant to the city have adequate capacity through the planning period covered by the water master plan. It may be difficult to charge impact fees for water treatment capacity because the City does not own the facilities, but it would certainly be possible for the City to recoup the cost of the excess major transmission line capacity that would be consumed by new water customers.

The master plan does provide cost estimates for elevated and ground storage tanks and major water transmission lines ranging from 12 to 24 inches in diameter that will be needed to accommodate projected growth in the planning area over the 20-year planning horizon from 1995 to 2015. If the five-year-old master plan is still considered to be reasonably accurate, it could be updated and used to develop water impact fees for major transmission/distribution lines and storage tanks. Using the plan's 2000 to 2015 needs and projections of growth in water demand, as well as current customer demand data, the potential fee for transmission/storage facilities can be estimated in an order-of-magnitude fashion to be in the neighborhood of $800 to $900 per single-family dwelling or equivalent, as shown in Table 9. This estimate is conservative because it is based only on the cost of distribution system improvements. A water impact fee could also recoup the cost of transmission lines from the treatment plant, and perhaps also the City's share of treatment plant costs. Nevertheless, this is a reasonable estimate of the amount of a water impact fee that could be assessed by the City. It would conservatively generate half a million dollars annually, based on recent residential growth trends within the city limits, not even including nonresidential customer growth or new customers outside the city, which could bump it up to $1 million annually.

Table 9
POTENTIAL ANNUAL WATER IMPACT FEE REVENUES

Ground Storage	$7,600,000
Transmission Lines	$10,993,000
Total Improvement Cost, 2000-2015	$18,593,000
New Maximum Day Water Demand (gpd)	17,110,000
Cost per New Maximum Day gpd of Water Demand	$1.09
Maximum Day Demand per Equivalent Dwelling Unit (gpd/EDU)	793
Cost per Equivalent Dwelling Unit	$862
Average Annual New Dwelling Units	583
Potential Annual Revenue from City Residential Growth	$500,000
Fayetteville Residential as Share of Total Usage	0.50
Potential Total Annual Wastewater Fee Revenue	$1,000,000

Source: 2000-2015 improvement costs in 1996 dollars and projected increase in maximum day water demand from McGoodwin, Williams and Yates, Inc., *Fayetteville Water Master Planning Study*, October 1996; maximum day demand per EDU from Fayetteville Water and Sewer Department, "Number of Water Customers, February 2001" and Consumption of Water Customers (Usage in 100 Gallons), February 2001"; average annual new dwelling units based on building permits issued by City from 1996 to 1999 (see Table 6).

Wastewater

The City does not currently charge new wastewater customers a connection fee to help defray the off-site capital costs to the utility system associated with a new customer. Such a one-time, up-front fee, called by many names including capital recovery fee and system development charge, is one of the most common forms of development impact fees. While cities lack explicit statutory authority to impose water or wastewater impact fees in Arkansas, these fees have a long history and have been litigated in Arkansas. Consequently, there appears to be adequate legal authority for the City to impose wastewater impact fees.

The City's current policies on line extensions and developer cost participation can be briefly described as follows. When a line needs to be extended to provide serve to a new development, developers pay only the cost of the line needed to serve the subdivision, which in most cases is an eight-inch line. If the line needs to be oversized to serve other developments, the City pays for the cost of the oversizing. In a few cases, the City has required subdivisions in an area to pay at the time of final plat to upgrade an overloaded lift station or to build parallel force main. If the projects are not built, the City will refund the money. For example, the City collected $200 per lot from new subdivisions platted within one-half mile on either side of the Salem Road line to pay for the eight-inch parallel force main.

As noted earlier, the need to build a second wastewater treatment plant in the near future was a major impetus for this study. The current wastewater treatment plant was built in 1988, with a biological treatment capacity of 17 mgd. It is estimated that a new plant will cost in the neighborhood of $100 million. Three hundred acres of land have been purchased for the new plant, and the City is applying for a National Pollution Discharge Elimination System (NPDES) permit for it. The current Paul Noland Wastewater Treatment Plant processes wastewater for the cities of Fayetteville, Elkins, Farmington, Greenland and parts of Johnson. The City also maintains the sewer collection systems for the cities of Farmington and Greenland, although the cities own the pipes. Over 90 percent of the City's wastewater customers, however, are located within the city limits, as shown in Table 10.

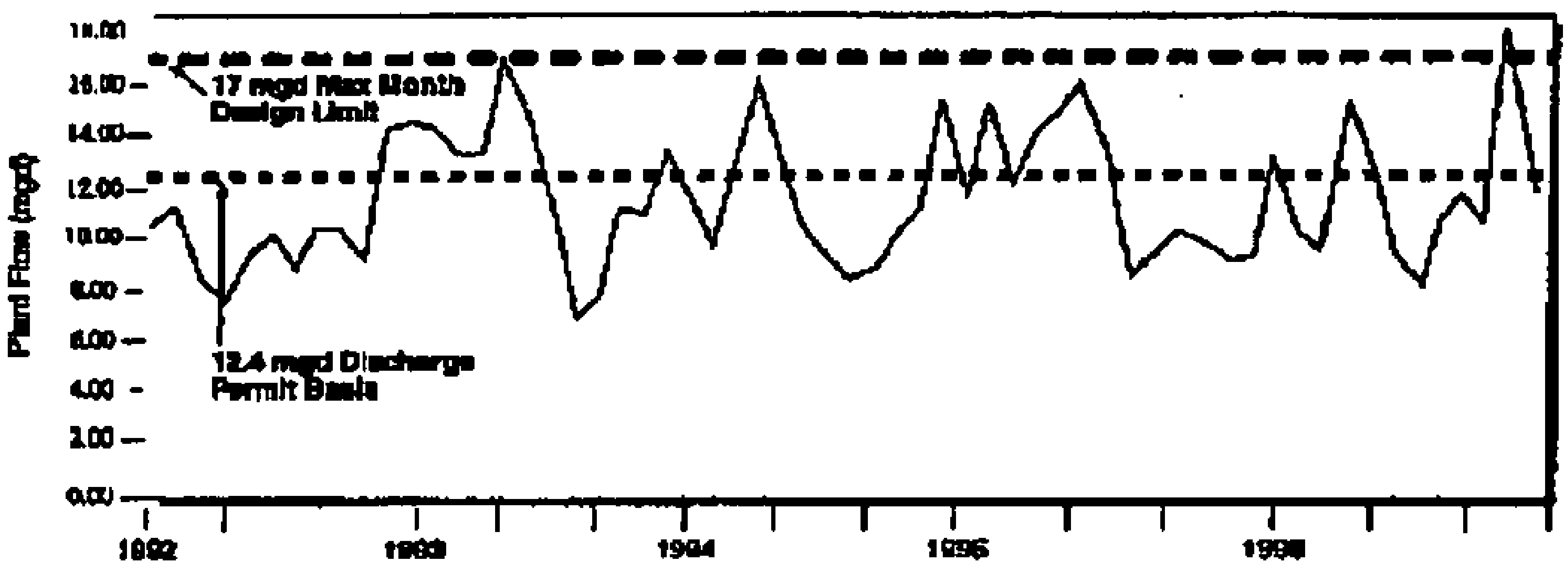
Table 10
CURRENT WASTEWATER CUSTOMERS

Jurisdiction	Number	Percent
Fayetteville	22,032	92%
Elkins (wholesale)	1	0%
Farmington	1,311	6%
Greenland	315	1%
Growth Area	176	1%
Total	23,835	100%

Source: Fayetteville Water and Sewer Department, "Number of Sewer Customers, Active Only, February 2001"

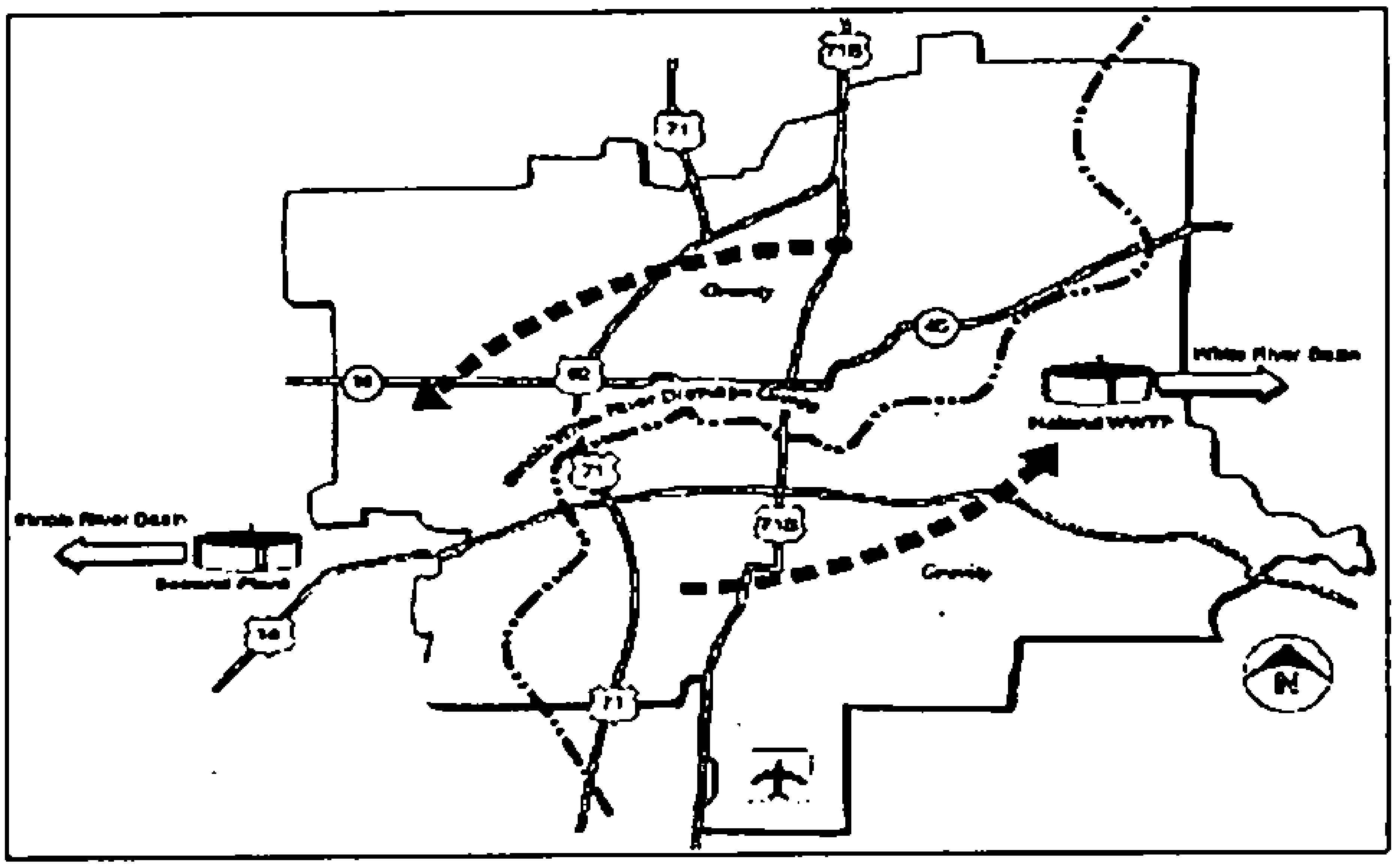
The City's *Wastewater Facility Plan*, completed in 1997, determined that the treatment plant was at or even slightly exceeding its capacity, having exceeded its maximum monthly design capacity of 17 mgd a couple of times in recent years (see Figure 5).

Figure 5
WASTEWATER TREATMENT CAPACITY AND DEMAND, 1992-1996



The facility plan evaluated the alternatives of expanding the existing treatment plant versus building a second plant in the Illinois River basin. About half of the city is in the Illinois River basin, and currently wastewater from that basin is transferred by lift stations and force mains to the White River basin, where the Noland treatment plant is located. Locating a second treatment plant in the Illinois River basin would eliminate the need for several costly, high maintenance lift stations and allow most of the collection system to convert to gravity mains. While expanding the existing plant would be more cost-effective in terms of treatment costs, the second plant alternative would have offsetting savings in terms of lower collection system costs. In the recommended two-plant option, construction of the new treatment plant would establish a clear distinction between the flows from the two watersheds. Nine lift stations would be abandoned. However, some effluent would still be transferred between watersheds to equalize demand and capacity at the two plants.

Figure 6
WATERSHEDS AND DIRECTIONS OF FLOWS



The new plant, to be constructed in two phases, will almost double the City's current treatment capacity. This will be about the amount of new capacity required by the year 2020, as summarized in Table 11.

Table 11
TREATMENT PLANT CAPACITY

	Average Day (mgd)	Peak Month (mgd)
Existing Plant	11.4	17.0
New Plant	10.1	15.7
Total	21.5	32.7
2020 Demand	21.5	33.5

Source: CH2M-Hill, *Fayetteville Wastewater Facility Plan*, February 1997

The new treatment plant is estimated to cost about $40 million. Dividing this cost by the anticipated growth in equivalent residential customers by 2020, at which time both new and existing plants are expected to be operating close to their capacities, results in an estimated cost per equivalent dwelling unit, as shown in Table 12. Based on recent building permit trends within the City of Fayetteville, residential growth within the city limits could be expected to yield about $1 million in annual revenue from wastewater impact fees. City residential users, however, count for only about half of total flows to the treatment plant. Assuming that growth in other types of customers is similar to recent growth in City residential customers, potential revenues could be as high as $2 million annually.

Table 12
POTENTIAL ANNUAL TREATMENT PLANT FEES

New Treatment Plant Cost	$40,400,000
New Equivalent Dwelling Units, 1996-2020	23,290
Cost per Equivalent Dwelling Unit	$1,735
Annual New Dwelling Units, City of Fayetteville	583
Potential Annual Revenue from City Residential Growth	$1,010,000
Fayetteville Residential as Share of Total Usage	0.50
Potential Total Annual Wastewater Fee Revenue	$2,020,000

Source: Cost from CH2M-Hill, *Fayetteville Wastewater Facility Plan*, February 1997; new equivalent dwelling units derived from February 2001 usage by customer class and population growth projections from 1996 to 2020 from RNJ Group, Inc., *Fayetteville Wastewater Collection System Master Plan*, April 1997; annual new units in Fayetteville is average from 1996-1999 building permits; Fayetteville residential as share of total usage from Fayetteville Water and Sewer Department, "Number of Sewer Customers, Active Only, February 2001."

These calculations are intended only to provide an order-of-magnitude sense of potential fee levels and revenue. A detailed wastewater impact fee study would need to take into consideration a number of factors. For example, the wastewater master plan notes that the City will need to spend approximately $10 million on improvements to the existing plant, even though the improved plant will have about the same amount of capacity. Some of this cost may be attributable to upgrading the plant's treatment quality, to the extent that is the case, new customers should be given credit against their impact fees for the rate revenue they will generate that will be used to remedy these deficiencies in treatment quality. Similarly, the existing plant appears to be operating somewhat over its designed and permitted capacity, so some of the cost of the new plant may be attributable to serving existing customers.

A detailed impact fee study could also review the possibility of charging a fee for collection system improvements. As both the treatment plant and collection master plans make clear, there are a number of collection system improvements that are needed to implement the two treatment plant scenario. However, additional analysis would be required to determine the portion of those costs that could be attributed to projected growth. Given the potential magnitude of the treatment plant component of a wastewater impact fee, the City may not want to perform the analysis required to determine a defensible fee for collection system improvements.

Parks

Fayetteville provides a wide diversity of recreational areas and open space for its residents. The City has 23 neighborhood and community parks totaling 414 developed acres, 14 undeveloped parks sites containing 48 acres and about 2,000 additional acres of land at three lake sites. The City also provides facilities at and maintains 10 sites owned by the school district.

On November 14, 1995, the citizens passed a one cent hotel, motel, restaurant (HMR) tax to implement the unfunded plans for existing and future park facilities. The City is currently updating its park master plan.

The City's subdivision regulations require developers of all new residential subdivisions to dedicate park land or pay a fee in-lieu of dedication. Major development comprising more than 40 acres or more than 100 housing units are required to dedicate parkland unless no suitable park site is available. The dedication requirement per dwelling unit varies by housing type. The fee in-lieu of dedication is updated every two years based on the average cost of park land. In 1994, the fees were based on $12,000 an acre. This was increased to $15,000 per acre in November 1997 and subsequently to the current level of $18,750 per acre in December 1999. The city is divided into four quadrants, which serve as benefit districts for expenditure of the fees-in-lieu. The fee revenue is spent within the benefit district in which it is collected. The fees are spent on park land acquisition and development.

Table 13
PARK DEDICATION REQUIREMENT/FEE-IN-LIEU

Housing Type	Acres/Unit	Cost/Acre	Fee/Unit
Single-Family	0.025	$18,750	$470
Multi-Family	0.020	$18,750	$375
Mobile Home	0.015	$18,750	$280

Source: Fayetteville Subdivision Regulations, Section 159.30(K), updated by Resolution 4199 passed November 11, 1999, effective December 10, 1999..

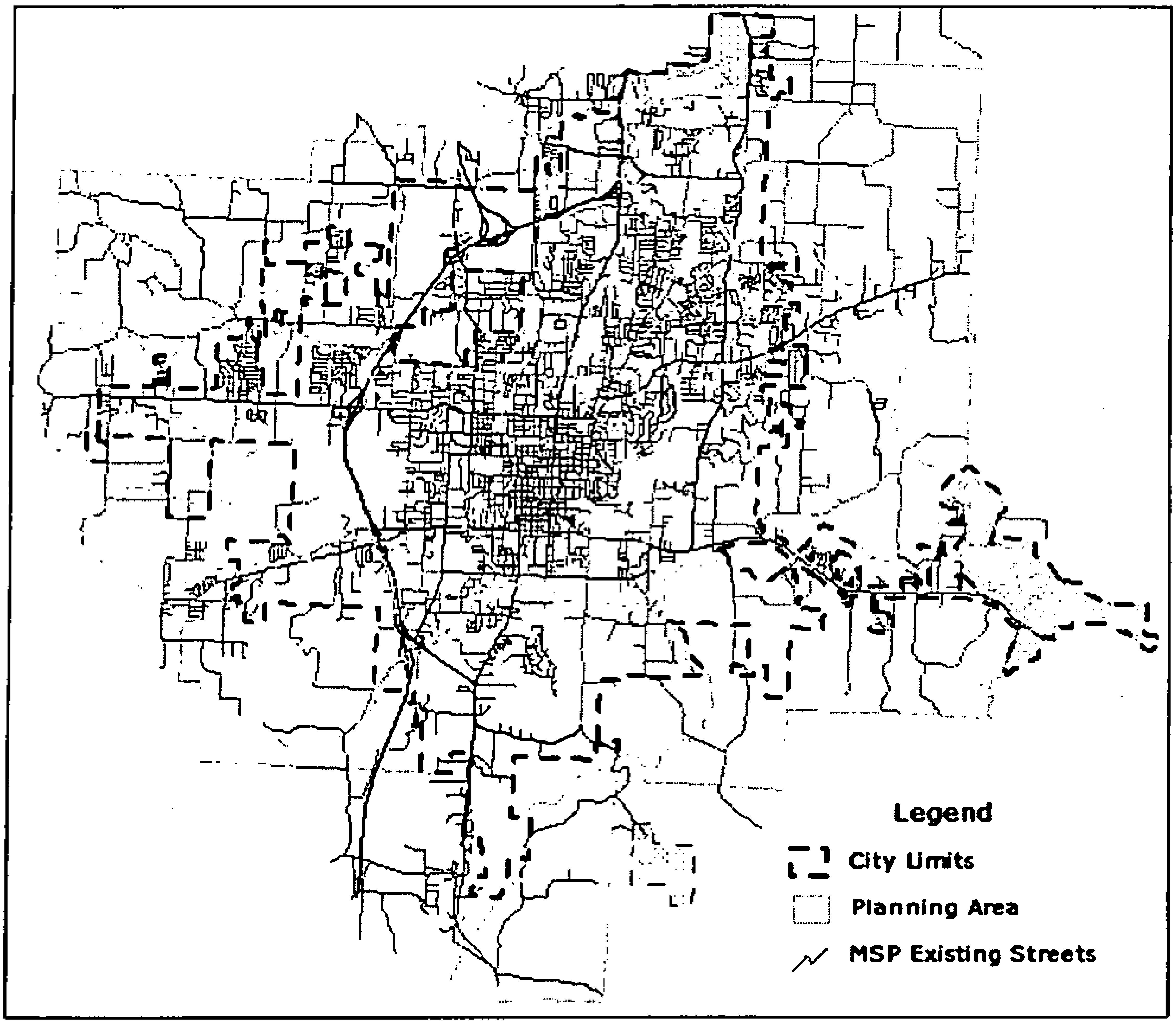
The current dedication requirements for single-family and multi-family units accurately reflect the differences in average household sizes between owner-occupied and renter-occupied units. However, the correlation between housing type and tenure is not precise, and actual data on household size by housing type is available from the census and should be used. The source of the dedication requirement for mobile homes is less clear, and again this should be updated using available census data. The City has an excellent inventory of park land and facilities for the current effort to update the park master plan. This inventory should be used to ensure that the dedication requirement does not exceed the current level of service provided by the City.

The City's current park land dedication and fee in-lieu requirement has been litigated up to the state Supreme Court. Our recommendation is that the City retain this system, and update it to reflect the current level of service as well as differences in household size by housing type.

Major Roads

The City's Master Street Plan is an official map that is used in conjunction with the Circulation Element of the 2020 *General Plan*. It classifies streets into a number of functional types, including freeway/expressways, principal arterials, minor arterials, collectors and local streets. The Master Street Plan shows the location of new roads and allows the City to preserve corridors for roadways expected to need widening or extension.

Figure 7
EXISTING MAJOR ROADS



The long-range transportation plan for the two-county region (Washington and Benton Counties) is the *2020 Regional Transportation Plan for Metropolitan Northwest Arkansas*, which was developed in 1995. The five-year update to that plan is currently in draft form. The Transportation Improvement Program for FY 2001-2003 has $2.5 million programmed for two major widening projects within the City of Fayetteville over the three-year period. The City also had road improvements programmed in its *Five Year Capital Improvements Program, 2000-2004*, which is updated every two years.

The most recent detailed transportation analysis for Fayetteville's major road system was conducted in 1992.[30] This analysis included compiling a complete inventory of the City's major road system, determining the peak hour capacity of each road segment, and identifying existing (1992) and projected (2010) traffic volumes. While somewhat dated, the study provides useful background information.

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[30] DeShazo, Starek & Tang, Inc., *Prioritization of Roadway Improvements in Fayetteville, Arkansas*, August 1992 (two volumes).

The City maintains an inventory of the major street system. The inventory includes the name of each street, the functional classification, from and to segment endpoints, the length of the segment in feet, number of lanes, and pavement and ROW width. Current (1999) traffic counts are available for most roadways in the region from the Planning and Research Division of the Arkansas State Highway and Transportation Department.

The City does not impose a road impact fee on new development, but there are a number of developer exactions for roads in the subdivision regulations. A "large scale development," defined as any development larger than one acre, must dedicate sufficient right-of-way (ROW) to bring any abutting or intersecting major road to the standards of the master street plan. A lesser dedication may be recommended by the planning commission and approved by the city council in cases of undue hardship or practical difficulties.[31] When commercial, industrial or multi-family development is proposed adjacent to any street not constructed to current city standards, the developer is required to dedicate sufficient ROW and install paving, curb and gutter, and sidewalks necessary to bring the street into conformity with current standards. The City Council may reduce the dedication requirement, and the cost of required improvements shall be in proportion to the needs created by the development.[32] Finally, off-site road improvements may be required where a proposed subdivision has access to paved streets only by way of substandard or unimproved streets. In such cases, the subdivider is required to contribute a proportionate share of the cost of the off-site improvements. The proportionate share is based on the acreage of the subdivision as a share of the acreage of all property benefitting from the improvement, or by an alternative method determined by the planning commission.[33]

In general, these requirements mean that development abutting an unimproved or substandard street must dedicate the required ROW and construct the half of the street improvement. The developer does have the option to do a traffic study to attempt to demonstrate that the required improvement exceeds the impact of the development. Even lot splits can trigger the requirements to improve abutting roadways.

The City's explicit statutory authority relating to major road exactions appears to be limited to requiring the dedication of land or payment of a fee in-lieu of land for improvements shown on a master street plan. The City's current roadway exaction ordinances, as well as those of most other Arkansas municipalities, go quite a way beyond requiring ROW dedication. They even include payment of an individually-calculated proportionate share of the cost of certain off-site improvements in some circumstances. Whether an Arkansas municipality's implicit authority to ensure the provision of adequate infrastructure to serve new development extends to imposing road impact fees is uncertain. In the absence of clarifying legislation, the courts will ultimately decide this question. Whether the City should proceed to develop road impact fees in this context is a policy decision for the City Council.

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[31] Section 159.54: Large scale development.

[32] Section 159.55: Street improvements.

[33] Section 159.33: Required off-site improvements.

DEVELOPMENT FEE SURVEY

FAYETTEVILLE, ARKANSAS

submitted by **duncan** associates

in association with
Cooper Consulting Company

April 11, 2001

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SUMMARY - Development Fee Survey

As part of the Fayetteville Impact Fee Study, a survey of development fees in 11 jurisdictions was conducted. The survey included 6 Arkansas jurisdictions (Bentonville, Conway, Fort Smith, Jonesboro, Rogers and Springdale) and 5 jurisdictions outside the State (Bozeman, MT; Chapel Hill, NC; Fort Collins, CO; Lawrence, KS; and Springfield, MO). Key factors in selection of jurisdictions included proximity to Fayetteville (northwest Arkansas), fast growth communities and/or traditional college communities. Note: *Information contained in the tables is a SUMMARY; refer to individual survey sheets for exact information.*

Population and Growth Trends

As the table below indicates, surveyed Arkansas jurisdictions range in population from Bentonville's 19,730 people to Fort Smith's 80,000. Outside the state, Bozeman has the smallest population with 33,000 people and Springfield, Missouri has the largest with 151,600 people. All Arkansas jurisdictions classify themselves as "fast growing" with the exception of Fort Smith, whose growth is "moderate" (note that Fort Smith also has the largest population, therefore a slower rate of growth is not unusual). In states outside Arkansas, Bozeman and Fort Collins classify themselves as "fast growing" with the others considered "moderate growth" communities.

Population densities are another interesting comparative factor. Jonesboro, with an average of 486 persons per square mile, is one-third as densely populated as Springdale - both with similar populations. Jonesboro contains almost twice the square miles (86) as any other surveyed jurisdiction within Arkansas. Overall, Arkansas communities have a much lower density than surveyed jurisdictions outside the state. Lawrence, Kansas is the most densely populated, averaging almost 2,900 persons per square mile. The remainder of the out-of-state jurisdictions reflects densities usually twice or three times that of the surveyed Arkansas jurisdictions.

	Population	Square Miles	Density (persons/sq. mi.)	Growth Rate
Arkansas Cities				
Fayetteville	58,150	44	1,322	Fast
Bentonville	19,730	23	850	Fast
Conway	43,150	40	1,079	Fast
Fort Smith	80,000	53	1,509	Moderate
Jonesboro	51,000	86	593	Fast
Rogers	37,800	38	995	Fast
Springdale	44,800	31	1,445	Fast
Other Cities				
Bozeman, Montana	33,000	13	2,538	Fast
Chapel Hill, North Carolina	45,000	20	2,250	Moderate
Fort Collins, Colorado	122,300	47	2,602	Fast
Lawrence, Kansas	83,700	29	2,886	Moderate
Springfield, Missouri	151,600	75	2,021	Moderate

Studies and Sales Tax Revenues

Based on interviews, only Bentonville and Conway are actively looking at development impact fees. Historically, revenue for capital projects in Arkansas jurisdictions is primarily generated through sale tax levies. Typically, it is a sales tax from ½% to 1%. The capacity to generate revenue, however, varies greatly. A 1% sales tax in Bentonville raises $2 million annually, while the same percent in Fort Smith generates between $14 - $16 million and in Jonesboro, $11 million. City size, proximity to growth corridors and the amount of commercial businesses within a jurisdiction all contribute to the capacity to generate revenue via sales taxes. Outside Arkansas, all but Springfield employs some type of development fee system to fund streets, drainage, water and sewer. With the exception of Bozeman and Chapel Hill, these jurisdictions also have sales tax levies to fund capital projects.

Based on information provided, it appears that only Bentonville is a beneficiary of a countywide sales tax. In addition to Bentonville's 1% general fund sales tax, Benton County has a countywide 1% sales tax, for which Bentonville is remitted its pro rata share. The city uses this revenue for capital projects. Springdale has an interesting twist. It has a "voluntary" property tax levy for the fire department and library.

	Studies	Sales Tax Rate & Annual Revenue	Sales Tax Purpose
Arkansas Cities			
Bentonville	On-going study on impact fees	1% city and 1% county-wide sales tax $2 million	Parks, fire, streets, municipal buildings (funded via county sales tax revenue)
Conway	In process of reviewing impact fee RFP submissions	½% sales tax $3.6 million	Roads, fire stations, drainage
Fort Smith	Comprehensive plan update underway	1% sales tax $14 - $16 million	Roads & drainage based on CIP
Jonesboro	City updating zoning and subdivision ordinances	1% sales tax $11 million	½ dedicated to roads; ½ eliminating fees for sanitation, mosquito spraying, bird removal, reducing property tax
Rogers	Updated fees in 2000; may update comprehensive plan soon	1% sales tax $5.5 million	Justice center, fire training & administration buildings, streets & drainage
Springdale	Comprehensive plan update underway	1% sales tax $8.5 million Voluntary Property Tax .15% mil Fire ($43,500) .10% Libraries ($27,300)	75% of revenue devoted to capital projects; based on CIP

	Studies	Sales Tax Rate & Annual Revenue	Sales Tax Purpose
Other Cities			
Bozeman, MT	Transportation impact fee study completed in 1996.	No sales tax for public improvements permitted.	N/A
Chapel Hill, NC	School impact fee study; may create different impact fees for different residential uses.	No sales tax for public improvements.	N/A
Fort Collins, CO	No development fee studies on going.	¾% sales tax issues $5 million	3 sales taxes: streets & transportation; community enhancement; parks
Lawrence, KS	Updating zoning ordinance; looking at "Adequate Public Facilities" ordinance.	1% countywide sales tax $7.2 million for city	Parks and recreation and part of county health facility based on CIP
Springfield, MO	Only discussed impact fees; nothing more.	1/8 % and ¼ % sales tax $4 and $8 million Plus: $4 million in property tax	1/8 % devoted to state identified road projects (reimbursed by state); ¼ % parks and other road improvements Property tax for fire stations & stormwater etc.

Roads and Drainage Facilities

Conway has perhaps the most liberal road improvement policy, requiring no improvement to an adjacent roadway if it is a city-maintained roadway, but it does require dedication of rights-of-way if a boundary street. Fort Smith and Jonesboro require developers to bring the adjacent street up to standard city standards, and if needed, dedicate right-of-way. Rogers requires developers to not only dedicate right-of-way, but requires additional lanes to be added if necessary. Bentonville's and Springdale's policies are similar to Rogers, but they have provisions for "payment-in-lieu" for major street improvements.

Cities outside of Arkansas have some very similar road improvement polices to many of those jurisdictions within the State. However, Bozeman and Fort Collins have transportation "impact" fees that are charged to the builder at the point of applying for a building permit. These transportation fees can add an average of $1800 to the cost of a single-family home; but more strikingly, they can add over $500,000 to a 100,000 square foot commercial development. The table below *summarizes* the results of the detailed survey sheets.

	Roads	Drainage
Arkansas Cities		
Bentonville	Bring road up to meet Master Street Plan; if lanes needed but not in CIP, dedicate ROW; if in CIP, makes "payment-in-lieu" for lanes.	Typically require on-site detention; off-site improvements only required if downstream hazard.
Conway	If city maintained, no improvements required; ROW dedication if Boundary Street.	Provide off-site drainage improvements as needed.

	Roads	Drainage
Fort Smith	Bring adjacent roads up to city standards; provides ROW for additional lanes if needed.	Same as above
Jonesboro	Same as above	Same as above
Rogers	Bring adjacent roads up to city standards; Provide ROW & road improvements, including additional lanes if needed.	Same as above
Springdale	Bring adjacent roads up to city standards; Occasionally, if improvements not immediately needed, developer makes a "payment in lieu;" Funds go into one account but assigned to specific street; no refunds.	Same as above
Other Cities		
Bozeman, MT	Transportation Impact Fee: Single-family home = $1778 Commercial (100,000 sf) = $492,600	Provide off-site drainage improvements as needed.
Chapel Hill, NC	Provide ROW for additional lanes and sometimes build additional lanes, a negotiated process.	Same as above
Fort Collins, CO	Donate ½ of ROW based on local street standard & construct street; If improved above the local street standard, developer reimbursed for additional cost. *PLUS (at building permit)* Street Oversizing Capital Expansion Fee: Single-family home = $1624 Commercial (100,000 sf) = $541,000 Larimer County Transportation Expansion Fee: Single-family home = $164 Commercial (100,000 sf) = $54,100	One time fee for development of a lot or parcel based on percentage of impervious area. Twelve drainage basins have been identified with ten having drainage development fees. As an example, an 8600 square foot lot having 50% impervious area would have a drainage development fee between $215 to $987, depending on which basin the property is located. Monthly stormwater fee examples: $8.13 for 8600 sf single-family lot and $82.34 for 1-acre commercial site.
Lawrence, KS	Provide all road improvements and ROW; If major street improvement premature, developer signs agreement not to oppose future "Benefit District."	Monthly stormwater utility fee based on impervious surface. Single-family: 1801 - 3000 sf = $3.75 Commercial 1 ac. site (90% impervious) = $21.04
Springfield, MO	Dedicate ROW and construct two lanes for internal arterial; Adjacent road - dedicate ROW & improve road (but not add lanes); If road-widening underway, developer makes "payment in lieu" to cover the cost. City may agree to recoupment agreement or cost sharing for significant improvement. If property rezoned for commercial or industrial use, City may require full roadway improvements including additional lanes.	Provide all storm drainage improvements and on-site detention facilities. If detention "buy out" is permitted, the fee for 1 or 2 family residence is $1 per cubic feet of required detention; commercial is $2. If development btw. 24,000 - 100,000 cf of detention, fee drops to ½; if greater, no buyout. Detention buy-outs approved on case-by-case basis.

Water and Sewer Facilities

The cost and recoupment policies for extending or oversizing water and sewer lines are somewhat similar across Arkansas jurisdictions. Both Fort Smith and Rogers have a $150 "connection fee" for new subdivisions, the former is based on per acre and the latter on per lot. Conway has perhaps the more formalized provision for recoupment of fees for line extensions or oversizing. With the exception of Springfield, all jurisdictions outside Arkansas had some type of sewer and water "impact fee." Chapel Hill and Fort Collins have substantial water and sewer "impact fees." Chapel Hill's combined "sewer and water availability fee" is $3500; while Fort Collins's "wastewater and water plant investment fees" can add $1030 for wastewater and $3810 for water to the cost of a home (based on a 10,000 sf lot). Wastewater and water fees for non-residential development within these communities are even higher. Bozeman has similar but lower impact fees for wastewater and water services.

	Sewer	Water
Arkansas Cities		
Bentonville	Tie-on fee - $125 Tap fee - $75	$350 - 5/8 inch meter plus bore/cut $1500 - 2 inch meter, plus bore/cut No fee for new subdivision; cost to tap main line - $1000 to tap an 8" line.
Conway	$300 - 4" service (20 feet or less) $450 - 4" service (greater than 20 feet) Plus: $350 for cutting or boring Conway Corporation serves as contractor to install in new subdivisions; Provision for recoupment of fees for line extensions of sewer and water through issuance of connection certificates by Conway Corporation.	$250 - ¾" inch meter (30 feet or less) $350 (equal to or greater than 30 feet) Plus: $150 cutting or boring
Fort Smith	Tie on fee: $150 per acre in subdivision; $350 for individual service. Sanitary sewer lines serving areas >100 acres eligible for partial reimbursement; Provision for city participation for oversizing lines; city may pay difference in cost of the line size; subject to Board of Directors approval.	Non-Street Crossing: ¾" tap - $260; 2" tap - $960; $13/ft. > 10 ft. Street Crossing - CUT: ¾" tap - $410; 2" tap - $1225; $23/ft. >20 ft. in street and $13/ft. out of street Street Crossing - BORE: ¾" tap - $325; 2" tap - $1025; $5/ft. > 20 ft. in the street and 13/ft. out of street
Jonesboro	Option of paying City Water / Light $30 per lineal foot to install sewer lines; most are installed by developer. $250 sewer inspection connection fee goes into fund for building sewer trunk lines.	Jonesboro Improvement District installs all water lines. Tap fee for ¾" line is $150; a 2" line is $500.
Rogers	$150 per lot "connection fee" Developer is required to pay all cost of extending service. On a case-by-case basis, the city may contribute to the extension of water and sewer.	$150 per lot "connection fee" 1½ inch or greater water meter, the charge is whatever actual cost is.
Springdale	Sewer service fee: 4" $285 for individual service; Subdivision: sewer & water service paid by developer; city may contribute to oversizing.	Tap fee: 5/8 inch - $275, plus bore/cut

	Sewer	Water
Other Cities		
Bozeman, MT	Sewer impact fee: $2716.07 residential	Water impact fee: $2142.31 residential
Chapel Hill, NC	Combined sewer/water "availability fee." Typical new house: $3500 Service 4" $615 - $700, plus street crossing Tie on fee - $350 or 4" service line	Combined sewer/water "availability fee." Typical new house: $3500 ¾" tap - $260 - $410, plus street crossing
Fort Collins, CO	Wastewater Plant Investment Fee (examples) Single-family Residential $1030/unit Non-Residential $6500 for 1 inch meter; $18,900 for 2 inch meter	Water Plant Investment Fee (examples) Single-family Residential (3/4 inch tap) $610 + $.32 per square feet of lot area Non-Residential $15,300 for 1 inch meter; $53,600 for 2 inch meter Plus, "raw water fee"
Lawrence, KS	Sewer system development charge of $460 Any line extension 12" or less is required to be made fully by the developer. There is no provision for recoupment of line extension cost if the developer must extend lines to reach existing water or sewer service.	5/8" - $450.07 Water system development charge of $355
Springfield, MO	5/8" - water meter is $300 sewer fee 1" - water meter is $500 sewer fee Developer provides sanitary sewer to development. Minimum size tract for a septic tank is 3 acres. Special projects - City has entered into agreements with developers to come up with a formula to apportion recoupment costs based on a per acre calculation. The City's policy for oversizing lines is to pay the difference in PIPE cost, not installation costs.	1" water meter - $600 (inclusive) If a water main extension is on the Master Plan for main extension, the City will cost share for oversizing. The City also has a cost recovery agreement whereby the developer who installed the main extension can receive recoupment of the expense based on the lineal front foot of development occurring on either side of the line. Cost recoupment is limited to 5 years; just initiated in last few years.

Park, School and Library Facilities

Based on information from the survey, Arkansas jurisdictions do not fund parks, schools or libraries through any development fees, dedications or payments-in-lieu. Only three of the six surveyed jurisdictions have a portion of their property taxes that is dedicated to libraries (Conway, Jonesboro and Springdale). Springdale has a "voluntary" property tax for libraries that generates approximately $27,000 annually.

Surveyed jurisdictions outside Arkansas fund parks, trails, open space, schools and libraries through a number of revenue sources. Fort Collins has a "capital expansion fee" that funds parks, libraries, police, fire and governmental administration buildings. School impact fees are charged separately by the respective school districts in Fort Collins ($446 – $484 per dwelling unit). Chapel Hill has a school impact fee of $3,000 per dwelling unit. Bozeman has a methodology for calculating recreation needs based on the density of proposed development.

	Parks	Schools	Libraries
Arkansas Cities			
Bentonville	N/A	N/A	N/A
Conway	N/A	N/A	1 mil county property tax
Fort Smith	N/A	N/A	N/A
Jonesboro	N/A	N/A	1 mil property tax
Rogers	N/A	N/A	N/A
Springdale	N/A	N/A	1-mil property tax A "voluntary" library tax of .0010 mils
Other Cities			
Bozeman, MT	State law authorizes land dedication requirements for parks. Based on sliding scale depending on size of lots.	N/A	N/A
Chapel Hill, NC	Requires improved recreation space as an amenity for apartments and subdivisions; Town Council can authorize payments-in-lieu.	$3000 per dwelling unit	N/A
Fort Collins, CO Ex. - Home: 1701 - 2200 sf	"Capital expansion fee" (CFE) CEF community parkland - $1,426 PLUS: parkland fee - $1,275	Poudre School District impact fee - $484.26 per dwelling; Thompson School District impact fee - $446.00 per dwelling	"Capital expansion fee" CEF for library = $453
Lawrence, KS	Part of the City's share of the 1% countywide sales tax funds parks.	N/A	N/A
Springfield, MO	A portion the ¼% sales tax funds parks.	N/A	Portion of property tax

Police, Fire and Sidewalk Facilities

With one exception, none of the surveyed Arkansas jurisdictions has any development fees for police, fire or installation of sidewalks. Fort Smith has an innovative sidewalk financing method – when a building permit is purchased on a residential or commercial improvement, there is a "sidewalk assessment fee" charged. Springdale has a "voluntary" property tax of .0015 mils that raises approximately $43,000 per year for the Fire Department. Outside Arkansas, jurisdictions have similar requirement for installation of sidewalks. However, Springfield, Missouri, requires sidewalks on residential streets based on density. If not needed at a particular location, Planning and Zoning Board can approve a sidewalk "buyout" at $16.63 per linear foot. In the area of impact fees, Fort Collins has a "capital expansion fee" for development impacts to the Fire and Police Departments. Bozeman has only an impact fee for development impacts to the Fire Department.

	Police	Fire	Sidewalks
Arkansas Cities			
Bentonville	N/A	N/A	5-foot sidewalks are required in residential and commercial development.
Conway	N/A	N/A	Sidewalks on both sides of collectors and arterials, commercial or office districts regardless of classification of streets.
Fort Smith	N/A	N/A	Developers must install sidewalks in new subdivisions. PLUS, almost every building permit includes an amount for sidewalks known as the "sidewalk assessment fee." Fee ranges from $50- $3000.
Jonesboro	N/A	N/A	Sidewalks required on one side of collectors and arterials.
Rogers	N/A	N/A	Developers must install sidewalks on both sides of street in new residential and non-residential developments.
Springdale	N/A	"Voluntary" Fire tax of .0015 mils; raises $43,000/year	Sidewalks are required on both sides of street in residential and non-residential development.
Others Cities			
Bozeman, MT	N/A	Impact fee: Home - $181.87 Bus. $450/1000 sf	Sidewalks are required on both sides of street in residential and non-residential development.
Chapel Hill, NC	N/A	N/A	Same as above
Fort Collins, CO Home: 1701-2200 sf Bus./Ind.: 100,000 sf	"Capital expansion fee" Home: $112 Bus.: $12,100 Ind.: $3,300	"Cap. Expansion Fee" Home: $163 Bus.: $17,400 Ind.: $4,800	Same as above and sometimes bike lane
Lawrence, KS	N/A	N/A	One side of local streets and both sides of collector and arterial.
Springfield, MO	N/A	N/A	Sidewalks required both sides of collectors & arterials; required on both sides of local res. streets based on density. If not needed at a particular location, P & Z can approve sidewalk buyout - $16.63 / foot.

Rezoning, Subdivisions and Variances

Rezoning, subdivision and variance fees vary widely in the surveyed jurisdictions. Clearly the fees charged by Arkansas communities are significantly less than those charged by surveyed communities outside the State. Fees in Chapel Hill are perhaps the highest, with it not being unusual for total development fees to run between $20,000 - $30,000.

	Rezoning	Subdivisions	Variances
Arkansas Cities			
Bentonville	Rezoning - $225	Preliminary & Final Plat - $125 + $1/lot	Variance - $125 Conditional Use - $125
Conway	Rezoning - $75	Minor - $100; Preliminary Plat - $150 + $5/lot Final Plat - $100	Variance - $35 Conditional Use - no fee
Fort Smith	Rezoning - $130	Preliminary & Final Plat - $25 filing fee	Variance - $50 Conditional Use - $50 / $75
Jonesboro	Rezoning - $30	Minor or Preliminary Plat - $25 + $.60/lot Final Plat - $25 + $.60/lot	Variance - $25 Conditional Use - $25
Rogers	Rezoning - $200	Preliminary Plat - $200 + $1/lot >50 lots Final Plat - $200 + $1/lot >50 lots	Variance - $100 Conditional Use - $100
Springdale	Rezoning - $175	Preliminary Plat - $100 Final Plat - $50 + $1/lot	Variance - $75 Conditional Use - $75
Other Cities			
Bozeman, MT	Rezoning - $400 + $5/acre up to 80 acres; $3/acre >80 acres	Preliminary Plat - $200 + $3/lot up to 100 lots; $1/ lot >100 lots Final Plat - $50 + $1/lot	Variance - $180 residential; $300 all others Conditional use permit - $660
Chapel Hill, NC	Initial zoning application: $800 + $40/acre Site Plan Review: $1700 + $17/sf floor area Final Zoning Permit: ½ of initial application fee	Preliminary Plat - $5000 + $200/lot Final Plat - $270 + $40/lot	Variance - $330 Special use permit - $5000 + $20/acre
Fort Collins, CO	Rezoning - $977 Major amendment to land use plan - $3206	Overall Dev. Plan - $1599 Project Dev. Plan no Plat - $3887; with Plat - $5879 Final Plan - $1000	Variance - $25 Do not issue conditional use permits
Lawrence, KS	0 - 5 acres: $200 - $350 5 - 10 acres: $225 - $375 10 - 20 acres: $250 - $400 >20 acres: $275 - $425	Plat - $100 <5 lots; $200 >4 lots +$3/lot >4 lots Prel. Dev. Plan - $200; & Final Dev. Plan - $100	Variance - $30 residential; $60 all others Use permitted upon review - $50
Springfield, MO	Rezoning - $630	Preliminary Plat - $390 Final Plat - $165	Variance - $350 Conditional Use - $700

SURVEY RESPONSES - Individual Cities

Bentonville, Arkansas

Contacts

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Mr. Troy Galloway, Planning Director, 501-271-3122 tgalloway@bentonvillear.com
Mr. Roger Terrell, Utilities Director, 501-271-3143 rterrell@bentonvillear.com
Mr. Stewart Smith, 501-271-3111 (sales tax) ssmith@bentonvillear.com
Ms. Denise Land, 501-271-3111 (sales tax) dland@bentonvillear.com

Size and Growth

Population: 19,730
23.2 square miles
Fast growing city, via voluntary annexation

Studies

Impact fee study that is on going by Paul Tischler should be completed by end of March. The study includes wastewater, sewer, police, fire, parks, and libraries, but does not include drainage, or electricity because of the advent of deregulation.

Sales Tax

The city collects a 1-cent sales tax that goes into the general fund. In addition, Benton County has a 1-cent sales tax in which the City of Bentonville shares. This tax generated $2,067,000 in sales tax revenue in 2000 and is informally referred to by the City as the "capital sales tax." Revenues from this tax go into a separate fund called the "County Sales Tax Department" fund whereby funds can be transferred to pay for capital projects that might include parks, fire, streets and municipal buildings. The City tries to avoid use of these funds for enterprise-funded operations such as water, sewer and electric.

Roads

In new subdivisions, the developer pays to bring adjacent roads up to standard of master street plan. If additional lanes are planned based on the Master Street Plan but are not yet part of the 5-Year CIP, the developer dedicates only the ROW. However, if the additional lane improvements are in the CIP, the developer makes a payment in-lieu for the cost of the additional lane. The amount is based on engineering estimates completed by the developer's engineer and approved by the City.

Drainage

Off-site drainage improvements are limited to those cases where a development may pose a hazard to down stream properties. The majority of developments provide on-site detention/retention that releases storm water at pre-development flows.

Water and Sewer
Sewer tie-on fee: $125/ DU or commercial or industrial development
Tap fee: $75

Water tap fee: $350/DU for 5/8 meter, plus $50 deposit. A 2" tap (commercial such as a fast-food) is $1500. No fee for new subdivision; develop installs the individual taps but does pay to tap the main line into subdivision which is usually $1000 to tap an 8" line. The water tap fee covers the cost of city installing the tap. Also a cost to bore the street ($20/ft) or to trench ($45/sq. yd.)

Parks
No development fees or dedications

Schools
No development fees

Libraries
No development fees

Police
No development fees

Fire
No development fees

Sidewalks
5-foot sidewalks are required in residential and commercial development

Zoning and Subdivision Fees
Zoning fees - $225
Subdivision Plat (preliminary and final) - $125 plus $1 per lot

Conway, Arkansas

Contacts
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Mr. Bill Polk, Planning Director, 501-450-6105, billpolk@conwaycorp.net
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Mr. Tommy Shackelford, Mgr. Eng. and Plng., Conway Corp, 501-450-6050
tommys@conwaycorp.net

Size and Growth
Population: 43,176
Square Miles: 40
Fast growing through voluntary annexation and annexation of "islands"

Studies
The city is in process of looking at putting out an RFP for infrastructure fees study.

Sales Tax
In 1993, the City passed a ½ cent sales tax for paying off bonded indebtedness to fund roads, fire station, drainage and other improvements. The tax raises approximately $3.6 million per year. When the bonds are paid off, the sale tax will sunset. (Perry Faulkner 501-450-6101)

Roads
In new subdivisions, the developer pays for all on-site improvements and provides ROW for additional lanes for Boundary Streets if needed in accordance with Master Street Plan. If a development is adjacent to a collector or an arterial that the City has accepted for maintenance, the developer may develop lots off of this roadway without regard to condition or adequacy of the external street. If the road is a local street that has been accepted for maintenance by the City, the developer may divide off the road but also meet the City's standards for access. If the road is a dead end road, the furthest lot from the intersection of this road with an arterial or collector or another local road that has at least two outlets must be nor more than 650 from that intersection. If the ROW is 60, there is 40 feet of paving, and no more than 44 lots or if the ROW is 50 feet, there is no more than 44 lots and the lot width at the building line for each lot is no less than 90 feet, then the distance from the intersection may be 1120 feet.

Drainage
Developer can be required to provide off-site drainage improvements if needed for plat approval, but this is a rare occurrence.

Water and Sewer
All water and sewer mains are constructed in accordance with City of Conway ordinances and Conway Corporation policy. Water mains are sized according to future development potential and fire flows. Sewer mains are sized to future development potential. The Manager of Engineering and Planning of the Conway Corporation serves as contracting agent to install water and sewer improvements in new subdivisions. Projects are funded through draws off letters of credits or cashier checks. Customers provide a letter of credit or a cashier's check equivalent to the estimated

cost of the project, including engineering costs, prior to the commencement of the job.
Customers paying for water or sewer main extensions are entitled to recover a portion of their costs if the extension fronts the property of other potential customers. The method by which this is accomplished is through the issuance of connection certificates by the Conway Corporation to the customer paying for the water or sewer main.

Certificates will be issued equal to the number of potential lots or building sites along the extension, in agreement with the customer paying for the extension. The value of each certificate is determined by dividing the total cost of the extension by the number of potential lots or building sites along it. The customer paying for the main(s) surrenders one certificate upon connection of this water or sewer service line to the main extension. Each outstanding connection certificate earns interest (currently at the rate of 6 percent per year) for the first three years from the date of original issue. Additional service connections to a water or sewer main extension will be made by the Corporation only upon receipt of a connection certificate, or upon payment of the face value of the certificate plus the interest earned.

Example: sewer ½ mile line extension cost $300,000; developer plans to build 50 lots; additional land that will benefit from the line extension has the potential for an additional 100 lots; total lots is 150; value per lot is $2,000. Developer's benefit is $100,000 ($300,000 divided by 50 lots); developer is paid $2000 (plus interest earned) for each new service line tied to the sewer line plus interest. In addition to line extension, homes in new subdivisions are charged $30 for a meter installation where the meter setter has been set during the construction of water mains in a subdivision.

Conway Corporation Residential Service Installation Cost Schedule where water and sewer services have not been provided at a potential building site. This is in addition to any connection certificate charges due on any main.

¾" water meter installation 30 feet or less - $250; >30 feet - $350; cutting/boring $150
4" sewer service installation 20 feet or less $300; >20 feet - $450; cutting/boring $350

Parks
No fees or dedications

Schools
No fees

Libraries
A one-mill tax is charged countywide to support the library.

Police
No fees

Fire
No fees

Sidewalks
The Subdivision Ordinance requires sidewalks be on both sides of collectors and arterials, as well as both sides with a commercial or office districts regardless of classification of streets. This applies only to new developments.

Electric and Cable

City provides overhead electric and cable services to city residents. Customers pay 60 percent of underground conduit costs for underground electric and cable. This is the approximate difference in the cost of overhead and underground facilities.

Zoning and Subdivision Fees

Rezoning fees - $75
Variance - $35
Conditional Use – no fee
Subdivision Plat: Minor Plat - $100; Preliminary Plat - $150 plus $5 per lot; Final Plat - $100
Sign Permit: $15
Parking lot permit: $25 for first 25 spaces; $10 for each additional 50 spaces

Fort Smith, Arkansas

Contacts

P.O. Box 1908, Fort Smith, AR 72902
Mr. Wally Bailey, Planning Director, 501-784-2216 wbailey@fsark.com
Mr. Roger Cox, Utilities Dept. Records Coordinator, 501-784-2236 rcox@fsark.com

Size and Growth

Population: 80,000
Square Miles 53.4
Moderate Growth

Studies

Retained Gould Evans out of Kansas City to prepare new Comprehensive Plan

Sales Tax

Early 1990's the City passed a 1-cent sales tax for roads and drainage improvements. Tax raises $14-16 million a year. Improvements based on CIP.

Roads

In new subdivisions, the developer pays to bring adjacent roads up to city standards and provides ROW for additional lanes if needed. Developer provides signalization if needed.

Drainage

Developer provides off-site drainage improvements if needed.

Water and Sewer

Sanitary sewer lines that serve areas in excess of 100 acres are eligible for partial reimbursement as outlined in current ordinances. Developers pay a sanitary sewer tie on fee for developments where new lines have been installed and taps provided. This fee is calculated at $150.00 an acre or part of an acre. Homeowners requesting new taps on existing lines pay a tap fee of $350.00 plus the additional cost of installing service lines to the property line. Charges are set by ordinance and total cost varies according to field conditions. In areas where additional water and sewer line size is required to serve a larger area than is originally developed, the developer can apply for City participation in betterment cost for the difference in cost of the line sizes. All City participation in cost sharing is subject to Board of Directors approval.

Water taps costs are set according to code, and vary according to the size of taps. The cost of water taps is also affected by the degree of difficulty in reaching the property line of the customer. Taps larger than 2" are installed by licensed contractors, and paid for by the developer.

- Non-Street Crossing: ¾" tap - $260.00, 1" tap -$300.00, 2" tap - $960.00; $13.00 / foot >10'.
- Street Crossing – CUT: ¾" tap - $410.00, 1" tap - $450.00, 2" tap - $1225.00; $23.00 / foot >20' in street and $13.00 /each additional out of street footage.
- Street Crossing – BORE: ¾" tap - $325.00, 1" tap - $365.00, 2" tap - $1025.00; $5.00 / additional foot in the street >20' minimum; $13.00 /additional out of street footage.

Parks
No fees or dedications

Schools
No development fees charged.

Libraries
No development fees charged.

Police
No fees

Fire
No fees

Sidewalks
Developers must install sidewalks in new subdivisions. The building permit fee includes a certain percent for sidewalks, "sidewalk assessment fee." Once the building permit is approved that portion of the fee that goes to sidewalks is transferred to the "sidewalk" fund. The fee is charged on almost any residential or non-residential building permit, except for small permits. Fees raise approximately $150,000 each year for sidewalks. Used to install sidewalks in areas that do not have sidewalks. Sidewalk fees are based on the estimated value of the construction costs:

Residential Improvements	Commercial or Industrial Improvements
$20,001 - $80,000 = $50 $80,001 and greater - $100	$10,001 - $50,000 = $100 $50,001 - $100,000 = $500 $100,001 - $1,000,000 = $1000 $1,000,001 or greater = $3,000

Zoning and Subdivision Fees
Rezoning fees - $130
Variance - $50
Conditional Use - $50 / $75
Subdivision Plat (preliminary and final) - $25 paid to the county as a filing fee

Jonesboro, Arkansas

Contacts

P.O. Box 1845, Jonesboro, AR 72403
Mr. Jeff Hawkins, Planning Director, 870-932-0540 jhawkins@jonesboro.org
Mr. Jerry Reece, Eng. Services Supervisor Utilities Dept., 870-930-3320 Fax: 930-3333

Size and Growth

Population: 51,000
Square Miles: 86
Fast Growing

Studies

Comprehensive Plan completed in 1996 and the Unified Development Ordinance in 1999; the city staff have broken the zoning and subdivision back out as separate documents and should adopt revised ordinances in this Spring.

Sales Tax

In 1995, a $55 million bond issue was passed that was backed by a 5-year 1-cent sales tax. It expired in June 2000 (average annual revenue generated by 1 cent sales tax is approximately $11 million per year). A new sales tax was passed in October 2000. It is a 1 cent sales tax; ½ dedicated to streets and drainage; other dedicated to eliminating fees for sanitation, mosquito spraying, bird removal, and the portion of the "general purpose" ad valorem tax.

Roads

In new subdivisions, the developer pays for all on-site improvements and provides ROW for additional lanes if needed in accordance with Master Street Plan.

Drainage

Developer provides off-site drainage improvements if needed for plat approval.

Water and Sewer

The developer has the option of installing sewer based on the City Water and Light Improvement District's specifications or the developer can pay the Improvement District $30 per lineal foot to install it. Developer installs most and must provide as-builts, tests, and confirmation that improvements have no outstanding bills or liens. There is a $250 sewer inspection connection fee that goes into a special fund for building sewer trunk lines.

The Improvement District installs all water lines. The water tap fee for ¾" line is $150; a 2" line is $500. There is no charge for boring or cutting a street because the homeowner is responsible for making arrangement for this in existing developments.

Parks

No fees or dedications

Schools
No fees

Libraries
1 mil ad valorem tax for libraries

Police
No fees

Fire
No fees

Sidewalks
Zoning ordinance requires sidewalks on one side of collectors and arterials.

Electric
The City Water and Light Improvement District provides electric service to city residents that is substantially cheaper then other electric providers outside city limits. This has spurred annexation into Jonesboro.

Zoning and Subdivision Fees
Rezoning fees - $30
Variance - $25
Conditional Use - $25
Subdivision Plat (minor, preliminary and final) - $25 plus $.60 per lot; site plan $25

Rogers, Arkansas

Contacts

207 South 2nd Street, Rogers, AR 72756
Mr. Maurice Kolman, Director, Office of Transportation and Planning (did not interview)
Mr. Derrel Smith, Asst. City Planner, 501-621-1186 dsmith@rogersark.org
Mr. Mark Johnson, Rogers Water Utilities, 501-936-5406 markcjohnson@usa.net

Size and Growth

Population: 37,800
Square Miles 38
Fast Growth

Studies

June 2000 major changes were made in development fees and building fees.
Zoning and subdivision update in 1998; there maybe an update of the growth comprehensive plan during this next year.

Sales Tax

In 1996 bond issue passed underwritten by 1% sales tax; funded construction of a criminal justice building, fire training and administration facility, and street and drainage improvements. The 1% tax raised $4.7 mil in 1997; $4.7 mil in 1998; $5 mil in 1999; and $5.5 mil in 2000. (Source: Peggy in Clerk's Office)

Roads

In new subdivisions, the developer pays to bring adjacent roads up to city standards and provides all right-of-way and development improvements, including additional lanes if needed. The large-scale development and subdivision ordinance require that developer improve half of street; and dedicate pave, curb and gutter and sidewalks.

Drainage

Developer provides on- and off-site drainage improvements based on development requirements.

Water and Sewer

Developer funds all water and sewer improvements. If sewer or water extension is required, developer is required to pay all cost of extending service. On a case-by-case basis, the city may contribute to the extension (if the extension is in an area the city plans to extend service, then there is more of a possibility that the city will share costs.

A $150 per lot ($300) "connection fee" is charged for both water and sewer service. Businesses are charged the same $300 "connection fee." Customers that require a 1½" or greater water meter, the Utilities Department installs and charges whatever the cost might be.

Cost of setting a meter in a new subdivision is $10, plus $20 deposit (for existing customers) for both water and sewer. Renters pay $25 for water and $30 for sewer plus a $50 deposit each service.

Parks
No fees or dedications, but developers are strongly encouraged to provide recreation area, particularly flood prone areas.

Schools
No development fees

Libraries
No development fees

Police
No development fees

Fire
No development fees

Sidewalks
Developers must install sidewalks on both sides of street in new residential and non-residential developments.

Zoning and Subdivision Fees
Rezoning fees - $200
Variance - $100
Conditional Use - $100
Large Scale Development Plan - $200
Subdivision Plat: Preliminary Plat - $200 plus $1 per lot over 50 lots; Final Plat - $200 plus $1 per lot over 50 lots
Lot split - $100

Springdale, Arkansas

Contacts

Dept. of Planning and Community Development, 201 Spring Street, Springdale, AR 72764
Ms. Patsy Christie, Planning Director (not interviewed)
Ms. Melissa McCarville, Assistant Planning Director, 501-750-8550 mmccarville@springdaleark.org
Mr. Chris Brown, Engineering Dept. cbrown@ springdaleark.org
Ms. Denise Pearce, City Clerk (sales tax) 501-750-8117
Mr. Otto Potter (roads and drainage) 501-750-8550 opotter@springdaleark.org
Mr. Rick Pulvirenti (water and sewer) 501-751-9479 / 750-4039 fax)
Mr. Paul Justice, NW Arkansas Reg. Plng. Commission, 501-751-7125 pjustice@mail.com

Size and Growth

Population: 44,800
Square Miles: 31
Fast Growth

Studies

City is working on an update to the land use plan; they adopted a new Master Street Plan in April of 2000. It is continually working on updates to various portions of the zoning ordinance and recently, the sign ordinance has been evaluated.

Sales Tax

1% sales tax passed in 1992. 75% of the revenue generated goes to capital projects listed in the Capital Improvement Plan; the remainder goes to the General Fund. In 2000, sales tax revenue generated was $8.5 mil with $6.4 mil going to capital projects.

City council has approved a "voluntary" tax for libraries and the fire department. In the past it was on the county's tax bill, but in 1996 it was taken off. It is now sent out by the City Clerk's office. Since this time revenues have fallen substantially from this "voluntary" tax. Revenues collected last year for the Fire Department were $43,487 (millage rate of .0015) and revenues collected for Libraries were $27,312 (millage rate of .0010).

Roads

Developer constructs all improvements and is required to improve adjacent street based on the Master Street Plan. If street improvements are not immediately needed, the city has a provision for a "payment in lieu." Most often the developer will ask for a waiver of improvements and the Planning Commission usually does not grant the waiver but requires "payment in lieu" of constructing the improvements. At this point the developer submits an amount that the engineers reviews and both parties mutually agree upon the amount. "Payments in lieu" are not done frequently; most of the time the planning commission will want the improvements done immediately. Funds received "in lieu" go into one account but assigned to the street (presently there are 18 different submittals). Funds in lieu are usually related to adding an additional lane. Money is paid in cash with no provision for refunds.

Drainage
Developer provides on and off-site drainage improvements based on impact of development. Developers must account for all on-site drainage and any drainage improvements needed so that development does not harm downstream. Special permission must be granted for detention. Commercial detention remains the responsibility of commercial property owner.

Water and Sewer
Developer pays total cost; city will contribute to paying for oversizing of lines. Water tap fee for 5/8" is $275, plus $250 for a full street bore or $649 for a street cut; Sewer service fee for 4" connection is $285, but developer pays no water or sewer tap fee, if they install water and sewer in new subdivision.

Parks
No development fees or dedications required

Schools
No development fees

Libraries
There is a 1-mil ad valorem tax for library operations collected by the County (Marsha Ransom, 756-7706). The City of Springdale has a "voluntary" library tax of .0010 mils (see above discussion under "sales tax.)"

Police
No development fees

Fire
The City of Springdale has a "voluntary" Fire Department tax of .0015 mils (see above discussion under "sales tax."

Sidewalks
Sidewalks are required on both sides of street in residential and non-residential development; occasionally variances are approved the exempt sidewalk installation. There is also a provision for "payments in lieu"

Zoning and Subdivision Fees
Rezoning – $175
Variance – $75
Conditional Use Permit – $75
Subdivision – Preliminary Plat - $100; Final Plat - $50/lot or $1/lot, which ever is greater; Informal Plat - $50

Bozeman, Montana

Contacts
20 East Olive Street, P.O. Box 1230, Bozeman, MT 59771
Mr. Chris Saunders, Impact Fee Coordinator, 406-582-2360 csaunders@bozeman.net
Mr. Mike Certalic, Water Superintendent, 406-582-3200 mcertalic@bozeman.net

Size and Growth
Population: 33,000
Square Miles: 13
Fast Growth: Est. 4.6%

Studies
Transportation, fire, water and wastewater impact fee study completed in 1996.

Sales Tax
No sales tax for infrastructure improvements; only resort towns are allowed to levy sales tax for public improvements.

Roads
Transportation impact fee charged for new development: single-family home - $1778; general use office - $3090/1000 sf; commercial development (100,000 sf) - $4926/1000 sf; fast food - $9210/1000; light industrial - $1297/1000 sf; elementary school - $151/1000 sf; high school - $319/1000 sf; and church - $1086/1000 sf. Impact fee credits given for some ROW dedication and off-site improvements made by developer.

Drainage
Developer provides on-site and off-site drainage improvements needed for plat or site plan approval.

Water and Sewer
Impact fees for water and sewer are based on the size of the water meter. Impact fees for single-family connections are $2,142.31 for water and $2,716.07 for sewer. Time and materials cost is charged for connection to main lines.

Parks
State law authorizes land dedication requirements for parks. Park dedication is part of state law and subdivision ordinance. It is based on a sliding scale depending on size of lots proposed or fixed amount per dwelling not to exceed .03 acres.
Lots greater than 5 acres – no park dedication required
Lots 3 to 5 acres – 2.5% of subdivision land devoted to recreation
Lots 1 to 3 acres – 5% of subdivision land devoted to recreation
Lots ½ to 1 acre – 7.5% of subdivision land devoted to recreation
Lots less than ½ acre – 11% of subdivision land devoted to recreation

Subdivisions of 6 lots or less are not required to dedicate land or make a payment in lieu of dedication.

The Comprehensive Plan supports changes to allow off-site parkland dedication. There is no recreation land dedication required for non-residential development. Multifamily requirements for provision of recreation vary.

Schools

No fees

Libraries

No fees

Police

No fees

Fire

Impact Fees based on type of dwelling unit or use and square footage. Typical fees are: single-family - $181.87; townhouse - $152.74; multifamily 4-plex - $83.40; office (50,000 sf) - $355/1000 sf; commercial (50,000 sf) - $450/1000 sf; and warehouse (50,000 sf) - $534.57/1000 sf

Sidewalks

Required to install sidewalk on both sides according to city street standards; standard sidewalk is 5 feet wide and located a foot from curb. Required in residential and commercial development. Developer pays all costs. Requiring sidewalks to be installed with development of subdivision up front or a "date certain." No longer than 3 years delay is typical.

Zoning and Subdivision Fees

Rezoning – $400 plus $5 per acre up to 80 acres, then $3 per acre over 80 acres.
Variance – $180 singe household, $300 others
Special Use Permit – $660
Subdivision – Preliminary Plat - $200 plus $3 per lot to 100 lots then $1 per lot; Final Plat - $50 plus $1 per lot.

Chapel Hill, North Carolina

Contacts
306 North Columbia Street, Chapel Hill, NC 27516
Mr. Roger Waldon, Planning Director, 919-968-2731 rwaldon@town.ci.chapel-hill.nc.us
Orange Water and Sewer Authority, 919-968-4421

Size and Growth
Population: 45,000
Square Miles: 20
Moderately Growing

Studies
Orange County conducted study for school impact fees; looking at changing fee structure. Currently all residential pays the same fee. Looking at a tiered system with lower fees for multifamily, townhouses and mobile homes.

Sales Tax
No sales tax for infrastructure improvements

Roads
In new subdivisions, there is a system of required developer improvements. The developer pays for all on-site improvements, provides ROW for additional lanes and sometimes builds additional lanes or makes nearby intersection improvements. Based on rational nexus between impact and need for improvement; it is mostly a negotiated process.

Drainage
Developer provides on-site and/or off-site drainage improvements if needed, as a condition of approval for new development.

Water and Sewer
Orange Water and Sewer Authority charges a combined sewer/water "availability fee." The typical fee for a new house in an average subdivision would likely be approximately $3,500.

<u>Sewer</u>

Sewer Service for "non-street crossing:" $615, $20 / additional foot >10 feet
Sewer Service for "street crossing - cut:" $700, $33 / additional foot >20 feet in street/out of street
Tie on fee: $350 for 4" service line

<u>Water</u>

Water tap fees for "non-street crossing" are: ¾" tap = $260, 1"= $300 and 2" = $960; $13 / additional foot >10 feet
Water tap fees for "street crossing - cut: " ¾" tap = $410, 1"= $450, 2" = $1225; $23 / additional foot >20 feet in street and $13 / foot out of street
Water tap fees for "street crossing - bore:" ¾" tap = $325, 1"= $365, 2" = $1025; $5 / additional foot >20 feet in street and $13 / foot out of street

Parks
Ordinance requires improved recreation space as an amenity for apartments; recreation area is required for subdivisions, based on zoning district's land use intensities; Town Council can authorize payments in lieu of land or improvements if it finds that recreation needs are met by public facilities in close proximity to development.

Schools
Currently a fee of $3000 per dwelling unit, but a proposal to raise the fee is under consideration.

Libraries
No fees

Police
No fees

Fire
No fees

Sidewalks
Sidewalks are typically required to be constructed on-site and sometimes off-site to continue connectivity; developer provides all improvements.

Zoning and Subdivision Fees
Application fees run between $20,000 to $30,000 for many developments
Zoning Map Amendments – Initial application fee: $800 plus $40 per acre
Zoning Compliance Permit – Site Plan Review fee: $1700 plus $17/sf of floor area
Zoning Compliance Final Permit Issuance – ½ of Initial Permit Fee
Board of Adjustment - Variance: $330 and Appeal: $220
Special Use Permit - $5000 plus $20 per acre
Master Land Use Plans - $5000 plus $20/100 sf of land area
Subdivision – Preliminary Plat - $5000 plus $200/lot; Final or Minor Plat - $270 plus $40/lot

Fort Collins, Colorado

Contacts

P.O. Box 580, Fort Collins, CO 80522
Mr. Cameron Gloss, Current Planning Director, 970-221-6750 cgloss@fcgov.com
Mr. Dave Stringer (roads), 970-221-6605 dstringer@fcgov.com
Ms. Dee Toplyn (sales tax) 970-221-6530 dtoplyn@fcgov.com
Mr. Matt Baker (street oversizing), 970-224-6108 mbaker@fcgov.com
Ms. Mary Young (water and waste water), 970-416-2630 myoung@fcgov.com
Ms. Jean Pakech (drainage), 970-221-6375 jpakech@fcgov.com

Size and Growth

Population: 122,304
Square Miles: 47
Fast Growth

Studies

City just raised "street oversizing capital expansion" fee rates; work was completed in-house.

Sales Tax

The City has three quarter-cent sales taxes for capital projects. The taxes are one-quarter cent for streets and transportation, one-quarter cent for community enhancement projects (City/School District community projects, performing arts center, library technology, etc.), and one-quarter cent for natural areas and parks (natural areas acquisition and maintenance, and community park improvements). This tax is projected to generate $5 million in fiscal year 2001.

Roads

A "street oversizing capital expansion" fee is charged at the point of building permit. It is what is commonly known as a "road impact fee." It is based on the assumption that certain streets, such arterials and collectors, have a community wide benefit and all development should pay their fair share to improve these streets (Master Street Plan). The term "oversized" comes from the calculation of "oversizing" a street from the required local street standard to the collector or arterial standard. Developers are required to donate one-half of the required right-of-way needed for a local street (25.5 feet), and construct within that right-of-way the local street standard (15 feet of asphalt, 10 foot parkway strip and 4.5 foot sidewalk). If the adjacent road is required to be improved above the local street standard, the developer is reimbursed by the city for the additional cost or the city undertakes the construction and the developer only pays the cost of improving a local street cross-section. If it is a large street and a substantial amount of right-of-way is required (over and above the local street standard), the City will purchase the right-of-way. Fort Collins collects approximately $4.5 to $5 million a year in "street oversizing capital expansion" fees.

Street oversizing capital expansion fees" charged for new development: single-family home - $1624; general use office - $2710/1000 sf (offices under 50,000 sf); commercial development (100,000 sf) - $5410/1000 sf; fast food - $20,630/1000 sf; light industrial - $1160/1000 sf; schools do not pay street oversizing fee; they must upgrade adjacent street based on projected impact of school; and church - $1520/1000 sf. The rates are based on Institute of Traffic Engineering (ITE) trip generations.

In addition, Larimer County has a "transportation expansion fee" to improve regional roadways. Fort Collins collects it at the building permit, and remits it back to the County on a quarterly basis. A committee representing all jurisdictions in Larimer County selects roadway improvement projects. These rates are approximately 10% of Fort Collins's street oversizing capital expansion fee.

Drainage

Stormwater development fees are collected when a lot or parcel of land is developed within the city that creates an *impervious* surface covering more than 350 square feet. The fee is a one time charge and is payable upon the issuance of a building permit. The fee pays for the design, right of way acquisition and construction or reconstruction of major stormwater systems.

The city is divided into twelve storm drainage basins. City Council adopted a basin-financing plan based on the cost of new facilities for each basin. Ten basins currently collect fees for new development. At this time, the Poudre River and Box Elder/Cooper Slough basins do not collect new development fees.

The development fees are determined by:
- Stormwater basin and basin rate in which the lot is located
- Gross area of each parcel of land
- Percent of impervious surface
- Amount of on-site detention, if any, that will be provided on the lot

(Gross sq. ft. of lot) x (Basin Rate) x (Percent Impervious) x (On-site Detention Reduction Factor)

For Estimate purposes only the following impervious percentages can be used:
Average Residential Lot = 50% impervious; Average Commercial Site = 80% impervious

Basin Name	Per Acre Rate	Per Sq Ft Rate	Basin Fee for 8,600 sq ft Lot*
Dry Creek	$5,000	$0.1147842	$494.00
Evergreen/Greenbriar	$10,000	$0.2295684	$987.00
Old Town	$4,150	$0.0952709	$410.00
West Vine	$7,004	$0.1607897	$691.00
Canal Importation	$6,181	$0.1418962	$610.00
Spring Creek	$2,175	$0.0499311	$215.00
Foothills	$6,525	$0.1497934	$644.00
Fox Meadows	$6,468	$0.1484848	$638.00
McClelland Mail Creek	$3,717	$0.0853306	$367.00
Fossil Creek	$2,274	$0.0522039	$224.00

* Fees shown are for an 8,600 sq. ft. residential lot, using 50 percent impervious. Lots of larger size and more intense imperviousness will have higher fees. This is an *estimate only* due to the many factors that affect this fee that are not included in the above formula.

Fort Collins also collects monthly stormwater fees for all developed properties within the city. These fees are for operation, maintenance of the system and capital projects. The stormwater fee for an average single-family home site of 8600 square feet would be $8.13 ("light runoff"). Commercial fees average $82.34 per month based on a typical 1-acre lot ("heavy runoff"). The stormwater monthly utility fee is based on lot size, share of open space, base rate and rate factor. The base rate equals .0023527 and the rate factor varies depending on impervious surface: very light = .25; light = .4; moderate = .6; heavy = .8; very heavy = .95. Single-family homes over 12,000 feet receive a 25% reduction. The formula to calculate the monthly fee is: (Lot area + Open Space) x Base Rate x Rate Factor.

Water and Sewer

The City has a wastewater and water "plant investment fee" (PIF) that is charged at the time of building permit. This is a one-time development fee collected to pay for growth related capital expansions cost of water supply, storage, transmission, treatment and distribution facilities. The fee varies with the number of dwelling units and the lot area served for residential users, and with the size of the water meter for non-residential users. For single-family, the wastewater is per dwelling unit; the water fee is based on square footage of lot. Commercial development based on meter size.

Wastewater Plant Investment Fee (examples)
Single-family Residential $1030/unit
Non-Residential $6500 / 1 inch meter $18,900 / 2 inch meter
Non-residential customers discharging high strength wastewater exceeding average concentrations of BOD and/or TSS are subject to PIF surcharges.

Water Plant Investment Fee (examples)
Single-family Residential (3/4 inch tap) $610 + $.32 per square feet of lot area
Non-Residential $15,300 / 1 inch meter $53,600 / 2 inch meter

Raw Water Fee
Raw water is required for the increase in water use created by new development and to insure a reliable source of supply in dry years. The Raw Water Requirement can be satisfied with water stocks or city certificate or by cash payment at the time of building permit. See the City of Fort Collins's web site for rates.

Capital Expansion Fee

A "capital expansion fee" is paid at the time of building permit. This fees goes toward funding capital costs for libraries, community parkland, police, fire and general government services.
The following fee schedule is based on an "average" residential home having from 1701 to 2200 square feet and an "average" commercial or industrial development of 100,000 square feet. The detailed fee schedule is available on Fort Collins's web site (www.fcgove.com).

Land Use	Library	Cmty. Parkland	Police	Fire	Gen. Gov't.
Residential	$453	$1,426	$112	$163	$207
Commercial	N/A	N/A	$12,100	$17,400	$19,500
Industrial	N/A	N/A	$3,300	$4,800	$5,400

Parks

In addition to the "capital expansion fee" for community parkland, there is a parkland fee charged at the time of residential building permit. Based on an "average" residential home having from 1701 to 2200 square feet, the fee charged would be $1275.

Libraries

See "capital expansion fee"

Police

See "capital expansion fee"

Fire

See "capital expansion fee"

Schools

The Poudre School District has a school impact fee of $484.26 per residential dwelling and Thompson School District has a school impact fee of $446.00 per residential dwelling.

Sidewalks

Sidewalks are provided as part of street improvements. Are required on both sides and sometimes as bike lane is required.

Zoning and Subdivision Fees

Rezoning – $977 plus $.50 per mailing label for notification
Major amendment to land use plan – $3206 plus $.50 per mailing label for notification
Variance – $25
Non-conforming use review – $1389
Overall Development Plan – $1599
Project Development Plan without Subdivision Plat – $3887 + $.50 per mailing label for notification
Project Development Plan with Subdivision Plat – $5879 plus $.50 per mailing label for notification
Final Plan with or without a Subdivision Plat – $1000

Lawrence, Kansas

Contacts
Planning Department, P.O. Box 708, Lawrence, KS 66044
Ms. Linda Finger, Planning Director (not interviewed)
Ms. Sheila Stogsdill, Asst. Planning Director, 785-832-3150 sstogsdill@ci.lawrence.ks.us
Mr. Chad Voigt (drainage), 785-832-3037 cvoigt@ci.lawrence.ks.us
Mr. Roger Coffee, Director of Dept. of Utilities, 785-832-7810 / 7897 (fax)
or Ms. Deedee Commons, dcommonons@ci.lawrence.ks.us
Ms. Debbie Sparks (county sales tax), 785-832-5287
Mr. Ed Mullins (city sales tax), 785-832-3214

Size and Growth
Population: 83,682
Square Miles: 29
Moderate Growth

Studies
Currently updating zoning ordinance and looking at cost for doing an "Adequate Public Facilities" ordinance/fee system (spoken with Eric Kelly, Duncan Associates)

Sales Tax
1994 passed a 1% countywide sales tax. Support for the sale tax was based on the agreement that the general ad valorem taxes that went to the city and county would be lowered by 7 mils (5 from city and 2 from county), while that portion going to the city-county schools would be increased by 7 mils to build a new high school. Douglas County uses to fund court renovations, operating cost for the jail and city-county health building (approximately $3.6 million received annually by County); the City of Lawrence expends its portion of the sale tax revenues (approximately $7.2 million received annually by City) based on a 5-year Capital Improvements Plan for parks and recreation and to fund the city's portion of the health facility.

Roads
Developer is required to provide all required road improvements and necessary right-of-way. If major street improvement is premature, developer signs an agreement that he will not oppose establishment of a "Benefit District" in the future. A benefit district is an "assessment" that appears on property tax and is paid over an extended period of time. City will participate in Benefit District if the improvements are deemed to be of benefit to the city at large.

Drainage
There is a citywide, monthly stormwater utility fee; it is based on impervious surface. A single-family home was determined to have an average of 2366 sf of impervious surface. This is called "equivalent residential unit" (ERU). Fee paid on water bill.

January 2001 $3.00 per ERU; January 2003 goes to $4.00 per ERU
Commercial properties charged for actual ERU's (based on development's total impervious square feet divided by 2,366) times $1.27 per 1000 SF impervious surface. Fee applies to City properties and tax-exempt properties.

Single family residences charged based on total building footprints on the lot:

up to 1000	0.67 ERU's	$2.01
1001 to 1800	1.00 ERU's	$3.00
1801 to 3000	1.25 ERU's	$3.75
3001 to 4000	1.80 ERU's	$5.40
4001 and up	2.50 ERU's	$7.50

Multi-family units charged based on "unit size." Unit size = total footprints / # units

up to 750	0.37 ERU's	$1.11
750 and up	0.66 ERU's	$1.98

Water and Sewer

No water service is provided until provisions for installing sanitary sewer have been made. The developer is required to install all water and sewer improvements. Any water line extension 12" or less is required to be made fully by the developer. There is no provision for recoupment of line extension cost if the developer must extend lines to reach existing water or sewer service. If a line is required to be oversized, there may be participation by City. The city may choose to extend water lines to commercial or industrial properties at no cost to the development; however, the cost of internal distribution mains are the responsibility of property owner. The city does not provide benefit district financing for water improvements.

If the Department of Utilities installs water lines, the charge is $8 per lineal foot for water main installation to existing lots. If the installation costs exceed this amount, the developer is charged based on actual costs. The Department has a fee calculation method specifically for cul-de-sac lots as it does for corner lots.

Residential home: water tap and meter fee for 5/8" is $450.07, plus a water system development charge of $355 and a sewer system development charge of $460; Total: $1265.07

Parks

No development fees; 1% sales tax funds much of acquisition.

Schools

No development fees

Libraries

No development fees

Police

No development fees

Fire

No development fees

Sidewalks

Sidewalks are required on one side of local streets and both sides of collector and arterial. If sidewalks do not need to be provided at the time development is approved, the development must sign an agreement not to contest a "benefit district" formation in the future.

Zoning and Subdivision Fees

Rezoning:

City: the following fees plus legal advertisement:

Acreage	Residential PRD	Commercial PCD	Residential - Office POD	Industrial PID
0 - 5	$200	$300	$250	$350
5.1 - 10	$225	$325	$275	$375
10.1 - 20	$250	$350	$300	$400
>20	$275	$375	$325	$425

BZA – Residential $30; Other $60

Use permitted upon review -$50

Subdivision Plats:

$100 for 4 lots or less

$200 for >4 lots, plus $3 / lot over 4 lots

Preliminary Development Plan - $200; Final Development Plan - $100

Plat Recording Fee - $20 per sheet

Covenants Filing Fee - $6 for 1st page, $2 each additional

Flood Plain Permits - $20

Site Plan - $50; Site Plan Renewal - $25

Springfield, Missouri

Contacts

Planning and Development Dept.,
Mr. Fred May, Plng. Dir. (not interviewed) 417-864-1037 fred_may@ci.springfield.mo.us
Mr. Andy Furedy (dev.) 417-864-1612 tel/ 1882 fax andy_furedy@ci.springfield.mo.us
Ms. Julie Gimlin (drainage) 417-864-1939 julie_gimlin@ci.springfield.mo.us
Ms. Mary Mannix (sales tax) 417-864-1399 mary_mannix@ci.springfield.mo.us
Mr. David Hutchison (roads) david_hutchison@ci.springfield.mo.us
Mr. Mike Delong, City Utilities of Springfield, 417-831-8527 mdelong@cityutilities.net

Size and Growth

Population: 151,580
Square Miles: 74.8
Moderate 8% growth over 10 years

Studies

The City has discussed the possibility of impact fees, but nothing else.

Sales Tax

Springfield instituted a sales tax to fund certain capital, operations and expenses of the city. It has a 1% general sales tax for operations and maintenance, a 1/8-cent (raise $4 million per year) for road improvements, mostly intersection improvements that are on the state's projects list but of a low priority, and a ¼-cent sales tax (raises $8 million a year) for parks and other road improvements. The State Department will reimburse the city for sales tax revenues expended on state identified road improvements (program started because some of the roads needing improvement within the city were far down the list of approved state projects, so the city speeded up the process by funding with sales tax revenues). The City also uses $4 million in property tax revenues to fund bonds to construct stormwater improvements, fire stations and other municipal facilities.

Roads

The developer is required to make all internal local and collector street improvements. For arterial streets within a subdivision, the developer is required to dedicate right-of-way and construct two lanes of any portion of the arterial street that provides direct access to the subdivision. The developer is also required to dedicate rights-of-way, make paving improvements and provide sidewalks on any adjacent road that is substandard and will not provide the level of service needed for the development. If a road-widening improvement is underway, the developer is required to make a "payment in lieu" to cover the cost of the sidewalk and any other required improvements. The City Council may agree to some sort of recoupment agreement or cost sharing with property owners for significant roadway improvement provided by the developer that will benefit the City or adjacent property owners when their property develops. With residential subdivisions there is a limited amount of off-site roadway exactions that can be required. If property is being rezoned for commercial or industrial use, the City can require at time of zoning certain conditions of approval. The City may require full roadway improvement including additional lanes, based on traffic impact studies completed for large developments.

Drainage

Developers are required to provide all storm drainage improvements and are most often required to provide on-site detention facilities. If a developer plans to construct a detention basin their engineer will use the TR55 or HECI software to calculate their detention volume and size their outlet weirs. A more simplified calculation is used for smaller basins or "buyouts" which allows bypassing the expense of hiring an engineer for these calculations only. The simplified approach calculates by the volume of detention needed: for every 1/10 of an acre of impervious surface development, the developer is required to construct 1280 cubic feet of detention. If detention "buy out" is permitted, the fee for 1 or 2 family residences is $1 per cubic feet of required detention; commercial is $2. If the development goes over 24,000 - 100,000 cubic feet of detention, the fee drops to ½. The city approves detention buy-outs on a case-by-case basis. If there is any potential for downstream impact, then there is no buy out approved. Sometimes developers are permitted to construct downstream improvements to reduce detention cost. Cost of downstream improvements reduces overall buyout cost calculations. In the past, storm water detention basins were allowed to discharge on private property, which caused a lot of legal problems and expense. The City now requires that basins discharge onto a public right-of-way, into a drainage easement, or that the engineer or architect certifies it discharges into a "natural surface-water channel" and must notify downstream property owners of this certification.

Water and Sewer

City provides gas, water, sewer and electric service. The City sometimes provides service extension for utilities if there is economic development potential because of the project. If a water main extension is on the Master Plan for main extension, the city will cost share for over sizing. The city also has a cost recovery agreement whereby the developer who installed the main extension can receive recoupment of the expense based on the lineal front foot of development occurring on either side of the line. Cost recoupment is limited to 5 years; just initiated in last few years.

Water service charge: 1" $600 (all inclusive)

Developers are required to provide sanitary sewer to their developments. Minimum size tract for a septic tank is 3 acres. On special projects the City has entered into agreements with developers to come up with a formula to apportion recoupment cost based on a per acre calculation. The longest period for reimbursement is 20 years. The City's policy for oversizing lines is to pay the difference in PIPE cost not installation costs. (Bob Shaffer 417-864-1920)

Sewer fee based on water meter size and charged at time of building permit: 5/8" meter is $300; a 1" meter is $500.

Parks

No development fees for parks

Schools

There are no development fees for schools.

Libraries

Capital improvements are funded through a portion of the property tax millage; run by a separate city/county board.

Police
No development fee for police.

Fire
Fire Department capital improvements are funded through sales tax collections.

Sidewalks
Sidewalks are required to be constructed on both sides of the collector and arterial streets. Sidewalks are not required on local commercial or industrial streets; however, on local residential streets, sidewalks are based on density: less than 3 units per acre, sidewalks not required; 3 – 5 units per acre, sidewalks are required on one side; >5 units per acre, sidewalks are required on both sides of residential streets. If a developer presents a reason to the Planning and Zoning Commission as to why it would not be effective to construct sidewalks in their development, such as a large channel along the street, then the commission can approve a sidewalk buyout at $16.63 / linear foot.

Zoning and Subdivision Fees
Rezoning – $630 for district change; $700 for PUD amendment;
Variance – $350
Conditional Use Permit – $700
Subdivision – Preliminary Plat - $390; Administration Fee for Final Plat - $165 and Appeal to Commission or Council of Plat $130; Administrative Subdivision (5 lots or less in an existing subdivision: $48).

McKinney Real Estate
1108 North College • Fayetteville, Arkansas 72703 • (501) 442-0888 • Fax (501) 442-0860

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April 12, 2002

To: The Honorable Dan Coody, Mayor
City Council
Planning Commission

From: Nathan McKinney Nathan

Re: Impact Fee Stakeholders Committee Report

Ten volunteers representing ten stakeholder groups have met on several occasions and spent untold hours studying and discussing the reports from Duncan & Associates.

The subject report is attached for your consideration. Our report consists of a summary and individual reports from each stakeholder group answering the four major questions we encountered during the study.

A wide range of opinions is expressed in the report.

Some of the stakeholders did not wish to take official positions on the issues, but their representative did express personal views for your consideration. If you seek further comment, I'm certain most members of our committee will be happy to comply.

Lastly, our committee unanimously agreed on only two matters:

- We want the best for Fayetteville.
- Impact Fees are far more complicated than we originally thought.

Stakeholders Committee Survey

Ten responses:

1) *Who should determine if Impact Fees are right for Fayetteville?*
   City Council...........8
   Public Vote............2

2) *Should the dollar amount of Impact Fees be graduated according to home size or value?*
   Yes.....................7
   No......................3

If so, how?

- By meter size (not square footage)
- Based upon dwelling size/consumption estimate and by amount of fee. I recommend 50% to 75% of the maximum allowable fee.
- Efforts should be made to offer discounts on fees based upon adequate implementation of conservation measures that reduce impact on infrastructure.
- Based on meter size. Not tied to square footage of residence but with some mechanism in place for subsidy of fees where applicable (i.e.- low income housing, industry)
- I believe that in some cases the fees should be waived or paid from a fund set aside. This could be not only for low-income housing but also perhaps to attract a certain industry or company.
- Keep it simple – meter size period. No impact fees for roads, parks already in place.
- Variable from 1000sf to 2000sf for 5/8" meter. By meter size above 5/8" meter.
- Graduating the fees invites an expensive legal challenge because graduation isn't legal.
- Water & wastewater impact fees should be based on the truest measure of actual consumption/impact to the capacity of the system: size of water meter.

3) Do you favor/oppose Impact Fees in Fayetteville for:

	Highly favor	Favor	Neutral	Oppose	Highly Oppose
Wastewater	6	2	1		1
Water	6	1	1	1	1
Roads	2	3		1	4
Parks/Trails	3	1	2		2

4) If Impact Fees are implemented, when should the fees be collected?

Water meter installed.........6
Building permit................3
Final inspection................0
Other.............................1

- Must trust the City to determine the most efficient and economical way to implement (between water meter installed and building permit) with possible adjustments to be made at final inspection stage.
- There is concern that if water/wastewater impact fees are collected at the time of issuance of a building permit then expansions/renovations of existing buildings will be unduly assessed impact fees. It would seem logical that if the water consumption of the existing building is not increasing (i.e. water meter size remains the same) then there would be no water/wastewater impact fee assessed. The impact fee should only be assessed on NEW water meters, not building permits.

Comments/Concerns/Questions:

- The University of Arkansas has chosen to not take an official position on impact fees.

- Since outlying areas may see increased growth as a result of impact fees in Fayetteville, surrounding towns should be included somehow in our impact fee system.

- The Chamber of Commerce cannot support the water and wastewater impact fees in their current form. There are too many unanswered questions regarding implementation details and control of future increases in impact fee scope and costs. Thus, the Chamber has taken a neutral position on these fees at this time.

The Chamber of Commerce is opposed to roads impact fees as proposed. The rationale used to formulate these fees is questionable, and the legality of these fees in the State of Arkansas is suspect.

It is our understanding that the Parks/trails portion of the Impact Fee study is a continuation of our current system. The Chamber has taken a neutral position on Parks/Trails impact fee.

The Chamber has some specific areas of concern regarding these impact fees, including:

  - The legality of the Roads Impact Fee and "nexus" formula used to calculate the fee.
  - Driving development outside our city jurisdiction to avoid the impact fee.
  - Assurance that the scope and costs of the fee won't continue to increase with future administrations.
  - Availability of City Economic Development funds to subsidize the impact fee when recruiting and/or competing for desirable business development and expansions.
  - Assurance that the proposed impact fees will be assessed equitably and not on a "discretionary" basis to control/restrict growth.

- Be careful what you ask for; you may get it!

- Impact fees and exaction don't mix very well. I think the city could ultimately lose revenue on parks and roads.

- If this is truly a fee, and not a tax, then it is probably illegal to prorate or graduate them according to value or size of home.

- Fayetteville could be on shaky ground with impact fees for roads. The consultant did not convince me this would meet the nexus required of an impact fee.

- Fayetteville is earning the reputation of putting out the "Un-welcome Mat" for new growth, new business, new people.

Stakeholders Committee Survey

Who should determine if Impact Fees are right for Fayetteville?

City Council ✓

Public Vote ____

Other ______________________________

Should Impact Fees be graduated?

Yes ____   No ✓

If so, how? AN

THAT INVITES EXPENSIVE

LEGAL CHALLENGE BECAUSE

GRADUATION ISN'T LEGAL

Do you favor/oppose Impact Fees in Fayetteville for:

	Highly Favor	Favor	Neutral	Oppose	Highly Oppose
Wastewater					X
Water					X
Roads					X
Parks/Trails					X

If Impact Fees are implemented, when should the fees be collected?

Water meter installed ______

Building permit ______

Final inspection ______

Other NEVER

Nathan

City Council / Mayor have asked for a recommendation

Stakeholders Committee Survey

Who should determine if Impact Fees are right for Fayetteville?

City Council ✓

Public Vote ____

Other ____________________

Should Impact Fees be graduated?

Yes ____ No ✓

If so, how?

____

____

____

Do you favor/oppose Impact Fees in Fayetteville for:

	Highly Favor	Favor	Neutral	Oppose	Highly Oppose
Wastewater		✓			
Water				✓	
Roads					✓
Parks/Trails					✓

If Impact Fees are implemented, when should the fees be collected?

Water meter installed ✓

Building permit _____

Final inspection _____

Other ______________________________

Comments on back

Stakeholders Committee Survey

Who should determine if Impact Fees are right for Fayetteville?

City Council X

Public Vote ____

Other ____

Should Impact Fees be graduated?

Yes ____ No X

If so, how?

KEEP IT SIMPLE - METER SIZE PERIOD
NO IMPACT FEES FOR ROADS, PARKS ALREADY
IN PLACE.

Do you favor/oppose Impact Fees in Fayetteville for:

	Highly Favor	Favor	Neutral	Oppose	Highly Oppose
Wastewater		X			
Water		X			
Roads				X	X
Parks/Trails		X			

THIS IS ALREADY BEING DONE. HOWEVER VALUE + LAND IS

If Impact Fees are implemented, when should the fees be collected?

Water meter installed X

Building permit _____

Final inspection _____

Other ______________________________

Impact Fee Stakeholders Committee
Survey Response from Fayetteville Chamber of Commerce

April 11, 2002

1. *Who should determine if Impact Fees are right for Fayetteville?*
   City Council __X___
   Public Vote ______
   Other ______________________________

2. *Should the cost of Impact Fees be graduated?*
   Yes __X___ No ______

   If so, how?

   Water & wastewater impact fees should be based upon the truest measure of actual consumption/impact to the capacity of the system: size of water meter.

3. *Do you favor / oppose Impact Fees in Fayetteville for:*

	Highly Favor	Favor	Neutral	Oppose	Highly Oppose
Wastewater			X		
Water			X		
Roads					X
Parks/Trails			X		

The Chamber of Commerce cannot support the wastewater and water impact fees in their current form. There are too many unanswered questions regarding implementation details and control of future increases in impact fee scope and costs. Thus, the Chamber has taken a neutral position on these fees at this time.

The Chamber of Commerce is opposed to roads impact fees as proposed. The rationale used to formulate these fees is questionable, and the legality of these fees in the State of Arkansas is suspect.

It is our understanding that the Parks/Trails portion of the Impact Fee study is a continuation of our current system. The Chamber has taken a neutral position on the Parks/Trails impact fee.

The Chamber of Commerce has some specific areas of concern regarding these impact fees, including:

- The legality of the Roads Impact Fee and "nexus" formula used to calculate the fee;
- Driving development outside our city jurisdiction to avoid the impact fee;
- Assurance that the scope and costs of the fee won't continue to increase with future administrations;
- Availability of City Economic Development funds to subsidize the impact fee when recruiting and/or competing for desirable business development and expansions;
- Assurance that the proposed impact fees will be assessed equitably and not on a "discretionary" basis to control/restrict growth;

4. *If Impact Fees are implemented, when should the fees be collected?*

   Water Meter Installed ___X___

   Building Permit ________

   Final Inspection ________

   Other ________

Respondent Note: There is concern that if water/wastewater impact fees are collected at the time of issuance of a building permit then expansions/renovations of existing buildings will be unduly assessed impact fees. It would seem logical that if the water consumption of the existing building is not increasing (i.e., water meter size remains the same) then there should be no water/wastewater impact fee assessed. The impact fee should only be assessed on NEW water meters, not building permits.

Respectfully submitted,

Matt Bodishbaugh

Matt Bodishbaugh
Board of Directors
Fayetteville Chamber of Commerce

Sierra

Stakeholders Committee Survey

Who should determine if Impact Fees are right for Fayetteville?

City Council ✓

Public Vote ____

Other ______________________________

Should Impact Fees be graduated?

Yes ✓   No ____

If so, how?

Efforts should be made to offer discounts on fees based upon adequate implementation of conservation measures that reduce impact on infrastructure.

Do you favor/oppose Impact Fees in Fayetteville for:

	Highly Favor	Favor	Neutral	Oppose	Highly Oppose
Wastewater	✓				
Water	✓				
Roads	✓	(if determined to be legal)			
Parks/Trails	✓				

If Impact Fees are implemented, when should the fees be collected?

Water meter installed ______

Building permit ✓

Final inspection ______

not a strong position — trust City to determine the most efficient & economical way to implement

Other with possible adjustments to be made at final inspection stage.

Ley - Friends for Fayetteville

Stakeholders Committee Survey

1. Who should determine if Impact Fees are right for Fayetteville?

City Council X

Public Vote _____

Other ______________________________

2. Should Impact Fees be graduated? ? Dollar value ~~based~~ on Use/type - — -

Yes X Perhaps No _____

If so, how?
~~Ranging from~~ No idea how ~~to based on degree of Impact~~

. Based on meter size

. Not tied to square footage of Residence but w/ some mechanism in place for subsidy of fees where applicable (i.e. - low income housing, industry

Jim Key Friends for Fayetteville

(3) Do you favor/oppose Impact Fees in Fayetteville for:

	Highly Favor	Favor	Neutral	Oppose	Highly Oppose
Wastewater	X				
Water	X				
Roads		X			
Parks/Trails	~~X~~ N/A				

already in place — no need to change

(4) If Impact Fees are implemented, when should the fees be collected?

Water meter installed X — most equitable — affected by users

Building permit N/A

Final inspection ____

Other ~~Mixed half front / half @ final~~....

Ark. Society of Professional Engineers

Stakeholders Committee Survey

Who should determine if Impact Fees are right for Fayetteville?

City Council X

Public Vote ____

Other ____

Should $ amount Impact Fees be graduated? per type and use

Yes X No ____

If so, how?

Variable from 1000SF to 2000SF for 5/8" meter

By meter size above 5/8" meter

Do you favor/oppose Impact Fees in Fayetteville for:

	Highly Favor	Favor	Neutral	Oppose	Highly Oppose
Wastewater	X				
Water	X				
Roads		X			
Parks/Trails	X				

If Impact Fees are implemented, when should the fees be collected?

Water meter installed X 1st option

Building permit ____ 2nd option

Final inspection ____

Other ____________________

Valerie McMullen - answering independently of the League of Women Voters.

Stakeholders Committee Survey

Who should determine if Impact Fees are right for Fayetteville?

City Council X

Public Vote ____

Other ____

2 Should Impact Fees be graduated? Should $ amount vary?

Yes X No ____

If so, how?

I believe that in some cases the fees should be waived or paid from a fund set aside. This could be not only for low-income housing but also perhaps to attract a certain industry or company.

Valerie McMullen – answering independently of the League of Women Voters

Do you favor/oppose Impact Fees in Fayetteville for:

	Highly Favor	Favor	Neutral	Oppose	Highly Oppose
Wastewater	X				
Water	X				
Roads				X	
Parks/Trails			X		

If Impact Fees are implemented, when should the fees be collected?

Water meter installed ______

Building permit X

Final inspection ______

Other ______

The University of Arkansas has chosen to not take an official position on impact fees. The following responses reflect my personal position on these issues.

Stakeholders Committee Survey

Who should determine if Impact Fees are right for Fayetteville?

City Council _____

Public Vote ✓

Other _____

Should Impact Fees be graduated? Based upon type and use?

Yes ✓ No _____ To the extent deemed legal.

If so, how?

Based upon dwelling size/consumption estimate and by amount of fee. I recommend 50% to 75% of the maximum allowable fee.

Do you favor/oppose Impact Fees in Fayetteville for:

	Highly Favor	Favor	Neutral	Oppose	Highly Oppose
Wastewater	✓				
Water	✓				
Roads		✓	if deemed legal		
Parks/Trails	✓				

If Impact Fees are implemented, when should the fees be collected?

Water meter installed ✓ for water & wastewater

Building permit ✓ Roads & parks

Final inspection ____

Other ____

Kay DuVal

Stakeholders Committee Survey

Who should determine if Impact Fees are right for Fayetteville?

City Council ✓

Public Vote ____

Other ____

Should the dollar amount of Impact Fees be graduated according to home size or value?

Yes ✓ No ____

If so, how?

by meter size (not square footage)

Do you favor/oppose Impact Fees in Fayetteville for:

	Highly Favor	Favor	Neutral	Oppose	Highly Oppose
Wastewater	✓				
Water	✓				
~~Roads~~	✓ (if legal)				
Parks/Trails					

If Impact Fees are implemented, when should the fees be collected?

Water meter installed ✓

Building permit _____

Final inspection _____

Comments / Concerns / Questions
Other ______________________

Note: Since out-lying areas may see increased growth as a result of impact fees in Fayetteville, surrounding towns should be included somehow in our impact fee system.

Tim—

Thanks for answering my questions last week and for getting the impact committee information packets out to us. Hope I didn't make you miss your doctor's appointment.

In looking at the copy of my "Stakeholders Committee Survey," I see that Nathan added the words "according to home size or value?" to mine after I turned it in to him. I don't know why, unless he was making notes on my survey for his secretary to type from. I'm sure he wasn't trying to make it seem that I had added those words, but the addition has an effect on my answer. I myself had inserted "the dollar amount of" to the question to try to clear up the question in my own mind. You can see that my answer to the "If so, how?" question says "by meter size (not square footage)." If the words "according to home size or value" had been in the original question, my answer would have been "no" instead of "yes," since a *no* answer would have coincided with my opinion that meter size should be the method instead of size of the house.

Do you see what I'm talking about? If you look through the other respondents, you'll see that most of us had problems with the way that question was phrased. Notice the different ways in which we amended it. Then notice that Nathan's report to the mayor states the question as "Should the dollar amount of Impact Fees be graduated according to home size or value?" Please look our responses over carefully and try to calculate the "yes" and "no" votes on that question again. I think the question is faulty and probably should be tossed, especially if this is to be taken as a majority/minority opinion about impact fees in general.

I'm sure Nathan was just trying to clarify the question for the report to the mayor, but working on the question after we had turned in our answers has just muddied the (waste)water.

Thanks,

Kay

Kay N. DuVal

4/23/02

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PLANNING DIV.

Kay DuVal

Stakeholders Committee Survey

Who should determine if Impact Fees are right for Fayetteville?

City Council ✓

Public Vote ____

Other ________________________

KD
the dollar amount of

Should Impact Fees be graduated? [according to home size or value?]

not my handwriting & not on the survey when I answered the question

Yes ✓ No ____

If so, how?

KD
by meter size (not square footage)

____

____

Stakeholders Committee Survey

Ten responses:

1) *Who should determine if Impact Fees are right for Fayetteville?*
   City Council............8
   Public Vote............2

2) *Should the dollar amount of Impact Fees be graduated according to home size or value?*
   Yes....................7
   No.....................3 — 5 ?

If so, how?

/ • By meter size (not square footage)
- Based upon dwelling size/consumption estimate and by amount of fee. I recommend 50% to 75% of the maximum allowable fee.
- Efforts should be made to offer discounts on fees based upon adequate implementation of conservation measures that reduce impact on infrastructure.

2 • Based on meter size. Not tied to square footage of residence but with some mechanism in place for subsidy of fees where applicable (i.e.- low income housing, industry)
- I believe that in some cases the fees should be waived or paid from a fund set aside. This could be not only for low-income housing but also perhaps to attract a certain industry or company.

3 • Keep it simple – meter size period. No impact fees for roads, parks already in place.

4 • Variable from 1000sf to 2000sf for 5/8" meter. By meter size above 5/8" meter.
- Graduating the fees invites an expensive legal challenge because graduation isn't legal.

5 • Water & wastewater impact fees should be based on the truest measure of actual consumption/impact to the capacity of the system: size of water meter.

FROM : GREGG PROPERTIES FAX NO. : 24 2002 11:06AM P1

24 April 2002

To: Planning Division, City of Fayetteville
Nathan McKinney

From: Larry Ash, NWA HBA

Subject: Additional Comments on the draft Stakeholder Committee Report

I would appreciate it if the following language were added to this report

"Impact fees are unnecessary to finance the wastewater treatment project. The voters of Fayetteville voted by more than 86% to finance that project via a sales tax increase. There is no justification for impact fees to provide an additional funding source for a project that is already fully financed."

Thank you,

LVA

24 April 2002

To: Planning Division, City of Fayetteville
Nathan McKinney

From: Larry Ash, NWA HBA

Subject: Additional Comments on the draft Stakeholder Committee Report—2nd set of comments.

I just noticed that some of the comments I offered earlier are not reflected in the draft report. I would appreciate it if you would include the items starred on the attached in the final report.

Thank you,

LVA

L V A

Attachment (2 pages)

NWA HBA Comments on Impact Fees:

Impact fees are a fundamentally flawed, totally unnecessary method of financing growth. Because they are unnecessary, **they simply expand the amount of money city officials have to pursue their infrastructure-building dreams**. While the use of impact fee revenues is restricted by law, the proceeds from other revenue sources are not, so **impact fees end up indirectly financing other projects that are so marginal they would not be pursued without the monies made available indirectly via impact fees.** That is one reason why they are so attractive to City Hall bureaucrats. Impact fees can be increased year after year by Council vote, irrespective of anything but the City's desire for more and more money. We know bureaucrats love spending other people's money. Impact fees are a dream come true for them.

* **Impact fees are fundamentally flawed because they unfairly double-tax existing residents who choose to buy new homes in their hometown.** Studies show a majority of new homes are sold to hometown residents, the same people who are paying for the infrastructure they are then being asked to pay for a second time. Proponents love to say impact fees put the burden of growth on the new people who have yet to arrive—sort of like a tax on motel rooms—taxing outsiders. But the truth is that most of the new tax burden falls on existing Fayetteville residents who are unaware that they will be paying these fees as they change their housing arrangements in the years ahead.

* **Impact fees are totally unnecessary. Virtually the entire infrastructure in the United States was constructed without them.** Fayetteville growth is nowhere near so fast that it cannot accommodate increased infrastructure requirements without a new funding source. Even with the rapid (and now much slower) growth of the 1990's, **Fayetteville met its infrastructure needs without impact fees. Now that growth has slowed, the case for them is even weaker than before.**

Impact fees are particularly unnecessary when it comes to financing the wastewater treatment plant. The voters overwhelmingly (86+%) approved a sales tax surcharge to accomplish that financing. They could have rejected that proposal in favor of impact fee financing, in whole or part, but they rejected that approach. **It is beyond absurd to charge yet a new impact fee to pay for a project the funding for which has already been approved by the voters and which is already in the process of being for. The City Council should respect the wishes of the voters when it comes to this particular application of the proposed fees.**

The consultant's study may have been marketed to the public as an impartial evaluation of impact fees, but it is nothing of the sort. Like any consultant study, it is a brief for the client, which in this case is the City Administration and City Hall Staff. For example:

* **The consultants failed to do any kind of environment impact assessment**—although it is obvious impact fees will drive development out into the County and increase urban sprawl.
* **The consultants failed to do any analysis of the impact of impact fees on the affordability of housing.**
* **The consultants failed to do any analysis of the impact of impact fees on the ability of minorities to live in Fayetteville**
* **The consultants first said it would be illegal to have different impact fees for residences of different sizes. After it became clear that this position creates a political problem for impact fees among people who are concerned about their impact on housing affordability, they did a complete 180 reversal of their position.**

One reason the consultant's study is so deficient is that City Hall staff never asked the questions about affordability, about environmental impact or about the effect of impact fees on community diversity. That failure is makes it obvious that the consultant study is neither complete nor objective.

Fayetteville is heading into hazardous legal territory.

Enactment of impact fees in Fayetteville, especially with discriminatory rates for different house sizes, will end up forcing the city into expensive litigation to defend these fees against charges that they fail to meet state standards. Since the first case is now being brought against Bentonville, Fayetteville would be well advised to defer action on impact fees until the issues raised in the Bentonville case are fully litigated. There is no reason to act now. It is better to wait until the legalities are clear than waste taxpayer dollars once again litigating a deficient ordinance.

It is worth remembering what the Arkansas Democrat Gazette said on January 16, 2002:

The argument that Impact Fees will stifle growth makes sense. But what grates is the basic unfairness of double-taxing homebuyers. Those who move across town are already paying for their city services. Are they supposed to pay extra for the privilege of moving to a new house--as if they were joining some kind of exclusive club? Our cities really don't need to become private clubs.

###

Nathan

From: Jim Key <jkey@arkansas.net>
To: <susie@nwark.com>
Sent: Friday, April 26, 2002 6:01 PM
Subject: Nathan - Stakeholders Impact Fee response

Hey Nathan, sorry to push this right to the wire. I've been too busy these last few weeks, not to mention months, and we just had a board meeting with Friends For Fayetteville last night.
I do have a few comments I'd like to add to the discussions and statements on record to date.

First, a primary concern from my perspective is the equity of the means of assessing and implementation of impact fees. I would like to propose that some planned means of subsidizing fees for appropriate use(s) be established in conjunction with implementation plans if the council should choose an impact fee assessement. For offsetting these charges for: qualified "low-income" housing; desirable business and industrial development; municipal projects like schools and fire stations, etc.; and for other types of development deemed appropriate.
Perhaps the various groups involved as Stakeholders would care to be involved in such planning for subsidies. The chamber could assist industry and business, the banking and university parties perhaps affordable housing, and the civic interest groups civic projects, and so on. I think it reasonable to possibly set aside a small percentage of the funds generated from all impact fees for such use. Could this legally be done? How to avoid everyone requesting subsidy, etc..... In any event, I think some means should be able to be established to offset any negative aspect associated with these specific concerns regarding impact fees.
I also think that roads should be included in any proposed impact fee structure, because roads are definitely a part of our infrastructure needing improvement and upgrade due to past growth and any future growth. I believe that by placing revenue generated from a road impact fee specifically could be placed in escrow for a period of time to safeguard city liabilites should suit be brought due to the questioned legalities of such fees in this state.
I also believe that if other states have been able to implement impact fees, Arkansas should not be that different. I think that perhaps the city attorney is being to guarded in this respect. Road impact fees should not be dropped altogether just because Mr. Williams has deflated there constitutionality. I do not believe this is his duty. It should be the city council's responsibility to make this decision, and I am concerned that the survey of opinions regarding the road impact fees reflected the least support for this particular fee due entirely to the city attorney's statements at our last meeting.

I have also had lots of feedback from many sectors of the community regarding my involvement with the Stakeholders committee. One citizen made an interesting point when discussing when impact fees should be collected.

Rather than assessing at time water meter is set, the suggestion was put forth to consider assessement of these fees at the time of final inspection and certificate of occupancy so that the builders would not have to finance these charges, but rather they could be financed as part of the building purchase price. It is assumed that this fee will definitely be absorbed by the end user, the issue being are they going to be paying a premium above the actual fee due to someone else being required to pay this fee in advance. The main argument here being: An impact fee should not be assessed until such time impact actually occurs! I think this is a very valid argument I wish I'd thought of and that could have been discussed among the committee. Is an impact occuring prior to water being used and wastewater being discharged? Before the endusers are using the roads and have need of park space. I don't think this can be answered off-hand, and perhaps brings to light another legal aspect of proportionality and true cost of impact....

Nathan, I appreciate all your hard work and hope this has not come at too late an hour to include with the other comments received. Please feel free to call on me any time should you have any questions.

Sincerely,

Jim Key, Director, Friends For Fayetteville

Received
5-17-94

I. MUNICIPAL TAXATION

A. Need Constitutional or Statutory Authority (Article 16, §11 of Arkansas Constitution and Hasha v. City of Fayetteville, 311 Ark. 460, 845 S.W.2d 500 (1993))

B. General Statutory Authority (Act 942 of 1977 - A.C.A. §§26-73-101-108)

1. Must have specific statutes to levy

   a. Tax on fuel, tobacco and alcohol

   b. Sales and use taxes (A.C.A. §§14-164-301 et seq., §26-73-113, §§26-75-201 et seq., §§26-75-301 et seq., §26-73-110 et seq., §§26-75-401 et seq., and §26-75-601 et seq.)

   c. However see A.C.A. §14-174-103 which conflicts with §26-73-103

2. May levy income tax with election

3. May levy any other tax not specifically restricted by statute or constitution with election

C. Property Taxes

1. Property tax levies:

   a. Levy up to five (5) mills for general fund of municipality (Amendment No. 10 to Arkansas Constitution; Article 12, §4)

   b. With approval of voters, a municipality with a population of 5,000 or more may levy up to five (5) mills for maintaining a public library and three (3) mills for building a public library or for retiring bonds for a library (Amendment No. 30 to Arkansas Constitution)

   c. With approval of voters in cities of the first or second class, the city may levy a tax up to one (1) mill for the Policeman's Retirement Salary and Pension Fund and up to one (1) mill for the Fireman's Retirement Salary and Pension Funds (Amendment No. 31 to Arkansas Constitution)

d. With voter approval, unlimited millage for capital improvement bonds (Amendment No. 62 to Arkansas Constitution) Other lawyers have placed a 5 mil limit on this type of revenue. AD

e. With voter approval, up to five (5) mills for industrial development bonds (Amendment No. 62 to Arkansas Constitution)

2. Subject to rollback provisions of Amendment No. 59 to Arkansas Constitution (Article 16, §14)

3. Exemptions in Amendment 59 to Arkansas Constitution (Article 16, §5)

a. Public property used exclusively for public purposes

(i) Exemption for industrial development financed with municipal bonds - Wyland v. Snapp, 232 Ark. 57, 334 S.W.2d 633 (1960)

(ii) Exemption does not apply to future use - City of Springdale v. Duncan, 240 Ark. 716, 401 S.W.2d 747 (1966)

(iii) No exemption for industrial development not financed with bonds B.D.T., Inc. v. Moore, 260 Ark. 581 543 S.W.2d 220 (1976)

b. Churches

c. Cemeteries

d. School buildings and apparatus

e. Libraries and grounds used exclusively for school purposes

f. Buildings, grounds and materials used exclusively for public charity

4. No other exemptions authorized

5. Quorum Court, at its regular meeting in November of each year, levies the municipal taxes for the current year (A.C.A. §14-14-904(b))

D. Income Taxes (A.C.A. §26-73-104)

1. Must have election

2. May not be corporate income tax only

E. Occupational Taxes (A.C.A. §§26-77-101 et seq.)

1. Must have ordinance adopted by 2/3 vote of governing body

2. Ordinance must be published within one (1) week after passage

3. May not be based upon income or earnings - City of Mountain Home v. Drake, 281 Ark. 336, 663 S.W.2d 738 (1984), and WSC, Inc. v. City of Jacksonville, 302 Ark. 295, 789 S.W.2d 448 (1990)

F. Motor Vehicle Taxes (A.C.A. §§26-78-101 et seq.)

1. Must be levied by resolution after an election

2. Maximum tax of $5.00 per vehicle

3. May be used for ambulance services, parks, fire fighting equipment and streets

G. Gross Receipts Tax on Hotels and Restaurants (A.C.A. §§26-75-601 et seq.)

1. Limited to first class cities

2. Levy of up to 3% on gross receipts

   a. Of hotel, motel or short term condominium rental accommodations for sleeping, meeting or party rooms and/or

   b. From sale of prepared food and beverages for on or off-premises consumption by restaurants, cafes, cafeterias, delis, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants and other similar businesses as defined by ordinance

3. Must be levied by ordinance

4. Tax may be levied on hotels or restaurants or both

5. Tax may not be levied on nonprofit corporations(see §501(c)(3) of the Internal Revenue Code) selling food

6. An election is not required

7. Referendum rights are reserved to 500 petitioners within 30 days after ordinance is adopted

8. Requires the establishment of a seven (7) member advertising and promotion commission .

9. Collections may be used for:

   a. Advertising and promoting the city

   b. Construction of convention center facilities

   c. Public recreation facilities

   d. Tourist oriented facilities

   e. Theme parks

   f. Other family oriented facilities

10. Tax collections may <u>not</u> be used for:

   a. General capital improvements

   b. General operation costs

   c. General subsidy of any civic groups or chambers of commerce

H. Local Sales and Use Taxes

1. Taxes may be levied in increments of 1/4% up to 1% except special parks tax (1/2%) and mass transit tax (1/4%)

2. Five (5) separate taxes are authorized

   a. Debt service on capital improvement bonds or temporary (up to 24 months) for new capital improvements under Act 871 of 1985 (A.C.A. §§74-164-301 et seq.) or operation and maintenance of capital improvements or solid waste management under Act 777 of 1991 (A.C.A. §26-75-113)

   b. General operations under Act 25 of 1981 (First Ex. Sess.) (A.C.A. §§26-75-203 et seq.)

   c. General operations under Act 990 of 1975 (A.C.A. §§26-75-301 et seq.)

d. Temporary for park and recreation improvements under Act 488 of 1985 (A.C.A. §§26-75-401 et seq.)

e. Mass transit facilities under Act 200 of 1991 (A.C.A. §§26-75-110-112)

3. Act 871 of 1985 (A.C.A. §§14-164-301 et seq.)

a. Limited to bonds (A.C.A. §14-164-327) or new capital improvements (A.C.A. §14-164-338) or solid waste management or operating and maintaining capital improvements

b. If for new capital improvements not financed with bonds, must be able to collect enough money in 2 years to pay for the improvements

c. Tax for bonds or new capital improvements may <u>not</u> be spent on operation and maintenance - only to pay debt service for bonds or capital improvement costs if a temporary tax

d. Tax may be voted to operate and maintain capital improvements and for solid waste management if not solely bonds or a temporary tax

e. Procedure for levy of tax

(i) Governing body passes ordinance levying tax subject to election results

(ii) Governing body passes ordinance calling an election

(A) Date may be 30 days or more after ordinance is adopted

(B) Election commission should be consulted regarding election date

(C) May be special election

(iii) The election and levy ordinance may be combined

(iv) Both ordinances should be published

(v) Notice of special election must be published one (1) time by the clerk or recorder of the municipality

(A) This is the only notice or proclamation which must be given

(B) Publication must be in a newspaper of general circulation in the municipality

(vi) Ballot must:

(A) Describe capital improvements (parks, water, sewer, hospital, etc.)

(B) Provide for maximum amount of bonds for each purpose, if bonds are involved

(C) State that a 1% sales and use tax is being levied

(D) Permit a separate vote for each type of improvement

(vii) Election is held and vote is certified by election commissioners

(viii) Mayor proclaims results and proclamation is published in newspaper

(ix) Ordinance, map and proof of publication are filed with State Department of Finance and Administration

(x) The election contest period ends 30 days after proclamation is published

(xi) Tax is effective on the first day of the month following the month in which the election contest period has ended

f. In effect until bonds are retired or temporary tax period ends - <u>may not be abolished while bonds are outstanding</u>

g. Surplus collections after tax is terminated may be used for general purposes approved by governing body if bond tax - surplus must be used to only fulfill original purpose if temporary, solid waste or maintenance tax

h. Ordinance must be passed defining "single transaction"

i. Tax is levied up to $6.25 per 1/4% tax per single transaction ($25 maximum for 1% tax)

j. First tax collections are available approximately 3 months after the date of levy

k. Rate limited to 1%

4. Act 25 of 1981 (First Ex. Sess.) (A.C.A. §§26-75-201 et seq.)

   a. Tax collections for general purposes

   b. Procedure for levying tax

      (i) Governing body passes ordinance levying the sales tax <u>and a use tax</u> subject to election results

      (ii) Governing body passes ordinance calling an election

         (A) Election must be held within 120 days after called

         (B) Conservative time is at least 30 days after ordinance is published

         (C) Election commission should be consulted regarding election date

         (D) May be special election

      (iii) The election and levy ordinance should not be combined - levy ordinance is not effective until after election (A.C.A. §26-75-209)

      (iv) No established notice procedure

         (A) Recommend Mayor or Clerk give notice at least fifteen (15) days in advance of election date

(B) Publication should be in a newspaper of general circulation in the municipality

(v) State Department of Finance and Administration should be notified of election within ten (10) days after called by filing both ordinances

(vi) Statute designates ballot title - must provide sales and use tax - Ragan v. Venhaus, 289 Ark. 266, 711 S.W.2d 467 (1986)

(vii) Election is held and vote is certified by election commissioners

(viii) Mayor proclaims results and these are published in newspaper

(ix) Map and proof of publication of proclamation are filed with State Department of Finance and Administration within 10 days of publication date

(x) The election contest period ends 30 days after proclamation is published and must be filed in Circuit versus Chancery Court - Pike v. Rice, 297 Ark. 25, 759 S.W.2d 541 (1988)

(xi) Tax is effective on the first day of the month following the month in which the election contest period has ended

c. In effect until termination date stated on ballot or abolished

(i) By 2/3 of governing body if the county subsequently levies a tax

(ii) By election called by governing body or by referendum petition

d. May not be abolished if pledged to bonds

e. Ordinance must be passed defining "single transaction"

f. Tax is levied up to $25 per single transaction for 1% ($6.25 per 1/4%)

g. If defeated, tax may not be considered for six (6) months

h. Rate limited to 1%

i. First tax collections are available approximately 3 months after the date of levy

5. Act 990 of 1975 (A.C.A. §§26-75-301 et seq.)

a. Tax collections for general purposes

b. Procedure for levying tax

(i) Governing body passes ordinance levying the sales tax <u>and a use tax</u> subject to election results

(ii) Governing body passes ordinance calling an election

(A) Election must be held within 120 days after called

(B) Conservative time is at least 30 days after ordinance is published

(C) Election commission should be consulted regarding election date

(D) May be special election

(iii) The election and levy ordinance should not be combined - levy ordinance is not effective until after election (A.C.A. §26-75-309)

(iv) No established notice procedure

(A) Recommend Mayor or Clerk give notice at least fifteen (15) days in advance of election date

(B) Publication should be in a newspaper of general circulation in the municipality

(v) State Department of Finance and Administration should be notified of election within ten (10) days after called by filing both ordinances

(vi) Statute designates ballot title - must provide sales and use tax - Ragan v. Venhaus, 289 Ark. 266, 711 S.W.2d 467 (1986)

(vii) Election is held and vote is certified by election commissioners

(viii) Mayor proclaims results and these are published in newspaper

(ix) Map and proof of publication of proclamation are filed with State Department of Finance and Administration within 10 days of publication date

(x) The election contest period ends 30 days after proclamation is published and must be filed in Circuit versus Chancery Court - Pike v. Rice, 297 Ark. 25, 759 S.W.2d 541 (1988)

(xi) Tax is effective on the first day of the month following the month in which the election contest period has ended

c. In effect until abolished by election called by governing body or by referendum petition

d. May not be abolished if pledged to bonds

e. Ordinance must be passed defining "single transaction"

f. Tax is levied up to $25 per single transaction for 1% under Act No. 802 of 1983 (even though rebate is provided by A.C.A. §26-75-312) - $6.25 limit for each 1/4%

g. No limit on time for resubmission

h. First tax collections are available approximately 3 months after the date of levy

6. Act 488 of 1985 (A.C.A. §§26-75-401 et seq.)

a. Tax collections for park and recreation facilities

b. Tax may be levied at rate of ½ or 1%

c. Election is required

d. Question whether limited to $25 per single transaction

e. Tax may be levied for up to 2 years

7. Act No. 200 of 1991 (A.C.A. §§26-73-110-112)

a. Tax collections for public mass transportation facilities

b. Tax must be levied at 1/4%

c. Election is required

d. Rules for sales tax apply under I.H.4. and 5. above.

I. County Sales and Use Tax Statute

1. Municipalities get share of county tax based upon population

2. Use tax must be stated on ballot Ragan v. Venhaus, 289 Ark. 266, 711 S.W.2d 467 (1986)

3. Use tax levied by statute for certain counties without an election

a. Sales tax ballot only under A.C.A. §26-74-308

b. Use tax levied by statute under A.C.A. §§26-74-318 and 319

II. MISCELLANEOUS TAX ISSUES

A. Fee vs. Tax

1. 3% charge on mixed drinks is not fee - City of Hot Springs v. Vapors Theatre, 298 Ark. 444, 769 S.W.2d 1 (1989) - "Any burden imposed by a government upon a taxpayer for the use and benefit of that government is a tax, whether labeled tax, levy, duty, custom, gaballe, or anything else." 769 S.W.2d at 2.

2. Garbage charge is fee and not a tax - Eaton v. McCuen, 273 Ark. 154, 617 S.W.2d 341 (1981) - service charges to all residents in service district are not taxes - charge imposed bears reasonable relationship to service provided

3. Annual fogging charge is fee and not tax - Holman v. City of Dierks, 217 Ark. 677, 233 S.W.2d 392 (1950)

4. Annual charge on each household for emergency medical services is fee for a service - Vandiver v. Washington County, Arkansas, 274 Ark. 561, 628 S.W.2d 1 (1982)

5. $3.00 per month public safety fee on each water bill for street and fire protection is tax and not fee - City of North Little Rock v. Graham, 278 Ark. 547, 647 S.W.2d 452 (1983) - Charge was "payment exacted by the municipality as a contribution toward the cost of maintaining the traditional governmental functions of police and fire protection ... It is not for a specific, special service such as the spraying for insects but is a means of raising revenue to pay additional money for services already in effect." 278 Ark. at page 549

6. Water meter charge for municipal operations is tax and not a fee - City of Little Rock v. Cash, 277 Ark. 494, 644 S.W.2d 229 (1982)

7. Water and sewer tapping and access fees charged to residential land developers are fees and not taxes - City of Marion v. Baioni, 312 Ark. 423, 850 S.W.2d 1 (1993)

B. Illegal Exactions

1. Taxpayers suits authorized against collection of illegal taxes (Article 16, §13 of Arkansas Constitution)

2. Cannot recover voluntary payments under common law - City of Little Rock v. Cash, 277 Ark. 494, 644 S.W.2d 229 (1982)

3. Payments not voluntary after complaint is filed - City of Little Rock v. Cash, 277 Ark. 494, 644 S.W.2d 229 (1982)

4. Funds not rebated must be used for purpose levied - may not be loaned to nonprofit corporations - City of Jacksonville, Arkansas v. Venhaus, 302 Ark. 204, 788 S.W.2d 478 (1990)

5. Special procedure for refunding sales tax; estoppel may lie if tax collected over long period - Hasha v. City of Fayetteville, 311 Ark. 460, 845 S.W.2d 500 (1993)

C. Diversion of Funds

1. No tax levied for one purpose shall be used for any other purpose - Article 16, §11 to Arkansas Constitution; Bell v. Crawford County, 287 Ark. 251, 697 S.W.2d 910 (1985)

2. Interest earnings are not considered part of tax for this purpose if principal is separated from interest - Board of Education v. Morgan, 182 Ark. 1110, 34 S.W.2d 1063 (1931); Eastering v. Cook, 175 Ark. 574, 299 S.W. 1009 (1927)

3. Proceeds of bonds issued for one purpose may not be used for another purpose - Hartwick v. Thorne, 300 Ark. 502, 780 S.W.2d 531 (1989)

D. Property vs. Other Taxes - Holt v. City of Maumelle, 302 Ark. 51, 786 S.W.2d 581 (1990)

1. Service charge for police, street lighting and fire protection is not a property tax

2. Parties stipulated charge was tax and not fee

3. Tax imposed on occupants and not landowners; unoccupied property is not assessed

4. If property tax would violate constitutional limit of 5 mill levy on property

E. Multiple Sales Tax Levies for General Purposes

1. Certain provisions of Act 990 of 1975 repealed as to enforcement, collection and operation (A.C.A. §26-75-317)

2. Attorney General's Opinion No. 88-227

a. Dealt with similar county tax levies

b. Only 1% may be levied for general purposes

3. Attorney General's Opinion No. 93-078 - contrary opinion

4. City of Eureka Springs

   a. Levy 1% under Act 990 of 1975 (A.C.A. §§26-75-301 et seq.) in 1981

   b. Levy 1% under Act 25 of 1981 (First Ex. Sess.) (A.C.A. §§26-75-201 et seq.) in 1990

   c. Matt v. Schoeninger, Mayor, et al. (Carroll Chancery Court No. E-90-44-1) upheld second levy

III. LOANS TO MUNICIPALITIES

A. Municipalities Cannot Incur Interest Bearing Obligations Except Authorized by Constitution - Article 16, §1 to Arkansas Constitution; and City of Hot Springs v. Creviston, 288 Ark. 286, 705 S.W.2d 415 (1986), rehearing denied 288 Ark. 286, 713 S.W.2d 230 (1986)

B. Tax Supported Debt for Capital Improvements - Amendment No. 62 to Arkansas Constitution

C. Revenue Supported Debt for Public Purposes Defined by Legislature - Amendment No. 65 to Arkansas Constitution

D. Must have statutory authority to borrow

   1. Local Government Capital Improvement Revenue Bond Act of 1985 - A.C.A. §§14-164-401 et seq. - revenues

   2. Local Government Bond Act of 1985 - A.C.A. §§14-164-301 et seq. - taxes

   3. Specific statutes for various types of improvements

      a. Water projects - A.C.A. §§14-234-101 et seq.

      b. Sewer projects - A.C.A. §§14-235-201 et seq.

      c. Electric projects - A.C.A. §§14-203-101 et seq.

      d. Industrial development - A.C.A. §§14-164-201 et seq.

      e. Port projects - A.C.A. §§14-186-301 et seq.

f. Sanitation projects - A.C.A. §§14-232-101 et seq.

g. Airport projects - A.C.A. §§14-360-301 et seq.

E. Must comply with Statutory Procedure for Particular Type of Project

F. General Rules for Revenue Supported Debt

1. Debt must be incurred by municipality and not board or commission unless clear statutory authority

2. City Council must approve all loans by ordinance - A.C.A. §19-9-606

3. Ordinance may not be adopted until hearing is held - A.C.A. §19-9-607

   a. Notice must be published at least 14 days in advance of hearing

   b. Notice must state purposes and principal amount of debt

   c. Publication must be in newspaper of general circulation in municipality

4. Ordinance must recite

   a. Statutory authority for loan

   b. Special obligation payable from pledged revenue source (example: water and sewer revenues) rather than from general funds

5. Ordinance must be published

6. Ninety (90) day referendum period expires (can be 30 days by referendum ordinance)

G. Tax-exempt loans

1. Must complete and file Form 8038 with Department of Treasury

2. Must designate the bonds as qualified tax-exempt obligations under Section 265 of Internal Revenue Code

3. Other requirements found in Sections 103 and 141-150 of Internal Revenue Code

IV. MUNICIPAL LEASES

A. Amendment No. 10 to Arkansas Constitution (Article 12, §4)

1. Prohibits contracts obligating revenues beyond the current fiscal year

B. Article 16, §1 of Arkansas Constitution (formerly Amendment No. 13) - prohibits interest bearing obligations

C. Brown v. City of Stuttgart, 312 Ark. 97, 847 S.W.2d 710 (1993) - interest bearing leases payable from general revenues violate Article 16, Section 1 of Arkansas Constitution

D. Keys for Lease Validity

1. Lease is for one year (and annual renewals) and can be paid from current revenues

2. Lease is true lease for long term (no interest) and has fiscal funding provisions allowing annual cancellation

3. Lease is financing lease with interest and

a. Has special source of payment (revenues) identified

b. Procedure for municipal loans is followed

V. ROLES FOR CITY ATTORNEYS IN BOND ISSUES

A. Verification that the municipality (or board, authority, etc.) is duly organized

B. Verification that the governing body is properly constituted and assisting bond counsel in any necessary corrective measures

C. Review of documents, particularly from the perspective of advising bond counsel of any conflicting provisions in existing ordinances, resolutions, contracts or agreements

D. Assisting in the presentation, adoption, and execution of the authorizing bond proceedings

E. Executing necessary closing certificates as to incumbency of officials and absence of litigation

F. Providing information for the Official Statement, particularly concerning litigation

G. Reviewing the Official Statement for adequacy and completeness

H. Responsibility for certifications made by issuer officials

I. Legal opinions as to litigation matters, etc.

VI. MUNICIPAL SEWER RATES

A. Procedure for Establishment (A.C.A. §14-235-223)

1. Ordinance establishing rates introduced and read one time

2. Hearing set by governing body

a. Date of hearing at least ten (10) days after notice given

b. Notice of hearing must be published in newspaper of general circulation in municipality

c. Notice must contain schedule of rates

3. Hearing held before quorum of members of governing body

4. Ordinance may be amended after hearing

5. Ordinance passed and published

6. Exception to hearing requirement: change in rates are substantially pro rata as to all classes of service

7. City of Fort Smith v. OK Foods, Inc., 293 Ark. 379, 738 S.W.2d 96 (1987)

a. Sewer rates held invalid

(i) No notice was published or public hearing held

(ii) Ordinance not published

b. Customers entitled to refund

B. Procedure for Collection

1. Suit in Chancery Court for nonpayment after 30 days from due date

2. Collect 10% penalty at discretion of trial court - Lamar Bath House Co. v. City of Hot Springs, 229 Ark. 214, 315 S.W.2d 884 (1958), appeal dismissed, 359 U.S. 534, 79 S. Ct. 1137, 3L. Ed. 1028 (1959)

3. No lien for collection (Act 290 of 1985 - A.C.A. §14-235-223)

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS
KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

-COPY-

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Heather Woodruff**, City Clerk

FROM: **Kit Williams**, City Attorney

DATE: **July 31, 2002**

RE: **Special City Council Meeting of July 30, 2002**

Enclosed please find a copy of the Resolution which passed at last night's Special City Council meeting.

1. Resolution to modify the existing exclusive water service area line between Fayetteville and Springdale to transfer about 340 acres in the City of Johnson into Springdale's service area

- Copy -

RESOLUTION NO. 17-12

A RESOLUTION TO MODIFY THE EXISTING EXCLUSIVE WATER SERVICE AREA LINE BETWEEN FAYETTEVILLE AND SPRINGDALE TO TRANSFER ABOUT 340 ACRES IN THE CITY OF JOHNSON INTO SPRINGDALE'S SERVICE AREA

WHEREAS, on June 5, 1967, the City of Fayetteville agreed with the cities of Bentonville, Rogers and Springdale to fund the expansion and operation of the Beaver Water Supply Facilities of the Beaver Water District; and

WHEREAS, exclusive water service areas for the cities were agreed to as part of that contract with the right of such cities to alter their exclusive service area by mutual agreement in the future; and

WHEREAS, the proposed Clear Creek Golf Course development including numerous residences to be built upon about 340 acres of land within the City of Johnson is currently within the exclusive water service area of the City of Fayetteville, but is not now being served with City of Fayetteville water mains nor can be legally served with City of Fayetteville sewer service; and

WHEREAS, the owners of the Clear Creek Golf Club development desire that their property be transferred from the exclusive water service area of Fayetteville to the service area of Springdale so that water and sewer can be provided by the same provider and also to obtain a second and redundant water supply for its development and the nearby hospital.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby agrees that the plat of land identified in Exhibit A containing about 340 acres in the City of Johnson should be and is hereby transferred from the City of Fayetteville's exclusive service area to the City of Springdale's exclusive service area and authorizes the Mayor to execute any necessary agreement, contract or memorandum of understanding to accomplish this transfer pursuant to paragraph 20 of the Memorandum of Understanding and Contract entered into on June 5, 1967.

PASSED and **APPROVED** this 30th day of July, 2002.

APPROVED:

By: ___________________________
DAN COODY, Mayor

ATTEST:

By: ___________________________
Heather Woodruff, City Clerk

NORTHWEST ARKANSAS EDITION
Arkansas Democrat-Gazette

AFFIDAVIT OF PUBLICATION

I, Diane Williams, do solemnly swear that I am Legal Clerk of the Arkansas Democrat-Gazette newspaper, printed and published in Lowell, Arkansas, and that from my own personal knowledge and reference to the files of said publication, the advertisement of:

Special City Council was inserted in the regular editions on July 29, 2002.

** Publication Charge: $ 47.23

Subscribed and sworn to before me this

29 day of July, 2002.

Tammy Allen
Notary Public

My Commission Expires:

Official Seal
TAMMY ALLEN
Notary Public-Arkansas
WASHINGTON COUNTY
My Commission Expires 11-05-2011

** Please do not pay from Affidavit.
An invoice will be sent.

RECEIVED
JUL 31 2002
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

SPECIAL CITY COUNCIL
AGENDA
JULY 30, 2002

City of Fayetteville

A special meeting of the Fayetteville City Council will be held on July 30, 2002 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

1. WATER SERVICE AREA: A resolution to modify the existing exclusive water service area line between Fayetteville and Springdale to transfer approximately 340 acres in the City of Johnson into Springdale's service area. The item was tabled at the July 16, 2002 meeting.

2. IMPACT FEE STUDY: Duncan Associates presentation of the Final Impact Fee Study: Wastewater, Water, and Roads, including update of the existing Parkland Dedication and Fee-in-Lieu requirements.

212 NORTH EAST AVENUE • P.O. BOX 1607 • FAYETTEVILLE, ARKANSAS 72702 • (501) 442-1700