Final Agenda
For
City Council Meeting
August 5, 2003

A meeting of the Fayetteville City Council will be held on August 5, 2003 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Cody Hiland – Public Service Commission.

Kit Williams – HMR Tax

Approved

A. CONSENT:

1. **Approval Of The Minutes:** Approval of the July 8, 2003 meeting minutes.
   Approval of the December 17, 2002 meeting minutes.

113-03

2. **Marinoni Offer and Acceptance/Broyles Road:** A resolution approving an offer and acceptance contract between the City of Fayetteville and Paul Marinoni, Jr. and Suellen Mary Marinoni in an amount not to exceed $43,400.00 for the purchase of approximately seventy (70) feet of right-of-way for the extension of Broyles Road and to obtain permanent and temporary easements for the construction of sewer line to the new wastewater treatment plant; and approving a budget adjustment in the amount of $78,400.00 for same.

114-03

3. **Multi-Craft Contractors, Inc. Bid #03-42 Back-Up Generators:** A resolution awarding Bid #03-42 to Multi-Craft Contractors, Inc. in the amount of $103,885.00 to install back-up generators at each of the Fayetteville Fire Department's five facilities; and approving a project contingency in the amount of $10,389.00 for same.

115-03

4. **Arkansas Parks and Tourism Outdoor Recreation Grant/Lake Fayetteville Spillway Bridge Project:** A resolution authorizing the Fayetteville Parks and Recreation Division to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount up to $250,000.00 for the Lake Fayetteville Spillway Bridge Project.

116-03

5. **USDA Forest Service Supplemental Lease Agreement No. 1:** A resolution authorizing the Mayor and the City Clerk to execute Amendment No. 1 to the lease agreement with the USDA Forest Service authorizing the City of Fayetteville to construct loading pads, approach ramps, and other civil works at the Fayetteville Municipal Airport associated with the air tanker operations base; and approving a budget adjustment recognizing the receipt of $1,200,000.00 as reimbursement for the City's expenditures.

6. **McClelland Consulting Engineers, Inc. Task Order No. 2**: A resolution approving Task Order No. 2 in the amount of $84,400.00 with McClelland Consulting Engineers for engineering, design, and construction oversight associated with the construction of the USDA Forest Service Tanker Base at the Fayetteville Municipal Airport; and approving a budget adjustment for the same amount.

117-03

B. OLD BUSINESS:

Amended (4) Ord Review by full cc Tabled to Sept 2nd

1. **Smoking in Certain Public Places:** An ordinance to amend §95.05 **Regulation Of Smoking In Certain Public Places** of the code of Fayetteville and to enact a replacement §95.05 **Regulation Of Smoking In Most Public Places And Places Of Employment** in order to remove exemptions for bars, pool halls, small restaurants, beauty salons, barber shops and designated smoking areas in enclosed public access areas in restaurants, theaters, roller rinks, bowling alleys, and retail stores, etc. ***This ordinance was left on the first reading at the July 15, 2003 City Council Meeting.***

C. NEW BUSINESS:

Tabled to Aug. 19th

1. **Public Hearing Raze and Removal 226 North School Avenue:** A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by Timothy C. and Christine Klinger located at 226 N. School Avenue in the City of Fayetteville, Arkansas.

2. **Public Hearing Raze and Removal 323 N West Avenue:** A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by the Bank of Fayetteville, N.A. located at 323 N. West Avenue in the City of Fayetteville, Arkansas.

3. **Police and Fire Pension LOPFI Agreement**: An ordinance electing coverage for eligible members of the Police Pension and Relief Fund and Firefighter Pension and Relief Fund under LOPFI and authorizing Mayor Coody to enter into an agreement with LOPFI.

D. INFORMATIONAL:

1. **City Council Budget Briefing Meeting: August 4, 2003, Room 219 at 5:00 PM.**

Meeting Adjourned at 11:10 pm.

Meeting of August 5, 2003

Subject:	Roll					
Motion By: Seconded:						
Motion To:						
	Reynolds	✓				
	Thiel	✓				
	Cook	✓				
	Marr	✓				
	Rhoads	✓				
	Davis	✓				
	Lucas	✓				
	Jordan	✓				
	Mayor Coody	✓				

Subject:	Table New Business Items until 8/19/03 meeting					
Motion By: Seconded:		Reynolds / Davis				
Motion To:		Table New Business				
	Reynolds	✓				
	Thiel	✓				
passed	**Cook**	✓				
	Marr	✓				
	Rhoads	✓				
	Davis	✓				
	Lucas	✓				
	Jordan	✓				
	~~**Mayor Coody**~~					

Cody Hilard Presentation
Question: Reynolds
Why the increase

Kit Presentation HMR
Mayor Coody
Bob Davis.

Meeting of August 5, 2003

Subject:		Consent				
Motion By: **Seconded:**		Davis Jordan				
Motion To:		approve Consent				
	Reynolds	✓				
	Thiel	✓				
	Cook	✓				
	Marr	✓				
passed	**Rhoads**	✓				
	Davis	✓				
	Lucas	✓				
	Jordan	✓				
	~~**Mayor Coody**~~					

Subject:		Smoking Issue				
Motion By: **Seconded:**						
Motion To:						
	Reynolds					
	Thiel					
	Cook					
	Marr					
	Rhoads					
	Davis					
	Lucas					
	Jordan					
	Mayor Coody					

Alderman Marr would like to throw out the amendments he talked about at Agenda session.
He has 4 amendments to the Smoking Ordinance
Alderman Thiel also has an amendment

Kit read the Changes at the end of the meeting.

Meeting of August 5, 2003

Subject:		Amend Smoking Ordinance to Exempt Fraternal Organizations				
Motion By: **Seconded:**		Thiel				
Motion To:						
	Reynolds	Motion failed for lack of a Second				
	Thiel					
	Cook					
	Marr					
	Rhoads					
	Davis					
	Lucas					
	Jordan					
	Mayor Coody					

failed to exempt Fraternal Organizations

Subject:	Smoking Ordinance	Motion to Amend ordinance to exempt Bars				
Motion By: **Seconded:**		Marr				
Motion To:						
	Reynolds	N				
	Thiel	N				
	Cook	Y				
	Marr	Y				
	Rhoads	N				
	Davis	Y				
	Lucas	Y				
	Jordan	Y				
	Mayor Coody	—				

Davis
Marr

Amendment #1 passed to exempt bars 5/3

Meeting of August 5, 2003

Subject:	Smoking Ordinance	Amendment to exempt Outside Areas				
Motion By: Seconded:		marr				
Motion To:						
	Reynolds	N				
Amendment #2 passed 7/1	Thiel	y				
	Cook	y				
	Marr	y				
	Rhoads	y				
	Davis	y				
	Lucas	y				
	Jordan	y				
	~~Mayor Coody~~					

Subject:	Smoking Ordinance	Amendment Vehicles				
Motion By: Seconded:		marr				
Motion To:						
	Reynolds	y				
Amendment #3 passed 8/0	Thiel	y				
	Cook	y				
	Marr	y				
	Rhoads	y				
	Davis	y				
	Lucas	y				
	Jordan	y				
	~~Mayor Coody~~					

Meeting of August 5, 2003

Subject:	Smoking Ordinance	Amendment Effective date to 2/1/2004				
Motion By: Seconded:						
Motion To:						
	Reynolds	N				
	Thiel	y				
	Cook	y				
	Marr	y				
	Rhoads	y				
	Davis	y				
	Lucas	y				
	Jordan	y				
	~~Mayor Coody~~	—				

Amendment # 4

7-1 passed

Subject:	Smoking Ordinance					
Motion By: Seconded:		Cook Marr				
Motion To:		2nd read				
	Reynolds	y				
	Thiel	y				
	Cook	y				
	Marr	y				
	Rhoads	y				
	Davis	y				
	Lucas	y				
	Jordan	y				
	Mayor Coody	—				

passed to go to second reading

Cook - Enforcement

Ellen

Marr

Thiel

Lucas

Have Chief Hoyt speak about enforcement at the next meeting.

Meeting of August 5, 2003

Subject:	Smoking Ordinance	Motion to Table Indefintely				
Motion By: Seconded:		Reynolds				
Motion To:						
	Reynolds	Motion	Failed	for Lack	of a	Second.
	Thiel					
	Cook					
	Marr					
	Rhoads					
	Davis					
	Lucas					
	Jordan					
	Mayor Coody					

Failed to table Indefinitely

Subject:	Smoking Ordinance	Motion to Send to Ordinance review – (NO VOTE) Amend motion to send to ordinance review to a				
Motion By: Seconded:		Rhoads Jordan		Rhoads Reynolds		motion to review the ordinance with a meeting of the full City Council
Motion To:		Ordinance review		Full City Council Review of Ordinance		
	Reynolds	NO		Y		
	Thiel	VOTE		Y		
	Cook	ON SENDING		N		
	Marr	TO		N		
	Rhoads	ORDINANCE		Y		
	Davis	REVIEW.		Y		
	Lucas			N		
	Jordan			Y		
	~~Mayor Coody~~			—		

5-3 passed to send Ordinance to a review of the full City Council

Meeting of August 5, 2003

Subject:	Smoking Ordinance	Motion to Table until Sept 2, 2003				
Motion By: Seconded:		Davis Reynolds				
Motion To:		Table Smoking				
	Reynolds	y				
	Thiel	y				
	Cook	y				
	Marr	y				
	Rhoads	y				
	Davis	y				
	Lucas	y				
	Jordan	y				
	M~~ayor Coody~~	—				

8-0 passed to table until Sept 2, 2003.

Subject:	NEW BUSINESS – TABLED					
Motion By: Seconded:						
Motion To:						
	Reynolds					
	Thiel					
	Cook					
	Marr					
	Rhoads					
	Davis					
	Lucas					
	Jordan					
	Mayor Coody					

Left on 1st Read

ALDERMAN AGENDA REQUEST FORM

Smoking in Certain Public Places
B. 1. Page 1

FOR: COUNCIL MEETING OF July ~~1~~ 15, 2003

FROM:

DON MARR, ALDERMAN and SHIRLEY LUCAS, ALDERMAN

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An ordinance to amend §95.05 **Regulation Of Smoking In Certain Public Places** of the Code of Fayetteville and to enact a replacement §95.05 **Regulation Of Smoking In Most Public Places And Places Of Employment** in order to remove exemptions for bars, pool halls, small restaurants, beauty salons, barber shops and designated smoking areas in enclosed public access areas in restaurants, theaters, roller rinks, bowling alleys, and retail stores, etc.

APPROVED FOR AGENDA:

Donald A. Marr 6-23-2003
Alderman Date

Shirley Lucas 6-23-03
Alderman Date

D. J. White 6/23/03
City Attorney (as to form) Date

ORDINANCE NO. ______

AN ORDINANCE TO AMEND §95.05 **REGULATION OF SMOKING IN CERTAIN PUBLIC PLACES** OF THE CODE OF FAYETTEVILLE AND TO ENACT A REPLACEMENT §95.05 **REGULATION OF SMOKING IN MOST PUBLIC PLACES AND PLACES OF EMPLOYMENT** IN ORDER TO REMOVE EXEMPTIONS FOR BARS, POOL HALLS, SMALL RESTAURANTS, BEAUTY SALONS, BARBER SHOPS AND DESIGNATED SMOKING AREAS IN ENCLOSED PUBLIC ACCESS AREAS IN RESTAURANTS, THEATERS, ROLLER RINKS, BOWLING ALLEYS, AND RETAIL STORES, ETC.

WHEREAS, Ordinance No. 3584 enacted on December 17, 1991, regulated smoking in numerous public places, but permitted designated smoking areas in restaurants, theaters, museums, galleries, malls, hotels, motels, banks, retail stores, health spas, roller rinks, bowling alleys, etc.; and

WHEREAS, Ordinance No. 3584 codified as **§95.05 Regulation of smoking in certain public places** did not apply to bars, separated bars in restaurants, beauty salons, barber shops, convenience stores, pool halls and small restaurants nor many places of employment; and

WHEREAS, scientific studies have proven that second hand tobacco smoke is a recognized carcinogen and is otherwise dangerous and causes diseases in the health of nonsmokers; and

WHEREAS, the United States Surgeon General has determined that separation of smokers and nonsmokers within the same airspace does not eliminate exposure of nonsmokers to second hand smoke; and

WHEREAS, employees who work in a smoke-filled business suffer 25%-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer; and

WHEREAS, the Fayetteville City Council has determined that further restrictions of smoking in enclosed public places and work places are needed to protect the health and safety of citizens and to ensure the right of nonsmokers to breathe smoke free air; and

WHEREAS, economic analyses have shown no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke free; and

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of

disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer; and

WHEREAS, The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respirator function to be a disability.

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 repeals §95.05 **Regulation of smoking in certain public places** of the Fayetteville Code, in its entirety and enacts the following new §95.05 **Regulation of smoking in most public places** of the Fayetteville Code to replace it:

"Sec. 95.05. Regulation of smoking in most public places.

(A) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Bar. An establishment that is devoted solely to the sale and service of alcoholic beverages for on-premises consumption and where the service of food, if any, is incidental to the consumption of such beverages.

Restaurant: An eating establishment, including but not limited to dining establishments, coffee shops, cafeterias, sandwich shops, private and public cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as non-residential kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

Enclosed area. All space partially enclosed between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

Health care facilities. All enclosed indoor areas in which health care is provided to the general public (other than areas to which smoking policy is already established by state law, A.C.A. §§20-27-701 through 20-27-703), including nursing and convalescent homes, optometrists', podiatrists', and chiropractors' offices, and physical therapy facilities.

Manager. The owner, lessee, or other person in charge of a public place.

Place of employment. An area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

Public place.

(1) Any enclosed indoor area that is used by the general public, except hotel and motel guest rooms and areas restricted to use only by employees or management of a private business; and

(2) Any swimming pool owned or operated by the city, including the entire area within the pool enclosure. A private residence shall not be considered a

public place for purposes of this section unless it is used as a health care or licensed child care facility.

Retail Tobacco Store. A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Smoking. Holding a lighted pipe, cigar, or cigarette of any kind, or lighting, or emitting or exhaling the smoke of, a pipe, cigar, or cigarette of any kind.

Sports arenas. Means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports or other events.

(B) *Restrictions on smoking in public places essential to members of the public*. No person shall smoke in the following public places:

(1) Health care facilities.

(2) Within the physical confines of licensed child care facilities. (As defined in A.C.A. §20-78-217)

(3) Polling places;

(4) Courtrooms and jury waiting and deliberation rooms;

(5) Rooms, halls or other places of meeting or public assembly, during such times as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city; provided that this section shall not apply to meetings of private organizations;

(6) Drug stores, grocery stores, banks, libraries, and laundromats;

(7) Public transportation terminals;

(8) Buses, taxis, and airport limousines operating within the city limits;

(9) Elevators accessible to the public;

(10) Restrooms; and

(11) Swimming pools owned or ~~operated by the city.~~

Sub Section V Marr Jordan

change #12 def. in places of employment

Exclude

(C) *Restrictions on smoking in certain other public places*. No person shall smoke in the following enclosed public places and places of employment or work places:

(1) Facilities primarily used for exhibiting any motion picture, lecture, musical recital, stage or other similar performance, except when smoking is part of a stage production;

(2) Enclosed walkways in malls and shopping centers;

(3) Hotels and motels, except hotel and motel rooms that are rented to guests and are designated as smoking rooms.

(4) Museums and galleries;

(5) Bank and retail stores doing business with the general public, except for retail tobacco stores whose primary source of revenue is the sale of tobacco and tobacco-related products;

(6) Restaurants, cafeterias, cafes, coffee shops, etc.

(7) Health spas, roller rinks, bowling alleys, and other indoor sports or recreation facilities, including pool halls;

Strike

(8) Bars, taverns, nightclubs, cocktail lounges, cabarets, etc.

Marr Cook

(9) Beauty salons and barber shops;

Strike

(10) Convenience stores.

(11) An outside area within a reasonable distance of fifteen (15) feet from a main entrance to an enclosed area in which smoking is prohibited.

Marr Jordan

(12) Enclosed places of employment and work places if a nonsmoking employee is present or regularly enters or uses that portion of an enclosed place of employment ~~or work place.~~

Strike

(13) Business vehicles with at least one nonsmoker as an occupant.

Marr Jordan

(D) The provisions of this section shall not apply to Retail tobacco stores whose primary source of revenue is the sale of tobacco and tobacco-related products.

(E) *Duties of managers of public places.*

Add effective 2/1/2004 Marr Jordan

(E) *Duties of managers of public places.*

(1) The manager of a public place in which smoking is prohibited or restricted shall place conspicuous signs at each public entrance up to a maximum of six entrances, and at appropriate places within the public place, notifying the public that Smoking is prohibited.

(2) The manager of a public place in which smoking is prohibited or restricted shall not knowingly permit, or fail to make reasonable efforts to prevent, smoking in any area where smoking is prohibited.

(F) *Enforcement.*

(1) This section shall be enforced by the Mayor or an authorized designee.

(2) Any citizen who desires to register a complaint under this section may initiate enforcement with the Mayor's office.

(3) An owner, manager, operator or employee of an establishment regulated by this section shall inform persons violating this section of the appropriate provisions thereof.

(4) A person who smokes in an area where smoking is prohibited by provisions of this section shall be guilty of a violation punishable by a fine not exceeding fifty dollars ($50.00).

(5) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Section shall be guilty of a violation, punishable by:

(a) A fine not exceeding one hundred dollars ($100.00) for a first violation;

(b) A fine not exceeding two hundred dollars ($200) for a second violation within one (1) year;

(c) A fine not exceeding five hundred dollars ($500) for each additional violation within one (1) year.

(6) In addition to the fines established by this Section, multiple violation of this Section by a person who owns, manages, operates or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(7) Each day on which a violation of this Section occurs shall be considered a separate and distinct violation.

(G) *Relation to other laws and regulations.*

Nothing in this section excuses noncompliance with any state or federal law, or any rule or regulation adopted pursuant thereto (including any rule adopted for the University of Arkansas or for the public schools), which prohibits or regulates smoking.

(H) *Jurisdiction.*

This section is not applicable nor enforceable in federal, state or county buildings including all facilities owned or operated by the University of Arkansas.

(Ord. No. 3584, 12-17-91)

PASSED and **APPROVED** this the 1st day of July, 2003.

APPROVED:

DRAFT

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
Sondra Smith, City Clerk

Smoking in Certain Public Places
B. 1. Page 6

ALDERMAN AGENDA REQUEST FORM

FOR: COUNCIL MEETING OF July 1, 2003

FROM:

DON MARR, ALDERMAN and SHIRLEY LUCAS, ALDERMAN

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An ordinance to amend §95.05 **Regulation Of Smoking In Certain Public Places** of the Code of Fayetteville and to enact a replacement §95.05 **Regulation Of Smoking In Most Public Places And Places Of Employment** in order to remove exemptions for bars, pool halls, small restaurants, beauty salons, barber shops and designated smoking areas in enclosed public access areas in restaurants, theaters, roller rinks, bowling alleys, and retail stores, etc.

APPROVED FOR AGENDA:

Donald Marr 6-20-03
Alderman Date

Alderman Date

6/20/03
City Attorney (as to form) Date

Smoking in Certain Public Places
B. 1. Page 7

KIT WILLIAMS
FAYETTEVILLE CITY ATTORNEY

DAVID J. WHITAKER
Assistant City Attorney
Judy Housley
Office Manager

Phone (479) 575-8313
FAX (479) 575-8315

THE CITY OF FAYETTEVILLE, ARKANSAS
113 W. Mountain, Suite 302
Fayetteville, AR 72701-6083

June 20, 2003

Don Marr
Fayetteville Alderman

845-2800 - Judy
By FAX: (479) 845-2801

Dear Don:

Attached is the revised smoking ordinance per your instruction. I also revised the Title to specifically mention "places of employment" and placed that within the second Whereas Clause. This is a major change in the law and so needs to be referred to in the title of the ordinance.

Please review this final (?) draft and let me know if any further changes are needed.

With kindest regards,

Kit Williams
Fayetteville City Attorney

KW/jh

Attachment

ORDINANCE NO. ______

AN ORDINANCE TO AMEND §95.05 REGULATION OF SMOKING IN CERTAIN PUBLIC PLACES OF THE CODE OF FAYETTEVILLE AND TO ENACT A REPLACEMENT §95.05 REGULATION OF SMOKING IN MOST PUBLIC PLACES AND PLACES OF EMPLOYMENT IN ORDER TO REMOVE EXEMPTIONS FOR BARS, POOL HALLS, SMALL RESTAURANTS, BEAUTY SALONS, BARBER SHOPS AND DESIGNATED SMOKING AREAS IN ENCLOSED PUBLIC ACCESS AREAS IN RESTAURANTS, THEATERS, ROLLER RINKS, BOWLING ALLEYS, AND RETAIL STORES, ETC.

WHEREAS, Ordinance No. 3584 enacted on December 17, 1991, regulated smoking in numerous public places, but permitted designated smoking areas in restaurants, theaters, museums, galleries, malls, hotels, motels, banks, retail stores, health spas, roller rinks, bowling alleys, etc.; and

WHEREAS, Ordinance No. 3584 codified as §95.05 **Regulation of smoking in certain public places** did not apply to bars, separated bars in restaurants, beauty salons, barber shops, convenience stores, pool halls and small restaurants nor many places of employment; and

WHEREAS, scientific studies have proven that second hand tobacco smoke is a recognized carcinogen and is otherwise dangerous and causes diseases in the health of nonsmokers; and

WHEREAS, the United States Surgeon General has determined that separation of smokers and nonsmokers within the same airspace does not eliminate exposure of nonsmokers to second hand smoke; and

WHEREAS, employees who work in a smoke-filled business suffer 25%-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer; and

WHEREAS, the Fayetteville City Council has determined that further restrictions of smoking in enclosed public places and work places are needed to protect the health and safety of citizens and to ensure the right of nonsmokers to breathe smoke free air; and

WHEREAS, economic analyses have shown no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke free; and

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of

lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer; and

WHEREAS, The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respirator function to be a disability.

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 repeals §95.05 **Regulation of smoking in certain public places** of the Fayetteville Code, in its entirety and enacts the following new §95.05 **Regulation of smoking in most public places** of the Fayetteville Code to replace it:

"Sec. 95.05. Regulation of smoking in most public places.

(A) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Bar. An establishment that is devoted solely to the sale and service of alcoholic beverages for on-premises consumption and where the service of food, if any, is incidental to the consumption of such beverages.

Restaurant: An eating establishment, including but not limited to dining establishments, coffee shops, cafeterias, sandwich shops, private and public cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as non-residential kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

Enclosed area. All space partially enclosed between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

Health care facilities. All enclosed indoor areas in which health care is provided to the general public (other than areas to which smoking policy is already established by state law, A.C.A. §§20-27-701 through 20-27-703), including nursing and convalescent homes, optometrists', podiatrists', and chiropractors' offices, and physical therapy facilities.

Manager. The owner, lessee, or other person in charge of a public place.

Place of employment. An area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

Public place.

(1) Any enclosed indoor area that is used by the general public, except hotel and motel guest rooms and areas restricted to use only by employees or management of a private business; and

(2) Any swimming pool owned or operated by the city, including the entire area within the pool enclosure. A private residence shall not be considered a public place for purposes of this section

unless it is used as a health care or licensed child care facility.

Retail Tobacco Store. A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Smoking. Holding a lighted pipe, cigar, or cigarette of any kind, or lighting, or emitting or exhaling the smoke of, a pipe, cigar, or cigarette of any kind.

Sports arenas. Means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports or other events.

(B) *Restrictions on smoking in public places essential to members of the public*. No person shall smoke in the following public places:

Deleted highlighted area at the request of Shirley Lucas

(1) Health care facilities ~~except in private or semi-private rooms occupied by one or more patients all of whom are smokers who have requested to be placed in rooms where smoking is permitted;~~

(2) Within the physical confines of licensed child care facilities. (As defined in A.C.A. §20-78-217)

(3) Polling places;

(4) Courtrooms and jury waiting and deliberation rooms;

(5) Rooms, halls or other places of meeting or public assembly, during such times as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city; provided that this section shall not apply to meetings of private organizations;

(6) Drug stores, grocery stores, banks, libraries, and laundromats;

(7) Public transportation terminals;

(8) Buses, taxis, and airport limousines operating within the city limits;

(9) Elevators accessible to the public;

(10) Restrooms; and

(11) Swimming pools owned or operated by the city.

(C) *Restrictions on smoking in certain other public places*. No person shall smoke in the following enclosed public places and places of employment or work places:

(1) Facilities primarily used for exhibiting any motion picture, lecture, musical recital, stage or other similar performance, except when smoking is part of a stage production;

(2) Enclosed walkways in malls and shopping centers;

(3) Hotels and motels, except hotel and motel rooms that are rented to guests and are designated as smoking rooms.

(4) Museums and galleries;

(5) Bank and retail stores doing business with the general public, except for retail tobacco stores whose primary source of revenue is the sale of tobacco and tobacco-related products;

(6) Restaurants, cafeterias, cafes, coffee shops, etc.

(7) Health spas, roller rinks, bowling alleys, and other indoor sports or recreation facilities, including pool halls;

(8) Bars, taverns, nightclubs, cocktail lounges, cabarets, etc.

(9) Beauty salons and barber shops;

(10) Convenience stores.

(11) An outside area within a reasonable distance of fifteen (15) feet from a main entrance to an enclosed area in which smoking is prohibited.

(12) Enclosed places of employment and work places if a nonsmoking employee is present or regularly enters or uses that portion of an enclosed place of employment or work place.

(13) Business vehicles with at least one nonsmoker as an occupant.

(D) The provisions of this section shall not apply to Retail tobacco stores whose primary source of revenue is the sale of tobacco and tobacco-related products.

(E) *Duties of managers of public places.*

(1) The manager of a public place in which smoking is prohibited or restricted shall place conspicuous signs at each public entrance up to a maximum of six entrances, and at appropriate places within the public place, notifying the public that Smoking is prohibited.

(2) The manager of a public place in which smoking is prohibited or restricted shall not knowingly permit, or fail to make reasonable efforts to prevent, smoking in any area where smoking is prohibited.

(F) *Enforcement.*

(1) This section shall be enforced by the Mayor or an authorized designee.

(2) Any citizen who desires to register a complaint under this section may initiate enforcement with the Mayor's office.

(3) An owner, manager, operator or employee of an establishment regulated by this section shall inform persons violating this section of the appropriate provisions thereof.

(4) A person who smokes in an area where smoking is prohibited by provisions of this section shall be guilty of a violation punishable by a fine not exceeding fifty dollars ($50.00).

(5) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Section shall be guilty of a violation, punishable by:

(a) A fine not exceeding one hundred dollars ($100.00) for a first violation;

(b) A fine not exceeding two hundred dollars ($200) for a second violation within one (1) year;

(c) A fine not exceeding five hundred dollars ($500) for each additional violation within one (1) year.

(6) In addition to the fines established by this Section, multiple violation of this Section by a person who owns, manages, operates or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(7) Each day on which a violation of this Section occurs shall be considered a separate and distinct violation.

(G) *Relation to other laws and regulations.*

Nothing in this section excuses noncompliance with any state or federal law, or any rule or regulation adopted pursuant thereto (including any rule adopted for the University of Arkansas or for the public schools), which prohibits or regulates smoking.

(H) *Jurisdiction.*

This section is not applicable nor enforceable in federal, state or county buildings including all facilities owned or operated by the University of Arkansas.

(Ord. No. 3384, 12-17-91)

PASSED and APPROVED this the 1st day of July, 2003.

APPROVED:

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
Sondra Smith, City Clerk

Smoking in Certain Public Places
B. 1. Page 12

Bentonville, AR 72712
Phone 479-845-2800
Fax 479-845-2801
Alt Ph 479-444-7871

HR Factor

Fax

To: Sondra
From: Don Marr
Fax: 479-718-7695
Pages: 7 (including the cover page)
Phone: 479-575-8323
Date: 6/20/03
Re: Revised Smoking Ord.
CC:

☑ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

Sondra, Don will request the addition to the agenda.

Thanks for your help,
Gail Eads

71

ORDINANCE NO. 3584

AN ORDINANCE TO REGULATE SMOKING IN CERTAIN PUBLIC PLACES AND TO AMEND CHAPTER 95 OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, ARKANSAS BY ADDING A NEW SECTION 95.05.

WHEREAS, studies by the Surgeon General of the United States, the National Academy of Sciences, the National Institute of Occupational Safety and Health, and other scientific and health organizations demonstrate that passive smoking, or involuntary exposure to other people's tobacco smoke, is a significant health hazard for elderly people, children, individuals with cardiovascular disease, and individuals with impaired respiratory function;

WHEREAS, health hazards caused by passive smoking include lung cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, bronchoconstriction and bronchospasm;

WHEREAS, non-smokers who suffer allergies, respiratory diseases and other ill effects of passive smoking may experience a loss of job productivity and may be forced to take periodic sick leave because of such adverse reactions;

WHEREAS, smoking is a frequent cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause losses to business;

WHEREAS, the Fayetteville business community has taken important steps to increase customer satisfaction by providing non-smoking areas, and this trend should be encouraged; and

WHEREAS, the purpose of this ordinance is to protect public health, safety and welfare by prohibiting smoking in certain public places essential to members of the public, and by restricting smoking to designated smoking areas in other specified public places;

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

Section 1. Chapter 95 of the Code of Fayetteville is hereby amended by adding Section 95.05 to read as follows:

§95.05 Regulating Smoking in Certain Public Places.

(a) Definitions.

(1) "Bar" means an area devoted to the sale and service of alcoholic beverages for on-premises consumption, where the service of food, if any, is only incidental to the consumption of such beverages.

(2) "Designated smoking area" means an area:

(A) that is separated from non-smoking areas; is designated by appropriate signs which are clearly visible to patrons in and entering the area, or is in a facility where conspicuous signs are posted that smoking is permitted in the entire facility except for non-smoking areas; contains ashtrays, containers, or other receptacles for extinguishing smoking materials; and does not include service lines or cashier areas; and

(B) that is situated so that smoke from the smoking area does not normally enter a non-smoking area; provided that in the case of a public place that is in business or operation on the date of enactment of this ordinance, whether under the same or new management, no new physical barriers or ventilation systems need to be installed, and such public place shall be deemed to satisfy this subparagraph (a)(2)(B) if it utilizes existing physical barriers or ventilation systems to minimize the drift of smoke into non-smoking areas.

(3) "Designated non-smoking area" means an area that is separated from smoking areas, and is designated by appropriate signs which are clearly visible to patrons and entering the area.

(4) "Health care facilities" means all enclosed indoor areas in which health care is provided to the general public (other than areas to which smoking policy is already established by state law (A.C.A.§§ 20-27-701 thru 703), including nursing and convalescent homes, optometrists', podiatrists', and chiropractors' offices, and physical therapy facilities.

(5) "Manager" means the owner, lessee, or other person in charge of a public place.

(6) "Public place" means (a) any enclosed indoor area that is used by the general public, except hotel and motel guest rooms and areas restricted to use only by employees or management of a private business; and (b) any swimming pool owned or operated by the city, including the entire area within the pool enclosure. A private residence shall not be considered a public place for purposes of this ordinance, unless it is used as a health care or licensed child care facility.

(7) "Smoking" means holding a lighted pipe, cigar, or cigarette of any kind, or lighting, or emitting or exhaling the smoke of, a pipe, cigar, or cigarette of any kind.

(b) Restrictions on Smoking in Public Places Essential to Members of the Public.

No person shall smoke in the following public places:

(1) health care facilities, except in private or semi-private rooms occupied by one or more patients all of whom are smokers who have requested to be placed in rooms where smoking is permitted;

(2) licensed child care facilities, except in areas in which children being cared for are never present;

(3) polling places;

(4) courtrooms and jury waiting and deliberation rooms;

(5) rooms, halls or other places of meeting or public assembly, during such times as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city; provided that this ordinance shall not apply to meetings of private organizations;

(6) drug stores, grocery stores, banks, libraries, and laundromats;

(7) public transportation terminals;

(8) buses, taxis, and airport limousines operating within the city limits;

(9) elevators accessible to the public;

(10 restrooms, except in facilities listed in subsection (d) of this ordinance; and

(11) swimming pools owned or operated by the city.

(c) Restrictions on Smoking in Certain Other Public Places.

No person shall smoke in the following public places, except in designated smoking areas:

(1) facilities primarily used for exhibiting any motion picture, lecture, musical recital,

stage or other similar performance, except when smoking is part of a stage production;

(2) enclosed walkways in malls and shopping centers;

(3) hotels and motels;

(4) museums and galleries;

(5) bank and retail stores doing business with the general public, except for retail stores whose primary source of revenue is the sale of tobacco and tobacco-related products;

(6) restaurants in business on the date of enactment of this ordinance, whether under the same or new management, if the seating capacity is 30 or less and the management posts a conspicuous notice on each public entrance stating that smoking is permitted throughout the restaurant; and

(7) health spas, roller rinks, bowling alleys, and other indoor sports or recreation facilities, except for pool halls.

(d) The provisions of this ordinance shall not apply to the following facilities, provided that the facility posts a conspicuous notice on each public entrance stating that smoking is permitted throughout the facility:

(1) bars, and separated bar areas of restaurants;

(2) beauty salons and barber shops;

(3) retail stores whose primary source of revenue is the sale of tobacco and tobacco-related products;

(4) gasoline stations and convenience stores; and

(5) pool halls; and

(6) restaurants in business on the date of enactment of this ordinance, whether under the same or new management, if the seating capacity is 30 or less.

(e) Duties of Managers of Public Places.

(1) The manager of public place to which this ordinance applies shall make one of the following three designations. The manager may

designate: (A) the entire public place as a non-smoking facility; or (B) separate areas of the public place as a designated smoking and non-smoking, if permitted by paragraph (c) of this ordinance; or (C) the entire public place as a smoking-permitted facility, if permitted by paragraph (d) of this ordinance.

(2) The manager of a public place, if the entire public place has been designated a smoking-permitted facility, shall post a conspicuous notice on each public entrance stating that smoking is permitted throughout the facility.

(3) The manager of a public place in which smoking is prohibited or restricted shall place conspicuous signs at each public entrance up to a maximum of six entrances, and at appropriate places within the public place, notifying the public that (A) smoking is prohibited, or (B) that smoking is prohibited except within designated smoking areas, or (C) that smoking is permitted except within designated non-smoking areas.

(4) The manager of a public place in which a smoking and non-smoking areas has been designated shall comply with the requirements of this ordinance for sitting of the designated smoking and non-smoking areas.

(5) The manager of a public place in which smoking is prohibited or restricted shall not knowingly permit, or fail to make reasonable efforts to prevent, smoking in any area where smoking is prohibited. The manager may fulfill this duty by asking smokers to refrain from smoking in a non-smoking area or directing smokers to designated smoking areas.

(6) Nothing in this ordinance shall preclude the manager of a public place listed in paragraphs (c) or (d) of this ordinance from designating all of the facility to be non-smoking, or from designating part of public place listed in paragraph (d) as a non-smoking area.

(f) Enforcement.

(1) The City Manager shall designate officers responsible for enforcing the provisions of this ordinance, with due regard for the circumstances of each type of facility subject to the ordinance.

(2) The violation of any provision of this ordinance shall be punishable by a fine of not less than $10.00 and not more than $100, except that in inadvertent first offender may be given a warning. Each day a violation of this ordinance continues shall be a separate offense.

(3) City officials responsible for issuing building permits and certificates of occupancy for facilities subject to this ordinance shall consider applicants' compliance with, or agreement to comply with paragraph (e)(4) as a factor in deciding whether to issue the permit.

(g) Relation to Other Laws and Regulations.

Nothing in this ordinance excuses noncompliance with any state or federal law, or any rule or regulation adopted pursuant thereto (including any rule adopted for the University of Arkansas or for the public schools), which prohibits or regulates smoking.

(h) Severability.

If any part of this ordinance, or the application of the same to any person or set of circumstances, is for any reason held to be void or invalid, the validity of the remaining parts of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby.

(i) Effective Date.

This ordinance shall be effective three months after the date of approval by the Fayetteville Board of Directors.

PASSED AND APPROVED this 17th day of December, 1991.

APPROVED:

By: Fred S Vorsanger
Mayor

ATTEST:

By: Sherry L. Thomas
City Clerk

CHAPTER 95: HEALTH AND SANITATION

Section

§ 95.01 Unsightly or unsanitary conditions on real property; order and notice to correct.

(A) The mayor, or his duly authorized representative, is hereby authorized to order the owner of any real property within the city to cut weeds and grass growing thereon, remove garbage, rubbish and other unsanitary and unsightly articles and things therefrom and eliminate, fill up or remove any stagnant pool of water or any other unsanitary thing, place or condition on such property which might become a breeding place for mosquitoes, flies and germs harmful to the health of the community. Whenever any such condition is found to exist, the mayor, or his duly authorized representative, shall give the owner of the property written notice to perform such acts within 20 days. In case the owner of the property is unknown or his whereabouts is not known or he is a nonresident of this state, a copy of the written notice shall be posted upon the premises.

(B) It shall be unlawful for any person to fail or refuse to comply with any order and notice given pursuant to this section.
(Code 1965, § 11-1; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69)

Cross reference—Penalty, § 95.99.

§ 95.02 Abatement by city; costs responsibility of owner.

If the conditions described in a notice given pursuant to § 95.01 are not removed or corrected within 20 days after such notice is given, the mayor, or his duly authorized representative, is hereby authorized to enter upon the property and do whatever is necessary to correct or remove the conditions described, in the notice. The costs of correcting said conditions shall be charged to the owner or owners of the property and the city shall have a lien against such property for such costs.
(Code 1965, 11-2; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69; Ord. No. 2557, 9-4-79)

Cross reference—Penalty, § 95.99.

§ 95.03 Enforcement of lien; notice.

(A) The lien herein provided for may be enforced and collected in either one of the following manners:

(1) The lien may be enforced at any time within 18 months after work has been done, by an action in the chancery court; or

(2) The amount of the lien herein provided may be determined at a hearing before the city council held after 30 days' written notice by certified mail to the owner or owners of the property, if the name and whereabouts of the owner or owners be known, and if the name of the owner or owners cannot be determined, then only after publication of notice of such hearing in a newspaper having a bona fide circulation in Washington County for one insertion per week for four consecutive weeks; the determination of the city council shall be subject to appeal by the property owner in the chancery court; and the amount so determined at said hearing, plus 5% penalty for collection, shall be by the city council certified to the tax collector of the county, and by him placed on the tax books as delinquent taxes, and collected accordingly, and the amount, less 3% thereof, when so collected shall be paid to the city by the county tax collector.

(Code 1965, § 11-3; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69; Ord. No. 2557, 9-4-79; Ord. No. 2922, 5-17-83)

(B) In case the owner of any lot or other real property is unknown or his whereabouts is not known or he is a nonresident of this state, then a copy of the written notice hereinabove referred to shall be posted upon the premises and before any action to enforce such lien shall be had, the city clerk shall make an affidavit setting out the facts as to unknown address or whereabouts or nonresidence, and thereupon service of the publication as now provided for by law against nonresident defendants may be had, and an attorney ad litem shall be appointed to notify the defendant by registered letter addressed to his last known place of residence if same can be found.
(Code 1965, § 11-3.1; Ord. No. 2557, 9-4-79)

§ 95.04 Public nuisance; abatement.

(A) It shall be unlawful for the owners, occupants, tenants, or lessees of any dwelling or place of business to allow garbage, trash or other litter to accumulate on his premises, or to place or cause to be placed paper, cardboard or other litter in such manner as to cause unsightly or unsanitary conditions in the city.

(B) The sanitation superintendent or the health department sanitarian or their authorized representatives shall have the duty of notifying the owner, occupant, tenant, or lessee of a dwelling or place of business where one or more of the conditions described in subsection (A) of this section is found to exist.

(C) It shall be the duty of the owner, occupant, tenant or lessee of such premises to correct said condition or conditions within 30 days from date of receipt of such notice.

(D) If the owner, occupant, tenant, or lessee fails to obey such notice and continues to maintain said prohibited condition or conditions, such person shall be deemed in violation of this section and shall be subject to the penal provisions contained in this chapter.

(E) The provisions of this section are supplementary to, and do not amend or repeal the provisions of §§ 95.01 through 95.03 of this Code.
(Code 1965, § 10-5; Ord. No. 1194, 4-6-59; Ord. No. 1619, 8-19-68)

Cross reference—Penalty, § 95.99.

§ 95.05 Regulation of smoking in certain public places.

(A) Definitions.

Bar. An area devoted to the sale and service of alcoholic beverages for on-premises consumption, where the service of food, if any, is only incidental to the consumption of such beverages.

Designated smoking area.

(1) An area that is separated from nonsmoking areas; is designated by appropriate signs which are clearly visible to patrons in and entering the area, or is in a facility where conspicuous signs are posted that smoking is permitted in the entire facility except for nonsmoking areas; contains ashtrays, containers, or other receptacles for extinguishing smoking materials; and does not include service lines or cashier areas; and

(2) An area that is situated so that smoke from the smoking area does not normally enter a nonsmoking area; provided that in the case of a public place that is in business or operation on the date of enactment of this section, whether under the same or new management, no new physical barriers or ventilation systems need to be installed, and such public place shall be deemed to satisfy this subdivision if it utilizes existing physical barriers or ventilation systems to minimize the drift of smoke into nonsmoking areas.

Designated non-smoking area. An area that is separated from smoking areas, and is designated by appropriate signs which are clearly visible to patrons and entering the area.

Health care facilities. All enclosed indoor areas in which health care is provided to the general public (other than areas to which smoking policy is already established by state law (A.C.A. §§ 20-27-701 through 20-27-703), including nursing and convalescent homes, optometrists', podiatrists', and chiropractors' offices, and physical therapy facilities.

Manager. The owner, lessee, or other person in charge of a public place.

Public place.

(1) Any enclosed indoor area that is used by the general public, except hotel and motel guest rooms and areas restricted to use only by employees or management of a private business; and

(2) Any swimming pool owned or operated by the city, including the entire area within the pool enclosure. A private residence shall not be considered a public place for purposes of this section unless it is used as a health care or licensed child care facility.

Smoking. Holding a lighted pipe, cigar, or cigarette of any kind, or lighting, or emitting or exhaling the smoke of, a pipe, cigar, or cigarette of any kind.

(B) Restrictions on smoking in public places essential to members of the public. No person shall smoke in the following public places:

(1) Health care facilities, except in private or semi-private rooms occupied by one or more patients all of whom are smokers who have requested to be placed in rooms where smoking is permitted;

(2) Licensed child care facilities, except in areas in which children being cared for are never present;

(3) Polling places;

(4) Courtrooms and jury waiting and deliberation rooms;

(5) Rooms, halls or other places of meeting or public assembly, during such times as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city; provided that this section shall not apply to meetings of private organizations;

(6) Drug stores, grocery stores, banks, libraries, and laundromats;

(7) Public transportation terminals;

(8) Buses, taxis, and airport limousines operating within the city limits;

(9) Elevators accessible to the public;

(10) Restrooms, except in facilities listed in subsection (D) of this section; and

(11) Swimming pools owned or operated by the city.

(C) Restrictions on smoking in certain other public places. No person shall smoke in the following public places, except in designated smoking areas:

(1) Facilities primarily used for exhibiting any motion picture, lecture, musical recital, stage or other similar performance, except when smoking is part of a stage production;

(2) Enclosed walkways in malls and shopping centers;

(3) Hotels and motels;

(4) Museums and galleries;

(5) Bank and retail stores doing business with the general public, except for retail stores whose primary source of revenue is the sale of tobacco and tobacco-related products;

(6) Restaurants in business on the date of enactment of this section, whether under the same or new management, if the seating capacity is 30 or less and the management posts a conspicuous notice on each public entrance stating that smoking is permitted throughout the restaurant; and

(7) Health spas, roller rinks, bowling alleys, and other indoor sports or recreation facilities, except for pool halls.

(D) The provisions of this section shall not apply to the following facilities, provided that the facility posts a conspicuous notice on each public entrance stating that smoking is permitted throughout the facility:

(1) Bars, and separated bar areas of restaurants;

(2) Beauty salons and barber shops;

(3) Retail stores whose primary source of revenue is the sale of tobacco and tobacco-related products;

(4) Gasoline stations and convenience stores;

(5) Pool halls;

(6) Restaurants in business on the date of enactment of this section, whether under the same or new management, if the seating capacity is 30 or less.

(E) Duties of managers of public places.

(1) The manager of public place to which this section applies shall make one of the following three designations. The manager may designate:

(a) The entire public place as a nonsmoking facility; or

(b) Separate areas of the public place as a designated smoking and nonsmoking, if permitted by subsection (C) of this section; or

(c) The entire public place as a smoking-permitted facility, if permitted by subsection (D) of this section.

(2) The manager of a public place, if the entire public place has been designated a smoking permitted facility, shall post a conspicuous notice on each public entrance stating that smoking is permitted throughout the facility.

(3) The manager of a public place in which smoking is prohibited or restricted shall place conspicuous signs at each public entrance up to a maximum of six entrances, and at appropriate places within the public place, notifying the public that:

(a) Smoking is prohibited, or

(b) That smoking is prohibited except within designated smoking areas, or

(c) That smoking is permitted except within designated nonsmoking areas.

(4) The manager of a public place in which a smoking and nonsmoking area has been designated shall comply with the requirements of this section for siting of the designated smoking and nonsmoking areas.

(5) The manager of a public place in which smoking is prohibited or restricted shall not knowingly permit, or fail to make reasonable efforts to prevent, smoking in any area where smoking is prohibited. The manager may fulfill this duty by asking smokers to refrain from smoking in a nonsmoking area or directing smokers to designated smoking areas.

(6) Nothing in this section shall preclude the manager of a public place listed in subsections (C) or (D) of

this section from designating all of the facility to be nonsmoking, or from designating part of public place listed in subsection (D) as a nonsmoking area.

(F) Enforcement.

(1) The mayor shall designate officers responsible for enforcing the provisions of this section, with due regard for the circumstances of each type of facility subject to the section.

(2) The violation of any provision of this section shall be punishable by a fine of not less than $10.00 and not more than $100.00, except that an inadvertent first offender may be given a warning. Each day a violation of this section continues shall be a separate offense.

(3) City officials responsible for issuing building permits and certificates of occupancy for facilities subject to this section shall consider applicants' compliance with, or agreement to comply with subsection (E)(4) as a factor in deciding whether to issue the permit.

(G) Relation to other laws and regulations.

Nothing in this section excuses noncompliance with any state or federal law, or any rule or regulation adopted pursuant thereto (including any rule adopted for the University of Arkansas or for the public schools), which prohibits or regulates smoking.
(Ord. No. 3584, 12-17-91)

§ 95.99 Penalty.

(A) Any person failing to comply with an order as described by § 95.01 shall, upon conviction, be punished by a fine of not less than $10.00 nor more than $100.00.
(Code 1965, § 11-1; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69)

(B) Whoever violates § 95.04 shall be punished by a fine of not more than $500.00 or double that sum for each repetition of such offense, or violation; provided, no penalty shall be greater or less than the penalty provided for the same or a similar offense under the laws of the state. The penalty for allowing the continuation thereof shall not exceed $250.00 for each day that the same is unlawfully continued.
(Code 1965, § 1-5; Ord. No. 2128, 7-15-75)

Minutes of the Special City Council Meeting July 8, 2003

A special meeting of the Fayetteville City Council called by the Mayor was held on July 8, 2003 at 6:00 P.M., immediately following the Agenda Session in Room RCED 120 at the Sam Walton College of Business, University of Arkansas, Fayetteville, Arkansas.

Mayor Coody: This is a conference for Design Build Operate for a major public works projects. Right now this is going to a special City Council meeting. I would like to ask our City Clerk to take the roll and I will call this meeting to order. Would you please call the roll.

PRESENT: Alderman Reynolds, Thiel, Cook, Rhoads, Davis, Lucas, Jordan, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience

ABSENT: Alderman Don Marr was present by audio via telephone.

Opening Remarks and Workshop Overview given by Mayor Dan Coody: Workshop presentations and discussions are centered on the means and methods by which the City of Fayetteville could use a design-build-operate project delivery method for its $125 million wastewater improvement project. Discussions, case histories, comparative analyses and other aspects of project delivery alternatives will be discussed.

Mayor Coody: That was the disembodied voice of Don Marr who is in South Carolina right now. Don we're glad to have you with us in spirit. We'll look forward to an interesting conversation.

Alderman Marr: Thank you mayor.

Mayor Coody: The reason that I wanted to bring this subject to Fayetteville, Arkansas is because United States is one of the last countries, if not the last country to embrace the design build operate process. This is prevail in Europe and Asia and other parts of the world. States in the United States have begun to find the benefits of the design build operate process. Any use of this process, in any part of this project we have in Fayetteville, would be the first use in the State of Arkansas, because of legislation they recently passed and actually becomes law in about another week. If we don't use it in Fayetteville, Arkansas, someone in this state eventually will. We have a lot of good important state regulators here today to listen to this conference so everyone can be very well informed about how this works and the reasons why so many people are going to it. We have a very good cast of folks that have come to speak with us about this tonight. If I didn't think this were very important I wouldn't have had everybody go to this much trouble. I very much want to thank Greg Boettcher because he did yeomen's work pulling all this together in almost no time at all, and all the folks that have come up here from Little Rock, Massachusetts, New York, and elsewhere. I appreciate everyone's participation. This has the potential as you will see in the presentation, to save cities enormous sums of money and quite a bit of time and history as shown and logic shows that it saves a lot of potential litigation as well. Now I think that all of us who have to look after the taxpayers' dollars are very interested in all these aspects.

We'll be opening up with Mr. Jim Binder, he is the principal at Alternative Resources Incorporated in Concord, Massachusetts, then Mr. Eric Peterson with Hawkins, Delafield & Wood, from Wall Street in New York City will be a presenter to help address some of the legal questions that we all have. I'd like to introduce Mr. Don Evans, who is the President of OMI, CH2M Hill, following him will be Mr. Dave Butler, former mayor of Atchinson, Kansas, after Mr. Butler will be Mr. Bill Rosenbaum, an engineer and Vice-President of U.S. Filter which is a large global company that specializes in this work along with OMI, CH2M Hill. Following Mr. Rosenbaum's presentation will be Mr. Pat McManus, former mayor of Lynn, Massachusetts who has direct experience with this.

We will then have a break for a few minutes. After the break, we will then come back to Mr. Binder to basically close this up. I will then open the floor for a public question and answer period at that time. While we're going through the presentations I'd like to limit the questions from the audience. The City Council, regulatory staff, Soil & Water, and EPA might have a direct question for a presenter. At the end of the presentation I think then would be a good time to open it up to the general public. We have the building until 9:00, however thanks to the generosity of the University and not wanting us to cut off in mid question they have allowed us to extend this as much as we need to past 9:00 up to 10:00, although all of us would like to see this to be a short concise productive meeting.

So right now I would like to invite Mr. Binder up to the podium to begin the conference. Thank you very much for coming here today.

Presentation:

Introduction To The Design-Build-Operate Project Delivery And Methodology: Mr. James Binder, P.E. President of Alternative Resources will be speaking. A general description of the alternative project delivery system including: (A) definition of the alternative process, (B) comparison of design-build-operate (DBO) process to the conventional design-bid-build (DBB) process, (C) description of current alternative project delivery applications in the water and wastewater industry and (D) presentation of comparative advantages and disadvantage of each process.

Mr. Binder: My name is Jim Binder from Alternative Resources in Massachusetts. Thank you Mr. Mayor for that kind introduction. So you will know who we are, our company is an independent consulting firm that advises communities who are considering alternative delivery of environmental infrastructure projects, water projects, wastewater projects, and solid waste projects. We normally assist those communities in what I will call a procurement advisory role where we would provide management engineering and financial services to help go through a DBO type procurement, so if an RFP were to be written we would help write the RFP. We would help review the proposals, and we would help negotiate a contract. We would be part of a team along with legal counsel and other advisors that the city might have if you were to go through this type of process.

On a personal note, I'm an engineer, I have been practicing for about thirty years. I have to say this is my first trip to Arkansas and I'm enjoying it so far. I was very pleasantly surprised last evening when I came in by plane to the airport. I met a very nice family on the plane and they refused to let me take a cab or van from the airport to Fayetteville. They insisted on driving me here personally last night. So it was a very nice way to be introduced to Fayetteville and to Arkansas. So I'm pleased to be here. I've been asked to present in two parts tonight. The first part is to discuss in a general way what a Design Build Operate Procurement and Delivery is. We'll refer to that tonight in shorthand as DBO. We will compare DBO and the potential advantages and disadvantages of that concept to the traditional procurement technique which is referred to as design bid build or DBB in shorthand tonight. I will then call several speakers and at the end of the evening, as the mayor said, what I'll do with the second part of my presentation is try and take experience that has been gained nationally in doing these DBO procurements and describe how specifically it might apply in Fayetteville.

I hope to take about 15 minutes to get through this and move as quickly as I can. At best--at this point as I understand the project, I have spent some time reviewing information sent to me by the city describing the waste water improvement project that is intended here. It is a project of about $125,000,000 for design and construction. It includes improvements to the east side or the Noland Plant, constructing a new waste water treatment plant on the west side for the west plant and their connecting pump stations. The project issues as I understand them to be, are meeting scheduled astringent effluent requirements, and being aware of not only what they are in Arkansas but Oklahoma regarding effluent limits. Preserving the $125,000,000 what I call SIF or RIF, and the low interest rate from the Soil & Water Commission, and looking at a tight schedule. The concern with growth of the area and the existing plant being near capacity, the question is being able to allow expansion in this area and not have EPA impose some type of construction moratorium. Those are some of the constraints and issues that we are thinking about when we discuss this. Just so you know that you're not alone, DBO's have been a common practice for delivery of the environmental infrastructure projects now in the United States for many years. There was tremendous involvement in many states using DBO for solid waste projects in the early 80's, and then there is lots of focus on applying that same concept with waste water projects starting in the early to mid 90's. The federal government has been supporting those kinds of partnerships where the private company and public entity get together to view one of these projects where DBO is a major trend for doing this work for many years. There have been IRS tax rules changes made, the most significant one was made in 1997 which will allow for long term operating contracts in addition to design and construction of improvements for these facilities. And there's actually been EPA guidance published in 1998 regarding how theses concepts apply to waste water treatment facilities. There is a fully staffed EPA office in Washington, D.C. that addresses public/private partnerships in these DBO type of procurements, so you are not alone, but one hasn't been done in Arkansas and we understand the enabling legislation which passed in April was just effective this month.

I'm going to talk about briefly what is DBO, and how does it compare to the traditional procurement method, the positive compared to the traditional contract. Very simply a DBO is having a single entity responsible for designing, building and operating either an improvement to an existing facilitiy or putting up a brand new facility; and being accountable for as a single entity for the results, in other words there is one party that the city would deal with as opposed to multiple contractors. There is a single point guarantee under a DBO for the services that are provided, so the city doesn't have 15-20 separate contracts. You don't have essentially retention of management of a design engineer, general contractor or any of the contractors working for the general contractor, and in doing so with this single point of responsibility, the performance and business risks are transferred to that private company, that single entity.

What's some of the advantages of this DBO option? What is the potential for all the costs. I'll show you some slides from projects elsewhere that shows potential savings as much as 10 to 50 percent. So there's a potential for significant costs saving, on the other hand one of the major benefits to this approach is transfer of risk to that private company. The private company under this DBO concept will sign a contract that guarantees fixed price for design and construction of those facilities. Under the operations part they would sign a contract and most of the long term deals operations now have the fixed based operating fee that's subject to escalation on an annual basis, there's a CPI or some other adjustor, also the party will guarantee to schedule for construction completion, and importantly there is certain environmental requirements that need to be met. The company would guarantee that technology, and design, when constructed will meet those performance guarantees not only when you first turn the plant on but if you sign a long-term operating contract for the full-term of operation of that contract. You don't get that under a standard design bid build package.

This slide illustrates some of the additional benefits, under the technical end of it. The company is responsible for making sure that it works. If it doesn't, they fix it, they pay for the fix. That's any time during the operating term, not just after construction is completed. Environmentally, if a permit limit is exceeded the company does whatever fix is necessary to come back into compliance, the company pays any fines that are levied.

On the operating end having a fixed operating fee subject to change on a CPI index but that would take the risk relative to labor costs that would be different than that index, utilities costs, any electricity typically and chemical costs. What all this results in and why this concept is really gaining popularity and is being used more in this country is that it's much simpler for a city to implement and that there's one party that they are dealing with, and that one party will assume risks that the city would have otherwise borne under the traditional DBB approach. There are fewer requirements because the day to day management is with that company. An added benefit because of the capabilities and resources that the companies who provide these services bring to the table both on a national resource level and international resource level is just amazing in terms of research abilities, and planning capabilities.

They'll invest in training of the people over the long term. If they need to optimize an operation they have the resources to that, this is very effective in helping in terms of regulatory review and pending regulations and how they might impact the facility. What could be done to a facility in term of compliance with new regulations. So there's a whole resource pool out there that you have available to you if you retain such a contractor.

Very briefly, how do I know there's going to be any money that possibly would be saved. I just extracted from Public Works Finance which is a journal that tracks public/private partnerships and DBO contracts, these are primarily contracts that have been put into place in about the last ten years. You can see that there has been both water and waste water plants that illustrated by this example and you can see plant sizes on the waste water are on the 2 or 3 MGD size and go all the way up to a larger site. I think this slide kind of illustrates what I pointed out earlier that there's the potential for savings of million of dollars, and again this is not something that I put together, this is published by Public Works Finance.

That sounds great but what's the downside to this, there are concerns obviously. I'm not sure that in the history that we've had with them that these concerns have been borne out, but let me go through some of the concerns. Initially you always hear we'll lose control of the process, because we might not be doing 100% of the design as you would do under the traditional method. You might do some level of design on the order of 15 to 30 percent and then you put it out and negotiate for remainder of the design to be done by this DBO contractor. The point to keep in mind here is that you set these contracts on a performance base specification, so very simply if you have effluent requirements in your permit for the existing facility and the new waste water plant, those have to be met. During the process of going from the design level you are at say its 30% to 100% the legislation requires and makes good sense to have an owner rep or an engineer representing the city, retained by the city that actually reviews the design work done by this DBO contractor, then during the construction flows actually monitors the construction and makes sure it's done in compliance with the design specifications.

Now from the operational standpoint, you've already got kind of an operation here so it's not much of an issue if you were to switch with public operations and private operations through your contract. The issues I'd like to address here down are relative to some of the issues that have been raised here in Fayetteville. In terms of the quality of construction or the maintenance and the upkeep of facilities will somewhat be diminished under a DBO contract. The level of service that could be provided operationally will be diminished, I don't think that you have that concern here. Again because you have private operator, those other concerns are, if ten years down the road if you are on a twenty year contract there's a change in law that requires a modification to the plant, how can we make sure that modification is done and it can be. It is done through contract provision.

Right now the trend is one time operating contracts for 15-20 years. There are certain efficiencies that can be brought on an operating basis to reduce costs as compared to short term operating contracts. And also now the trend to have capital improvements tied in with that so design construction of the improvements will be tied in with the long term operation and that's how it becomes a DBO. For new facilities to have a contractor from day one be responsible for the design build and operation. But the trend is to go long term on the operation basis. Once you do that then the responsibility for asset management is borne by the private company, meaning that in the operating period over the long term they are responsible for repair and replacement of equipment and that is included in their fixed operating fee. For protection, that is always guaranteed, again there is a shift of risk to the private contractor.

Traditional approach, DBB. This is where the city contracts out to the engineer to design and a project contractor to construct the project. The decision on construction is based on the lowest cost bid from responsive and responsible bidders. So you really don't have the flexibility here to take anything but the lowest cost. What does that mean in terms of quality, you might be subject to greater quality concerns under this type of approach then the other. Under this type of approach if you go the traditional to design and build a project you can continue the process of having a private operator and you could look to extend the term of that operator from a five year basis to a longer term if you chose too.

Advantages to the traditional. I think that people have used it so they are comfortable with it. The procurement procedures are in place and people are used to working with them. So there's a comfort factor there. I think it is the feeling that unless we as a city are responsible 100% for the design we are not going to get exactly what we want. I think some of these advantages can be turned around and looked at as disadvantages.

Disadvantages under the traditional approach as I see them, there's an issue of quality associated perhaps with a low bid for construction. There is certainly a potential for higher cost of construction and the potential for I think a greater number of change orders during construction which go to increased costs. So there's no fixed price guarantee from any party to the city for completion or guarantee of completion date. The city can hire a private company to be responsible at risk for performance after it's turned over to the operator. If it breaks and the operator says it's broken because of when I received it, it wasn't built properly, it was designed improperly, you've got an issue of finger pointing. There's no security for what I term performance. Leaning others in to single point guarantor, that's standing behind this with their guarantor resources, in addition to that, the lack of credit for bonding for the full term of a 15-20 year operation. There are increased potential claims and litigation since again there is no single party responsible for the design, construction and operations.

What delivery method makes sense for Fayetteville, and why? I'm going to get into this into my Part 2 description. That concludes some of the general comments and introduces some of the process' advantages and disadvantages.

Legal Perspectives: Mr. Eric Peterson with Hawkins, Delafield & Wood will be speaking. A primer on the legal and contractual issues associated with different project delivery methods, including comparative risks, advantages and providers.

Eric Peterson: It's nice to be here. Just to mention my name is Eric Peterson and my firm is Hawkins, Delafield & Wood, we are a firm of 515 lawyers based in New York City, we have seven offices. I have the public contracts group at our firm. We have been active in the alternative project delivery field for a good thirty years, we have a lot of experience around the country in trying to review the choices, neatly, practically and with communities like yours. I'm very pleased that the Mayor has seen fit to invite us here to present to you tonight. What I'm going to talk about is a little elaboration on several things that Jim mentioned.

DBO risk and contract considerations in design build projects. Try to keep in mind the status of your planning efforts so far, at the end of the presentation I'll talk a little bit about the new statutes that you've got to work with which has some interpretation issues associated with it. But let me proceed to the presentation and give you overview why I think design build operate in particular is one several alternative project delivery methods and is coming to the fore around the country. We've worked in Georgia and Arizona for example, on their first projects under new omibus procurement law which allow design build operate as one of the procurement methods. We have seen the concerns and considerations that draw the enactment of the law change in the first place as well as the decision to attempt it on a particular water or waste water project in those states. The main driver I see is great payer resistance versus capital needs. I know that your community has approved a sales tax back bond issue to pay for the capital costs of the new projects. That's certainly a giant capital need and maybe one of the largest the state has seen to date. Because of the impact on rates people will naturally ask themselves is there a way we can do this faster, better, cheaper, that is the main driver for design build operate in my opinion and it's manifesting itself here in your waste water project. There's a greater openness to having competition and cooperation among the various participants in the project development. In the last ten years laws have been changed around the country to allow alternative project delivery. In general the laws allow competition among design firms and operation firms as well as construction firms. In general traditional design bid build as Jim described you've got very vigorous, almost vicious price competition among the construction companies but very little among the design firms or the operating participants. On the other hand the present design bid build procurement method traditionally doesn't allow cooperation among those three primary participants. In fact if you have cooperation among designer, a builder or an operator traditionally the law would call that fraud, corruption and conclusion, you can't do that. New forms of competition allow people to work together to create better solutions. Also what's happening is what we would call full service water companies are emerging from a mix of private companies that are engaged in the water and waste water business. There are companies that will take on the responsibility for managing the design and managing the construction as well as operating the plant. Without them you wouldn't be having this meeting, there would be no industry to talk to, but they do exist and they do a great job. The success of design build operate has been manifested. We're not aware of any failure of any design build operate in any sense whatsoever, cost overruns, failure of performance, or failure to achieve the acceptance test. It's been a very excellent track record on these projects. Jim had a number of 10-50% of savings. I'll boil that down to 20-30% is basically a significant savings as against what you would project the cost of the project, if would be doing it traditionally, it's been a solid record there. Raising up to address the procurement process in a new forum or advisory teams, advising the municipal side, Jim and I are both specialist in that business. Jim from the procurement and technical side and myself from the contract and legal side. This has been in all environmental sectors, water, waste water and residuals management, and of course, new state procurement laws such as yours has arisen to address these new competitive possibilities.

In traditional design bid build method essentially trifurcates the responsibility for the project between three unrelated entities that have to present their work and accomplishes their work in a way which anticipates what the other participant might be doing or not doing. You get a lot of redundancy in these processes because of that traditionally. As Jim mentioned design build unifies the responsibility in a way that I'll describe contraction in a few minutes. And as he said you have comprehensive three party participant process in the development of the assets and management under a single contract, this is true in the equipment side as well. You have one contractor dealing with all the subcontractors and equipment suppliers both during construction and operation, and it avoids the risk obviously and disputes between all those participants and it is easier to administer.

Let's take a minute on the vendor market because as I said before this would be a theoretical exercise if there weren't companies out there willing to assume these responsibilities to this on a single point responsibility basis and back the contracts unquestionably with deep financial resources. This market is deep in international. It's consolidated recently down to about five major players, two of them are represented here tonight. You'll hear from them later. But the competition among these firms to establish a leading position and good share of the market and to establish their reputation in excellent in design and construction as well operation has resulted in excellent projects proposals and pricing. One of the parent companies of these market participants does execute a parent, what's called a parent company guarantee and that is where you get the single point of responsibility. These companies have generally worldwide research and development capabilities and operate dozens of plants, many internationally as well as in the United States. They have a very active comment to the market and excellent performance record. When you send out, if you elect to proceed this way and send out a request for proposals you would get interest I believe from excellent firms.

How are these contracts backed? As I mentioned there are companies that usually have, and I think they all have investment grade credit ratings which is a very significant factor. They all have net worth in excess of a billion dollars, and the parent company guarantees the performance of all aspects of the serve and design build operate service contract. You have essentially three contracts in one. Design contract, build contract and a construction/maintenance, operation/ maintenance contract, and it all in one document that is guaranteed by one investment grade company. That guarantee shows up as contingent liability or a footnote in their balance sheets. The trend now days is to have a limitation on their liability at some reasonable high number. It's acceptable to the company and to the communities. Sometimes you get a small letter of credit backing the transaction. You also have traditional construction performance bonds and sometimes an operations performance bond. So the security for performance package on these transactions is outstanding. And it's much deeper than it is among the three contracts you would otherwise execute in the traditional design bid build. Jim showed you a slide that presented a scorecard of savings as against so called benchmark project of what it would cost if you did it traditionally, what you achieve by doing it in design build operate basis.

I've selected six examples from projects that we've actually worked on. Several of which the contractor is OMI or US Filter represented here tonight. Fulton County, Georgia; Stockton, California; Lynn, Massachusetts; Cranston, Rhode Island; Seattle, Washington; Phoenix, Arizona; four out of six of those were waste water projects. Two out of the six were water. And you can see the absolute dollar savings as against the base line or benchmark projection of what it would have cost to do the same three functions on a traditional basis. One of the things I would note here is that these savings are calculated on a life cycle cost basis. One of the things that the process of thinking in terms of design build operate naturally leads you to is let's focus on the total costs of this project, to what are the design costs? What would a low bid construction cost? What are the costs to operate, maintain, repair and replace, and separate unrelated matters. It forces you to think of them as a unified whole. In a traditional method of analysis in comparing the proposals of DBO companies is to think in the terms of 20 or 30 year life cycle cost analysis, so when the RFP's go out on these things usually the request is what you are going to propose to design and build this project and we'll have our bond issue pay for that.

And we'll even propose to operate, maintain, repair and replace for 20 years, we'll pay that out of our rate. What is the net present value of the totality of the fixed design build price and your fixed operation fee, that is the number by which one proposer is traditionally compared to another and compared to a project of what it would be if you did it on a traditional basis. Thinking in those long term life cycle costs I think it's been a great benefit of this kind of procurement thinking. People wonder where do you get the 10, 20, 30, the 50% savings through this procurement method, you could say after all this just another form of privatization. Right now you have a private operator on your plant. Are you going to hire private design firms if you stay traditional, you'll hire private construction. The private companies are doing the work. If you do design build operate the same thing, private companies doing the work. How can it be done so much more economically?

This is my list of reasons. You are dealing with major international based or operating water service companies whose core competency is the management of water assets. That certainly brings value to the table. As I mentioned before, ordinarily you have competition as to the design. Sometimes it's called operator driven design where they bring their operating practices to inform and benefit the design for the plant. Competition is to operation obviously. They mentioned before a cooperative relationship between designer, builder and operator. Let me give you an example there. In the Seattle project that we worked on, when the designer and the builder of the project got together the proposing team that won, they were looking at a primary design from the design engineer that called for 18 foot high retaining wall, the project was in the cascade mountains and needed a strong retaining wall. The build said why do you need 18 feet high retaining walls, could you do a 16 foot wall. The designer said well I think that would probably be safe as well. And he said good because if you can, I can save you 40% of the costs of building those walls, my concrete forms that I pour my concrete in are only 16 feet high. If I have to add two more feet it's going to cost me a lot more money. And so in the planning processes where the designer and the builder cooperate together you come across a whole array of savings by knowing who it is that you are going to be working with. What your other partnership is capable of and what their limitations are and how far they are willing to go in putting together a great project.

And that produces my bullet there, Small or Contingency Allowances. When a company proposes a job they've got to put in contingency allowances for what others may or may not do. And you have smaller contingency amounts in these projects. You bulk consumables buying power from these operators which you've probably seen so far in your present operating contract. As Jim mentioned, broader technology access in general, particularly by pulling the resources of three firms.

Another source of savings is preventive versus breakdown maintenance. By selecting the equipment in the processes and the technology to be used in the project you can pay a lot of attention to preventive maintenance issues and you can think about trade offs between operating costs versus capital costs investments of the equipment that you would be buying and operating; and make the optimal choice so when you look at a 20 net present value life cycle costs analysis you've got the lowest optimized cost. As I mentioned before you're eliminating some redundancy because basically you know who is going to be operating the project, yourself or one of your partnerships. You have an excessive amount of redundancy. Here's a point I don't think that is stressed often enough in these projects. I call it early stage price certainty, if you look at the assessment what is this project going to cost. I'm sure a lot of work must have gone into that question in Fayetteville to come up with a number of $125,000,000 on the capital side. I don't know if work was done on the operating side. But typically a design cost 8 to 10% of fee of projected the construction costs. And of course, that's a guess. And you don't know what it's actually going cost. If it's higher, you've got problems and you may have a delay or redesign.

Now on design build operate your costs are much less than that. You'll pay maybe one, two, or three percent of the costs to do a transaction, to do their primary design, the conceptual design, the planning and negotiating work with a DBO contractor. What will happen you will select a proposer, however we end up doing it, if you elect to go this way. The proposer will put in a lot of work at their own risk. And they will design on a guaranteed performance basis to the level necessary to guarantee the price that they are offering you. So basically you can obtain a price guarantee for a low cost in general. Disputes in monitoring as Jim indicated and I think that as many of you may have already experienced. I don't know your experience here in Fayetteville or in Arkansas is, but in design bid build bid, protest can be common. You're six to eight percent. We see a lot of monitoring of the actual construction work that's performed by the winning construction company under the traditional method. You're looking at a lot of change orders typically. I don't know if that's been your experience. We see that a lot, and often times litigation, the companies have change order disputes. In design build operate I think all that are here associated with industry would agreed with me that the bid protest are quite uncommon.

With a DBO the construction monitoring cost is very low for reasons I'll go to in a minute. Change orders are rare to nonexistent. We've worked on over 100 of these projects. In thirty years we've never seen a traditional change order, and litigation is rare. The primary reason is that you're shifting design liability over to the company. And it is their responsibility to complete the design and make it work. Jim Lutz the performance guarantee, said basically performance based contracting is another word to describe what we're talking about. The service contract in which the design build operate commitments are made will contain a plant effluent guarantee. So whatever standards and performance you want to see whether it's in a permit or it's an anticipated permit conditions or better than that, you will write in the contract and they will design it to meet those limits. There are ancillary guarantees as well as odor goes. Trucked in materials if you have trucked in sludges and sewerage. System residuals disposal is a guarantee that's offered. Traditionally environmental guarantee is air emissions guarantee as well.

Performance base contracting. Jim eluded to some of these as well. I'll give you my summary of them. These are the risks you are going to transfer. A lot of risk transfer goes on in these contracts and again it's a risk taken by a company with investment grade credit. A strong company. Specialist in the business.

Construction costs exceed budget or contract. That's the company's risk.

Operating costs exceed budget or contract. That's their risk. If it happens, they absorb the risks, it's part of the cost of doing business.

Completion risks. This is one that ought to be stressed for a minute. Generally it's the risk of will the facility work or not and work well. Will it achieve all our standards? Will it achieve effluent standards? Will it have the capacity to achieve the waste water that you have. There is no one in the traditional procurement process, design bid build that takes the completion risk flat out without excuses. If there's a problem in any of those areas in the examples that I just gave you, you would have to try and figure out was it a design issue, the builder's issue or the operator's issue. And naturally people will elect to play hide the ball. In this form of contracting if it doesn't work, you're only looking at one entity. And that entity will not be able to say to you I was not negligent. Negligence is not a defense.

Mayor Coody: If you have a question during the presentation feel free to ask for the City Council and the regulatory folks we would invite those questions now, and for the rest of the audience after the presentation is over.

Alderman Rhoads: What's your experience from a practical standpoint of what happens to the operation say after the contract expires in 15, 20, 25, 30 years? And then what are you contractually doing different now as far as taking care of what happens with the expiration of the contract?

Eric Peterson: I call that the capital maintenance risk. Essentially that is one of the benefits of this form of contracting. Under traditional contracting the plant gets built. And it's either managed by a municipal or a private company. You have a private company right now as I understand it. And that contract will expire and I think they are on renewable five year terms. So the issue of how well the plant is maintained is intrinsic to any transaction. And you either manage your municipal workforce well traditionally or you work with your private contractor on a five year operations contracts to make sure that the capital reinvestment is made. But as far as the initial designing and construction of the project goes the builder will never, as far as I've heard, give you a warranty of the condition of the equipment for more than a year. But it's certainly not a twenty year warranty of the equipment. The effect of a 20 year operation contract the words warranty never appear in the design build.

Alderman Rhoads: Perhaps my question wasn't that clear? My question is what happens after the term. What in practice what has been happening?

Eric Peterson: In practice what happens is that the company has got to operate the plant for 20 years. Therefore they've got to maintain it or they can't meet the performance standards. And when it comes to the end of the contract, I'm presuming the plant will be publicly owned here and the contract will expire. So you will have to make the decision as municipal operations or private operations at the time. In general the record company in coming to the end of either five year operating contract, or the longer terms of it. Jim and I have seen longer terms than 20 year in the solid waste industry for example. And they've done a great job in maintaining the plant because they've had to perform the service.

Alderman Rhoads: Those by and large cities are renewing with their original bidder with their original building and operator?

Eric Peterson: Yeah, I think Filter & OMI will be able to tell you what their renewal rates are. Jim you want to jump in here.

Jim Binder: There's been a change in the length of operating contracts as I tried to bring out. Before 1997 you essentially could not do much more than a five year operating contract without jeopardizing the tax exempt status of any outstanding debt you have on your treatment facility. IRS changed the rules in 1997 to allow 20 years or up to 20 years if you want to do that without jeopardizing that tax position. And there are certain requirements to do that in terms of the operating fees. Eighty percent of them have to be fixed on an annual basis and 20% can be variable. But most of the contracts now that we have private operators as you have seen here in Fayetteville, on the short term, the history is they've been rolled over either through renewal clauses or if there is not a renewal clause then if they've been happy private concept of operation they've gone out and competitively procured or continued operation. It may end up being the same operator or may end up being a different operation. We've been associated with many of these where they actually kept the same operator and there's been other incidences where they've gone through a competitive operations procurement and changed their operator in time because they got a better deal from another operation who was competing at that point. So we can't point to a 20 year contract because statutorial change happened in 1997. And say that it's been rolled over. I can tell you that the history to date of those contracts of which we've been involved under long term operations have been successful in that the municipalities have been pleased with the service that is being provided and we can go in and talk about the difference between a contract like what you have here now for operation and what the contract would look like on a twenty year operating basis. Because there is a difference in terms of risk transfer and how the fees would flow. But the history has been good. So a short term contracts I think Filter can talk to a facility in Burlingame, California that where they had short term contracts that have been rolled over for close to, how many years, since the mid 70's. OMI has quite an experience here, right here in Fayetteville in terms of successfully continuing to be your operator and please you with their service.

Eric Peterson: I am going to further point out a capital maintenance issue. With a municipal operation or with a five year short term contract, the responsibility for capital reinvestment in the facility does rest with the community as generally, that is kind of within your own control. And many communities actually, around the country, unfortunately have elected to engage in differed maintenance.

Under this form of contracting you're essentially agreeing not to engage in differed maintenance, differed capital maintenance. Because you're including an allowance in the fixed operation repair and maintenance fee to pay for the capital maintenance. So that the burden shifts now, it's not an election for you to invest in it or not its enforcing the contract to make sure that you get your money's worth because they're agreeing to do the capital major maintenance in the contracts.

Couple more items on risk transfer. Often times the companies will agree to take some risks in the permitting area, that they would agree within their control. Sometimes the timing of the permits if it's not issued at all. Terms and conditions might be imposed by Soil & Water upon the project were perhaps not anticipated, they might take that risk. There is some possibility of risk transfer in that area. We've talked a lot about internal disputes among the various participates.

Schedule risk is an important one. The companies will be your guaranteed schedule not only for building the project but also for achieving the acceptance test, and making sure that it works. Two different things, they'll take the so called as is risk. I understand that one of plants right now is going to be revamped, expanded and rehabilitated and the companies will accept the risk of the current condition of that plant as they plan their capital program.

We talked just a minute about capital maintenance risks. Jim mentioned regulatory compliance. You have to have probably in your contract right now if there's a regulatory compliance fine, for example the companies will pay that.

Sludge market risk. This is something that we see coming in more and more. The companies will agree to get rid of the sludge from the project as part of the fixed operation maintenance fee and they'll take responsibility for labor relations as well.

In general those risks that I just summarized that you are transferring to a single provider are seen as within the control of the company and that's why they take them. There's free lunch here so things that are absolutely outside their control and these are unusually listed as exceptions in the contract, and if they occur they'd be the responsibility of the community as they would be under any procurement method. If the effluent was outside a range of agreed upon perimeters that wouldn't be their risk. If there's a change in law the new permit ten years from now that requires more stringent treatment, they're not taking that risk. That would be a risk under any scenario.

Inflation. In cost over 20 years is indexed so it's not a cost plus deal, it's a fixed price escalated based on an index deal. Obviously not taking interest rate risks.

Electricity rate risks, generally not. They do take the risk of electricity consumption. Risk of any deciding is really put on the deciding companies.

Unusual surface conditions, particularly hazardous conditions in the construction of the facilities, and generally the repair of varied infrastructures as seen as generally outside their control.

All these are risks of municipal government under any scenario.

Jim referred to municipal control. It is an important issue. We've heard presentation from mayors on their successes with this kind of procurement over a long time. And many of them actually say they feel they have more control with this form of procurement than with traditional.

Assets are managed comprehensively not partitioned out. You've got clear performance standards they've got to meet clear cost guarantees. Here's how we measure it by a full service contract. And most importantly the contracts universally included convenience termination rights which allows the community to terminate the contracts for its convenience. Upon payment of a negotiated reasonable termination fee if you don't like what's happening. It's important to know what isn't turned over to a company in a design build operate process it's certainly not conveying ownerships of the public works assets. You're not conveying any ownership of any system revenues that would be municipal revenues. City Council will continue to set user rates that's the way it is set now.

Capital planning responsibilities remain with the city. You're certainly not transferring bond financing to the company. You continue to issue taxes and debt to the entity of the system.

Just let me conclude here by a few comments on the new state enabling legislation. You know you have very seasoned advice coming to you from your city attorney on this and I've discussed this to some extent with Kit Williams. The issues that he's raised in the memos that he's sent you are real issues. The one thing that is not an issue is can you sign a contract that includes the elements of design build operate, I don't think there is any issue there. You couldn't do that until this law passed to unify all those functions in one contract but now you can. The real question in the ambiguity in the statute that's got to be graveled if you want to consider this further is how you select the winner, what's the process, what's the selection process? The law says that proposals must be solicited and uses the phrase as you can see "qualifications based competitive sealed proposals" and there's uncertainty as to what that means. It says that you should establish and apply selection criteria and only identifies two. Perhaps suggestions that there's only two criteria that you can consider in selecting the winner, previous performance on other similar projects and environmental compliance record. As you mentioned the law does provide a role for independent professional both setting up the process and monitoring him.

I mentioned the law clearly intends to allow for design build operate contract. But as it has been clearly noted this would be the first contract under the law and selection issues really come down to a few. Are you going to be evaluating the entity that's proposing in terms of the experience and qualifications or are you going to evaluate the actual project that they technically proposed and its price, and can you consider that. Can you solicit that? Can you consider that in the process and what is the role of price and when is price offered? When is it evaluated? When is it confirmed? The word price is not mentioned in the statute. So at least, in my view I think Kit and I talked earlier today, the better reading probably is that the law intended that the municipalities will select a design build operate proposal team based on its experience and qualifications. The issue of what the project actually is going to be and what it's going to cost will have to be worked out after the most advantagous proposer is selected.

As he mentioned in his memos, there's another view that you can take. Its probably isn't the right view but is can be argued that now you have to ask for receive and evaluate technical proposals and price proposals at the same time, as you look at qualifications and experience. That way of doing it would be by far the normal way of doing it as we've seen it around the country. As I alluded to earlier, a lot of the benefit from this process is competition. If you don't have technical proposals and price proposals at the time you pick the winner, the first company you negotiate with the only competitive aspect, is the threat of going to number two, if that's allowable. The law doesn't say anything about that but presumably would be part of custom and practice in Arkansas that you could go to number two. You can work out a good DBO contract number 1. I would note that it is not usual, it's not totally unheard of to follow the DBO selection process that seems to be intended by this law. I'm aware that in Florida a lot of design build, not design build operate, but design build procurements that have been done based on selecting the most qualify firm and going to negotiate a design build contract seems to be an acceptable arrangement. The law in Arizona allows that too. And we're doing some procurements with Phoenix right now on that same basis. It's less than norm but it;s not totally unheard of and it is workable. It may not be optimal but if that's the proper reading of the intention of the law, my own feeling is that it still would be a viable process.

Kit's memo also talks about the issue of what happens if there's a challenge of the validity of the procurement. Any procurement anywhere can be challenged as not being lawfully authorized or conducted, and usually what happens there is an aggrieved company that will say you didn't follow the selection process properly, or you often times see taxpayers sued as well to the extent that they're challenged. In the normal relief that is given if the contract is found to be illegally procured its simply invalid declaration of the validity of the contract. Kit may be aware of special considerations here in Arkansas which he discusses in his memo which really put extra emphasis on the idea of illegal exactions and apparently the city has had two unfortunate experiences with that whole legal authority. And it's also the aspect of lawyer's fees which can be quite significant in those cases that heighten the risk of consequences if a judge that the selection method that you were to choose, you followed was not proper. So that's the one area that I think needs to be developed a little bit further if the discussion you hear tonight about design build operate has any appeal to you. That would have to be I think examined in much more thorough and cooperative basis among everybody involved in the process to see what the exposure there is and how it might be litigated.

Aldermen Thiel: Based on an article that I obtained from the Laredo Morning News or Morning Times, July 4, 02 article, apparently Hawkins, Delafield & Wood exceeded their $250,000 not exceed contract by $118,000 and without notice to or authorization from the City Council. I think one of our main concerns is the additional cost of hiring a firm, an outside firm, I think that might be one of the questions that's asked a little bit later. The cost of the legal services that are going to be involved. And I'm very concerned about the fact that your firm had this situation in Laredo. Can you explain this?

Eric Peterson: If you were to contact the City Manager and City Attorney in Laredo they'll give you the explanation. Basically with the additional work involved at the tail end of a very intense process. Normally what happens is that the City Council has authorized work of any consultants to be performed up to a certain time budget and an associated dollar budget with it. And then if the scope of work exceeds, what was established in the original budget you return to council for additional authorization. In this particular case the process of the negotiations went at a very rapid clip and intense work done over a six to eight week period to wrap it up, so we asked the City Manager should we proceed or do you want us to stop and he said proceed and we'll present it to the City Council. We kind of proceeded on a risk essentially, but you can review that with the City Attorney. The important point here is that the budgeting for this process, the procurement advisory process that Jim and I participated in or any advisory consultants that you would work with has to set out a reasonable consulting contract based on certain assumptions, and you have to monitor as it goes along to see if the assumptions prove to be true. I think the broader point though is the one that I made earlier that the total budget to run a process like this could range any where to a half a million to a million and a half depending how long it goes and how complex it is. And the comparison of that to other ways of doing it is obvious.

Alderman Davis: Well didn't that one take 20 months to get to that point?

Eric Peterson: Yeah, in Laredo, they did a procurement that maybe Don can comment on because we were only involved in about the last three months, but it did take about 20 months and that was not a design build operate, in Texas you can't do it, the law still prohibits it. That was simply a 10 year operations contract, and they did a procurement that lasted quite a while. There's a lot of uncertainty among the City Council members as whether or not to do it all and which company to pick. When they finally picked the company they wanted to deal with they called us in as the business attorneys to negotiate the contract in crash schedule to the last three or four months.

Alderman Davis: Jim and Eric, I've got a question. I guess I don't understand how you do your comparison of the cost of a DBO and a DBB? And how is that cost different, how is it proven?

Eric Peterson: Well, you've heard Jim and I use the phrase baseline or benchmark.

Alderman Davis: And who sets that benchmark?

Eric Peterson: This is probably more up Jim's alley. Let me let Jim go for it.

Jim Binder: Basically whether you consider a benchmark or a baseline study, there are various ways of getting that number that ultimately you would compare to a number from a private proposer. The technique that's used most often now is for the municipal entity, the city, have its engineers take the design to the design level which they can do take offs and come up with something better than a planning level estimate which is what you've got now in your $125,000,000. Typically that's a 25, 30 percent design level. The problem with that is not so much in getting a better estimate of design and construction costs, the issue arises in how you estimate the operating costs, and typically the engineers that do design and construction didn't have the experience of operating these facilities over a 10 or 20 or 30 year period. But estimates are made based on the design that's intended, therefore, the use of chemicals, power and labor that goes with that in terms of the operating costs, those are put together so you have a design cost, a construction cost and an operating cost and you run a live cycle analysis. So you're going to do it over a 20 year term. You predict the present valuation is $100,000,000 or whatever it is, that's your baseline. In some cases when those baselines are prepared the engineers have actually gone to the market and gotten construction bids to go along with those designs depending on what level of certainty the city is interested in. When the prices from the private proposers, they'll give you a price for the design and the construction and operation, do essentially the same present value analysis on those numbers over the life of the contract. Say 20 years or 15 years, whatever it is intended to be and you compare those numbers and the difference or the savings. You can present those savings in present value or you can do them in what they call future dollars. You without discounting the dollars back to present day. But that is essentially how those comparisons are made.

Alderman Davis: The reason I asked that is because we've had two local bid situations in the area and one Beaver Water District which the guesstimate was 54.7 and the actual bid was 42.4. So there's 22% savings there doing it the conventional way. And you also had the City of Fort Smith's water facility which was guesstimated or estimated, or whatever word you want to use at $80,000,000 and the bid came in at $50,000,000. You're looking at 40% savings there doing it the conventional way.

Jim Binder: What I don't know in either of two instances is how the estimates were made initially and what level of design was done in making those estimates? You would have to investigate that. Perhaps they were only planning level estimates like you have now, and the design didn't go to the next level where you can do take offs and actually come up with more precise figure. I don't know. Typically on a planning level you are more conservative in that you estimate a higher figure or you try to because you don't want to be short when you go out at that point and you're planning your financing and so forth for a project. Again I don't know what level they went to when they did their estimates in those two instances. If they went to a higher level of design then I don't know why there was such difference other than perhaps in the estimate, again there wasn't enough knowledge of actual construction costs for those types, or there wasn't a lot of experience in it. Sometimes when you go to the market and get bids sometimes you're surprised and no matter how much work you've done in trying to come up with your best estimate, and hopefully you're surprised on with the prices being lower than what you've estimated, and in some instances the prices come in higher.

Alderman Davis: How are you going to help the City of Fayetteville because you are looking at $120,000,000, fifty percent of that is going to be line expansion or taking care of the lines that are already. You're looking at $60,000,000 there. How can you save us dollars on that portion?

Jim Binder: It might be that there aren't a lot of savings in that portion of it. Typically there aren't. Typically the larger savings come on the treatment plant. And one thing we are going to discuss you know, at the end of this presentation is trying to bring some of this down to this actually could apply to Fayetteville. That it might be that you consider not doing the entire project under DBO, perhaps just those parts of the project where you think the greatest benefit might be achieved. And maybe that's the treatment plant. This is the kind of thing that needs to be thought about at the city level and discussed and the strategy ultimately developed. But I agree with you that the greater potential for savings isn't in the pipes. Okay is going to be in the facility?

Eric Peterson: Can I add to that to supplement a little bit. We just finished up work on a major project for the City of Phoenix, Lake Pleasant Water Treatment Plant. It's 80 million gallons a day and they selected American Waters to team with McCarthy Construction and Black & Veatch. That came--the selection came last week at the end of a four year process and the Phoenix Water Services Department and the Phoenix City Council grabbled with all the questions that you are asking in pretty much the same form. To the question of establishing the benchmark or the baseline, they were very concerned about how much guess work is involved in that number and is this all just numbers and manipulation basically. So they--they engaged a locally trusted firm to independently prepare the "benchmark." They paid maybe a little more money than I would have paid but they felt that it was really important to. I think they took their design to a 20 or 30 % level. It was a real alternative project. And if they would have received design build operate proposals that they didn't like or that they didn't "beat the benchmark" by 15%. They would fully prepare to sort of build on that 30% design and go forward traditionally. They also even previous to that did a massive study. I can make copies available from there if you'd like to see it on Alternative Project Delivery Methods. They invited members of the council. They basically took this kind of a form and made it into a six study project and made a lot of money for that. They decided they would try design build operate for the plant for some of the reasons mentioned but not for the piping that connected the plant treatment plants to the water distribution system. Part of that involved concern about how much money it could really save. Part involved one of the preserved work to local contractors in a traditional fashion and so forth. But there were a lot of considerations involved in that. The questions you are asking are very natural and normal and I've yet to see a city that didn't come up with some kind of benchmark or baseline that they thought was reasonably calculated.

Alderman Davis: Didn't Phoenix rescind the first award?

Eric Peterson: They had a proposal from Earth Tech. One of the five major players here. But Earth Tech, unfortunately for both sides I think, requested to be withdrawn. Earth Tech is part of Tyco and you've read about the problems with Tyco's management. They're still a solid company. They still have investment grade ratings from one of the rating services. But the--when it came time to deliver the performance bond to sign the contract they were having a hard time at this particular point in their corporate history of delivering it. Unfortunate because the savings there I'd put a $25,000,000 number on my Phoenix slide and that's what the selected company, American number two offered. They would have had 75 with Earth Tech if they had not withdrawn. But it's seen as a great success in Phoenix. I think a benchmark at Phoenix was low frankly but anyway they see it as a great success there.

I've taken quite a bit of time.

Alderman Marr: Before you go on I would actually like to ask a question if I could. My question is related to the savings benchmark, the 20 to 30 percent. What's the correlation of that as the project life cycle is lower. Is there direct correlation or does the percentage of a project hold true?

Eric Peterson: I think it's a general rule. The larger the project I think you are more able to achieve that level. Would you agree with that Jim?

Jim Binder: I am not exactly sure.

Eric Peterson: In other words is it different percentages savings based on the size of the project?

Alderman Marr: Well if I understood you correctly I thought that up until 1997 or 99 or some point when the law changed that the majority of the contracts were operating contracts or agreements of five years, and that they recently changed to life cycles of 20 and 30. The percentage numbers that you're showing us I'm assuming are based off these 20 and 30 year life cycles.

Eric Peterson: Yes, and to be a little more specific about the 1997 tax law change, you couldn't have taxes and bonds prior to 97 if your contract with a private company went longer than five years. And so--and also the laws were not in place in many states to design build prior to 1997. So those contracts you have, hundreds and hundreds of contracts for all five year con-op deals, as we call them, contractual operations with usually know design build component. So we're talking about the 20 year design build operate contracts that have come in since 1997 and that's the frame of reference that we have.

Alderman Marr: But if you had calculated savings on projects where you did a design build and a 5 year operating agreement, where would the percentages have run?

Eric Peterson: They would be lower in my experience. And this is true for your current five year contractual operations deal. I'd like to hear the comments from OMI and Filter on this but my experience is that at a certain level of savings is obtainable as against municipal operations by going to a five year contractual operations arrangement as you've done a long time ago. When you allow the company a 20 year contract you can increase your savings because they have the asset management responsibility for a longer period of time. And they are willing to make investments in capital assets and so forth on the commitment of the project because they know they have a long term contract. The contracts we've seen have saved maybe 10 to 12 percent. It's just simply by going five years to 20 years. You will get I think greater savings with longer term contracts. Okay?

Alderman Marr: Thank you.

Eric Peterson: Well I've taken much more than my allotted fifteen minutes and I thank you for your patience and attention.

Mayor Coody: Thank you. We appreciate everyone coming down because this a great low cost endeavor. I appreciate everyone's volunteers in this. Thank you.

Alternative Project Delivery System Providers and Case Histories: Mr. Don Evans, President of Operation Management International, Inc. Mr. Dave Butler, Former Mayor of Atchison, Kansas, and Mr. Bill Rosenbaum, Vice President of Municipal Design/Build Project Development will be speaking. Pat McManus, Former Mayor of Lynn, Massachusetts will describe the City of Massachusetts' experience using design-build and design-build-operate concepts to address various municipal projects over a period of 18-years. The presentation will include an overview of the challenges that were addressed relating to funding programs, sewer line construction and system repair issues.

Don Evans: Thank you Mr. Mayor. And thank you members of the Council and the public for letting us speak to you for a few minutes. I am Don Evans, the President of OMI. And my first comments is that, thank you very much for letting OMI work with you over the last 17 years. We've had a very strong partnership. We've been very pleased and proud to be a part of the Fayetteville team. Fayetteville had an incredible quality of life improvement in the past years. So with that I'll go through this project quickly. You've seen it before. You've got a project with the Noland Plant. You'll be upgrading and improving that plant and then building and improving the collection system on the Noland site on the east side of the city. And then building a new treatment plant and the collection system on the other side of town. Mr. Davis mentioned that about half the project is those collection system improvements and about half of the project is improvements to the Noland plant and the new treatment plant on the west side. So you've got a project that complex and large. A very sophisticated project that takes you into the future and continues your strong commitment to environmental stewardship. You've had an incredible commitment to that over the entire time I've been coming to this community. I first came here in 1985. Worked on some of your early projects then. You're commitment has been unwavering during that period and that's resulted in the quality of life you've got.

If you look at what we are here for today. Design build operate and key considerations for Fayetteville. This is your decision. You know that. This is a new opportunity. What has happened? Well Arkansas was the 37th state that passed legislation providing design build, design build operate in the United States. So 37 out of 50 have passed that legislation. Different cities are going forward with it. If that legislation is passed in this state you have the opportunity to consider it. That's really all that has happened to your--and the legislation as people has mentioned goes into effect next week. But its something that people had done and you really ask what's the driving force. Well you've seen it and we've seen it. You're being asked to do more with less. And as you look as doing more reflects to your state. And other states have said well we want to give our municipalities options. Give you options to pick from. Again as Mr. Davis said for certain projects the design build, the design build operate is the perfect option. If not perfect for other projects. You have to look at it. But you now in this state have the option as a city to look at it. And Mr. Binder mentioned and the mayor mentioned, eventually a city in this state will use it. There will be people who will go forward with it. Maybe your community or maybe another one. But people will look at design build and you'll ask why and Mr. Binder and Mr. Peterson have mentioned that we've seen from our customers that they do it to reduce the overall risk on the project, to save money and to save time. They've said gee we've got to do this and go forward with the project and they've done it with those goals in mind and looked going forward with design build and design build operate. And as the mayor mentioned it's the primary system that's used overseas. And we participate with a lot of private sector firms. And some of the larger firms, General Electric, one of the larger firms in the United States. They've changed their entire procurement process for capital projects to design build and design build operate. So you want to know why would a private firm like that do that. It's because they've seen the savings going forward. They've said gee we think is the preferred method for going forward with our capital improvement project. So it's happened in 36, now 37 states. It's been really legislative bodies giving cities an option as you get pressed on to do more with less. And as you look at that now you've got to say what options do I have.

This is a checklist that's in my comments but it's also been in Mr. Binder's and Mr. Peterson's which is a checklist of going forward. The legal issue being addressed.

The benefits. Are the benefits enough to want you to consider design build and design build operate. Can you maintain the access to state revolving funds? And what are the next steps as you go through and evaluate the regulatory and permit compliance issues.

DBO can reduce the overall risk profile. This is really something you seen in a graphical form. When you do a design bid build you basically contain and maintain and control all that risk yourself. . You have some agency contracts with engineers. You do other things but it's still your risk.

As design build operators you sometimes can share that risk with a design build operator. And that's why people do it.

I'll step down after this next slide and introduce the mayor of Atchison, Kansas. Because I think its best for you to talk to people that have done it and see why they did it. But these are some cities recently that have done design build and design build operate. In Seattle. Phoenix is job that Mr. Peterson talked about. Atchison, Kansas, Stockton, Augusta and another project in Seattle. So there have been major projects where projects have gone forward with substantial design build and design build operate projects in the water and waste water industry. And they've done that because it makes sense to them. And that's really your opportunity today, is does this make sense for the City of Fayetteville.

So now I will introduce Mayor Butler. Atchison, Kansas, has been a client of OMI since the early 1990's. I've got a long term relationship with Atchison. Atchison is beautiful community on the river. They have a water treatment plant that they had fully used. Mayor Butler and the community had made a long term commitment to improving their utilities. They worked with us and developed a program to build and design and build and then operate a water facility there in Atchison so I thought it would be very appropriate for Mayor Butler to be here and share his experiences and then be open to any questions you've have as a fellow elected official on building a water system in Atchison.

Mayor Butler: Thank you Mr. Evans and distinguished colleagues, I guess would be the way to put it. I'm just delighted to be here this evening and it gives me a great deal of satisfaction to know that you're asking the very same questions we ask in a town of 10,642 people.

We have five commissioners in Atchison. It's been my honor to be the mayor of Atchison four times in the last twelve years. One of them was when we decided we had to do something with our water treatment plant. EPA was making the standards drop down to where you have to make it pure and pure. I as mayor was sitting there saying if the technology is there to help make the water pure we need to because we don't want to jeopardize any of our future leaders in our young children. So we were forced to undergo a--same type of discussion you are as to what can we do to upgrade our water plant to make it compliant. Not only with the state regulations but also with our EPA regulations.

We began working with OMI as Don said earlier in 1990s, late 1990s, and CH2MHill at one of the facilities. We have a population of 10,600 although we have several rural water districts in our area, so we actually serve approximately 15,000. We have an aging water treatment plant which was built in the 30's, we upgraded in the 50's, we upgraded in the 70's and we upgraded in the early 90's. The last upgrade was in 1994 and was mostly done with the standard DBB. Here it was the year 2000 and all the sudden we're having to do some more things to it because our plant as aging as it was, still was not going to meet the needs we needed to be met.

CH2M Hill began working with the telemetry again. We had pretty much gone ahead and hired OMI to be our operations and management team for the water treatment plant. We had taken over the plant in 1983 from the private company that was running it. We began to look at the cost every year going up, you're trying to give the employees one, two, three percent raises, the cost of running the plant was going up. Our expertise was getting less and less and less as the technology got finer, finer and finer, that's why we decided to go with OMI.

The other reason we went with OMI basically was that they were backed up by CH2MHill. Having the combination of the two working in concert really made a difference, that we saw from the standpoint of hiring OMI to run our plant. We began to see some savings right away just from the standpoint that we dropped about 12 employees off our payroll and put them on their payroll, so right away we begin to see some changes.

We began to talk about what we could do and started talking about this new design build of the new water treatment center. OMI again was already onsite and delivering our operation management, they also brought in CH2MHill engineers and the CCI which then gave us a guaranteed maximum price with a performance incentive. We didn't want to leave them out in the cold and not give them a chance if they did a good job reward them some way.

Probably in just looking back I think we may have had just one change order. And that came about from the fact that OMI operators looked at the builder and said look, what you're going to do here is not going to work. It will not really be the most beneficial for us as workers, therefore the builder said okay lets go back to the engineers and find out what we do to make this better. The operators were happy, they worked it right in to the plan and it was just very little cost to us. Having in concert, engineers working with the builder and working with our operators made a big difference.

Our plant, the slide says 8,000,000 gallons per day was really only operating at about 6.5, that was about the maximum we could get. We have one supplier in Atchison that uses between 4 and 5 million a day, so we were looking at if they were to expand their business we would need to have a whole lot more water. We're located right on the Missouri River.

We went through a lot of the same systems you did. We looked at whether or not we should drill wells, we spent a lot of monies to drill a well. The well, would make the water easier to treat. We looked at the long term cost of what it was going to cost to do well water versus what we already knew. This was river water and after spending a couple hundred thousand dollars we decided to stick with what we already had. As city commissioners you've got to have all the options before you. It really tugs at my heart that you're asking all the same questions we did and it makes me feel good that we're all thinking along the same lines.

We had the response of the aging facilities and what could we do to meet the regulations. We ended up having upgrades, we looked at the filters system, the new micro filter systems and looked at the cost of those at the present time. We decided not to put in the new micro filter systems but we decided to build in somewhat of a way that we could add those later once those became cheaper and easier to use. We might be able to utilize those because we know that the standards are going to get tighter, tighter and tighter, they're not going to get any less stringent. EPA is not going to come out next and say hey it's okay to be turbid tomorrow, that's not going to happen. We needed a new chemical feed building. We'd been using an old style building and doing it all very. It was almost dangerous for the workers the way we were doing it. We changed the building esthetics a little bit, and of course with today's things, everything with the security enhancements went up too.

High points. We were scheduled to be finished sometime in November 2000, we were actually done and had cutting in July, we saved roughly $600,000, probably a little less than what you're being told, but I think it was well deserved and everything was probably about as good as could be. We have one City Commissioner that is a plumber and scrutinized every invoice that went through the place, not to say that that's bad. It came in at $9.6 and we had estimated it at $10.2. We asked for bonds for 10.2 million to get the project started. So our $600,000 savings will go to help pay off the debt.

I have City of Atchison pins if anybody would like one afterwards. I'd be glad to talk to you about the project. This was a new system for us, we looked at it. When you think about having your engineers work in concert with your builder as they're going through making the changes as needed I think you'll see that it really works well. I know it worked well for Atchison. With that I'll thank you.

Bill Rosenbaum: Mr. Mayor, Council members, on behalf of my colleagues of U.S. Filter, we appreciate the opportunity to talk to you tonight about the design build operate project delivery system. My name is Bill Rosenbaum. I am the Vice President for Municipal Design Build Project Development for U.S. Filter Engineering and Construction. Let me introduce quickly a couple of our other people that are here. Stew Kinsey is our vice president of the southern region. Rod Nichols is a vice president for project development and along with us today is Pat McManus the former mayor of Lynn, Massachusetts.

What I'd like to do is just talk about maybe a little bit of a different perspective on the design build operate project delivery method. Some of the things I would say would be a little bit redundant with some of the good presentation that's been made. So I'd like to give a little bit of a different view of it and feel free if you have questions as we go along to chime in.

Obviously I'm here as an advocate for the design build operate project delivery method. In not only just because that's the business that I'm in. My roots go back all the way to consulting engineering. I've been an engineering representative for cities and have been through the design build process and truly believe that the design build operate method is the superior way to go for a lot of different projects. To me the DBO method is really about innovation, risk assumption and total life cycle costs. It's really putting your money where you're mouth is. And I think most of all it's about service and partnering in its building long term relationships. There's multiple project delivery options. We've talked about design bid build and design build operate, and those are the two we want to focus on right now.

Additional variations include design build operate finance and design build own operate transfer, those are kind of hybrid. The ones I want to focus on is design bid build and design build operate, of course we've been through the whole discussion of the design bid build approach. This is just a graphical representation basically showing the relationship between the owner and the various contractors. And as you can see there are multiple parties in the design bid build approach. You've got the general contractor or the architect engineer all of who individually report to the owner and then of course the operator. That can be under a contract relationship or if the municipality has its own staff that would be their own people.

So what this approach represents is a significant management challenge and burden for the municipality, for some municipalities have that infrastructure, others it can be a problem. I think as you go through this process you also find that it's a sequential stepwise approach. Where you're doing the engineering that's passed off to a contractor which is then passed off to an operator. And as you're going along you're slowly finding the real costs are becoming known. So you start out with planning of the cost. As you develop your engineering you get a detailed engineer's estimate. Then you get a contractors quote. Ultimately you get your real operating cost so at the end of the day you're cost won't be known until you're actually up and operating.

Of course in this situation the owner's in the middle of any disputes that might occur between an engineering contract or the operators. Any other owner ultimately bares the risk for performance price and compliance. Ultimately because of the multiple parties and the relationships there are no guarantees, nobody is going to stand up and say I'll guarantee this plant will work, and guarantee it's constructed properly.

Contrasting this a little bit with the design bid build operate approach as you can see there's a single line to the design DBO contractor. There also probably ought to be an advisor box off the side between the owner and the DBO contract, those would be the people who would provide the oversight for the contract and other services to the owner.

The DBO contractor in this arrangement manages all the elements of the project and essentially provides the owner in the proposal provides a fix firm price going in for the entire life cycle cost of the project. Before bonds are issued you know the firm price. You know what your operating costs are going to be for the entire life of the project. You've got one firm that will in fact guarantee the performance. They'll guarantee the performance. They'll guarantee that the plant will work. They're placing a guarantee that the prices are what you say they are.

The one thing that this provides in particularly when you're in an interim process that can consider other factors say then strictly qualifications is that it provides the potential for competition of ideas and development of different and more advantageous approaches for the owner.

The advantages of the DBO process includes risk assumption. That's the technology risk, cost risk and performance risk. The reason that the firm can take those risks is because we can control that. That we have control of the design, construction and the operation. We can manage those risks much more effectively then breaking out those separate activity.

We carry the responsibility for schedule and actually can accelerate schedules. In the standard DBB approach you can work the project in phrases. You can get elements permitted and accelerate a construction that way. You proceed all the way through the project planning for the start up phase which is the shake down and usually time consuming part of the project.

Then in the contract itself there's contractual requirements, liquidated damages, they require how you're to meet the stated schedule for the project. I think one of the primary features of this approach is innovation and its ability to allow for innovation. Going into the competitive process you are really looking rather than competing on prices you are really developing a competition of ideas, and essentially identifying the most advantageous approach for the city. I that the best technical approach, is it the best management approach, which will in fact give you in all likelihood the best price for the project. So this is a competition of ideas not just low budget and low price.

Cost management and control are important elements from the initial proposal development the emphasis is basis--is on optimizing cost throughout the project delivery cycle. In developing a proposal you've got the contractor the operator's as well as the designers at the table. They are looking at the entire project life cycle and net present value and focusing on that.

We find that frequently in a proposal we'll put more capital up front so that we can reduce our repair and replacement cost through the 20 years. That's a very common thing. We also have performance requirements established contractually, so that the interest and stress to control your cost doesn't overcome the requirements in contract to provide a plan at the end of the 20 years so that it's essentially in the same condition that it started out in.

One of the common concerns of the client control over the project, and from the beginning the client establishes specifications for performance, specifications for quality, these essentially aren't any different then what you would have for a design bid build approach. We observe all the standard design protocols and have to achieve state certification of our designs.

The client typically reviews and approves the project as we go through the design stages and also inspects it as we go through the construction, and of course as previously mentioned there are other options to include termination, that the worst case scenario. One thing I wanted to stress in this whole thing is that you know one of the best elements for controlling and managing the process is to foster and develop this partnering approach. And we've had a great deal of success in a number of our projects developing that where we're working we know we're in the community for 20 years and we work closely looking out for the clients interest and the clients working with us as well.

A couple of the projects I wanted to just give as illustrations, Woonsocket, Rhode Island was a 15,000,000 gallon waste water treatment plant upgrade. It was probably the hallmark of our close cooperation with the state and local industry. That had a history of compliance problems and we brought that into compliance and recently won some awards there for the most improved plant in Rhode Island.

Tampa, Florida, surface water plant, a 66,000,000 gallon a day plant that uses advanced technologies. That one highlighted a great deal of ping partnership with an ongoing relationship that we are continuing to work with them closely today. That project came in on time and on schedule.

The Lynn, Massachusetts, USFO project which Pat will talk about here in a minute, provided an alternative solution to significant CSO problem for the City of Lynn, Massachusetts. I'll turn it over to Pat right now for discussion on that project.

Pat McManus: Thank you Bill.

First let me compliment Mayor Coody, the Council, and entire team in Fayetteville for at least taking a little time to look at options and being open-minded. You may find at the end of this that your existing plan is the best plan for your constituents. But at least by taking a look at options you're making sure that you do get the best product for your constituents.

I was the Mayor of Lynn for ten years and I chaired the Urban Water Council for the U.S. Conference of Mayors which is a body that represents all the mayors in the country. The charge of the Urban Water Council was to find newer and more efficient, more economical models for addressing infrastructure and the many needs we have with water and waste water issues in the country. Because we know that as mayors we just couldn't afford to make all the improvements and all the changes to become compliant with the Clean Water Act which deals with your waste water issues, and the Safe Drinking Water which dealt with need for safe drinking water. Lynn is a city of 100,000 people we have 150,000 people when we include the surrounding community that we service. We had two major problems, one was we had an older waste water treatment plant, very similar to your Noland Plant, it needs capital improvements. We had a private operator with a five year contract just as you have now. The bigger problem was we had a combined sewer overflow problem which is common to many older cities in the country.

Lynn was founded in 1629. With the combined sewer overflow systems or CSO we had a sewer system and then we had storm water systems, two sets of pipes. The storm water obviously when you get rain and storms would run out in our case to the Atlantic Ocean in the harbor; and the sewerage would run to our waste water treatment plant, the problem is with many older cities you have combined systems. There were junctions where the pipes were designed opened, I don't know why anybody ever designs this, I assume because of some form of protection when you started having flows that might have jeopardized the systems but when you had heavy flows and in particular during heavy storms, we ended up with combined sewage and water running off into our harbor. It was a major problem and we had to clean it up. The Clean Water Act which governs your waste water treatment and your discharges into your harbors or your rivers, etc., requires zero overflows. I spoke with the EPA many times about this and they said we can give you more time to try to address the issue but congressional intent says zero overflows. We can never over ride that, sooner or later you have to go to zero overflows into your harbor, no sewage to become completely compliant with the Clean Water Act.

I did want to point out that you are in much better shape than Lynn was timing wise. In 1990 we were sent a Federal Consent Decree, we were under a federal order to clean up the CSO systems and go zero overflows, it was done in three phases. Phase I ran from 1991 to 1996 and called for separation in a small portion of the city, by separation we mean building new sewer pipes or water pipes so we didn't have that combined overflow. When I became mayor in 1992 that was underway. In 1995 the Water and Sewer Commission announced a 53% rate increase for that year. They informed us that rates were going to quadruple over the next 10 years as we moved forward with this capital improvement program. At that point the City Council and I said wait a minute we're going to take a long hard look at this.

Phase II was a beautiful plan, it was a mile and half long, 10 foot in diameter conduit, 300 feet underground that was suppose to run to an 8 million gallon storage tank. During heavy storms they run all of the effluent and runoff water underground and into the storage tank, store it for a few days and gradually let it work through the plant, and that was design to get us down to four overflows a year which is admirable. We could never get to zero overflows with that. So Phase III called for total separation of a storage and storm water systems to bring us down to zero overflows, that actually hasn't had a time table designed on it.

The question you have to ask is why would you have a storage tank to cut you down to four overflows when the separation which you have to do would have permanently solved the problem. That was the plan they came up with in 1990 and that was the plan we were under a federal order to implement when we started looking at this. So in 1996 we went to the EPA, discussed it with them and said look we just think there's a better way and we can save money and they agreed to basically put a stay on our federal consent order. So we were a third of the way through our project when we actually took a look at it. You're much farther ahead of the curve then Lynn was I will say that.

As we worked through that we decided to come up with a program that I'll show you in a second to design bid proposals which went in February 19, 1999, and in November, 1999 we completed selection and contract signings, in 2000, our work began. In 2005, the CSO project is going to be completed with zero overflows to be fully compliant with the Clean Water Act.

Alderman Rhoads: What happened in between the three years from when you talked to the EPA, got the Consent Order put on hold and you went out to bid 1 February of 1999.

Pat McManus: We spent a lot of time talking with company. Our Phase II didn't have to begin until 1999. Even though we were under a federal law we still had some time to explore options and we just wanted make sure that we got the best option possible and really spent time talking to engineers, to contractors, to the private companies. Now remember as chair of the Urban Water Council, I was with these people probably once a month. In our case, to be honest with you we didn't have a lot of debate in the city, we knew we couldn't afford to do this. Rates were going to quadruple, we could not afford it, so the public pretty much told me, look go out and get something else done or you're out of here, which really is an advantage in a sense because you know if you can figure out what to do it's easy to get it done. Ultimately what I did was I appointed myself to the Water and Sewer Commission. I was on it when they elected me the chairman and pretty much just moved it through. Again you know I had spent years working in the field and certainly you have a lot of interests, the mayor, the council and the level of expertise you would be expected to have on your wastewater treatment plant, and your sewer system is just one on 100 things you have to deal with in the course of your decision. He explained the cost involved in Phase II. Phase II was complete separation. We asked for three prices, our Phase II storage tank, complete separation and a price for any technological process that would solve the problem as long as they guarantee that it worked.

Alderman Davis: Asked about a report that was written by the Inspector General regarding the facility can you explain that.

Pat McManus: That was written by his assistant who had for years avodacated against Design Build and long term contracts. That report has been thrown out by the new Inspector General who advocated for our program, he said it was based on false information. We did not pay much attention to it.

Alderman Davis: I can see why.

Pat McManus: I could never understand anybody criticizing this because this was the best service for the people in our district.

Alderman Thiel: You are the former Mayor, what do you do now?

Pat McManus: I do consulting work.

Implementation Strategy Using A Design-Build-Operate Concept-Fayetteville, Arkansas: Mr. James Binder, P.E. President of Alternative Resources will be speaking. This discussion will be focused upon the Fayetteville Wastewater System Improvement Project with specific responses to: (A) issues associated with implementing a DBO procurement, (B) potentials for cost savings, (C) scheduling implications,(D) coordination with the Revolving Loan Fund, (E) perception of EPA perspectives towards DBO methodology, (F) description of a conceptual process for Fayetteville's project, (G) predicted schedule using alternative project delivery method and (H) future actions needed to evaluate alternative approach.

Mayor Coody: I would like to restate the reason we are here tonight is to learn as much as we can about this process because we have a job in public service to do the best we can to conserve the taxpayers dollars. All of us want to do the most we possibly can with the few dollars that we have and we have a deep obligation to the public trust to do the best we can with the available financing and resources that we have at our disposal. We obviously need research this to explore it and see if it fits our needs. I certainly hope you understood in the previous conversation what the potential is for this process in Fayetteville. We are going to be discussing now how this legetation and this process can affect us in Fayetteville directly and specifically. One of the things that I would like to reiterate is the fact that we have if we build the standard Design Bid

Build process, then we have a one year warranty on the plant, if anything breaks they fix it, after that all cost are going to the city. We have right now about 17 contracts that we are about to sign with private firms, all good firms, all of which I am assuming would be able to work well in any process that we decide to use, including changes or modifications that we might have in using part of the Design Build Operate process. Here are the options, one option is we can do DBB or DBO and we can use any of those options on any particular part of our project. There are several different options in doing this. That's the reason we wanted to take this short crash course on this. I would like to thank all of you for coming and sharing your experience with us. If you have any questions, please feel free to ask them.

Jim Binder: When we look at what processes might work best in Fayetteville, a DBO procurement process works best when you have a complex project, stringent effluent limits that you have to meet, when you have a costly project and a schedule. I think you would fit the mold for a DBO process. He went on to explain why this process might work in Fayetteville.

Speaker: Today we've heard a strong advocacy for design build operate. And certainly that is a valid procurement process that is employed in the industry. The city is to be commended and the mayor is to be commended for looking at it in light of the opportunity that you have here in the State of Arkansas. There have been a number of comments made that compare DBO to DBB, and I'm afraid that the advocacy suggests that DBB is poor approach to public improvement projects, I think we know quite the contrary. Your own experience with DBB, I think it has been quite successful over many years of history in the City of Fayetteville. Some of the comments that have been made concerning cost savings, our design group have had the opportunity to consider the DBO strategy and what kind of opportunities might exist for schedule and cost savings here. As has been discussed we don't see the opportunity for quite the magnitude of percentage savings that exists because of the specific nature of your project, particularly with respect to the schedule. The schedule that was put on the wall here just a moment ago in my opinion is quite optimistic. To think that we can accomplish and clear up some of these questions and uncertainties that exist in the procurement process and acquire a contract with a design build operator in nine months is quite fast and the experience of other cities would suggest that, that might not be accomplished. The difficulty that you have as council people and the mayor is, what's the likelihood we're going to make that. I just want to point out that at least with the design bid build process you know you have a system that works. It has the potential to achieve savings against benchmarks, nebulous benchmarks that sometimes exists as has been pointed out. Quality engineering and quality contractors can have projects that produce low percentages of change orders. I think that we would all stand behind the design work that we've done and be willing to share with you our change order experience which is quite comparable to what has been shown there. As you continue to deliberate the question of DBO vs. DBB I would ask that the DBB side have the opportunity to present to you much the same advocacy that has been given to the design build operate side tonight. I compliment you for looking at it. It's certainly something that should be looked at but at lease look at it within the specific constraints that Fayetteville faces and the project that you have. Thank you.

Mayor Coody: Thank you. I think that is exactly what we tried to do here tonight is look at it in the context of Fayetteville's need. We haven't tried to say one size fits all, what works for Lynn, Massachusetts will work for Fayetteville, Arkansas. I don't believe any of us is advocating that. One of the things we want to do is have an open airing of all sides issue because I feel and I'm sure the Council feels obligated if a new option shows up, on the horizon that has the potential, then we have an obligation to research and explore it. It may not go anywhere. We may use part of it, we may not, and we may stay on the same path. We have an obligation to explore it for the benefit of the citizens of the community. And I think that's what we're trying to do here tonight. I appreciate it your comments.

Mr. McManus: Thank you. You know you've talked a lot about the DBO which is really how this was pretty much addressed. But one thing I would seriously consider is at 20 year operation and maintenance contracts. Design build is one issue but with five year contracts there is a level of costs. If you allow the operators that come in recommend equipment that they would put in over a 20 year period they could get a return on their investment and recapture that investment. I'll guarantee you can save money on your operations on this. One thing I think about is that on your Noland Plant I would try if you don't go to design build, to get your operators to coordinate with the engineers and discuss it.

Jim Binder: DBB. I would probably think in this case what would probably make sense so you can get a refined estimate of the cost on the DBB would be to consider going from the familiar design level that you are at now and playing with the estimates to a more precise estimate. But perhaps having engineering advance to the 30% design level and then that be used to come up with a refined more detail cost estimate under DBB and they use under this approach as your point of comparison to price, you would get ultimately in negotiation under DBO.

Alderman Jordan: I'd kind of like to get to the bottom line here. How much money to do you think you can save the City of Fayetteville. How about that for a question?

Jim Binder: You tell me how good that $125,000,000 number is. If that estimate is going to save what percent, 25%, 50%, 10%. I cannot tell if the DBO approach will save you the 10 or 20 or 30 or 50 percent. You won't know that until on this schedule you've advanced to this under the DBO under a negotiated contract. You won't know the actual cost of completing the project under DBB until 2006. So all you have is estimates up until that point.

Alderman Jordan: We want to hold to $125,000,000 is what we're going to do.

Jim Binder: I hope that that can happen. I'm not suggesting that you probably would make sense to go a higher level on your design in terms of deriving a cost estimate under DBB then you have at this point.

Mayor Coody: One thing I want to remind folks is that it's not just the $120,000,000 construction that we are talking about as far as part of the design build operate process. We're also talking about the operational costs as well. And that is more than $120,000,000. As a matter of fact once you add the $120,000,000 construction cost and the estimated operation for both plants for 20 years you're starting to talk about $264,000,000. So a large part of the savings also comes from a long term operational contracts. I've heard tonight, even if we save nothing on the construction of the plant itself we still could see substantial savings in the 20 year contract negotiations.

Alderman Jordan: We don't know.

Jim Binder: In my mind you don't have final number under DBO until you have a signed contract under DBO. I'm telling you, you won't know under the DBB concept until you finish construction because there will be change orders. That's my view and I'm going to illustrate that in a moment.

Alderman Thiel: I have. Well, since the mayor brought this up I think I'll go ahead and pursue it because I mean generally it seems to me like any cost savings at the front end is going to have to be made up at some point. There are examples from cities all over the country that, that's exactly what happens, the operating costs exceed their expectations, they continue to go up. There's examples felt in California, Huber Heights, Ohio, and Peckin, Illinois. Anyway so I have a hard time understanding even though you've given us reason why this process saves so much money but you know material and labor costs the same. Somewhere you know these two processes are going to cost the contractor the same to build this plant if we just deal with the plant itself. So somewhere they've got to make up the cost to them and it seems like some of these other cities experiences have came in on the end at the operating costs and these of course are passed on to the consumer in their user rights increases.

Jim Binder: Well I guess to put your comment into prospective perhaps one needs to think about the number of contracts-the number of waste water plants that are privately operated. I think that you will find that in the United States there are literally hundreds. So if you cite three examples where they were short on operating costs I'd have to examine why. I'd have to examine was their price proposal initially too low. I'd have to take a look at the provision of the contract and do they have the ability to pass through under the provisions of that contract added costs. So really, it's a little dangerous to pull two or three cities or names out of the hat without understanding specifically the circumstances because I pull another 100 cities out of the hat where that hasn't happened, and so to be fair about one really needs to have broader perspective. I think Eric pointed out and you heard presenters from OMI and Filter speak as to why they think that they can get cost savings in the design and construction. And if you want an additional discussion on it I'd invite those speakers to come back up and help respond to that. This is a thought, it's an idea. We're not saying this is the right way to go but I don't think that in your minds you should give up and say I can't meet the same construction schedule because this says you can in my view.

This slide is meant to be a representation of some of the DBO projects where you do have the long term stuff that started after 1997 that we've been involved in at ARI, where we've been procurement advisors. I also picked a couple on that were actually asked by that particular city to stay on and be the owners rep during designer review construction monitoring, and operations monitoring. This is just to give you an idea of some of the size of the plants, of the waste water plants. The DBO savings in millions that are there in terms of the DBO. And when I say DBO it means over the term, it's the life cycle savings. In the next column I tried to break out for you how much was saved when one compared the actual design build costs to the baseline for just design build forgetting about operations for a minute. And you can see one case for example in Massachusetts, savings on the capital improvements, they saved $10,000,000 of what was projected on the $20,000,000 project, it's a 50% savings. On this project the construction is done. It's been accepted, tested and completed for that $10,000,000, you can see the examples. I would also like to point out that if you look at the situation on Lynn, Massachusetts which is a brand new waste water treatment plant. The savings didn't appear on the design build portion they appeared on the operations portion.

Stockton was a contract just signed this past February and the commence date is to be August of this year so I can tell you in actuality that its going to end up being the way it's contracted to be. If you'll look at the contract and compare those prices you will see that there's a savings on design build portion of $49,000,000 representing 44% in compared to the baseline cost for design construction and improvements that give less of the savings. For $75,000,000 we took into account the operations. So its gives you a sense of these particular projects because it's done, finished and operation. He proceeded to discuss other contracts with other cities.

Alderman Davis: Jim, you mentioned Sioux City, Iowa.

Jim Binder: Yes.

Alderman Davis: From my understanding and from what I've got here from the Sioux City Journal it mentions the process actually began in 1999.

Jim Binder: Now the process, they've got an interesting situation in Sioux City in that they do not have any enabling legislation for DBO. As you saw on my slide of Sioux City that's a design, operate contract. So they spent several years trying to figure out essentially how to work the procurement process to give them a cost savings and reduce risk because they didn't have enabling legislation. So ultimately they came up with the design operate concept, they thought it was better than the traditional. The actual procurement process and so far, the RFPs only now penalize your proposals were received. Essentially, I think at the end of May of this year. You have to also be careful reduce paper accounts of when a process started because you have to really look at it again what are the initial stages of the project you're trying to deal with a situation where you didn't have enabling legislation or the concept that was being developed.

I'm going to just wrap and then get to the questions again. What do I think would need to be done to make a decision as whether it makes sense here in Fayetteville to go with the DBO option or not.

We tried to throw some things out here, or I did in this presentation, I think we need to address certain issues yet, and certain things need to be clarified. There needs to be additional thought given to the legal framework for a procurement under DBO considering Act 1297. I think we kind of agree that you can't do an upfront cost competition it has to be qualification based. But it can be approached, that I suggest you try to achieve some benefit on the cost savings end and contract end and the approach that it be done as I suggested. Is that not possible, I don't know. These are just thoughts right now but obviously I haven't had a chance to talk with you about how well this might fit together here, and that kind of discussion needs to happen. Just as important in my mind is meeting with several of your state agencies and spending some time with them on how you would intend to apply this DBO approach in Fayetteville if you went that way, and seeing if they are comfortable with that approach. How would you do the funding?

When we did the Taunton, Massachusetts project that was the first DBO in Massachusetts, the state agency there was DEQ, they had never done SRF received a revolving fund loan but they did it and it was accomplished.

I would say the same things in terms that there needs to be some discussions with DEQ, and the Department of Health. You are on a schedule of permit issues, there needs to be some further discussions with EPA even though they're governmental supportive of this approach. You tell them you want to make sure that you're going to okay with them on the approach and scheduling. You don't want to get into a situation where you might have construction work and schedule issues.

There may be further questions addressed that we want to reflect on more. We've tried to give you off the cuff responses based on our experience tonight. And I'd like to talk a little bit more about some of the issues that have been raised too. And so what I would suggest is that an investigation be done. And then I would suggest that a plan. You've got to plan now for DBO procurement. I would suggest that you develop and take as a starting point, that schedule I threw up there as an idea under DBO and refine that, and talk about what approach would be taken and to try and garner a qualification based only on procurement. The advantages of a DBO you might get relative to cost savings contract term and technical approach. I think in that DBO plan you should go into their approaches as agreed to and see how that works relative to schedule. I know you're going to want to know how much it's going to cost to do this. You've already raised these questions tonight in terms of the advisors. Our experience has been the cost for advisors on this kind of procurement can run any where from ½ percent and to maybe a couple percent of your construction costs.

I would suggest that if there's enough interest in this approach these things can be done not in a long time frame. I'm suggesting maybe you need three or four weeks, four weeks if you could have it to come back and set the meeting to council and present a DBO plan that's more specific than what's been presented tonight and have it to compare that to your current DBB plan before. I personally would be comfortable in overseeing it. You're chaired with making a decision as to whether it makes sense to proceed with one approach or the other. And even if the cost savings aren't there and there's concern that you get the competitive pricing under the qualifications based procurement there is tremendous value in the guarantee of the construction price and the guarantee of construction schedule and the guarantee of performance over 20 years meeting permit conditions.

You're not going to have that regardless of price under a DBB procurement. Sometimes communities are willing to pay more for a DBO process just to get those guarantees. It's a matter of comfort level for the city.

I think, mayor, I'm going to end at this point.

Mayor Coody: Thank you very much. Right now I would like to open the discussion up to anyone in the room that would like to ask any questions. I know there are a lot of engineers in the room tonight that certainly have an interest in this. Some of the water folks are here. We have a lot of folks that might have a question. Does anyone have anything they would like to ask and we'll see that you get a microphone. Anyone want to break the ice with the first question? I know some people have questions.

Alderman Rhoads: I'd like to ask the city attorney for an opinion on probability of legal action if the city went ahead with the DBO approach? And how much might that delay the process?

Kit Williams: I've discussed this in a six page memo to the City Council that I was able to prepare today. Just getting back from vacation I couldn't get it to you earlier and apologize for that. I tried today to evaluate all the potential litigation situations we might have and the only one that really causes me a lot of concern is the potential taxpayer illegal exaction type case. What concerns me is that when the legislation was drafted it talks about qualification based selection process, but in a subsequent section it talks about the city should accept or shall accept the most advantageous bid. For me I've got a little problem in thinking you cannot consider cost at all when you talking about what is most advantageous to the city. I do agree with Eric that the better interpretation, I think would be qualification based only, and you wouldn't talk about cost. The problem is that if a court disagreed with us and said no it says most advantageous and that means you've got to think of cost and therefore you selected the wrong person. Therefore your $100,000,000 contract with them or if it's a design build operate for 20 years maybe it will be $250,000,000 contract with them is illegal and therefore an illegal exaction. And the very bright attorney that is saving the taxpayer's all this money not spending on this illegal exaction is entitled to about of 15% of all the money he saved. You can see there's such a payoff for the bright attorneys that we have in this area that specialize in illegal exaction lawsuits, they have been very successful over the years and we better not discount their abilities. Even if we are 90% sure that we are going to be right on qualification base 90%, if its only 10% then you hit the jackpot and you get $30,000,000 if you get that 10% there's a lot of attorneys that are going to take that shot. I would think that we certainly could be facing litigation from a taxpayer's suit if we go forward with the design build operate system the way the statute is currently written. I wish everything would have gone one way or the other, and made it clear one way or the other. I mean I'm not going to take a position where the design build operate is the best system, or the worst system. I'm looking from the legal perspective of whether or not it's likely or not that we would get sued. If we do get sued what do we do, do we continue with the project and potentially increase our damages, do we stop it right then. These are decisions that the City Council will have to make, so that's my main concern.

Alderman Rhoads: I'd like to ask Kit some questions. Kit could we be sued if we go the other way?

Kit Williams: Yes but unlikely.

Alderman Rhoads: Unlikely, okay. I realize that you just got back from vacation, I did read your memo. Thirty-seven other states have adopted this same type of enabling legislation. Have we had a chance to look at other statutes and other court interpretations in other states that may be similar to what our statute looks like?

Kit Williams: No I haven't studied other state statutes, although you heard Eric talk about that there are some states that are kind of similar to ours, and then a lot of states are not where they clearly allow cost to be part of a selection process as you are aware. The Arkansas Supreme Court can look to other states if they want to or they can just say this is Arkansas law and we're the top judicial body of the state and we're going to decide for ourselves. The problem that I have is that until the Arkansas Supreme Court has interpreted this statute, nobody anywhere can tell us what this means for sure. Now we can get 90% maybe, but even at that I think maybe that is stretching it.

Alderman Rhoads: This is more of statement I guess to my fellow City Council members and I'm not arguing for this or against this I'm just talking about the issue of every time we turn around we will be faced with some one trying to sue us because of what has happened in the past, and if that makes us walk down a path that is too tentative and not in the best interest of Fayetteville, then I think we need to think long and hard about it. We've got good lawyers on the city staff and we just need to get the best interpretation of the law and not let the fear and the threat of plaintiff's lawyers keep us from doing the things that are in the best interest of the citizens of Fayetteville.

Mayor Coody: Any other questions? I'm certain there'll be some more questions.

Don Evans: Today we've heard a strong advocacy for design build operate. And certainly that is a valid procurement process in that is imploded in the industry. The city is to be commended and the mayor is to be commended for looking at it inlight of the opportunity that you have here in the State of Arkansas. There have been a number of comments made that compare DBO to DBB, and I'm afraid that the advocacy suggests that DBB is a poor way to approach public improvements projects. I think we know quite the contrary. Your own experience with DBB has been design bid build, I think has been quite successful over the many years of history in the City of Fayetteville. Some of the comments that have been made concerning the cost savings, we have, our design group has had the opportunity to consider the DBO strategy and what kind of opportunities might exists for scheduling cost savings here, as has been discussed we don't see the opportunity for quite the magnitude of percentage savings because of the specific nature of your project. Particularly with respect to the schedule, the schedule that was put on the wall just a moment ago in my opinion is quite, what's the word I'm looking for here?

Mayor Coody: Optimistic.

Don Evans: Optimistic. To think that we can accomplish and clear up some of these questions and uncertainties that exist in the procurement process and acquire a contract with a design bid build operator in nine months is quite fast, and the experience with other cities would suggest that that might not be accomplished. The difficulty that you have as council people and the mayor is what's the likelihood that we're going to make that? I just want to point out that at least with the design bid build process you know you have a system that works. It has the potential to achieve savings against benchmarks, nibulous benchmarks that sometimes exists as has been pointed out. Quality engineering and quality contractors can have projects that produce low percentages of change orders. I think that we would all stand behind the design work that we've done and be willing to share to you our change order experience which is quite comparable to want has been shown there. As you continue to deliberate the question of DBO vs DBB I would ask that the DBB side have the opportunity to present to you much the same advocacy that has been given to the design build operate side tonight. I compliment you for looking at it. It's certainly something that should be looked but let's look at it within the specific constraints that Fayetteville faces and the project that you have. Thank you.

Mayor Coody: Thank you now. I think that is exactly what we've tried to do here tonight is look at it in the context of Fayetteville's needs. We haven't tried to say that one size fits all, what works for Lynn, Massachusetts will work for Fayetteville, Arkansas, I don't believe anyone of us are advocating that. One of the things we want to do is have an open airing of all sides of the issue because I feel and I'm sure the Council feels with me, obligated if a new option shows up on the horizon and has the potential, then we have an obligation to research and explore it. It may not go anywhere, we may use part of, we may not, we may stay on the same path but we have an obligation to explore for the benefit of the citizens of the community; and I think that's want we're trying to do here tonight. I appreciate your comments.

Mr. McManus: Thank you. You've talked a lot about the DBB which is really how this was pretty much addressed but one thing I would seriously consider is to look at 20 year maintenance contracts. The design build is one issue but with 5 year contracts a level of costs. If you allow the operators to come in and recommend equipment that they would put in over the 20 year period, they could get a return from their investment or recapture that investment, I'll guarantee you that you can save money on your operation under this. One thing I think about is on your Noland Plant I would try at a minimum even if you don't go to design build get your operators to coordinate with the engineers and discuss what equipment will get you a savings over the 20 year period. In a sense almost a modified approach toward design, DBB and DBO. There are a lot of approaches you could take that is short of a definitive DBO especially the issues of concerns of whether or not the legal action is taken against you. It could be a cooperative effort with the community engineers and the operators and take a longer term look because there's many saving that come from this program, the 20 year operational maintenance because the companies will put in equipment that will ultimately will reduce cost over that 20 year period. So as you go through this I don't think you should discount the advantages for looking at the longer term operation maintenance contract as the construction cost. And I think there's tremendous advantageous by having the engineers and the operators spend a lot of time together and discuss what is in the best interest of the long term cost and which equipment will serve the purpose with great savings.

Mayor Coody: Mr. Binder is there a way that we could take advantageous like Mr. McManus says if there is a way that we could go ahead do a procurement for our operator, say for example the City Council says we aren't going to do a DBO and strictly stick with DBB, can we get the operator on board early enough to work with these engineers. These engineers have never operated the plant, they've never probably poured concrete for a plant. Is there a way we can bring an operator in to be an interval part of this as say a consultant and work with the engineer and the construction people to gleam from the savings if we stick strictly with the DBB?

Jim Binder: I think that possibility exists and I think that there's merit particularly if you consider the longer term operational 20 year period as opposed to five. But what you're giving up if you separate the operations from the design build portion maybe a guarantee for the long term performance of those facilities, you might find a more sufficient way to design it. That's the whole point of the DBO is having one team come up with a combined solution, so once you start to split that team and if the operator only has the ability to make comment, but his comments might be well received or implemented and you might run into the guarantee issue relative to operational performance.

Mayor Coody: The way I look at this is not only the legislation is not optima because it's not bid based it is qualifications based. If the City Council decides design bid build is the way we want to go then if there are some other options to where we can gleam some increased benefit over the long haul and just throw the baby out with the bath water. I wonder if there is an option there if we're going to do DBB, then I wonder if there is a way we still gleam some of the advantageous there.

I'm thinking Don or maybe Mr. Rosenbaum might have input on that.

Don Evans: You know I'm the representative of OMI, your existing operator. We absolutely will coordinate and cooperate with the city in any method you choose.

Mayor Coody: What a politically correct answer.

Don Evans: Whatever you want to do. We're an advocate for the City of Fayetteville you have an option that you came up within April that's going to be law next week and it works well to coordinate.

Speaker: Any alternative that you can come up with gets you part way to where you want to be. Naturally I think the DBO approach as Jim indicated provides the full range of benefits from risk reduction and cost reduction. Just like with Sioux City they had a situation where they couldn't go the whole way. And they determined that an alternative approach might give them a lot of the benefits that they want, it can help without a doubt.

Mayor Coody: Thank you. Any other questions or comments?

Alderman Thiel: We keep hearing from the people that came down here to present this project plan. I think a very good point was made up here that we need to give equal opportunity the DBB to give the same kind of a workshop because I know at least one alderman requested that this workshop have both viewpoints. All we have seen tonight has been advocacy for the DBO plan. We've not heard with the exception of the one brief statement, from the other way it could work. I really think it is really unfair to us to just give us one process and the advantageous of that and it's strictly by people that their mayors seem to work for these companies that are represented here. I feel like we really do need to hear the other side if we're going to consider this at all.

Mayor Coody: Sure, I think to be more accurate I was asked to present not only the DBO successes but the DBO failures. I think that's a more accurate assessment and so far we've asked about failures. Atlanta, Georgia is one that did not go well.

Guest: It's not a DBO.

Mayor Coody: You're right. It's not a DBO. Thank you very much.

Okay good. I stand corrected. We tried to find some failures. Everybody that we talked to will confirm that when we spoke with them we said I don't want to bring a rosy scenario to the City Council. We need to bring the pros, the cons, the good side, the dark under belly, we need to see the successes, we also need to see the failures. Don't bring us just one side of the coin, bring us both side and I don't think that anyone here would disagree with the fact that this was put on table for them to bring to us, and it was just hard to find failures. That's the problem.

Alderman Thiel: These people that paid consultants to do this. We're not paid to do this but we will certainly make every effort to substantiate our sources of failures.

Mayor Coody: I don't mean to get into an argument with you. You don't have to do that. In about another five minutes or when the questions stop, I'm going to ask the Council what if you want to; as Mr. Binder has suggested, take four weeks to do some more research and talk to Soil & Water to see their take. If they say no it stops right here tonight. If you say yes, Soil & Water might say no. It would stop right there. If they would say yes then DEQ might say no. It would stop right there. If they say yes then the legal situation might say no and it would stop right there. There are a lot of off switches in the next step that would keep us right on track with where we are. You have to research the things that appear to be failures. You're welcome to say no design bid build do not want to consider any other options. If you do that tonight that's exactly what we'll do.

Alderman Rhoads: Mayor I can't speak for the rest of the Council but I am kind of getting a sense of the way people are pretty tuned into this conversation that everyone really wants to hear both sides of the story. I think most of us feel a little bit more about the old way of doing it then we do the new way and I think we felt that this was educational and very beneficial. What I think I would want, and I would bet that I'd be joined by most members of the Council, is somebody kind of rap all this up because if I were to try to make a decision here tonight I'd probably have about 100 more questions to ask; before I felt comfortable in voting. I think what I would need is what is the city's recommendation. Are we recommending that go completely back to the traditional way of doing it or go completely the other way or a blend. And if so, are we talking about a blend, for just either one of the plants. I would leave the pipe a lone. I'd want to hear something like that from the city. And based on some of the questions that have already been tossed out here, I think there's plenty to go on as far as coming pretty good recommendation. I don't know if you all can formulate something you know by the next City Council meeting, maybe three weeks from now, or something like that, but it seems that time is of the essence. I know these people probably definitely feel that. I know that other people that have called me telling me that time is of the essences. I don't think we can make a decision tonight, that'd be my take.

Mayor Coody: Don are you still on the phone?

Alderman Marr: Yes I am.

Mayor Coody: Do you have anything to add. We've missed you here tonight.

Alderman Marr: It's been very educational. I don't know that I have anything to add. The point that takes away the major advantages it sounds like is the guaranteed side of what you would get out a guaranteed time frame, guaranteed costs, etc. It's hard for me still to understand how we compare that to a benchmark because I think the benchmark seems too weighted towards the operational link. Without knowing how we break that out in comparison to the point that Bob brought up also about how much of our project has variable costs vs. laying pipe are things that I would need to know a little more about. My biggest concern is waiting, continuing to wait and I'm relying on the city staff and your leadership to make sure that we're progressing to a point that we're not going to be talking about development moratoriums because we can't make a decision. My concerns are that we did start our election in Fayetteville at the same time that Beaver Water District talked about, Fort Smith talked about, Springdale talked about and it seems that we're, and I think rightfully so, looking at the options. But at some point we need to begin to feel like we're really taking a step forward. My only concern is that we evaluate the information and make decisions and we move forward because I have this fear we're in paralysis of analysis.

Mayor Coody: I understand you're concern. One thing that has been clear from my discussions with folks is that everything that we have done to this point, as far as the engineering goes and all the research and the design development has been done, is usable no matter what we do. Also I think that I don't believe we're 33% design right now either. Before we could even make the decision to go with DBO or DBB we'd go ahead and at least get 33% design completion done. Is that basically what I heard earlier Jim?

Jim Binder: The point I was trying to make relative to 30% design is that would enable you to either confirm the $125,000,000 estimate or perhaps come up with a more refined estimate, and that might be the benchmark that you would use to compare. If you were going to compare it to something that comes back from the market place that would come back after that process I had shown on the procurement where you would have a offering from a private company to compare to that and then you would have to, through a negotiation process, to make sure that you get the terms and everything that you want. But I think you know that I don't know what level of confidence exists in the $125,000,000 estimate. If it's a planning level number only, then people need to recognize it for that. And I don't think that would be the number you would want to use as a benchmark for comparison to what a private DBO company might be able to do. So my thought was that maybe you advance the current project. One suggestion was that maybe you think about advancing the current project up to the 30% design level at the same time in parallel you consider this DBO approach to the next milestone of getting price information from the market side then making your final decision at that point. Certainly you don't have to do that. But I think some of the questions that has been raised tonight can't be answered until you move down this road a little further to be perfectly honest. I don't think that if you took the time to do that you'd lose anything on your schedule, because the work you would do getting to your 30% design would be worth that. You were going to do that anyhow if you proceeded under the DBB approach.

Mayor Coody: Now if the highest likelihood for savings is in the construction of the east side, or west side plant, what would it be like to go ahead and continue on, I now Swifty wanted to ask a question, if we move forward with all the processes. Do the 30% design and take a special look at the west side plant as a possible DBO approach.

Jim Binder: And that's a possibility. I think that under approach what was meant was that you really need to think about do you want to subject the $125,000,000 estimate to the DBO approach or maybe you just try and pick those where experience tells you you'll have your greatest chance of getting a benefit by going to the market place under DBO. Maybe it is just the west side or maybe it is the improvements to the east side plant.

So I think that in order to specifically answer some of the questions that are being raised tonight by council you really need to take this to the next level beyond where we are at tonight and be able to come back at a second meeting to have something more definitive to say in terms of an approach that perhaps might work best in most peoples' mind under a DBO approach. We haven't had the opportunity to sit around a table and kind of kick things around too much.

Mayor Coody: So does anyone here have an estimation, if we needed to go to 30% design no matter what we do, DBB or DBO, we've still got to go through the design process. Does anyone have an estimation of how long it would be before we would even be at the 30% point? Either way we go. Any estimations? I hear several months. Would several months be a fair assessment? Six to eight months?

Unknown consultant: Mayor the larger project the longer period of time to get there. One of the difficulties we have in giving you an answer is that under the schedule that we have laid out we we're going to be under construction on some elements of the plant in six months.

Alderman Reynolds: Mr. Mayor, I'm on the Water and Sewer Committee, and Bob Davis, we've been around a long time and we've got some new members that's not familiar with what we do. So if they're not comfortable voting tonight I'm willing for them to meet with the DBB folks and get their schooling. But I'm not going to vote tonight if they're uncomfortable, but as far as I'm concerned I've road the wagon all the way through on this thing and I'm ready to vote tonight. I know what I'm going to do. The way I see that west plant is $43,000,000, the Noland Plant is going to be a $22,000,000 upgrade. We've got $60,000,000 on upgrading lines and pumps for a total of $125,000,000 so I really don't see where these folks are going to do us a lot of good. We've got a lot of cities that are shutdown that need to get rolling. We've promised a lot of these little towns our support back when they started getting water and sewer services from us. So I think we need to get the ball rolling and I don't think we need to go back to ground zero with a new organization. So I'm willing for these new council members to meet with the DBB and let them get their thing worked out. But I know how I'm going to vote. Thank you.

Mayor Coody: Alright. Swifty has basically made an assessment here that he would like to scrap the idea of moving with any kind of DBO assessment and move forward just as we were with the DBB. I saw some heads nodding there. Carl, do you want to go ahead and speak?

Carl Yates: I really didn't plan to say anything tonight. But after sitting here and listening to the presentation and it's a one sided presentation which we understood it was going to be. Mr. Binder you made several assertions about the design bid build that was actually quite contrary to what it really is. You should know better. You alleged that, I guess the feeling I got quite frankly when listening to your guys talk was that somehow all of the sudden the knowledge all resides not with the traditional engineering and construction firms but with the DBO people.

Mr. Mayor I just want to say this to the Council. I lived in Fayetteville all my adult life that's with the exception of the three years that I was out for the Korea War. We do have one of the contracts for design but I have a lot more interest other than just being able to do this design work. We've heard a lot of talk about the savings. I think those savings are an illusion and I think that it's been pretty much brought out.

Mr. Mayor, you asked me after your announce at the agenda session or after the agenda session, you said "Carl I perceive that you're not for this process," and my answer to you at that time was exactly what it's going to be for the Council. You have spent about year to year and half putting a process in place to see that this project is built in a timely manner and as economical as possible. You hired Burns & McDonald to do the program management, part of that worked. They have put together a value engineering. What they're going to do is and they are going to review our work at the, Jerry I'm not sure at the 30 to 35% stage and they're going to tell us, if we're gold plating anything they can say you shouldn't gold plate that so we've got this in play.

I've had quite a lot of conversation with various people around the country, including engineers that have experience with design build and design build operate, and also including several owners in many cities. While it's true in some cases the design build fits very well. I just think that given where we are and in this project that it's appropriate. What I found out was that in many cases we go through this process to making a selection and then all of the sudden the bottom drops out. The City of Fayetteville, in my view is just doesn't have the luxury of taking that chance. You've got a process in place, it's worked well say for 100 years, forever. At this stage of the game I just don't see any reason to chance.

I would suggest to the Council what you really ought to do is make the decision and I'm going to suggest that you do it tonight, Mr Rhoads to move ahead with the procedure that you had set up. Now certainly as Swifty suggested, we're more than happy to meet with the Water and Sewer Council and talk about it. But I would suggest that it's time to move on here. I just don't think its time to try this new process. I think the stakes are just too high. Thanks Mr. Mayor.

Mayor Coody: Thank you sir.

Alderman Davis: Dan I'd like to ask Kit, Robert asked him a while ago for a legal opinion could we be sued and things of that nature. My question is you've been researching this now for a couple of months pretty much or so. What is your opinion, what do you think.

Kit Williams: First I want to agree with Alderman Rhoads in that City Council should not be just intimidated and never take action because someone out there might threaten suit. And I don't think that the City Council has done that. For example in regulating Thunder Valley we knew very well that we're going to be sued by the owner's of Thunder Valley and yet you still went forward and I did not recommend that you not go forward. There'd be very few times I'd recommend that you not do action and it's only when there is severe danger to the city and taxpayers. It's true that the city could get sued even in a design build situation but it's not going to be an illegal exaction suit. It's not going to be a suit where the city could loose 10's of millions of dollars in attorney's fees. And we could potentially do that if we went with a design build operate because if the law is not clear we would do our best. But the best advice from the lawyer to his client is how to avoid trouble rather than try to get out of once you're there. So my advice to you will be no matter how far the engineering might be is that if you go down the design build operate route you are taking a giant gamble. Now maybe you think this gamble is worth it because you can save 10's of millions of dollars, and if that's your judgment I will do everything I can to try to make sure that we're safe as we can be. But you are risking the chance of not only a suit against us and of course, if you remember the Town Center suit when we were sued there, they asked the judge to suspend the project, to stop the construction and fortunately the judge did not. It was a close call, she very well could have suspended construction and then the Town Center would be right now being built.

In $125,000,000 suit they might ask the judge to suspend construction. I don't know what the judge would do. We would certainly probably ask not to suspend construction because we need this plant but that's a risk. So my advice will be on this particular issue that I could just never recommend a design build operate contract with the confusing state law that we have.

Mayor Coody: I'd like to add, Shirley Lucas hadn't spoken, go ahead.

Alderman Lucas: Well I'm one of the new members on the committee that we're talking about but I've read a lot about this and studied this very thoroughly. I think the reason we were interested in listening to the DBO process was the carrot that we could save money. And after listening tonight the question is we may not since we have to approach this on experience and on cost basis. So even if we took the west plant and tried to do a DBO we still could not do it on cost savings. If I'm understanding right we had to do it on experience of the people. So the carrot that we wanted to see is not there, for me at least.

The timeframe doesn't fit real good here, in four weeks when Phoenix took four years. They even took six months studying it. It kind of scares me and I don't want to put this off any longer. I want that west plant built to be honest with you.

Mayor Coody: Lioneld would like to speak as well it looks like.

Alderman Jordan: These are my concerns after listening to all this tonight. And I'm glad we've had this discussion but my concern is this, this is unproven any where in the state that I know of. Two, we could have possible lawsuits for illegal exaction. That's been given to us by an attorney. Another issue that concerns me we have made promises to people that we have done business with in this city for years and years and years, and I think those need to be kept. I think we are gambling with $125,000,000 of taxpayers' money to possible buy a pig in a poke. We'd be going from the know factor the way we've always done business to the unknown factor, I really personally think it's too late in the game to change the rules, and that's my opinion.

Mayor Coody: If I might go ahead and intervene. The clear sense that I'm getting from the City Council is that there's not a whole lot of interest to research this any further. Basically the intent of this meeting was for everybody to come together which we have done, from all over the country to discuss this. Innoculate the idea into Arkansas because eventually, if it doesn't take root in Fayetteville now it may later. We're going have another project later on down the road where we might be able to use the design build operate method. Other cities in the state might be able to take advantage of this process with projects they have on the horizon, that they haven't gotten where we are right now. We'll have time to do more legal research. At the next legislative session we'll even be able to tighten up this legislation. This was manipulated before it was approved by folks that certainly had a financial stake in it and wanted to maintain that financial state. I know that Mr. Young and the Sewer and Water Commission probably know more about design build operate now then they did when they walked in the door. I don't know what your assessment is but I bet your, I hope at least that you are all glad that you've had this experience and can walk away feeling like you've learned something, this may be a process which might be beneficial to other taxpayers in some other town at some other time. It's clear that I think the City Council is more interested in moving forward with the existing structure that they have in place and I certainly don't have any argument with that. My purpose tonight was to bring forward all these options, discuss them openly, lay everything on the table and make a decision about whether this had enough merit to it to consider it further or not. The feeling that I get from the City Council is it does not, at this point I would just as soon go ahead and ask the City Council if you would like to prefer moving forward with the design bid build and not have further decision on design build operate. Is that a fair assessment?

Alderman Jordan moved to scrap the idea of DBO and continue to move forward with the DBB. Alderman Reynolds seconded.

Mayor Coody: Okay we have a motion and second to scrap the idea of design build operate and continue to move forward in the design bid build. Yes, ma'am.

Alderman Lucas: Can I say one more thing.

Mayor Coody: Please.

Alderman Lucas: When I first looked at all of these contracts that we have to begin with I thought gee, it seems like there should be one person that's ultimately responsible, and that's what I like about the DBO, so I agree with you. I think we should pursue this later on other projects, not just to scrap as you say completely. Maybe on this project go the original route but please continue to do the research on that, and also the legislation and everything. I like the idea there's that finish, that price and they have to stick to it and things like that.

Mayor Coody: I appreciate your comments there. The things that I found most attractive about this and the reason I brought this to you is because the fact that experience has shown so much cost savings from other cities that have experienced this is the time savings that adds up to money. The fact that instead of a one year warranty you get a twenty year warranty on your plant and the fact that you can extrapolate your cost out for the next 20 years and cut your cost savings not only in construction but operation as well, you really save money in the long term. Those were things that I felt were important enough to discuss to bring this for you tonight and I really appreciate you're taking the time to listen to this. I know that with the legislation not being optimum that put us kind of behind an eight ball, still the idea is worthy of consideration I would have felt like that we wouldn't have been doing our job to at least not consider and explore the options because we have responsibility to look after taxpayers' dollars, if we just do something just because that's the way we've always done it even when a new option becomes available, well we aren't even going to consider it we're not doing our jobs. We have considered it tonight and if the discussion is to move forward with existing status quo then that's exactly what we'd like to do.

Alderman Rhoads: The only place that I have difficulty with this whole process is I would have felt better if at some time in this meeting before or during or right now I had something from the city saying, "here's what we recommend and here's why, " and that's why I was advocating that we wait another week, another three weeks. I would hate to stick to the old ways just because we're use to it. I realize that we've done business with these people for a long time but we don't have a signed contract with them and that doesn't mean that they will be cut of what we do in the future, again I'm not advocating that we go to DBO. I just feel like I haven't had something from the city saying here's what I think you ought to do and here's why, and then City Council members you all vote on it. I don't know, maybe by the fact that you're not proposing something maybe what you're trying to tell us is that you don't feel like the time is right.

Mayor Coody: Well certainly with Kit's legal assessment its hard for me to stand up here and recommend we do something that he says is a huge risk. I don't want to do that, no one wants to do that.

Alderman Rhoads: Let's hear the percentage on it. What's the chances on losing and having to pay out 10's of millions of dollars? I'm trying to set the stage for what I think is the process in which you could make better decisions. Number 1 you get your city attorney to look things over and give you something that, okay here's his idea of what a huge problem this would be vs. someone else's might be different. So I'd like to know in percentages to back that up a little bit. If we're going to make a $125,000,000 decision to $264,000,000 decision whatever that number is, it would seem that we ought to allow Kit to get back from vacation, research a little bit more, have him check into 37 other states to see if there's applicable law that can help us. I'd also for future reference or future matters that we look at I want the city to give us something that this is what we propose and here's why we proposed it. As opposed to, here are some ideas that we can float around, what do you all think. That's my criticism of the process. Not the people, just the process.

Mayor Coody: I understand and it's a valid criticism. The only thing is where we're at a disadvantage is that it would have been tough for us to bring you a recommendation when we don't know what Soil & Water would think because they hadn't heard the ins and outs of DBO. We would need to go from tonight forward for another few weeks to found out more about what the possibilities are before we could make a recommendation. I would hate to make a recommendation to Council saying I think we need to the west side plant here and part of the east side plant and find out after two more weeks of research sorry you can't do any of that, and then we come back and made the recommendation but we did it two weeks too early, so we don't have a enough external information from people in the outside world who are key players with us. We don't have enough input from them yet or we don't have that tonight to be able to make a recommendation to Council. I wish we did but we don't have that and there's no way we really could have in the last three and half weeks which is really how long it's been, to do this huge assessment and then be able to develop some kind of recommendation. All we could do tonight was basically to bring you an idea and bring people in to discuss the idea and describe the big picture. If the big picture was attractive enough the first off switch is the politics of it. I agree with you but generally speaking the politics isn't there to move forward on this. We could even do four more weeks of research and we'd still wind up with the same conclusion by the tenor of the City Council. I wish that I could have brought you a recommendation tonight but we did not have enough information from the other key players in the process to be able to do that. I appreciate your assessment.

Alderman Marr: One thing I want to add on this is that what has intrigued me in this process probably more so is the longer term operation agreement. It appears from the information that you had presented to us that there are, the savings are more in the long term efficiency and productivity of how a plant operations when it moves forward. Certainly a part of this, I want us to move forward and I'm probably in more agreement with many of the council members who have spoken about continuing with the design and bid and getting the thing built but I would really encourage and I agree with Robert's point in this fact that I'd like to see a recommendation coming back from you as the leader of our city on how we might address the operational component. How we might go ahead through the procurement process of selecting an operator to involve them in the design process so that we get maximum efficiencies and lower cost long term because it appears that the bulk of the savings and you even said this earlier in the presentation tonight is not only in the build portion but in the long term operation of it. I hate to think that just after this discussion we would not advance further discussion related to that particular item.

Mayor Coody: I appreciate your comments very must and that's exactly what we'll do Don. We will bring forward consideration of whatever we can find that benefits from this process. It won't be the design build operate by any means but if we can take what we know tonight and roll it into what we're doing and save some money, save some time, have some long term security then that's exactly what we will do and we will make a recommendation at the right time. I appreciate your comments Don.

I'm going to wrap it up tonight because we're supposed to be out of here five minutes ago. I want to thank everyone for coming tonight.

Sondra Smith: You have a motion on the floor.

Mayor Coody: We have motion and second on the table to move forward with design bid build process.

Alderman Marr: Mayor, I have one other question. Kit, I think our Rules of Procedure is that I actually need to be present to vote. I just want to make sure--I'm not going to vote unless I should.

Kit Williams: I would be uncomfortable if you tried to vote Don.

Alderman Marr: Okay.

Mayor Coody: You can vote we just won't count it.

Alderman Marr: Okay don't count me.

Alderman Rhoads: I have a question, are we voting to do the whole project including the operational aspect of it, design bid build. I definitely agree with what Don just had to say about the operation for the next 10, 15 or 20 years. So are we voting to not look at a DBO piece for that?

Mayor Coody: Yes, essentially yes. We would be looking at design bid build standard just as we've been looking at for the entire process until tonight. That doesn't mean that once the City Council votes on this and if the motion passes to just stick with design bid build, that we won't talk to USFilter, OMI and whoever else might be potential folks and see if we can't strike a bargain with them some how to bring them in early on rather than later to gleam some of that prospective and experience, I don't know that we can, we'll talk with Kit. We'll talk with different people and see what advantages we can find and incorporate those into the process.

Alderman Rhoads: I just don't want to vote on some thing tonight that would keeps you from being able to do that.

Alderman Davis: Mayor I agree with what Robert and Don just said. I think that we need to go ahead and continue especially on the west plant and possibly on Nolan to look at those additional options. But I think we need to get on with the laying of the pipe. The new pipe and the old pipe in getting it replaced, I don't what to hold that up any longer.

Mayor Coody: Alright.

Mayor Coody: The best benefit that we have had tonight besides introducing this idea into the State of Arkansas is the fact that now we can take new information and blend it into the design build process and see if can't come up with a marriage that is going to be beneficial to everyone. We will get some good out of this meeting tonight.

Alderman Jordan moved to amend the motion that we continue discussion on the operational end of it. Alderman Reynolds seconded.

Alderman Jordan: On the east and west plants.

Mayor Coody: Alright the motion and I'm assuming the amend is seconded and approved. Alright. Shall the motion pass to stick with the DBB?

Upon roll call the motion passes with the amendment by 7/0 with Alderman Marr not voting because he was present by audio only (via telephone).

Alderman Thiel: Could I request that the contracts that were put on hold at the last agenda meeting be brought forward at this next Council meeting.

Mayor Coody: I guess that would take a special vote at the City Council to put those on the agenda.

Kit Williams: Well you could actually take a vote right here to put it on the agenda on the next council meeting.

Alderman Thiel moved that we put those back on the agenda. Alderman Jordan Seconded.

Mayor Coody: Shall the motion pass?

Upon roll call the motion passed 7/0. Alderman Marr did not vote because he was present (via telephone).

Mayor Coody: I thank you all very much for coming to night. We have accomplished our mission.

Meeting adjourned at 10:00 pm.

From: Amber Wood
To: Cook, Kyle; Davis, Bobby; Jordan, Lioneld; Lucas, Shirley; Marr, Don; Reynolds, Robert; Rhoads, Robert; Thiel, Brenda
Date: 7/15/03 8:33AM
Subject: 12-17-02 City Council Meeting Minutes

The City Clerks office has discovered several Meetings from 2002 that have not yet been transcribed. We will be sending them to you for your review so that you may approve them in the upcoming City Council Meetings. The following attached minutes from 12-17-02 will be on the August 5, 2003 Agenda. If you have any questions, just give me a call.

Thank you,

Amber Wood
City of Fayetteville
City Clerk Division
awood@ci.fayetteville.ar.us

MINUTES OF A MEETING OF THE CITY COUNCIL DECEMBER 17, 2002

A meeting of the Fayetteville City Council was held on December 17, 2002 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Present: Reynolds, Thiel, Young, Marr, Davis, Santos, Jordan, Mayor Coody, City Attorney Kit Williams, City Clerk Heather Woodruff, Staff, Press, and Audience. Alderman Bechard was absent at time of roll call.

Government Finance Officers Association Award

Laura Favorite, Finance Director for the City of Springdale and First Vice President of The Arkansas Government Finance Officers Association, gave a presentation. She presented two awards. The first was the Certificate of Achievement for Excellence in Financial Reporting. The second award was The Distinguished Budget Presentation Award. Both awarded to the City of Fayetteville.

Mayor Coody Thanked Ms. Favorite for the presentation. He also thanked the Budget staff.

CONSENT:

Approval of the Minutes: Approval of the November 19, 2002 meeting minutes.

BID 02-63: A resolution awarding Bid No. 02-63 to RJM Manufacturing in the not-to-exceed amount of $150,000 for the purchase of up to 300 solid waste yard containers. The containers will vary in size from two to eight yards and will service multi-family dwellings and commercial businesses.

Resolution 194-02 As Recorded In The Office Of The City Clerk.

BID 02-70: A resolution awarding Bid 02-70 to Rehrig Pacific in the amount of $13,666.09 for the purchase of 1,500 bins and 2,000 lids for the City's curbside recycling program.

Resolution 195-02 As Recorded In The Office Of The City Clerk.

WATER TANKS: A resolution awarding the construction contract to Eagle Sandblasting and Painting, Inc. for the repainting of the Rodgers Dr. & Goshen water tanks in the amount of $295,427.00, with a contingency of $29,573.00 along with the approval of a budget adjustment.

Resolution 196-02 As Recorded In The Office Of The City Clerk.

SOUTHERN VIEW APT.: A resolution to accept the recommendation of the Fayetteville Parks and Recreation Advisory Board to accept money-in-lieu of land for Southern View Apartments.

Resolution 197-02 As Recorded In The Office Of The City Clerk.

REGIONAL AIRPORT: A resolution appointing Tommy Deweese and Don Nelms to the Regional Airport Authority's Board of Directors.

Resolution 198-02 As Recorded In The Office Of The City Clerk.

Alderman Davis moved to approve the consent as read. Alderman Reynolds seconded. The motion carried 7-0-1. Alderman Bechard was absent.

OLD BUSINESS

RZN 02-37.00: An ordinance approving rezoning request RZN 02-37.00 as submitted by Milholland Company on behalf of Ozark Adventure for property located east of Futrall Drive, west of Baldwin Piano, and south of Hollywood Drive. The property is zoned R-O, Residential Office and contains approximately 17.70 acres. The request is to rezone to C-2, Thoroughfare Commercial. Ordinance was left on the first reading at the November 19, 2002 meeting and left on the second reading at the December 3, 2002 meeting.

Alderman Davis moved to suspend the rules and go to the third and final reading. Alderman Santos seconded. Upon Roll the motion carried 7-0-1. Alderman Bechard was absent at time of roll call.

Mr. Williams read the ordinance.

Mary Beth Hughes, a citizen, stated that the last time she spoke of this issue we had lots of discussion. She stated that she spoke to Denny Tuttle who is in charge of Expo Park where Big Splash is. She stated that Expo Park is where they have the County Fair, it is also Government property. That property where Big Splash is leased from the county, therefore it is not a tax space. It's public land and it is held in trust. That's not going to be the case here. In that lease they pay a hundred thousand dollars a year or 10% of the gate receipts that they receive from Big Splash. They have only gotten one year out of ten where they have received more than the minimum payment of a $100,000.00. It has never reached expectations. We are talking about a much larger area than what we have here. There is no impact on us at all if we are just talking about local residents and Tulsa has a lot of local residents and they've got a lot larger, easier, and more accessible to get to than it is to get off at Hwy 62 out here and come through the mountains. The gate receipts have never reached that 10% or higher than $100,000.00/Private sales, and there is no taxes on that, have never met the projections that they were given for this. The park alone, because I couldn't get a hold of Ms. Murphy, they carry $500,000.00 in accident insurance and that doesn't come cheap, they carry $1,000,000.00 in liability and that doesn't come cheap, and I really don't think I need to remind anyone in Fayetteville what happens when somebody gets hurt whether it's their feelings or otherwise what happens when an out of town lawyer comes in and sues the socks off this city. We've been through it twice. It doesn't—and it sounds ridiculous, who would sue the City. We allowed it to be built, that's all they need. She gave an example of the lady who burned herself with McDonald's hot coffee and won. We talk about tightening our belt, and tightening our budget, what are we opening ourselves up to. We've got to think past the tip of our nose. We've got to project down the line.

John Knock, Financial Advisor for this project, said just moving on a couple issues that have been addressed tonight, let's keep in mind that this is a private company. We will not receive any municipal support. Nothing will be coming out of the City's coffers. This also is not what we anticipated to be the process where we would be doing the large scale development procedures. We anticipate a full and complete analysis of all the requirements that would fit into the City's requirements for large scale development. What we are looking for simply is the rezoning. Now let me say something about this project. This project has been designed and is patterned after successful family water parks. I'm not sure we want to be like any other town, but I know that this is an activity and a place where by families in Fayetteville and Northwest Arkansas will enjoy. I think that we can find a negative in everything, but I think this project will be good for the City of Fayetteville and as a citizen I've put my claim and my reputation on that. Are there any questions that I can answer about the park per say?

Bill Ramsey with the Chamber of Commerce said I wasn't prepared to say anything tonight, notice I didn't even wear my coat in here, but we have been working with Mr. Bhakha and the people on this project for about a year now and I think we're talking about a quality of life issue. Folks, we keep talking about what Fayetteville has is different from other communities in Northwest Arkansas and around the state is the quality of life that can't be found in other areas and I think that this is one of those things. They have already talked with the University of Arkansas with their aquatics people over there; this is going to provide jobs for our students. You talk about calls and the previous speaker mentioned that many of you have had calls, we've had a lot of calls at the Chamber too and I can tell you they've all been positive, they've all been excited and I think this is a great addition to Fayetteville, it's not going to be something shotty It's going to be first class and it isn't going to be ninety days, we've got Christmas lighting going on out there, The Lights of the Ozarks, they plan to be part of that, they plan to do some activities out there more than just ninety days, so it's not a ninety day thing, it is a great addition and would be a great addition and as Mr. knock pointed out we're really not here to debate whether we should do this or not, we're just talking about rezoning. This will have to go through all the process, the large scale development, and there will be time for those comments at that time but I would urge you, don't shut the door on this, go ahead and do the rezoning so we can move forward. Thank you.

Mayor Coody asked if the Council had any comments.

Alderman Reynolds stated that he would like to hear from the Alderman in Ward 4.

Alderman Santos stated that he felt he could speak for Alderman Jordan that we have no complaints.

Alderman Jordan stated that he has not had any. He stated that he might have had two people that have concerns about it but usually when something like that is going in then I'll hear a lot of telephone calls, but I haven't on the negative side, there hasn't been any petitions circulated. I'm always usually concerned about what goes on in there because I live down there. My questions have been answered somewhat that I've asked. I asked how the water would be treated and they said that it would be treated there. I was concerned somewhat about the traffic congestion and I think that just to ballpark the figures Tim said approximately 3,000 was traveling through that area and it could hold up to 8,000 I believe, I was concerned about how much revenue it would bring. Mr. Knocks said 3.5 million its first year was projected. So I don't have any problems with the rezoning as far as it is so far.

Alderman Reynolds asked Alderman Jordan if he had any answers about the noise ordinance, what kind of noise they're going to produce.

Alderman Jordan stated that he had not gotten any.

Kit Williams, City Attorney, stated that a rezoning decision is a very safe decision to make, as you know, the City even if it was making a more dangerous decision is protected by sovereign immunity that has been granted us by the Legislature so we wouldn't be in the same position as some of the horror stories or whatever that you've heard about. Also you have a rezoning before you right now and as you remember, I did a little memo to you this summer about what you're supposed to consider in the rezoning and the compatibility of that zoning area for that particular area the 20/20 plan objectives and several other things, but not necessarily what's going to go in there, that's really probably going beyond what we do now. Now we recently passed a planned zoning district ordinance and when those start coming through then you get to look at the entire project as well as the zoning change but right now this is being presented only as a zoning change and so you should confine yourselves primarily to those zoning considerations that I listed in that particular memo to you rather than this whole big project even though we have heard parts about it.

Alderman Santos stated that this is definitely an area that should be zoned commercial, it's on the interstate and it's a commercial area that needs help and throwing a couple million dollars at it sounds like a good idea so I'm willing to pass the ordinance.

Alderman Thiel added that since we just down zoned an area on the other side of Sixth Street from this area to Multi-Family which was commercial; we lost that large section of commercial so this is in a way taking the place of that.

Alderman Bechard added that the discussions primarily have been on the success of this business which I think everybody has kind of duly noted that a large scale development item and I think there are avenues out there to address that. There's performance bonds to take care of places should businesses not work out. I'm very familiar with acquaintances in business that actually are required to do that to remove a business if it is unsuccessful. So, I think we have options available to us when we get to the large scale zoning, and I think this land should be commercial and I will support it.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0-1. Alderman Bechard was absent at time of roll call.

Ordinance 4446 As Recorded In The Office Of The City Clerk.

IMPACT FEES: An ordinance enacting impact fees for all territory within the City's water and wastewater service areas including areas outside the corporate city limits and within the service areas located within Washington County and other incorporated cities. Ordinance was left on the second reading at the November 25, 2002 and left on the third reading at the December 3, 2002 meeting and tabled until the December 17, 2002 meeting.

Mayor Coody stated that Alderman Bechard wanted us to hold off on this particular item until he got here and he should be here in the next fifteen to twenty minutes.

Mr. Williams stated that they probably should have a motion to move this to the end of Old Business or something.

Alderman Davis moved that they move this item to the end of Old Business. Alderman Santos seconded. Upon roll call the motion carried 7-0-1. Alderman Bechard was absent at time of roll call.

RZN 02-18.00, 19.00, 20.00, 29.00, 30.00, 31.00 and 32.00: Ordinances approving rezoning requests as submitted by the City of Fayetteville Planning Division on behalf of the Mill District Neighborhood Association. This ordinance was left on the second reading at the December 3, 2002 meeting.

Alderman Santos moved to suspend the rules and go to the third and final reading. Upon roll call the motion carried 7-0-1. Alderman Bechard was absent at time of roll call.

Mr. Williams read the ordinance.

Mayor Coody asked Mr. Conklin if he needed to make a presentation.

Mr. Conklin stated that this is part of the ongoing effort to look at areas that are zoned inappropriately and this area had a lot of industrial zoning and we're rezoning it to residential type zoning districts.

Alderman Young stated that he had received no complaints. Has the Planning office received any complaints about this?

Mr. Conklin stated that they have not received any complaints.

Alderman Thiel stated that this is our Ward and I've not heard anything and I know a lot of the people that were involved in this, I've had conversations with about other issues and this has not been mentioned, so I believe that everyone seems to be satisfied with it.

Mayor Coody stated that he thought this has been driven by the neighborhood itself wasn't it?

Mr. Conklin stated that they started this the beginning of last year and met with the neighborhood association and worked with them through many meetings to come up with a recommendation on different areas within this Mill District neighborhood. We worked very closely with the neighborhood and also sent out letters to notify all the property owners and the people living in the neighborhood and I'm pleased this evening that I think we are going to be able to change some of the zoning that's been there since 1970 that's industrial.

Alderman Reynolds stated that they have actually wanted this changed for the last six years. I was still on the Planning Commission, we started talking about this and we finally got it done.

Mr. Conklin stated that this is one of the reasons why the Planning Division chose this neighborhood because the neighbors did come out very strong when we did have a rezoning and talked about reserving their residential character of their neighborhood and this is the first attempt that the City actually has made since the early 1970's to do comprehensive type zoning of neighborhoods.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 4448 As Recorded In The Office Of The City Clerk.

FRANCHISE FEE: An ordinance setting the franchise fee of four and one-quarter percent (4¼%) on the gross revenues of the City Solid Waste, Water and Sewer Funds and repealing Ordinance No. 3804. The ordinance was left on the first reading at the December 3, 2002 meeting.

Alderman Santos moved to suspend the rules and go to the second reading. Alderman Davis seconded. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance.

Alderman Santos moved to suspend the rules and go to the third and final reading. Alderman Davis seconded.

Mr. Williams stated that to his understanding the staff was now recommending that we were not going to raise the solid waste franchise fee at this point and time. Is that right Steve?

Mr. Davis said that is correct.

Mr. Williams went on to say that we shouldn't go on to the third and final reading unless we want to amend that out of there unless you all want to do that, but I think the staff recommendation at this point is not to raise the solid waste franchise fee at this point in time and it is not my decision, I just heard that so you might want to hear some explanations.

Alderman Reynolds asked how that was going to affect the money.

Alderman Thiel said yeah that's the question I mean the budgets that we keep getting are revised budgets. Are they based on that?

Mr. Davis stated that the revised budget that you have that shows $1,857,000 use of reserves does not account for any increased franchise fees from the Solid Waste Fund. It is based solely on increased franchise fees from the Water and Sewer Funds.

Alderman Santos asked why are we changing here?

Mr. Davis stated that when you look at Solid Waste Fund it's already at an operating income deficit so to add additional cost to it to transfer from Solid Waste Fund to General Fund is just compounding a problem that we already have in the Solid Waste Fund so we want an opportunity to further analyze what the costs are in the cost drivers or in the Solid Waste Fund before we add expenses there.

Alderman Santos asked Mr. Davis to explain to the people who weren't at the Agenda Session last week that may not understand that this is not going to cause an increase to anybody's bill this is just a shift of money that goes into the enterprise funds for water and waste water that will now go into the General Fund. So it's not any kind of a tax increase or any kind of a fee increase that anybody's going to get on their bills, it's just a shifting of funds between different accounts in the City.

Alderman Young confirmed that this would not be affecting any other utilities.

Mr. Davis stated that no other utilities will be impacted.

Alderman Davis moved that we delete the wording for Solid Waste.

Mr. Williams read the ordinance both in the title and in section three to show what the amendment would sound like with the new title.

Alderman Marr asked if the rates were on all customers not just residential, but any customer.

Mr. Davis stated that since it doesn't apply directly to any customer, it's an increase in the operating cost to the water fund and the sewer fund. I try to draw the distinction between the gas, telephone, cable, and electric invoices that customers receive. Franchise fees are listed as a separate line item. That's not the case in the water and sewer bill.

Mayor Coody asked shall the amendment pass. Upon roll call the amendment passed unanimously.

Alderman Santos moved to suspend the rules and go to the third and final reading. Alderman Davis seconded. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance.

Alderman Jordan asked Mr. Davis to tell the public how much money this will bring in for revenue.

Mr. Davis stated that this change is expected to generate $180,900 for General Fund for 2003.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 4449 As Recorded In The Office Of The City Clerk.

2003 BUDGET: A resolution adopting the proposed 2003 Annual Budget and Work Program. The resolution was tabled at the December 3, 2003 meeting.

Mr. Williams passed out a slightly amended resolution that has a new Section 2 that would also adopt a new 2002 Hay Plan, recommendations for the Police and Fire pay ranges. It will make the ranges effective with the beginning of the first pay period in 2003 or January 6, 2003. This was requested by the Budget Director of Administrative Services.

Alderman Davis motioned to amend the resolution. Alderman Jordan seconded. Upon roll call the amendment passed unanimously.

Resolution 199-02 As Recorded In The Office Of The City Clerk

A citizen said you are addressing the resolution to pass the amendment in the 2003 Budget for the City of Fayetteville. I would like to see some other things taken into consideration.

Mayor Coody asked Mr. Davis if he wanted to address us on this.

Mr. Davis said as we start with the Budget 2003 the Mayor's original proposed that budget contained $732,000 in new franchise fees. The first request that I heard from City Council was remove all new franchise fees. We did that. That became, actually it shouldn't be called City Council Goal it should be called City Council Direction for the Franchise Fee Removal, that's the next column over. The expenses stayed the same. The use of reserves under the Mayor's original proposed budget was $1,715,162. The new after the City removed the new franchise fee revenue the use of reserves climbs to $2,447,162. At our Budget meeting City Council instructed staff to come back and reduce the General Fund Budget and we heard numbers any where from 2 to 3 ½ % of total expenses. I think there was even one number that was 5% of General Fund expenses. We came back in the Mayor's revised proposed budget includes adding franchise fees for Water and Sewer Fund only, which is an increase of $180,000, we identified $428,000 worth of expenses that could be removed from the expense side without harming service delivery, and we added $20,000 for DDEP for the first 6 months of 2003 for a net reduction of $408,000. The reductions, $238,000, came from personnel services, $31,875 came from removing the funding for a half time Special Projects Director. Then there were some small benefit changes that went along with that $31,875 half time salary. We reduced workers comp premium insurance by $50,000 and we increased personnel services contra, that's the amount of General Fund Labor that is directly tied to Capital Projects, we increased that $150,000, that's $75,000 for the Engineering Division for the Surveyor's and the Draftsmen and the Engineers on the Capital Projects and its $75,000 for the Building Services Division. We have Capital Projects in the 2003 Budget to renovate the ground floor of this building and the first floor and the City is going to pay a contractor or someone to do those renovations. The Building Services Division is staffed to do that work and their maintenance work as well so that's where that money is allocated to. Additionally public notification was reduced $20,000; this is going to require some sort of mix or blend of public notification contracts between the two newspapers or selecting the low bidder for all public notification. Uniforms and personal equipment budget was reduced by $10,000 and utilities were reduced by $30,000. In addition when the Mayor's original proposed budget was put together, we were operating under the old ordinance for a replacement fund that required a $16,800 transfer from General Fund to the Replacement Fund under the Replacement and Disaster Recovery Fund, no such transfer is required from General Fund, so that $16,800 was taken. We also reduced $6,000 in Minor Equipment that was for a printer for Parks and several telephone instrument replacements, we reduced \$5,000 in Publications and Dues, \$45,000 in round numbers from Travel and Training, \$20,000 in Contract Services, \$15,000 in Hydrant charges, \$4,000 in Promotional Activities, \$12,000 in Buildings and Grounds Maintenance, that \$12,000 was actually transferred to the Sales Tax Capital Improvement Fund because it's more related to major maintenance issues that our existing Fire Stations have, and we added \$20,000 for the transfer to Downtown Dickson Enhancement Project and we reduced Fixed Assets by \$7,000 which is a scoreboard for the Parks Department that was also transferred to a Capital Funding source. The sum total of all of those cuts is \$408,633.

Alderman Young said that's how much you reduced the proposed budget \$408,000. That's what you are proposing.

Alderman Santos said this includes full funding for CAT for the full year and half funding for DDEP.

Mr. Davis said it includes \$20,000 for DDEP and \$69,000 for a public access provider to be determined.

Alderman Thiel said you don't have a breakdown for Travel and Training and I'm not sure who that affects and who it doesn't and how important that is because we talked about the fact that some of those really depend on that Travel and Training to keep their Certification up. One of the things that I mentioned whenever I mentioned Travel and Training, I mentioned Fleet and you have a copy in here that they are budgeted \$9300. According to this big Budget that we got initially they were \$18,000 and some odd. I am kind of confused about that.

Mr. Davis said the \$9300 is for Educational Reimbursement for one employee in the Fleet Division. It's part of the City's on-going management program that we have where high quality employees are identified and if they need additional training, the City's has a program since 1990 to provide that training. In exchange the employee agrees to stay at least twelve months after they receive the training.

Alderman Thiel said that she didn't understand why you're showing one figure there and a different figure here.

Mr. Davis said they had one amount of money that was for the Educational Reimbursement and the remaining moneys were for the routine mechanic trainings that have to occur.

On the sheet where you see the \$9,300 right above it is the account that has a detail that has \$8,900 worth of expenses. Those two numbers are combined to make the \$18,200.

Alderman Thiel stated that she was still concerned and wanted to make sure that no one in the General Fund such as the Parks has reduced their Travel & Training to a point that they are not going to be able to receive their accreditation.

Mr. Davis said I don't believe that occurred with anybody.

Alderman Bechard said that if you remember the sheet that Mr. Davis put in our box that projects out 2003, 2004, and 2005 and the document we're currently looking at if you look at the Mayor's Revised Proposed, they are the exact same numbers as the second column over called Budgeted 2003 Mayor Proposed. If I can direct you there for a second, here's why I asked him to put this together, what Steven told us is that by the year 2005, there is a minimum required fund balance that we have to have available so as we think about the decisions we make tonight we have got to understand how that impacts what we're projecting after 2005. I personally wouldn't want to pass a budget tonight where we don't find ourselves in the right position in 2005. As I look through based on the assumptions that Steven got based on the meeting we had last Tuesday, you can see the projected assumptions. I don't want to get those confused with Kevin's, these are more the generic assumptions, one being DDEP is budgeted in 2003 for $20,000 but not budgeted moving forward. This one has DDEP in there for $20,000 and is projected as a going rate of 4% annually, is that correct?

Mr. Davis said that is correct.

Alderman Bechard said here is my thought as I'm looking through the budget; good news is that it looks like we're really close to hitting our minimum required fund balance. Note that that has to be $3.8 million dollars and I'm looking in the far right column Projected 2005 and based on the projections Steven called out on the first page of this document it shows us that $3.816 million so we're real close. Here's the concern I have though, correct me if I'm wrong, this does not assume any new employees for the year 2005 is this correct?

Mr. Davis said with the exception of the Firefighters for Station 7.

Alderman Berchard said many of us on this Council expressed a concern that we continue to grow as a City yet we haven't added people for two years, now we're saying we're not going to add people for another three years and that really concerns me not to make the assumption to continue to provide the services we provide in the City of Fayetteville, we are going to have to have some more people over time. We can't think that we're going to grow what 4 to 5% and not grow accordingly in people. So one thing I'd like to see us accomplish in this budget is exceed the ending fund balance projected by 2005 versus what we have to have. I'd like to see $400,000 above and beyond the goal, the redline if you will, that Steven gave us last Tuesday. With that then it gives future Councils to say hey we need to add more people and the good news is there's finally some money that we've got to go do that without going under the red line. What I don't want to happen two years from now is to say I can't believe the Council in 2002 passed a budget that doesn't continue to allow us to add people. So what I'd like to get into is some ideas in route how we can continue to cut the budget and I know Kevin has some and I'm going to throw out an amendment that I'd like to propose. That is around Public Access Television and I want to be very clear on how I scope this discussion. This has nothing to do with programming, First Amendment rights, whether you like the program or not, quite frankly I am a fan of Public Access Television, if they came to me to look for funding, I'd probably give them some of my own funding. The question that's at hand tonight is, scope of the decision is, should the tax payers pay for Public Access Television. Particularly we're in a budget that as of right now in 2005 we're still $50,000 short and we can't hire any more people. I'll give you a great example, I happen to be a big fan of First Knight, I think that's a wonderful program, but I think it's interesting that next year First Knight is going to fund themselves and they're not going to come to the City for funding. The question I think they can tell you they went through as well is they went in front of a vote to the people of Fayetteville and they said, here is the deal, we want you to pay for our First Knight but we are going to tax you to do that, yes or no, do you support that or not? My bet is as a City, we probably wouldn't support that, so they went off and looked for their own funding and have been able to do that. I'd tell you it would probably be worse from a Public Access Television standpoint based on the priorities we have and the data we have, it was at the bottom and by far like 30% from a ratings standpoint so what I would like to see happen and in a minute I'd like to throw out there is that we fund Public Access Television through June 30, 2003 so that they have some time to go get the contract, they can go, have some time to put together a plan and I would strongly suggest we look at doing things in a broader scope than in Fayetteville. We look at doing a Northwest Arkansas Public Access Television, a State of Arkansas, a Public Access Television linked with the University of Arkansas. I don't know what that looks like, but I do think that in the financial situation we're in today and look to be in for the next three years, it's in our best interest to look at things like this with the very bottom of the priority list so that as we look at priorities, that we get out of funding things in those situations. **So the Amendment that I'd like to make is that we fund $28,750 which would fund them through June 30th and then based on that they can come back to City Council, although I highly recommend they look for ways to be self sustaining.**

Alderman Reynolds seconded.

Alderman Thiel said that in the past the City of Fayetteville funds other recreational activities such as a big chunk of money to build our tennis courts, we spend a good sum of money on our swimming pool each year, we are going to spend a good chunk of money to spend on a skate park, these are all things that serve some of the citizens of Fayetteville, they don't serve all of them. I think tonight that you're going to hear from a large group of the people that really do appreciate and enjoy Public Access Television. I know that their budget is over $100,000 but it's a struggle to make what they do come up with. They do have fundraising efforts, they do charge fees for certain things but, it's kind of like our swimming pool, it doesn't pay for itself. We just cannot charge the public enough for that. I am not going to debate that at this point. I think there will be some discussion about revenue that we haven't even tapped into yet that we've discussed, license fees and looking at our fee structure which could throw this balance into what you're saying it should be at the end of 2005. I would not be at all in support of eliminating the funding for Public Access Television.

Alderman Thiel moved to allow the folks in Bentonville to discuss impact fees. Alderman Santos Seconded. Upon roll call the motion carried unanimously.

IMPACT FEES: An ordinance enacting impact fees for all territory within the City's water and wastewater service areas including areas outside the corporate city limits and within the service areas located within Washington County and other incorporated cities. Ordinance was left on the second reading at the November 25, 2002 and left on the third reading at the December 3, 2002 meeting and tabled until the December 17, 2002 meeting.

The City of Bentonville Mayor said that the City of Bentonville studied this issue for about two years before we finally passed Water Capacity Fees, Wastewater, and an Impact Fee for Fire. We did not consider anything for Street, the Library; Police and Parks were voted down. We are pleased with the revenues that it's bringing in at this time. It will certainly not pay for everything, but it does go a long way in paying for new infrastructure and we do feel like its new growth fair share of their cost. It has not slowed down building in our city.

Alderman Austin with the City of Bentonville said there is a bill before the State Legislature and all the State Legislators were in Little Rock and they were lined up just like you and by the numbers they said we don't have money and I asked them if they didn't have a way to replace what we had the political courage in Bentonville to do and it took Political Courage to do. We passed this is in January with an effective date in July and we did that so we wouldn't ambush, or surprise and that gave everybody a chance to get their ducks in a row. It did create a large volume of Building Permits in June. Everybody came and got what they could ahead of time and we knew that was coming. July was slow, August was a little slow, but then September, October, November, we got lots on our table. What's on our table is a lot of new construction which is a demand for more services. The City of Bentonville is faced with a new Wastewater Treatment Plant. We don't have the market cornered on that; we're faced with going all the way back to Beaver to get a new water line. It's going to take mega bucks. The bottom line of Impact Fees and the bottom line of everything that's on your table is who pays. All political issues wind up at the dollar and who pays. Madam Mayor mentioned that this is not a solve all and it will not but it's a stamp in the right direction and this makes the people who are creating the need for a sewer line, creating the need for a new Fire Station, and creating the need for a new water line to pay that. If we didn't grow another inch, if we didn't have any new construction, the City of Bentonville is in excellent shape for water, sewer, and for fire. I came down here to support you. I encourage you to have the political courage to do this. If we don't fund a lot of our problems at our local level, we're not going to get it at the state level.

Mayor Coody said we have been threatened with law suits. Have you all been sued by anybody yet.

Alderman Austin said they have not yet.

Mayor Coody said you haven't seen any kind of in average it didn't slow down at all.

Alderman Davis asked when do you implement or when do you gather your fee for the impact?

Alderman Austin said we collect the Fire Fee when they get the building permit and we collect our fee from Water and Sewer when it's time to transfer the property.

Alderman Davis said so those building permits that were purchased in June then the owner will have to purchase the Water and Sewer portion of it at a later date.

Alderman Austin said we won't be able to collect Impact Fees for everything that we put in June.

Troy Galloway, City of Bentonville Planner, said we collect the Fire Impact Fee when the building permit is issued, in rational as soon as there is a structure on that particular lot we as a city have a responsibility to protect it from fire and other hazards. We collect the Water and Capacity Fees at such time just prior to this a Certificate of Occupancy, that's essentially the same time that a permanent connection is made to those utilities to provide service to that dwelling or that commercial structure.

Alderman Davis said but you all are waiving those for anything that began prior to July 1st.

Mr. Galloway said anything that was initiated; anything that obtained a permit prior to July 1st is exempt from the fee structure. Anything that was issued a permit after July 1st is subject to those fees.

Mayor Coody asked if they based it on water meter taps, water meter size.

Mr. Galloway said yes, that is correct. We had a sliding scale in terms of a typical 5/8 meter services a standard residential dwelling so we had a fee for that and it should go up in size to ½ inch or ¾ inch full inch meter. The fees were increased as a result of that.

Alderman Davis asked if they did that on residential and commercial.

Mr. Galloway said that was correct.

Alderman Marr said on the permits that you issued, did you exempt any areas, boundaries of your city?

Mr. Galloway said yes sir we did. We had a fairly significant portion of the downtown that extends from downtown Bentonville southward to Hwy 102, it's about 5 or 6 blocks wide and probably extends 15 to 20 city blocks in length to the south that we exempted all together from any of the Impact or Capacity Fees so we called that a Downtown Redevelopment District. It is an area of the City that is substantially blighted and in need of redevelopment. We viewed this as an opportunity to encourage some reinvestment in that area to give the builders and developers a break in that regard. It is also an area of where essentially all the services have already been provided. We have adequate water and wastewater facilities in place to handle the redevelopment of that area as that has already been taken into account at the Wastewater Plant in the water transmission lines. It's also very close to the main fire station down town so we felt like the decision we made there was very well founded in what's going on in the City and we would certainly like to see that area redeveloped.

Alderman Marr asked if they had any exemption for affordable housing.

Mr. Galloway said they do not have a specific exemption; they have a waiver request process whereby somebody that intends to build an affordable housing can petition the City Council. We were advised that any time that the waiver was granted that the City actually needed to pay those various funds, so in a sense that somebody petitioned the City for an affordable type housing project they would go in front of the City Council if it was approved, the City would then out of their own moneys pay those various utility funds, those fees that would have been associated with that project.

Alderman Marr asked how did you actually set the qualifications for what is considered affordable housing.

Mr. Galloway said that essentially what we have done if it is something that qualifies for Federal or State aid where by those funds are directed specifically at affordable housing whether be low to moderate income or elderly affordable housing, then that's something that would qualify and typically that type of project would be associated with a significant amount of Federal or State Aid.

Alderman Marr asked the Mayor and Alderman of Bentonville while during the process of considering it, how were they legally advised about Fire Impact Fees.

Alderman Austin said that the Lichner & Associates brought the issue to us, we asked them to study it, we paid them to do it and their final proposal was one that has been tested in court. We decided to go with one that has already been tested and won.

Alderman Marr asked if this was in Arkansas.

Alderman Austin said that they were pretty much the first in Arkansas. It is new here and it is taking a sales jump but I think it's done well.

Alderman Marr asked if they roughly knew how many dollars since they implemented it has it raised for the City.

Mr. Galloway said that just to give you an idea with regard to the Fire Fee to date, The City of Bentonville has collected $205,000 for the Fire Fee and we have collected nearly $25,000 in Wastewater Fees and about $22,000 for the Water Fee, but again that is going to be reflective of very few actual certificates of occupancy that have been issued on the permits that would've required impact fee payments.

Alderman Thiel asked if Bentonville receive CDBG funding.

Mr. Galloway said they do not receive Community Development Block Grant Funds.

Alderman Thiel asked if they have a designated redevelopment area.

Mr. Galloway said it was designated as such about five years ago when we amended our land use plan and at that time that redevelopment district was identified as an area that was blighted and potentially could benefit from some incentive such as this.

Alderman Thiel said that the City of Fayetteville does not have a designated area other than our CDGB target area.

Mayor Coody said that the Arkansas Municipal League, I know there is some State Legislation, Senator Bisby's Legislation to basically regulate impact fees in the state of Arkansas. The Municipal League unanimously supported or opposed this particular Legislation because they thought there were too many poison pills buried in it. The second Resolution was the Municipal League will support Legislation that clarifies and codifies Impact Fees that will be more supportive of the municipalities perspective and make it to where we can have things like Streets and Fire Impact Fees and do it in such a way that cities won't be encouraged to not do it as the present legislation probably do. Is that roughly right.

Alderman Marr said being a sister city, if you were going to give a piece of advice to a city who is considering Impact Fees either things would you change having implemented it or things that you might look at differently, what would those be.

The City of Bentonville Mayor said we feel good about it and if you need to call us for anything, we'll be happy to visit with you about anything.

Alderman Marr asked if they could give them the general area of where Impact Fees are not being implemented; the geographic area because you said you already had utilities and such there.

Mr. Galloway said it is an area that involves the central core of the city and it includes the downtown square area and a couple of blocks preferal to that and it extends in a linear shape probably 5 or 6 blocks wide running south all the way to Highway 102 and that's probably anywhere from 15 to 20 City blocks in length.

Alderman Marr said so you are charging Wal-Mart Head Quarters Impact Fees.

Mr. Galloway said that if they were to add on to their Corporate Head Quarters it would fall out of that area and they would indeed have to pay the fees.

Alderman Santos said that if they wanted to build in that area that is what you're trying to achieve is a redevelopment of an invited area.

Mr. Galloway said that prior to July 1st the City issued nearly 400 Single Family Building Permits, 270 of those were issued in the month of June and that was in direct response to the July 1st deadline. Since July 1st we've issued nearly 200 Single Family Building Permits and the vast majority of those are subject to all of the Impact and Capacity Fees so I don't think the interest in building in Bentonville has eroded as a result of the Council taking this action. I don't know that that effect would be the same in Fayetteville, but I know one thing for certain that Fayetteville, Rogers, Springdale, and Bentonville all are in the sixth fastest growing metropolitan statistical area in the nation. There are jobs here, there are good schools, there is good quality of life and those things draw people more than Impact Fees are going to run them away.

Mayor Coody said I know that Conway is looking at them too right now. They would be the third city in consideration. Do you know where they are in the works?

Mr. Galloway said he actually had the discussions in front of their Planning Commission and City Council last spring sometime. There were some questions in regard to the study that had been conducted at that time and they placed it on a table and I don't know that they have entertained it since that time. They do continue to discuss it, at least informally.

Mayor Coody thanked them for coming.

Mayor Coody said we are going to go back to the budget meetings right now and before us we have an amendment to the budget and a second to cut the funding for public television by roughly 50%.

Alderman Bechard said he wanted to comment on something Alderman Thiel said. If I remember she said that we do things like the skate park and such that not everyone wants to do, I'm just going to read real quickly the paragraph out of the 2001 Fayetteville Citizens Survey. What it says is Citizens were given a list of traditional city services and outside service agencies and were asked to rank them in priority order. The respondents were asked to rank the highest priority for #1 and the lowest priority with #14. The overall weight of the average ranking of all the services as listed below. Public Access Cable, Community Access Television, was a 10.88 now that was #12 out of #14 in priority, #13 are going away, First Night of Fayetteville, they are going to go fund themselves. So let me be clear on what I just said, it's not that First Night is going to go away, the tax payers funding First Night in 2003 is going away. They saw what the citizens of Fayetteville had said. Arkansas Air Museum is #14 and that is not within the General Fund, so the last item left in the General Fund is Public Access Television and for perspective to Alderman Thiel's point leisure and recreational services, parks, trees and landscaping government access was a 6.73. Again, Public Access Television was a 10.88. Parks and Recreational additional personnel to enhance the facilities was 6.37 and this a 10.88. That's why I bring it up, I agree. A couple of things I found interesting, Fayetteville Boys and Girls Club, a lot of people are not going to use Fayetteville Boys and Girls Club yet it ranked a 5.95, twice as good as Public Access Television. Also the Community Adult Center, 7.77, Public Access 10.88. It's all about priorities, what the citizens want to pay for and the fact that adding Franchise Fees, ultimately what we're saying is that the citizens of Fayetteville would rather raise their cost, Franchise Fees, and taxes to pay for Public Access Television. I think what we're hearing from the citizens is that's not what they're interested in doing and that's why I bring this amendment.

Alderman Thiel said she did not mention the Franchise Fees, she mentioned Business Fees and our General Construction Fees, I may have said Franchise Fees, that would be another thing but there are some things we are considering that would not be a direct effect on citizens.

Alderman Young said what your proposal is for Public Access Television that's the $69,000 line item is that correct.

Alderman Bechard said that is correct.

Alderman Young said if my memory serves me correct, I think we are running a deficit of $2.8 million. When you are talking about setting priorities, that's exactly what this council needs to do and this $69,000 item doesn't cut that $2.8 million very much. This Council has got to get serious about cutting the budget, otherwise forget it. Now on those Franchise Fees I would oppose to them when they were going to be applied to all kind of other utilities. I voted for those Franchise Fees because they only applied to Water and Sewer and they were a transfer of money and they did not increase taxes to the rate payers. When I said that I was not in favor of raising rates to anybody as long as the Council is not willing to cut the budget, but right now I have not seen any proposal to cut the budget. The Mayor has proposed $400,000 reduction. That doesn't come very close to my proposal of $1.2 million.

Gary Lowery, a citizen, said one thing you have to look at when implementing your Budget is we haven't really hired a lot of people in the last couple of years. We've lost a lot of people to retirement, people leaving the City of Fayetteville, but we still have these positions there that need to be filled and we have grown. So now we aren't providing the citizens with the quality of service that Fayetteville is capable of doing.

Alderman Bechard said that the reason he is looking to cut cost is so we can fund other things. It's not about cutting cost just to cut cost. He said that he is trying to find ways to cut cost here and there and find more money so future City Council's can hire those people that we need as we continue to grow.

Mr. Lowery said we all have had to cut at home so I think it's time the City needs to look at cutting itself at home.

Kathryn Shearles, involved with Public Access since 1982, the general manager of Fayetteville Open Channel, and also helped form Access for Fayetteville, stated that if Public Access is cut, that's the end of Public Access. Another reason she feels that you would not want to do that is the Government Channel would be under a lot of pressure if there was no Public Access Channel. She stated that she liked the separate channels. The Government can control what goes on Government Access, where as nobody really can legally control what goes on Public Access.

Mayor Coody clarified that the Government Channel is not on open for discussion, and there is no talk about cutting that.

Susan Cromwell, Chair of the City's Telecommunications Board, said it was premature to cut the Budget tonight when in fact you haven't heard from your City Boards recommendation on how to handle this particular issue. The Telecommunications Board would make certain that a contract that would make the Public Access Television provider who is chosen accountable, the performance criteria and standards are all built into this new process that we defined. I think that it will result in a good Public Access Television provider and I hope that you will fund the Budget.

Melissa Johnson, a citizen, said she supports Public Access Television and is against cutting their funds.

George Weiss, President of CAT Board, said that on the 2001 Citizen Survey on page 5 under Over All Service, under Public TV, 84% of the Public suggested that at least it was fair to excellent. Only 16% said it was poor. That means for every person that say's it's poor, there are 5 people who say its okay. This is a service that the City has provided for 22 years and you are now talking about cutting it after 6 months time. I urge you to reconsider that and fund it for the full year.

Michael Stillwell, Multi Grain Media, said that they are a non profit organization that helps other non profits get their word out and help them find money. Public Access is one of the places that they can put their stuff on the air. Public Access is very important for the community. When it comes election time, you guys use it. It's very important and we need to keep it alive. We have to find a way to fund this.

Mr. Roberts, President of an independent producers group, Shannon Cain, involved with Community Access for five years, Jane Tree, President of the Fayetteville Lions Club, Kendra Fury, a citizen, Mosha Newmark, a CAT Board Member, Ann Bynum, a citizen, Jim Goodlander, involved with Public Access since 1990, Lou Weiss, a resident, Renaldo Hemphill, a member of the Board of Directors for Community Access Television, Jim Beamis, a citizen, and Betty Lou Landcaster, a citizen, were all against the amendment to stop funding for Public Access Television.

Mayor Coody said that he knew there would be some misinterpretation about my particular comments at the Agenda Session the other day. What I basically said then and I reiterate now is that you will not find a stronger supporter of Public Access Television and the Freedom of Speech and the freedom to express unpopular opinion than I. One of my dearest friends in the world the other day, he and I had a visit, he had said through the years Public Access Television has survived through all these trials and tribulations. My response was; yes, but it has just survived. I want to see it flourish. I would like to see us spend not only $69,000, I'd like to see us double the amount of funding that we give this kind of Public Television stuff. The thing about it is we can't do that with the level of public support that it's generating right now. What I would like to challenge Public Access Television supporters and advocates to do is take this 10.88 and move it up to 4.00, raise the bar, bring in quality production, quality programming, do the very best job you can do. Don't settle for what you're doing now, challenge yourself to do a better job than you ever thought you could do and make it easier for us to say that this is a great asset to the community, we all need to be able to say that. That's my challenge to you. Let's make this thing really good.

Brenda Thiel said she would like to make a suggestion because you have pointed out some things some valid things. Mr. Bechard said he really wasn't referring to the content of Public Access but you are referring to that. I would make two suggestions and recommend that we keep the funding at the level it is now, but that either the Council or the Committee assigned by this Council through a review of any Public Access Service Providers performance at the end of each year. In the past it's been every five years. We are just now doing that after a five year period and I think that if we reviewed whatever Public Access Provider we contract with more frequently then I think we could maybe keep up on problems. The second thing I would like to suggest is that if we do pursue the contract with which ever Public Service Provider, the Selection Committee will make a recommendation Thursday night to the Telecommunications Board and then they will come back to that recommendation for the service provider to this Council. I would like to see that contract have a required percentage such as 2% of the providers' contract or their budget to be used for Community Outreach which I think this would encourage more citizens to become interested in using Public Access Television. I think that there needs to be a funding mechanism requiring whoever the provider is to do this outreach. I think that that in turn would help the public have better programming, and in that process they would find out more from the public what they want to see because I understand they have periods of time where they've scrolled the calendar, so I know there's time for more programming to be on there. I think there's ways that we can make this better and if we can look at the contract of provision and the contract requiring that, I would like to look at that and I guess I'll talk to the Telecommunications Board about that. I really would hate to see us eliminate the funding level we have right now which they've asked for more funding in the past this year because there was a turmoil about the provider. I think we ought to keep it at the level it is. I think it provides a very important service.

Alderman Bechard said that it's not about the programming; it came up over and over. It is all about priorities. Even if we increased the rating by 20% it would still be the second lowest. He also said we have to set priorities and we have fundamental issues with our current Budget and how we're going to get there by 2005.

Alderman Marr said that at the Budget Meeting he requested a copy of the contract just like we got on DDEP, and said what's it supposed to provide and I got from Marvin today the Quarterly Report of the last Quarter so I could take a look at the things and compare them to the points in the contract. The reason to do that is because I actually use this channel through my election and everybody that ran against me and with me knows that we all did so I certainly see value in it and in terms of programming I answer to that comment when someone asks me is it's no different than having the right to burn a flag in our country. It's something that while I might not like it, I'm going to fight to make sure it happens, and that we have the right to do that. I'm not against not funding it but I'm against funding it indefinitely without there being a thorough review. It's like having a 22 year business that you've never sat back and looked at it to see whether or not it should be organized any differently. There are four items in this contract; scheduling and teaching a video production, scheduling of programs on the Public Access, cable casting of programs, promoting the use of the Public Access Channel, then it goes on. Our cost is not $69,000 for any of us sitting up here looking at it. We provide a building. It says in it that we will be responsible for the payment of utilities, routine building and grounds maintenance, and maintenance to the structure. Our costs are more than $69,000, not only on this program, but on anything else we provide facility space on. He went on to say that there are multiple ways that it can be structured. For me we need to put together a Task Force just like we did for the Business and Technology Park that is made up of the producers group, people who run the station, average citizens, people from the City staff, and two Aldermen, that studies this and says how should it be structured and when we keep this how it's going to continue to be successful, funding sources that we can look at. My problem with this is not programming, it is not purely a Budget number, it's that it's broke and it might be fixed this quarter, but the concern I have with it is it's not stable, and it doesn't stay fixed. It seems that we have issues after issues that I would like to see corrected and whether that's structure related or lack of respect of how we treat our ordinance directed, to me those are the things we should look at the most and the only reason I would support reduced funding is to put a timeline on us evaluating that because if we fund it, we never force ourselves to go back and look at it and that's why I would support something less, not to get rid of it but to say let's organize this area for long term stability and success and that might look completely different than how it is today.

Alderman Thiel said that one reason why she was advocating a more frequent review. The Telecom Board is supposed to be what you just said, and we're really confusing a lot here because we're talking about the provider or the lack of abilities over the last year possibly. We're talking about two different things here, we're talking about Public Access or the ability of having it and I understand what your saying, maybe it doesn't need to be funded at that level, that's certainly something to think about and I think there definitely needs to be a review process more frequently than we've done, I think that's been a real mistake, and I still think the idea of possibly percentage being required that they actually use their Budget. They do generate other income and I think there will be more discussion at the Telecommunication Board and more reasons why there will be more changes. I being on that Selection Committee and looking at this very closely for the last two months feel like that we really need to continue this, but keep a much closer eye on what non profit is doing, how they're doing it, and whether or not we need to look at another one, not that we need to remove the funding for Public Access, and that's really the discussion right now.

Alderman Bechard said I completely agree with your comments. I do think the Telecom Board is the place that a lot of this discussion should happen, but for some reason it's not effective, it's not working that way, whether that's us circumventing it, the participants circumventing it, but somehow it doesn't work. It's not that I'm advocating that it not be funded, the reason I think it's relevant to this discussion is to say we're going to do $69,000 when who knows maybe under a completely different format, different items, we may want that number to be higher as the Mayor talked about, or if we have another way to do it that we think is more effective or efficient, it might be something different than that. We need a committee to go back and look at this and say, we know we have it, we committed to having a PEG Center and we can't just do away with it, but we do need to have the most effective PEG Center for long term sustaining liability that we can. Are we organized to do that and do our ordinances reinforce that.

Alderman Reynolds said he would like to see everyone get on the same page at the Public Access Television Center and if we fund you through June I hope and pray that you will do that and in June we can look at it and you guys will have it straightened up and we can go forward and that's where I am on this issue.

Alderman Young said the reason that what Don Marr was talking about the problem with the Telecommunications Board in my opinion is because the Council and Administration has ignored the Telecommunications Board. They have asked to be a participant in various different things and they have been ignored, that's the fundamental problem.

Alderman Jordan said I've heard all the problems with Public Access Television and I don't agree with all the programs that have been put on that station, but you know what, that's sort of the price of freedom isn't it. You may not agree with everything that's put on there, but everybody has the freedom to express that. I've spent most of my life fighting for the freedoms of people in the workplace and everywhere else and I think that when we can tolerate one another even though we come from different backgrounds and have different opinions, that's when you can sing that song the lad of the free and the home of the brave. I think that $69,000 is a small price to pay for freedom. I know that maybe the programs need to be looked into to but you know what, that's when the city needs to get with the Telecom Board and form a real partnership and straighten things out.

Mayor Coody asked if Alderman ? and Alderman Marr would be willing to be on the committee.

They both said they would be happy to.

Upon roll call the amendment failed 4-3-0. Alderman Thiel, Alderman Young, Alderman Santos, and Alderman Jordan voted no.

Mayor Coody asked Mr. Davis where we left off on the Budget 2003 discussion.

Mr. Davis said that he was answering questions.

Alderman Santos recommended cutting CAT and DDEP and most importantly I recommended cutting in half the Travel and Training, Publications and Dues, and Office Supplies. I want to endorse the Mayors proposal which is a more careful cut of those things among other things. I know that we're very wasteful with the office supplies. I would really like to see the City move to a more paperless operation, I'd like to see those computers that everyone has, be used. The most important thing that they do is to be used for communication. We really need to look towards doing more of the cutting down on office supplies, just everybody thinking more frugally about office supplies. As far as the Travel and Training and Publications and Dues, we might want to think about a change in the corporate culture here. I work for the state and we don't get this stuff paid for us. We have to keep up our own professional certifications. My proposal, which I'm abandoning now but I still want the future Council to think seriously about this is do we want to change that culture where we pay for everything for keeping everybody educated and up to date with all of their dues or do we at least have the higher level of employees pay their own, that's why I only proposed cutting it in half so there would still be plenty there for the lower level of employees to go to the conferences they need to go to and pass the tests they need for their various certifications. Once they've done that they should be at a higher pay level and they should be able to pay their own dues like I do and every State Employee does. The future Council needs to think seriously about whether you want to continue to pay for this extra benefit that the State doesn't think it needs to pay and can the City afford to if the State can.

Alderman Thiel said that she does want to address something that Mr. Lowery brought up that is a concern of hers. Some of our enterprise funds, our Street Fund for example, we get frustrated because we get a lot of complaints. Let me remind the public that really what we're looking at right now what we can deal with is the General Fund which has nothing to do with that, in other words if we save money here it would not go into the Street Fund, that's an enterprise fund.

Alderman Bechard asked if we could allocate money for instance if we had $200,000 left over in the General Fund could we allocate that to the Street Fund.

Mr. Davis said yes.

Alderman Thiel said we are not dealing with that in this Budget. This Budget is dealing with the Divisions that the General Fund funds by ordinance.

Mr. Davis said the City of Fayetteville has never transferred General Fund moneys to the Street Fund in the past 11 years. I don't believe they did in the preceding four to five years, from 1985 forward. It is possible for General Fund to transfer moneys to Street Fund it's just that Fayetteville has never done that.

Alderman Thiel said that she is not real sure why we don't have more discussion on some of our Enterprise Funds. Is there a reason we can't? We always seem to concentrate on the General Fund.

Mr. Davis said that the primary reason why the folks talk about the General Fund is that your Water and Sewer Fund, Solid Waste Fund, Airport Fund, Shop fund, and Street Fund, they are all dedicated revenue streams for that single purpose and that is the only purpose for that fund. You can talk about any and all of these funds.

Alderman Thiel said because if we have a concern with how that particular Enterprise Fund is operating, I have issues with several of the funds that I feel like they are spending, here we are cutting our advertising down to zero almost and I know that we have to legally advertise and I know there are other funds that are very carefree about how they spend their advertising funds. I just wonder when we will ever get to a point maybe these are things that we will hopefully discuss when we're in depth at our retreat. That's going to be more of a planning, hopefully we can have an earlier planning discussion this year and it just didn't happen because of the sales tax issue and various issues that we were dealing with. I think we do need to have early discussions before it gets to this stress level to where we don't have time to really look at these things.

Mayor Coody said I think we are looking at doing exactly that starting in March I think we're going to start with the retreat and start talking about these things and I just looked at the schedule and you've scheduled throughout next year starting very early on Budget talks. Is that correct?

Mr. Davis said we are talking about the 2004 Budgets on, but part of the Budget calendar for next year is in proposal state. I haven't had the opportunity to discuss it with the Mayor. We have the Strategic and Leadership Retreat scheduled for March 14, 2003 out of that retreat until April 15, 2003. Staff would begin to develop a 2004 Budget and have it to City Council by mid July or early August on that it would give about four months of discussion and you would have more opportunity to go into the specific other funds and delve into what they do, how they do it, and why they do it and also have sufficient time to go through General Fund. General Fund is the most complicated fund. Everything that does not have a specific item or funding source that we do in the City is funded in General Fund. That's why it's so complicated and that's why City Council has historically spent 85 to 90% of it's time on General Fund. The only time that City Council historically for Fayetteville has spent a great deal of time on the other funds is when the Solid Waste Fund needs a rate increase or the Water and Sewer Fund needs a bond issue or a rate increase. Those are when the City Council usually focuses in on those utility funds because they are more self sustaining and they need less care and maintenance if you will.

Alderman Davis said he doesn't see any of the boil points on each proposal to go back and look at increasing fees to participate in some of the Park programs and we talked about that the other day and you mentioned that that was something we were going to look at in 2004.

Mr. Davis said yes that User Fee Study will be developed and it can be developed in house or it can be contracted out and we need to do a cost analysis to see which is the most cost beneficial to the City. That would be coming to you we expect sometime in July or August time frame.

Alderman Davis said that's what we need to look at because too many of these programs right now have a pretty good size deficit and we need to look at other alternatives and see what can be done. Is there anything we need to look at?

Alderman Thiel said we need to look at the funding of Boys and Girls Club. We're spending an awful lot of money and that's something we need to look at. Is that a service we want to fund at that level?

Alderman Bechard said he can't support the Budget that's in front of us right now. One thing that I said last Tuesday night is that I was hoping to find a Budget that would be brought forward that expenses would be about 6.5% over Revenues. We'd be passing a Budget tonight and we'd be spending 9% more than what we are and what that does and if you guys look at the projections, it says that in 2004 which I will not be a part of so I'd be forwarding to the next Council a Budget telling them you got to keep your expenses exactly more than $80,000 of what your expenses were for this year. So don't mind the fact that the City of Fayetteville is still a growing City, you've got to hold your expenses $80,000 verses what its saying. Oh by the way you can't hire anybody for the year 2005 except for staff in the new Fire Station and only that way will you get to the red line number for 2005, so I can't in good conscience sit here tonight and support a Budget where we're over spending by 9% and putting the future Councils in a very difficult financial position.

Mayor Coody said in order to meet the rule of thumb for Governments you don't want to have too much money. If you're collecting too much tax money you're not spending it and that's a problem. So we want to spin down to the rule of thumb that we need which is going to be $3.8 million or something around that.

Mr. Davis said that in 2005 the target number is $3,000,877.

Mayor Coody said I've looked around at different cities, we've all looked at the numbers as far as what taxes we collect, what fees we charge, what all the income we have, compared to the number of services we offer and the quality of services we offer and the level of customer satisfaction we have. When people compare Fayetteville services to anybody else in this part of the world, we're at the top of the heat. If you compare the amount of income that we draw to pay for that, we're at the bottom of the heat. So I think we've been doing phenomenally well with the amount of money we have producing a very good product, so if we're going to balance this budget to where we're either going to have to increase something or decrease services and since most of our money goes to personnel that mean decreasing personnel and I don't see how on earth we can decrease personnel or decrease services as we continue to grow at 4% per year every year, especially when you look at the last three years. The City Government here has grown what percentage would you say Steve?

Mr. Davis said that from 1992 through 2002 General Government functions and the internal functions for General Fund grew 17%.

Mayor Coody said and the City grew 40%.

Mr. Davis said 40% because inflation took care of the other cost increase.

Mayor Coody said and so from the year 2001 and 2002 for these two years, how much has the Government grown?

Mr. Davis said I think we've reduced staff.

Mayor Coody said we've reduced but yet what has the population of Fayetteville done?

Mr. Davis said it's gone up about 3 to 3 ½ % per year, based on Building Permits.

Mayor Coody said it doesn't take a Rocket Scientist to see that we can't say cut our spending and raise expectations in our community because that is not going to work. We've got to find a way to bite the bullet one of these days and either cut services or personnel, which none of us want to do and the citizens don't want us to do, or show the courage Bentonville showed and find ways to try and make that difference up. If we're one of the lowest collection cities around here and still providing such good service, imagine what we could do with a little bit more money with the service we would continue to provide. If we're going to be going into taking care of all the City Solid

Waste and Commercial, we can't do it with the existing staff and Budget that we have right now and that will pay for itself as we get into the business. That's why Enterprise Funds pretty much are self sustaining in taking care of themselves because they bring in the money that they operate by. General Fund is a different ball of wax. The General Fund is funded by primarily sales tax and the bulk of that goes for personnel cost, Fire and Police parts are a majority of the General Fund. We can't continue to cut 5%, or 3% of our Budget and give the raises to the Police and Fire of $986,000, go to LOPFI too for Fire and Police, go into expanded services over here and make up individual salaries that need to be made up, something has got to give because we can't do both. We need to get our Fire, Police, and all of our employees up to where we need to be. We're going to have to look at a way to where we might have to come up to what may be our next lowest neighbor, is just to match the next lowest city would make a big difference for this community.

Alderman Reynolds said I've been waiting for an overtime report, did you get your report that you asked for at the Agenda Session.

Mayor Coody said he did not.

Alderman Reynolds said that I'd hope in January that we get into our different departments and we're going to rework some different departments I hope January or February we all get our heads together and we breakdown Streets and Water and Sewer and we start saving some money and we find good ways to spend our money in those departments. The other thing Brenda is Business License Fees. I think you're going to be surprised at the money that we're going to produce from that because it's going to make a lot of people honest on sales tax. You're going to be surprised at the money we're losing on sales tax just through theft of different businesses in this city that's hidden in the backs and fronts of all the houses. They don't give it to us but we don't have the right tools to do anything about it so we need to change some ordinances, we need to rework things in January and February and we need to get strict, we need to get our dollar so we can pay our employees and our people and build Fire Stations.

Mayor Coody said as a matter of fact the Legislature right now in this session is looking at some new laws that would free up the information sharing from the State Finance Department to the cities to where we can do a better job of policing the folks in our town. That would be a tool that we just don't have right now. When I look at a restaurant that has people pouring in and out all day everyday and they don't even show up on the HMR tax, that's a problem and that's not right, we need to fix that.

Mr. Davis said Alderman Reynolds; your overtime report is in the process of being developed now. It's going to be a multi year report that breaks the overtime usage by month over the last three years. The person that's doing that data collection is Kevin Springer who has also been tied up in getting the Budget numbers together.

Alderman Young said that the issue comes down to, the City Council is going to have the City live within the revenues coming in, and that's the bottom line. Then when you start looking at the pieces of paper and you rationalize about the year 2005, on paper you can make it look good you know if you don't hire any people, that looks good, but that's not going to happen. My problem is whether or not you're going to get realistic with the Budget. The main thing I would like to correct is something that was stated in at least one of the newspapers repeated it talked about how Councils at fault needs to get into the Budget process earlier, they're wrong. The Council is not the problem. Don Marr has been asking for a lot of this information shortly after he got onto the Council and we started wanting these numbers early on, I told him then you're dreaming, you're not going to get this until the last Agenda Session in November and that's exactly when we got this stuff. It's incumbent upon the Administration to get this stuff to the Council early on.

Mayor Coody said it's not like we're saying no we're going to hold off and give it to them at the last minute.

Alderman Young said the information is not provided to the Council until the Final Agenda Session in November. It's been that way for the eight years that I've been here and I predict that it will continue to be that way.

Alderman Thiel said she thinks that there should have some early policy discussions and direction. We can study the Budget we have before us now and say these are some things that we have concerns about and we will have more time to talk about it.

Mayor Coody asked Mr. Davis what would be a realistic yet early time to where Council could start getting this information and start combing through it.

Mr. Davis said August. If everything falls into place just right, you know that we get the policy decisions made by Council by April 15th then staff has adequate time to prepare their work papers so that they can think about what they are going to do for the next year in 2004. Staff preparing a Budget so that City Council can look at it in August means that by the time they actually go to spend the money, their numbers are at least four months old, and in some cases even six months old. Some of those projections might be off.

Mayor Coody thanked Mr. Davis and the Budget Division for their hard work.

Alderman Marr said that he did not want the Budget so early that we lose predictability. One of the things about business is when you start the process so early, by the time you get to January to start the year, you may already be off Budget. I think the point is that we know they're going to be the same; there are things that we can look at. I understand that being a really long process to look at the Budget when you do zero based Budget, but we don't do that, at least not how I define zero based Budgeting. I think that's something again that we should look at, going through department and putting them on a three year rotation because some businesses do it yearly in every department so if we can get them on a cycle of three years I think that will be a good thing. I originally came into this process and said well our range was 1.8 to 2.4 in my mind without Franchise Fees so I was looking at a Budget that came in that range without Franchise Fees being done and I think that this last round of cuts of $408,000 without there being an increase to the end user, I think we're there. We are building in assumptions. You know we have a Hay Plan Adjustment of $750,000 and $180,000 that is a good guestimate based on history of what we anticipated it to be, but it's not a fact. We have a Fire Station that is in here at $600,000. Lord I hope we finally get one under the Mayor. That's an assumption we know today, but there may be a lot of things that we don't know yet. I do think we have a good Budget.

Alderman Santos said that he was glad to see that we're within $1,000,008. I'm kind of in the goal where we talked about there is no job loss which is great. One thing that we do need to change that we did three or four years ago and that was where Steve if you recall you met with each Alderman ahead of time and you kind of went through the Budget and answered questions and concerns at that point in time which in reality you may have saved us loss of hours since we all just got together and began to brainstorm, whereas have we met separately and discussed those items with you it may have cut down the overall group participation which is good, but you could have answered some things in just a few minutes there. Things of that nature that we could have looked at like we have three or four years ago would probably help out. Then we have the large discussions and we're talking about the major concerns, it may help us be able to expedite and speed up that process.

Mayor Coody said we'll put that in the works for soon when we start doing the next Budget; early on we'll certainly do that.

Mr. Davis said what I'm hearing from City Council is that they want to get into more of the other funds in a more in depth manner, not just in November. Actually what we could start doing, if the City Council wants to, I could have those individual meetings early in the year and we could actually go through the 2003 Budget where Street Fund and all those other funds to address the concerns and questions.

Alderman Santos said but if we do that we'll probably need to have Greg in there when we talk about the Street Fund so we can tell him the questions we have with the concerns of the Department at this point in time and possibly what we feel like maybe there will be some changes to save dollars or to make the program better to where the citizens can see more work done.

Mr. Davis said I can also do a presentation at the Agenda Sessions from time to time for particular funds.

Mayor Coody said one more thing I want to bring up is the fact that what amazes me is that we have added LOPFI too and the pay raises for Fire and Police and other certain employees of the pay compression problem which adds up to 1 ½ million rough in round numbers.

Mr. Davis said that including the pay compression it's about $1.5 million in General Fund.

Mayor Coody said that you added that to our expenses ledger and we're still just about right on target with where we needed to be.

Mr. Davis said that some of that was paid for with the savings in our Group Benefit plan.

Mayor Coody said only $280,000 some thousand. So really about $1.25 million added into the expense side and we're still meeting the target that we set up before we had this expense so that's good work.

Alderman Santos said that's a good point. Each year we look at this Budget ahead of time and you never know what your Benefit Packages are going to be, your Work Comp could always increase and all the sudden blow out your Budget so I go back to what Don said, you got to go look at that zero budget and look at it every year and justify what the expenses are in each and every department.

Mayor Coody said I think that as a matter of fact we're starting with the Parks Department doing a zero based budgeting process.

Alderamn Jordan said I think this Council and the staff has done a wonderful job this year.

Alderman Reynolds said I just want to thank Steve and the Administration for going the extra mile.

Alderman Bechard said that he still struggles with the fact that our ultimate goal is that you can't go below the red line by 2005. I think if we educate the citizens of Fayetteville and what our tax base structure is versus those around us, ours is the lowest from what I understand. We've got that data and we've got the lowest taxes in the Northwest Arkansas area. Are there opportunities to look at that so that we can continue to fund our growth? That may be things we should do. I heard a lot of you talk about those opportunities, I still struggle that we didn't do that as a City Council, I think that was our responsibility and that we are leaving it to someone else to have to do that and I think that is a little unfortunate, but I'm glad that at least the folks are going to be here in the future talking about those opportunities.

Mayor Coody asked if the public had any comments on the Budget.

Alderman Santos moved that the resolution be passed. Alderman Jordan seconded. Upon roll call the resolution passed 6-2-0. Alderman Young and Alderman Bechard voted no.

Resolution 199-02 As Recorded In The Office Of The City Clerk.

Mayor Coody said now we will go back to our discussion on Impact Fees.

Mayor Coody said that one thing I forgot to mention on the Budget is that when the Governor was talking about a ⅝ cent sales tax increase. What the Municipal League is going to propose in lobby for is not to have a ⅝ cent sales tax increase which would just go to the State and hamstring the cities, basically to do away with some exemptions such as advertising like we've been talking about in other services to where we could leave the sales tax as it is, broaden the base of what sales tax has collected on and that way the City benefits from that as well.

Mayor Coody said we heard from Bentonville. Does anyone from the City Council have anything they would like to add to the conversation right now?

Alderman Thiel said I had proposed a couple of Amendments and I believe Kit has provided those changes. She asked Mr. Williams to explain what he has provided.

Mr. Williams said that what is actually before the Council right now is the one that you got in your packet that at the bottom it says as amended by the City Council on 11-25-02 and that is officially what is before you. The last meeting that we had I guess was the first meeting in December where we actually had an official meeting where we could talk about the Impact Fee Ordinance and there might have been some amendments then, but everything after that, I have made some suggested language following your comments and I have all of that put together in the most recent one that I handed out tonight. At the bottom of it says 12-16-02. If you'll notice on that one there is actually two page 4's. On the top of the first page 4 it says the original schedule 1990 Census Data and that shows the schedule as it originally read and has a sliding fee schedule. The other page 4 was a suggestion from Alderman Thiel using a single family average and the 2000 Census Data and if we use 2000 Census data, we cannot use a sliding scale for residential property if we use 2000 data because the study that our consultants made in order to come up with the different square foot values relied upon data gathered in 1990 and they don't have any current data for that out of 2000 so that they would not be able to use an updated figure if you wanted to use a sliding scale.

Mr. Conklin said that after the last working session where we looked at the amendments, I had a consultant look at the 2000 Census data with updating the schedule fees, since then I've been in contact with our consultant and questioned how the methodology worked with 1990 and 2000. From that, our consultant suggested that if the City Council keeps the sliding scale for Impact Fees for single family homes that we should use what was presented originally.

Alderman Thiel said she would really like to keep them together because the purpose of going away from the sliding scale eliminates what the original intent with the sliding scale was to provide some lower rates for affordable housing and if we go to the single rate for the residential then we need to incorporate the second part which is on page #5.

Alderman Thiel read page #5.

Alderman Thiel said there are two parts to my amendment.

Alderman Santos seconded.

Alderman Davis asked on the rate structure, you're wanting to go ahead and use the single family average and multi-family average and you're wanting to use the 2000 with the 1990 Census data.

Brenda Thiel said we just understood that we have to use the 2000 Census.

Tim Conklin said they updated the study with the 2000 data. In order to use the sliding scale, you have to use two different data sets, 1990 and 2000. I would recommend that we use the 2000 Census data since it's much more current than 1990 and it provides a better measure of persons per dwelling unit which is what we're trying to capture is the impact for water and waste water.

Alderman Davis said the only problem he had with that is when you look at the two studies you have one from the NWA Regional Planning Commission and you have one from Mr. Duncan and if I recall Mr. Duncan shows 50% apartments and 50% resident dwellings. The NWA Planning Commission has shown rates off the 2000 Census that showed that if 58% of the dwellings in Fayetteville were tenant occupied and 42% are owner occupied and what I had even had Paul Justice's name on it and he had done the research and given these figures out. I have a tendency to believe his figures rather than the ones that Duncan has provided. That is a concern because I'm not sure that this rate structure is going to be accurate or correct.

Mr. Conklin said we're looking at persons per unit based on dwelling type, not renter versus owner occupied. We have verified that it has the same data that Duncan's Associates is using.

Mr. Williams said there is a slightly increased danger legally in having a sliding scale rather than using the 2000 Census data.

Mayor Coody asked shall the amendment pass, upon roll call the motion carried unanimously.

Mayor Coody said we will now get back to the General Conversation of the Impact Fees.

Alderman Davis said that he would like to bring up a change on the refunds. The way the original one was written, basically its responsibility of the citizens to have to come forward and it was set up for ten years. I brought up last week to change this to a five year period and to make it to where the City had to notify that particular home owner whether those funds have been used or not.

Mayor Coody said one thing I would like to caution the Council on as far as the five year after the date number, that language is in the State Legislation and everyone at the Municipal League and this includes me feels like five years is over night when it comes to municipal planning. In order to do this, we would be refunding money more often than actually using it. I would think ten years would really give a chance to accumulate some money and apply it toward the plan.

Mr. Williams said both our Parks Plan which is an Impact Fee and our current ordinance where we collect money for a specific project has a five year limitation.

Mayor Coody said a park is easier to build than an expansion to a sewer system.

Alderman Santos said this first sentence says that if there is any money in the Impact Fee Fund that has not been spent or encumbered, that means that even though we haven't got that new Fire Station built, we're promising that the money is going to go toward that new Fire Station.

Mr. Williams said that if you have pledged that money to pay a debt, then I think that would not trigger an automatic refund, but as Alderman Davis said now the burden is on the City, we're not going to ask any property owners to ask for their money back, we will simply send it back to them with interest if we have not used it or encumbered it within that five years.

Alderman Bechard said that he also feels that five years is to short.

Mr. Davis said as the City brings contracts forward to do improvements that are expected to be partially funded with Impact Fees. When we bring the contract forward to City Council for approval, those moneys are encumbered at that moment. So if we bring the contract to you prior to the five year or the ten year run out of this time and the money stays with the project from the encumbered standpoint, we don't have a problem. We might be able to use our GIS system to tag a parcel number to an Impact Fee, but it is going to create some additional administrative work.

Mr. Williams said that for the record when you vote on this that you take a definition of encumbered as stated by our Administrative Services Director, so for the record, that's the definition of encumbered, so when you vote on that consider that the definition.

Alderman Thiel asked if the Administration Fees of collecting and sending this back, are these Administration Fees that pertain directly to the collection and is that going to be part of the Impact Fees or is this going to be the additional costs that we have to pay for through General Fund.

Mr. Davis said my understanding of the ordinance is that there is no Administration Fee built into the Impact Fee Ordinance right now so the answer to your question is that the increased cost that we're going to be called on to perform is going to be paid for from our General Revenue streams.

Alderman Santos said that when you look at your Administrative Fees that you may want to add that extra administrative cost into the price of the building permit if you raise the price of the building permit to reflect the amount of staff hours that go into processing the building permit or a large scale development.

Bill Burkhart, past President of the Home Builders Association, State Director, and National Director, said particularly on this one amendment, there is nobody else but the City that will know when a refund is due to a person. There is no way a citizen who has paid an Impact Fee will know that they need to request for it because it hasn't been spent. The Budget that you just had in front of you is so detailed that it is hard to understand on your side, there is no way that a citizen paying an Impact Fee can go through your enterprise funds and know that his funds have been spent on something. I think to be fair to any citizen, you're the one that needs to notify the citizens and send the money with out question. In five or ten years it should be based on your Capital Improvement Plan. There is no way you can hold their money for ten years even though you don't have it marked for anything. Your five year plan is completely funded so you're going out and saying I'm going to hold your money for ten years until we come up with something that we can buy and that's not a benefit for a fee, so I would limit it to a five year fee.

Jeff Erf, a citizen, said we do have a Sewage Treatment Plant on the west side of town that we're building and other improvements of pipes and that sort of thing. We know now how much of that can be paid for by Impact Fees.

Mr. Conklin said the whole Impact Fee Ordinance is based on paying for $42,500,000 for a treatment plant that will produce ten million gallons capacity per day. For the water it's looking at a buy in approach of what it's going to cost for transmission and storage. We know that the Capital Improvements because the improvements were identified to develop the fee and so the fees will go to pay for those Capital Improvements.

Greg Boettcher, Public Works Director, said those funds can be used to help retire the debt because it would go towards the Capital Improvements Project and also on the water side, those funds are earmarked for capacity improving transmission lines, not for replacing deteriorated lines. I think the key thing to the Impact Fees are that the money has to be earmarked for things that add capacity. I recall that it can be applied towards the Waste Water Plant as well.

Mr. Erf said that the point is it sounds like there are lots of Capital Improvements to be made and millions of dollars worth so it seems unlikely to me that you're going to be giving any of this money in the near future. There is a lot of talk about giving the money back, but it seems that it's going to be a while before that might be a problem.

Mayor Coody said this Impact Fee was reduced with the consideration of the sales tax that a person would pay so basically the Impact Fee rate gave back to the home owner for the amount of sales tax they would pay.

Alderman Marr said I would like the amendment to be two separate amendments.

Mayor Coody said so we're going to vote on 10 reducing it down to five year amendment first.

Alderman Marr said yes and the second being changing it upon application to the City to refund by the City. That's how I'm reading the two differences.

Alderman Marr said I would like to move to amend the amendment to make it ten instead of five. Alderman Thiel seconded.

Mayor Coody said shall the motion pass, upon roll call the amendment passed 5-4-0. Mayor Coody voted for the amendment. Alderman Reynolds, Alderman Thiel, Alderman Bechard, and Alderman Davis voted no.

Mr. Williams said you now have the other part of this proposed amendment by Alderman Davis that has now been amended to ten years.

Alderman Davis motioned to pass the amendment, Alderman Bechard seconded.

Mayor Coody asked shall the amendment pass. Upon roll call the amendment passed unanimously.

Mr. Williams said that I was asked to check and see that there could be know slipping through the cracks that we would put time of collection to include the issuance of the Building Permit as well as connection to either of the waste water or the water system, whichever one comes first. I prepared that language. Before that the issuance of the Building Permit only triggered it if there was no connection to either one of the other systems and that presented a potential loop hole that someone might be able to sneak through so I drafted this up.

Gary Lowery, a citizen, asked if the City was going to charge a Tap Fee and an Impact Fee for the sewer services.

Mr. Williams said an Impact Fee would not be charged and an Impact Fee would always be charged.

Mr. Lowery asked why an Impact Fee would not be charged because now they are impacting the sewer system and causing expansion on it because they're using it.

Alderman Santos said that the rational with an existing home that's on septic is that they have already made the investment. The investment in the infrastructure comes partially from the Impact Fee charged to the new residents because they don't have a history of paying the taxes. The people in this existing home have a history of paying the taxes and have already made that investment that the new resident hasn't made.

Alderman Young said the people from Bentonville talked about the Impact Fee being paid just before the Certificate of Occupancy so what we would be doing is having these developers pay the Impact Fee while they're under construction.

Mayor Coody asked how do we safeguard from somebody getting temporary water and then not coming back to get a certificate of occupancy.

Mr. Davis said that after a period of time if they have a construction meter and we go by and see that they are occupied, we give them notice and if they do not come by and get a Certificate of Occupancy we have a procedure to go out and pull their water meter.

Brenda Thiel said the Certificate of Occupancy is always paid by the developer or the buyer. The buyer would not have to pay a Certificate of Occupancy as a rule.

Mr. Conklin said on non residential it could be the person leasing space inside the building in the Occupancy Permit.

Alderman Thiel said one thing that troubles me about Impact Fees at the level they are charged is because if a buyer goes out to borrow the money to buy this house, if the impact fee has been put up here at the top where basically it's being passed down to him by the seller or developer, then he can bill that into his loan. What I really am concerned about is us getting down to a level where the person that buys that house who has depleted everything he has for a down payment and go out to get financing for that home and then he walks in and finds out he's going to have to come up with a thousand or so dollars which he does not have at that point and I would always rather see Impact Fees be at a level where they are passed down to that buyer so that can be built into his loan. That's why I want to make sure that if we go with this Certificate of Occupancy that the developer is always going to be responsible for that and you're telling us that's not necessarily true.

Mr. Conklin said he could not guarantee that, the earlier you can collect them the better chance you have of that cost being part of the home sale.

Mr. Williams said I think administratively it would be much easier for Tim and the people who have to keep track of this if you have it earlier in the system like we do with Park Fees which is our other Impact Fee. It is much more difficult to pull a water meter for people who are living in a house than to require the Impact Fee to be paid up front by the developer who is going to work it into the cost of the house.

Alderman Davis said could we change this to be when you have temporary water hook up or permanent. In most residential housing you're going to have temporary water at the job site some point into construction for brick work and concrete work so it is going to happen before the home is sold in most cases.

Alderman Bechard said I can get a building permit; I can't even put in piers or concrete foundation without a permit first, so if we make it based on a permit, we're charging them a fee, we're asking these builders to put more money up front before they're ever impacting anything. They may get a permit and not start for three months so we're not charging them for six-nine months before they even really make an impact. If we're going to be fair we've got to balance between what's easy for the City and what's fair to the people. I think fair is when you truly have an impact, that's when you pay the Impact Fees. Is it legal to get a Certificate of Occupancy, not have that and have someone move into a home? Is that legal to do that?

Mr. Conklin said the original ordinance talked about at the time of connection, so Certificate of Occupancy you can be connected to the system and not occupy the house and still be connected to the system and using water.

Alderman Santos moved to adopt this amendment. Alderman Thiel seconded.

A citizen spoke opposed to the Impact Fees.

A discussion followed.

Mayor Coody asked Mr. Conklin if we had a time limit on temporary meters.

Mr. Davis said if we don't have a Certificate of Occupancy, we go around and periodically and check construction meters to see if the building is occupied. I don't know if we have a time limit on temporary meters at this time.

Mr. Lowery asked if under new subdivision if there's a tap already there and all the new homes in that subdivision, no one has to pay a tap fee at the present time.

Mayor Coody said that is correct.

Alderman Bechard said that he wanted to support Alderman Marr's point and I know that this is harder, but I think it truly is the fair way. If we're all about being fair, truly making people pay for their impact for their waste and water, that impact begins when you go down to the City and you sign up for water and sewer, that's when it begins. I truly believe that's the fairest way.

A discussion followed.

Mayor Coody said shall the amendment pass. Upon roll call the amendment passed 5-3-0. Alderman Marr, Alderman Bechard, and Alderman Davis voted no.

Mr. Williams said that if you'll look at C-2 immediately below C-1, I developed this language because of what our City Planner mentioned to me. This is a specific provision grandfathering in those projects that already have a Building Permit issued with revise so that they would have to have their project completed within six months of the effective date of this ordinance so that someone could not continue the Building Permit and not be doing anything. So basically what this would say is that anybody that has their building project with the building permit issued prior to the time of our effective date of this ordinance which is about six months from now would be exempt, would not have to pay the Impact Fees, they would be grandfathered in under the old system, but they would have to finish their projects within six months to keep this exemption.

Alderman Santos motioned to adopt the amendment. Alderman Jordan seconded.

Mayor Coody said shall the amendment pass. Upon roll call the amendment passed unanimously.

Mayor Coody said now we are to the entire Impact Fee Ordinance in its entirety.

Mr. Williams said does anyone have any problems with changing the definition of new development.

Alderman Santos moved to change the definition of new development as shown in exhibit A. Alderman Jordan seconded.

Mayor Coody said shall the amendment pass. Upon roll call the motion passed unanimously.

Mayor Coody said now we are talking about the totality. Now we're talking about the Impact Fee.

Alderman Reynolds said I would like for it to read "Water, Wastewater, and Fire Service" like Bentonville has theirs.

Alderman Bechard said since all the discussion and calling all the other cities, I don't have an issue with impact fees as a potential revenue stream. I think that Impact Fees have done fairly and I think there is liability with impact fees so as I think about it in my own mind I put that into another tool that we have as a city to go create tax, to get revenue. We can increase sales tax, mileages, Franchise Fees, and now Impact Fees. The issue at hand to me it's not about Impact Fees for a moment, it's about creating another revenue stream in a world where we only have so many revenue streams that we can create. I really struggle with the fact that we did not challenge the legal side of this like I know it has been done in other places to charge University of Arkansas Impact Fees. The last thing I'll say is this is just another revenue stream, just another tax, and if we think it's such a great idea why don't we let the people vote on it and if they say great, great, it's their call.

Alderman Marr said I don't look at it as a new tax. The reality of it is that I believe we have to have a funding mechanism to help us keep pace and build infrastructure in our city.

A discussion followed.

Mayor Coody said the thing that I fall back on is that when we were going through this pitch to get the public to vote on ¾% sales tax, the thing that I consistently heard was why am I having to be charged to pay for new development. We'll support this but you guys need to pass an Impact Fee. I basically said if you guys will vote for this and support it then at least I'll support it.

Alderman Marr said I think we need to be careful about just making an assumption that all of that growth is going to go to those areas, obviously we're only the second location looking at this currently, Rogers doesn't have it and I don't see people flocking from Bentonville to Rogers. In fact they talked about the fact that their development is back up and that their levels are actually as high as they were in June. I think we have to be careful in speculating on what's going to happen.

Mr. Lowery suggested that we add a couple cents per gallon sales tax on gasoline to add to the City's ability.

Alderman Thiel said that what she was trying to say is that other cities are using our water and our sewer system and we are not going to be able to charge them, yet we are charging citizens of Fayetteville.

Mr. Erf said that those people that live in the outlining towns, they do shop in Fayetteville and they will be paying the sales tax and that will help pay for the improvements made to the treatment system. I encourage you to support the ordinance before you.

A citizen spoke against Impact Fees.

Alderman Jordan said I am concerned that we have not put it on Police, Fire and roads because that's what I hear all the time. I don't feel that its right that the Impact Fees are being charged inside the City Limits of Fayetteville and it's not being passed onto the outlining cities. The thing that I haven't got around is what I hear from most of the people that I talk to is that everything keeps going up and they feel like the City keeps growing and saying we're subsidizing the new growth that's coming into the City. Though this Impact Fee is not a perfect document, I'm going to support it and I'll fight those other battles later.

Mayor Coody said shall the ordinance pass. Upon roll call the ordinance passed 5-3-0. Alderman Reynolds, Alderman Bechard, and Alderman Davis voted no.

Ordinance 4447 As Recorded In The Office Of The City Clerk.

NEW BUSINESS:

WATER TANK SITE: A resolution approving the sale of 2.0 acres of the City's Gully Rd. Water Tank site (12.0 ac) as requested by Ozark Electric Cooperative for the appraised price of $70,000.00 including access to and from Gulley Road, plus payment for specific City costs associated with the preparation of said property to be sold.

Mayor Coody asked someone from Ozarks Electric to briefly explain this item.

Troy Scarbrough, Vice President of Engineering at Ozarks Electric, said the substation site that we're interested in is at Gulley Rd. We have two adjacent substations to the north and south that are reaching limits of their capacity and we basically, based on our Engineering Design have determined that we need to add a station in this area because all the load growth at Highway 45.

Mayor Coody said so basically you have abandoned the idea of the underground feeder going in.

Mr. Scarbrough said they have abandoned the idea of the underground transmission feeder because it adds about $100,000 plus to the cost and we feel like with the one single area on entry into the station we can minimize the esthetic effects.

Mitchell Johnson, President CEO of Ozarks Electric, said actually the esthetics of doing the transmission feeders underground would actually be worsened. The reason is that basically you would have to add five additional poles in the existing easement and with this proposal here you would actually only have to move a pole without adding a pole in the existing easement. It would not be a very good situation to do.

Mayor Coody said so it will still be a fifty foot wide easement.

Mr. Johnson said they would go with a thirty foot easement.

Mr. Scarbrough gave a picture presentation.

Alderman Bechard said can we go back to the slides, you said at 300' that there's 10DB. Do you have actual data from another plant where you're 500' away in actual date of what the DB's are at that level.

Robert Erickson with Ozarks Electric said that I just took some readings that were provided by the manufacturer for the transformer and I calculated the reading that should be at the distances and I also took a gage and went out and basically checked it from range of 64DB down to about 50 which was the limit of my gage. I compared the two curves and they pretty much lay straight out so I think it's very accurate representation. It also does not take into consideration any of the attenuation from the vegetation from around there. I think it would be a little bit less. If you get 500' away from the gate, you can't hear them. If you're at the gate of the station, you can hear the hum and that's basically where I got my readings.

Alderman Marr said you listed two substations in our material, have you actually done readings at those locations at these distances to see what the readings are.

Mr. Erickson said I have not taken the gage out there.

Alderman Marr so this is purely based off the manufactures specs.

Mr. Erickson said yes and I compared it to our Farmington Substation because that was an easy one for me to go to. It is another substation similar set up and I was using my gages out there because I thought there would be less traffic because the traffic would override my readings that we get about 70DB with just the car driving by.

Alderman Bechard asked if there was a chance that you could get those readings for us and the two current stations 500' away at various radiuses.

Mr. Erickson said I can bring you any readings that you would like on that. I can go out, take the gage, and put it out there. We'll have to chart the curve out because it will only go down to fifty decibels but it's a pretty standard equation, you can calculate how much the sound will dissipate over distance.

Alderman Marr said and fifty is an average office according to your material.

Mr. Erickson said yes.

Alderman Thiel asked Chief Hoyt if our sound meters were better than that.

Chief Hoyt said they could do that. You do run into ambient noise issues when you get out trying to take any type of noise reading. Just the wind blowing across the microphone causes you problems. I don't know what method they used when they measured or when they did their extrapolation to get down to what they're saying the level is, but I will tell you my studies on noise has told me that every time you increase the distance by double from where you're measuring, then your decibels drop 100% but as far as a meter goes, they only drop by three.

Chief Hoyt said so the question here is do we have meters and can we assist in something like that. We could go out and take a meter reading.

Alderman Thiel said we could do that I think it would be a very unbiased measurement. I'd feel very confident that we were using the best equipment around and I would also recommend that this be done, so if there is some way that we could get someone out there to test this maybe in the middle of the night.

Mayor Coody said these stations exist nearby here in town don't they. This is not an unusual unique situation.

Mr. Erickson said no sir.

Mayor Coody said is there another situation in close driving range that we would hear this if we stood there and listened to it.

Mr. Erickson said any one that you would drive by I would think.

Mayor Coody said then why don't we take a board tour and just listen to it and drive off.

Alderman Thiel said well that's okay, but if it's in the middle of the afternoon unless we go to one that has absolutely no traffic around it. I think if I were these people I would be concerned about this at 10:30 PM. I would be concerned about the sound at night.

Mayor Coody asked Rick if he would come back and bring this information.

Alderman Marr said I think that we should have a council tour.

Alderman Davis said it is my understanding that you are going to dig into the hills somewhere, is that correct.

Mr. Erickson said yes sir.

Alderman Davis said and that's going to cut off some of the height of the equipment so it won't be seen over the tree line is that correct.

Mr. Erickson said yes sir except for the lightning protection.

Alderman Davis asked if they were going to eventually have anything else sticking up above the tree line. As far as wiring you're telling us at this point in time you're going to have one trunk coming in that's above ground. How long do you see it before you'll have to have a second trunk or a third trunk or will that ever be a situation that we would have?

Mr. Scarbrough said basically the transmission line is the only thing that's designed for overhead and we will size that transmission line accordingly so that any future growth will not necessitate the edition of any transmission upgrades, so basically never.

Alderman Bechard said you talked about renderings that the overhead was better aesthetically than the under ground scenario and that you had pictures to show us of what we could anticipate it to look like. Do you have both scenarios or do you just have the overhead scenario.

Mr. Scarbrough said basically the renderings I have show more of the impact of the substation sight. I don't have any renderings that show the transmission line. If you'll bear with me I'll show those real quick and then we can back up and I can try to give you an idea of what the impact of the underground would've been like.

Mr. Scarbrough explained the items in the pictures.

Alderman Reynolds said so are we going to ask Rick to go out and check the Johnson Substation and the Harpfield Substation and when we go on tour we're going to look at those two.

Mayor Coody said now the problem Rick is going to have is that when he backs up 500' he'll be recording noises that likely aren't the Substation, but he'll be recording other ambient noises like wind or traffic. His readings are going to be tough to really decide what this thing really sounds like at 500' if at all.

Mr. Scarbrough said I don't think that will be a very accurate measure no matter what we do.

Alderman Reynolds said so they could meet us and take us out there on tour.

Mr. Scarbrough said yes.

Mr. Scarbrough said I went out and did an informal survey myself at our Fayetteville West Substation and I took a pace at a time and recorded the sound of the Substation. This is certainly no scientific, but when I got to the edge of the fence, you could barely hear the hum of the transformer at all, but keep in mind there's a lot of background noises on Highway 16. Would you like to hear that?

Mayor Coody said sure.

Mr. Scarbrough played the tape.

Alderman Young said I would like to ask you, you all mentioned that the second sight you were looking at on Highway 45 and you mentioned that you stopped. Could you elaborate a little what the problem was on that?

Mr. Scarbrough said we approached an individual about a purchase of their property, but basically after about four months of negotiations they terminated negotiations all together. Basically the only other option that we had at that point was to basically condemn or do condemnation proceedings with that property and Ozarks Electric is definitely not in the practice of doing that.

Mayor Coody said I know the question came about the East Side Sewer Plant. I know you took some pictures and did some looks out there, but I think you mentioned to me about the flood plain and all that had to hold back flood waters.

Mr. Scarbrough said basically the number one reason that we did not choose that sight is basically it's outside the growth area that we are considering for this Substation sight. You saw the 5,000', radius that we actually showed you graphically and basically it was outside of that. We thought there was some access issues as well and plus the flood plain issues as well. It's not a good idea to have any kind of water next to a Substation.

Ernie Jacks, citizen, said the property under discussion for this Substation is contiguous to the thirteen acres that I've owned for Forty Five Years. You have a letter which was sent to all the Council members and I'd like to say the details are our concerns, but the issue really that we feel strongly about is that this is a small area and we feel like we're being inundated with major utility installations. First we had the high voltage transmission lines, then you 750,000 gallon water tank, and now we're proposing a mega watt electric substation and we understand from some people here in the City that you have plans for two or three more area water tanks and one ground storage tank out there.

Mr. Boettcher said I wasn't here when the City started the project but we have the one tank, there is piping for a second elevated tank, and I think the sight layout anticipated that at some future unknown date in the City's life. As far as the ground storage, that would be a possible option to add ground storage at the sight, but those are the only structures that I'm aware of.

Mayor Coody said and there is no time frame as to when these will be built.

Mr. Boettcher said they are not currently in any plan that I'm aware of.

Mr. Jackson said I might note that although the City has planning jurisdiction in that area, that water tank is by no means conformed to your own zoning ordinance set back requirements. Which means that when the City exist as a non conforming use which doesn't sound like very good planning to me. We realize that the sale of this sight for the Substation is convenient to the Ozarks Electric people and it's an opportunity for the City to dispose of some surplus land and acquire some much needed cash, but the concentration of all these major utilities is really devastating to our property values out there. Land is expensive down there in that area. There are already a lot of large houses and others planned. I was disappointed that Ozarks Electric didn't want to talk about underground service. We realize there is nothing to restrain the City from doing whatever it wants out in the growth area.

Mayor Coody said when Ozarks came to talk to me about this I asked them to do the offset to where you couldn't see the Substation from the easement. We talked about narrowing the easement, we talked about the underground, we talked about everything that we could even talking with a gentleman to actually buy another acre to actually move the sight 100' farther away from everybody. We really have worked hard to really try and do the right thing for the neighbors out there to get to this point. What was originally supposed, I don't think anyone would have supported, but I think we've made so many modifications to the original plan. If the Substation is only 20' high and if it's cut into the ground and the trees are 30' tall out there, it will pretty much be hard to see it even in the winter time, so we're really trying to do everything we can to minimize the impact to where if this does pass and it does get built out there that it won't be nearly the impact that it would've been six weeks ago.

A discussion followed.

Dr. Gerald Ginger, resident near the proposed sight, spoke against the resolution.

Mayor Coody asked Mr. Mitchell to mark out where 500' would be so they could go to it and see what it sounds like when they go on the tour. If we can get right next to the Substation and then figure out where 500' is and we can go there and kind of estimate what it would be like, if you can do that for us I would appreciate it. What we might want to do is table this until the first meeting in January that way it would be the first item in Old Business and that will have given us a chance to actually go and see what's going on out there instead of going through this and then coming back and talking about it because I know this isn't going to be approved tonight.

A citizen said you have some maps now that show the water tower sight and the City sewer sight, on some of those there is a red line, that's a pretty close estimate of where the power line cuts through the city property one of the main issues when we originally met with the Ozark Electric about not locating at the sewer plant is because it was at the flood plain and as you can see there is a large slice of the City property that's on a hillside and it looks like to me that would be an excellent spot for an electric substation. That is not visible, it's down in a valley and the people here are concerned about their property values, I'm far enough away that I'm not concerned about my property value, I'm here because I think a lot of the citizens in this town who want to see our scenic vistas preserved and we are really going down hill on that slope. I hope there is an alternative here.

June Eckinsire said she would also like the Council to take note of the condition of the homes around the tank sights and the condition of the homes in this area. I visited the Substation in Johnson and it is surrounded by single story homes. Our area is a very nice neighborhood so I would like you to notice the surrounding area of the Substations.

Rebecca Ginger, lives next door to the sight, spoke against the resolution.

Alderman Davis motioned to table this to the next meeting on January 7, 2003. Alderman Lucas seconded. Upon Roll call the motion passed unanimously.

ADM 02-37.00: A resolution approving amendments to the Bill of Assurance submitted with Ordinance No. 4410, passed and approved by the City Council on August 20, 2002.

Jim Crouch, a representative of Mathias Properties, said it was before you back in August when you rezone this 21 acres to a rezoning classification called RMH6. When that was rezoned the developer with the suggestion of the Planning office gave you a Bill of Assurance and the Bill of Assurance in essence said there will be 126 units on this subdivision. At that time they were in the preliminary stages of development and they hadn't done the Technical Plat Review they had before the Planning Commission for that. When they finally went back to Planning Commission, they decided some things were going to have to change.

Mr. Crouch gave a PowerPoint presentation.

Mr. Crouch said we went to the Planning Commission and presented the preliminary plat, it was approved subject to your approving a change in the Bill of Assurance. Really the only change in the Bill of Assurance would be to change or remain 126 Units but the configuration of it has changed a bit. There was no opposition in fact there was some surrounding neighbors that were there to support it so I think the Bill of Assurance that has been amended has been approved by the City of Fayetteville, City Attorney staff and I will be glad to answer any questions.

Alderman Santos read a letter from Richard Mainor.

Alderman Santos moved to pass the resolution. Alderman Jordan seconded. Upon roll call the resolution passed unanimously.

Resolution 200-02 As Recorded In The Office Of The City Clerk.

RZN 02-39.00: An ordinance approving RZN 02-39.00 as submitted by Tim DeNoble on behalf of John Eldridge, III for property located at 210 N. East Ave. The property is zoned R-O, Residential Office and contains approximately 0.70 acres. The request is to rezone to C-3, Central Commercial.

Mr. Williams read the ordinance.

Alderman Davis said Mr. Eldridge called me this afternoon and he told me that what they're going to do at this particular location is put eight condominiums in and that will be similar to Campbell Belt, which the Campbell Belt Building is now completely occupied, they have sold those units up there and there appears to be a demand for condominiums downtown and that's what he plans on doing with this.

Alderman Davis moved to suspend the rules and go to the second reading. Alderman Jordan seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Mr. Williams said I should note that the Planning Commission passed this 9-0.

Alderman Davis moved to suspend the rules and go to the third and final reading. Alderman Jordan seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 4450 As Recorded In The Office Of The City Clerk.

RZN 02-40.00: An ordinance approving RZN 02-40.00 as submitted by Jerry Kelso of Crafton , Tull & Associates on behalf of David Slone for property located behind 3195 N. College and east of Plainview Ave. The property is zoned A-1, Agricultural, C-2, Thoroughfare Commercial and R-1, Low Density Residential and contains approximately 8.84 acres. The request is to rezone to RMF-18, Medium Density, and Multi-Family Residential.

Mr. Williams read the ordinance.

Alderman Davis moved to leave this on the first reading. Alderman Jordan seconded.

VA 02-15.00: An ordinance approving VA 02-15.00 as submitted by Ross Mallioux for property located at 2309 Golden Oaks Dr. The property is zoned R-1, Low Density Residential and contains approximately 0.30 acres. The request is to vacate part of the utility easement (75.7 sq. ft.)

Mr. Williams read the ordinance.

Alderman Davis moved to suspend the rules and go to the second reading. Alderman Jordan seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Alderman Davis moved to suspend the rules and go to the third and final reading. Alderman Jordan seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 4451 As Recorded In The Office Of The City Clerk.

COUNCIL ON AGING: An ordinance approving an agreement with the Council on Aging to provide public recreation for the citizens of Fayetteville and to waive competitive bidding for the payment to the Council on Aging in 2003 for the provision of public recreation.

Mr. Williams read the ordinance.

Alderman Santos moved to suspend the rules and go to the second reading. Alderman Jordan seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Alderman Davis moved to suspend the rules and go to the third and final reading. Alderman Thiel seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Alderman Marr said a question I've got is have we actually looked at these agreements and made sure that there were no contractual changes that we wanted made on specific performance measurements because it constantly comes up with groups that we out source services to and that's how I look at this. My only question is, should there be more specific parameters or is everyone comfortable with these generalities.

Mr. Williams said prior to last year, we had no such contracts, we just paid money. We now have contracts, but I will welcome any input that the staff wants to include on performance measures that you would like to see in any of these contracts.

Connie Edmonston, Parks and Recreation Superintendent, said $31,000 is what we provide for these people and that is to help with the recreational for our Senior Citizens and if they did not do that, of course we would have to pick it up. I don't know if we want them to detail exactly what activities that this $31,000 provides for. We do tell them that 75% of it must be promotional or developmental because this comes from our

Park Development, our HMR Fund. They do have quarterly reports that they send us and we get the quarterly newsletter that tells us all the people that are attending and the events that are going on and I think for $31,000 they do a magnificent job for us.

Alderman Thiel said isn't there something that the Parks Board also kind of looks at, I'm still getting mailings from them that resulted from being on the Parks Board I think.

Mr. Williams said I would suggest that you pass this tonight, but then if you want to get into more detail, we start examining that next year. We have had a thirty year relationship with them and I think we've been very well satisfied over the years.

Ms. Edmonston said I might say that next year when they do get the Senior Citizen Center completed that we might possibly need to relook at this at that point in time.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-1-0.

Ordinance 4452 As Recorded In The Office Of The City Clerk.

BOYS & GIRLS CLUB: An ordinance approving an agreement with the Fayetteville Boys and Girls Club to provide public recreation for the citizens of Fayetteville and to waive competitive bidding for the payment to the Fayetteville Boys and Girls Club in 2003 for the provision of public recreation.

Mr. Williams read the ordinance.

Alderman Davis moved to suspend the rules and go to the second reading. Alderman Santos seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Alderman Thiel said I would like to say something about this contract because it's still referred to as the Fayetteville Youth Center Inc.

Mr. Williams said they really have both names. They do business under the Fayetteville Boys and Girls Club Inc., but they're also the Fayetteville Youth Center Inc.

Alderman Young asked what this applies to.

Mr. Williams explained what it applied to.

Ms. Edmonston said this is the same as the last one. The 75% must be promotional and developmental; we have more or less on this one outlined which activities we are responsible for. They have a Parks and Recreation actually provides the outdoor recreation whereas the Boys and Girls Club do the indoor recreation events except for their football program, but I do believe with the new Boys and Girls Club opening up next year that possibly we really need to go through this agreement again and get a little bit more precise at that point.

Alderman Thiel said besides this funding here what other funding do we provide the Boys and Girls Club.

Ms. Edmonston said at this point and time, because of the bus service, they're not providing anymore bus services and that's all going to be weeded out later on.

Mr. Williams said we have provided building help in building the road and things like that.

Alderman Thiel said I guess my question is about the bus service and I think we need to understand a little better because there was so much promotion about the Boys and Girls Club being located that far out of town, but that there would be transportation and that's not being provided now.

Eric Schultz, Boys and Girls Club representative said my understanding is there are no transportation funds in this and in the past the City has provided transportation. Our board and Hugh Earnest are having discussion regarding transportation for the future. I've had discussions with Ozark Regional Transit, Razorback Transit, and Fayetteville School Systems to see what opportunities there are for us in the future because that is a big issue for us when we move out to the west side of town. My understanding also is that the City will help, and will provide some transportation.

Alderman Reynolds said it is my understanding that we were going to turn our buses over to the Boys and Girls Club, have we not done that.

Mr. Schultz said my understanding is that's still under discussion.

Mayor Coody said obviously we all have some questions on this so let's leave this contract on this reading and get this hammered out.

Mr. Schultz said one thing I would like you all to consider is this contract and the negotiations that you're dealing with tonight deal with our operations. It doesn't necessarily deal with our transportation so in my opinion you could approve this since transportation could be a discussion that kicks on for a couple months because it involves a lot of different flares. I don't know where transportation is at I know it's still in the works and I hate for our funding to be held up based on transportation.

Ms. Edmonston said actually it says it is understood the City's annual purchases service will be negotiated on a yearly base if or see shall provide liability insurance for buses and vans provided by the City of Fayetteville, so if we're not providing them at that time they don't have to have the insurance. If we do hold up this agreement tonight then the Youth

Center doesn't get their first payment in January and I don't know what that would do to their operations, but I would hate to hinder the services that they are providing for our City.

Mayor Coody said I bet when Hugh gets back to work we'll be able to have a meeting and get straightened out on this because I'm sure he has been in the middle of it.

Mr. Williams said before we pass it, I think we need to formalize the understanding to Alderman Reynolds that paragraph eight where it says that Fayetteville Youth Center shall provide liability insurance for buses and vans provided by the City of Fayetteville does not place any duty on the City of Fayetteville under this contract providing the buses and vans, that has to come by a separate contract and this does not with the understating before they vote on it, this does not obligate the City to provide any sort of transportation services by buses or vans to the Youth Center.

Mr. Schultz said my only question is we are currently using City transportation right now. I would like to continue using that until the transportation issue is handled.

Mr. Williams said I am not saying that you can not do that, I'm just saying that I want you to understand from the comments of the Alderman that this contract for next year does not require the City to provide buses or vans for your use.

Alderman Young said does this apply to the new Boys and Girls Club out there or just to the existing one.

Mr. Williams said we are making an agreement with this corporation and whatever that corporation has to be operating out of.

Alderman Davis moved to suspend the rules and got to the third and final reading. Alderman Thiel seconded. Upon roll call the ordinance passed 7-1-0. Alderman Marr voted no.

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-1-0. Alderman Marr voted no.

Ordinance 4453 As Recorded In The Office Of The City Clerk.

FIRST NIGHT: Discussion of a resolution to approve funding for First Night 2002.

Alderman Jordan motioned to approve the resolution. Alderman Bechard seconded.

Alderman Thiel asked where the money was coming from.

Mr. Davis said we had some money budgeted in the miscellaneous programming contract services that were not used for 2002.

Upon roll call the resolution passed.

Resolution 201-02 As Recorded In The Office Of The City Clerk.

TOWNSHIP BUILDERS #4 CHANGE ORDER: Dickson Street.

Brenda Thiel moved to suspend the rules and allow this to be placed on the Agenda. Alderman Marr seconded. Upon roll call the motion passed 6-2-0. Alderman Young and Alderman Jordan voted no.

Mr. Boettcher said very quickly I just want to update the Council I received a fax late yesterday and an update today from Township Builders. The Council approved change order #4 for the brick repairing the stone culvert or filling the stone culvert and drainage at Arkansas. You approved the dollar amount that was negotiated but refused at contract time. Township Builders has refused to accept the direction to perform additional work without additional time. When I communicated with them the Council's wishes I asked that they make a counter proposal or at least deny acceptance of change order #4 in writing. What they have counter proposaled is basically to install stamped concrete in the intersections instead of the brick. The brick selection that was reformed is now concrete color so stamped concrete would provide the same appearance going to stamped concrete would save us $45,000 and would reduce the completion time by, they wanted 60 days for that, they reduced they're request to 25 days, but the key issues and the reason I brought it up before the Council is I have received a response from them. The work down by the Brew Pub that was part of Change Order #4 cannot be performed until we get this authorized and so they are somewhat held up there and that's why I believe that work has not been performed. Where we're at is there is a cost saving option before us to go to stamped concrete which would be reinforced, I think would be a little more durable than the brick. We would offer the same colors and it would save us some money. If the Council wants to think about this, we can put it on hold until January and that work won't proceed, but I felt that since I received it you needed to be aware of it.

Alderman Young said I think we need to put it on hold.

Alderman Thiel said we talked about the stamped concrete whenever this was discussed and there were all kind of objections to it. It wasn't as durable, it wasn't as attractive, I'll look at the tape to see all the response to it but, has DDEP approved this.

Mr. Boettcher said Bootsie Ackerman was at a progress meeting when this was discussed as an option, obviously they prefer to see the original appearance, but they understand the budget constraints that we're laboring under. I did contact Atkins Benham, asked them the same thing because of the esthetic issues on the project and they had basically the same response. Back dating when I first became involved in this project or before we released it for bids and knew we were going to have a tight budget, I asked Atkins Benham to evaluate stamped concrete as a substitute and they came back that there wouldn't be appreciable cost savings. What they are indicating is that they were assuming it would be tinted concrete and now that it could be regular concrete the cost savings is there. One thing that the Council could consider would be to approve back filling the stone arch culvert which was one item of the Change Order and to approve the drainage culverts at Arkansas Avenue which was another element which would allow them to continue work where they're at and we can debate this issue further. They can't proceed with the work until we have a valid Change Order and they asked for 21 days for the Arkansas drainage culverts and drop inlets and 21 days for back filling the stone arch.

Mayor Coody said this is basically work that we have asked them to do that is above and beyond the Contract.

Mr. Boettcher said these are increases to the contract scope for which additional time has been requested and some additional time is going to be necessary.

Mayor Coody asked what would the Council think about approving those two items so they can go ahead and keep working instead of stopping for another three weeks.

Alderman Young said this filling at the brew Pub, what do you mean by filling, just filling in with the base or something.

Mr. Boettcher said what I understand, this was one of the elements of the Change Order #4 that came to the Council before and that stone arch was planned, Atkins Benham I believe, designed that to stay in place and build a new sidewalk over the top of it when they started installing the storm sewer. It began caving in and they realized it was not in very good shape so now what this involves is taking and breaking that down, installing a storm sewer through it, I think an 18 or 24" culvert and back filling it so we can build the sidewalk on top of that section.

Alderman Young said so you're not filling it in you're putting in some storm drainage.

Mr. Boettcher said yes a small storm drain to carry the water that still comes through there so that was a cost of $22, 382.50 that required 21 days of contract time.

Alderman Young said 21 days to do what.

Mr. Boettcher said essentially they will go in, remove the indicate that they are going to have to do some hand removal there because it's close to the buildings, they need to take it down carefully, they can't just demolish it for risk of damaging some of those older buildings that are there, install that and compact the gravel fill and bring it back up and then put the sidewalk on top of it.

Alderman Young said it don't take 21 days to install a storm drain.

Alderman Reynolds said Cyrus; you don't understand the problem they've got down there. The only thing that's holding that sidewalk up is a 2x4.

Alderman Young said I understand it fully and I understand also how long it takes to put in storm drainage especially when it's already excavated.

Alderman Jordan asked how big is the storm drain.

Alderman Reynolds said 6X6.

Mayor Coody said I guess we could wait three weeks and determine three weeks from now if we're going to give them three weeks extra time or not.

Mr. Boettcher said I apologize for bringing it forth, but I received it, it was a denial of what I was told to communicate to them and I felt like the Council needed to know that we had a response and we can certainly wait.

Alderman Jordan said how thick is the walls.

Mr. Boettcher said it's just a hand laid stone arch is what I understand that's down through there. It's one of the old style culverts that was laid up by hand and it's rock and now that we've exposed it, it's caving in because it's old and in poor condition so they will have to carefully remove it, install a culvert in the bottom where the hole is, then compact gravel back up and then put the new sidewalk there which is kind of in front of the Brew Pub and that area going east on Dickson before it goes underneath the buildings.

Alderman Reynolds said the sidewalk is just hanging in mid air in front of where that Barber Shop used to be and it's hooked to the front of that building, but there's nothing underneath that but the boxed culvert.

Mr. Williams said I think that one of the things that Greg is concerned about is that if we don't approve that part at this point in time that the contractor might say that he was not able to continue working in this whole area here until we make up our mind on what to do with that and allow certain number of days and they might use that against us at the end of the contract when we try to say you haven't finished on time.

Alderman Young said he has lots of other areas he can be working in.

Alderman Reynolds said well he's pretty well done in the 300 Block, he's up at Colliers so this is the last part of the 400 Block for him to complete that to go back up across the tracks and start on the north side across from George's.

Alderman Bechard said I realize I just made a mistake by voting to suspend the rules and put this on the Agenda. What resignated with me is I don't want to delay the project by three weeks but then what we're agreeing to is delaying the project by two months if we agree to this?

Mayor Coody asked how we were delaying it two months.

Alderman Bechard said because they want a 67 day time increase and it complicates it even more to think about changing materials, that's a big deal.

Mayor Coody said we can put that subject off all together and just concentrate on the extra work we've asked them to do which is tearing out and replacing the storm drain and not worrying about that stamped concrete until a later date. We can just do the two pieces, there are three pieces all together. We can take off the stamped concrete, go ahead and approve those other two parts that we've asked them to do above and beyond the call of duty, we've said we want you to do the work and here's the money but you just don't have the time to do it. Now we're going to go back and give them some time to do it because they're stopped dead in the water until we give them some time to do it is what it amounts to.

Alderman Bechard said can I make an amendment to remove the brick section.

Mr. Williams said the total amount that you would be authorizing then would be $38,257.50 and 42 days.

Alderman Bechard said I would like to make that amendment.

Alderman Marr seconded.

Alderman Young said this is on the time because we've already passed the money.

Mr. Williams said no because this is going to be a smaller amount.

Alderman Young said we've already passed the change orders correct.

Mr. Boettcher said yes we passed the Change Order with no contract time extension.

Alderman Young said so this is only extending the time.

Mayor Coody said yes.

Mr. Boettcher said just Items A and B would be Arkansas Avenue drainage addition and the aqueduct backfill edition.

Alderman Thiel said those are the same price.

Mr. Boettcher said yes the same price that we originally received from them.

Alderman Bechard moved to approve the resolution as amended with Section C deleted. Alderman Marr seconded. Upon roll call the amendment passed 5-3-1. Alderman Young, Alderman Santos, and Alderman Jordan voted no; Alderman Reynolds abstained, and Mayor Coody voted to pass the amendment.

Mayor Coody said okay, now for the resolution, and if we say no to this we're going to revisit this in three weeks and we're going to be right where they are tonight and it's going to slow them down through Christmas and everything else.

Alderman Young said what's the resolution?

Mayor Coody said the amendment just struck C from the resolution and now we're going to pass the resolution.

Alderman Bechard said I would like to question the extension I mean if you are abstaining from the vote, but you're participating in the discussion and participating in the vote to suspend the rules to put this item on the Agenda.

Alderman Reynolds said I have some property down in there and I decided I don't need to vote on this part of it.

Mr. Williams said for the record assuming, I don't think he had to abstain on the vote to suspend the rules, but assuming that he had abstained on the vote to suspend the rules would you vote to in fact suspend the rules Mayor.

Mayor Coody said yes.

Mr. Williams said we still have to vote on the resolution.

Upon roll call the resolution passed 5-3-1. Alderman Marr, Alderman Santos, and Alderman Jordan voted no; Alderman Reynolds abstained and Mayor Coody voted to pass the resolution.

Resolution 202-02 As Recorded In The Office Of The City Clerk.

Meeting Adjourned at 2:00 AM.

Tentative Agenda
For
City Council Meeting
August 5, 2003

A meeting of the Fayetteville City Council will be held on August 5, 2003 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Cody Hiland – Public Service Commission.

A. CONSENT:

1. **Approval Of The Minutes:** Approval of the July 8, 2003 meeting minutes.
   Approval of the December 17, 2003 meeting minutes.

2. **Marinoni Offer and Acceptance/Broyles Road:** A resolution approving an offer and acceptance contract between the City of Fayetteville and Paul Marinoni, Jr. and Suellen Mary Marinoni in an amount not to exceed $43,400.00 for the purchase of approximately seventy (70) feet of right-of-way for the extension of Broyles Road and to obtain permanent and temporary easements for the construction of sewer line to the new wastewater treatment plant; and approving a budget adjustment in the amount of $78,400.00 for same.

3. **Multi-Craft Contractors, Inc. Bid #03-42 Back-Up Generators:** A resolution awarding Bid #03-42 to Multi-Craft Contractors, Inc. in the amount of $103,885.00 to install back-up generators at each of the Fayetteville Fire Department's five facilities; and approving a project contingency in the amount of $10,389.00 for same.

4. **Arkansas Parks and Tourism Outdoor Recreation Grant/Lake Fayetteville Spillway Bridge Project:** A resolution authorizing the Fayetteville Parks and Recreation Division to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount up to $250,000.00 for the Lake Fayetteville Spillway Bridge Project.

B. OLD BUSINESS:

1. **Smoking in Certain Public Places:** An ordinance to amend §95.05 **Regulation Of Smoking In Certain Public Places** of the code of Fayetteville and to enact a replacement §95.05 **Regulation Of Smoking In Most Public Places And Places Of Employment** in order to remove exemptions for bars, pool halls, small restaurants, beauty salons, barber shops and designated smoking areas in enclosed public access areas in restaurants, theaters, roller rinks, bowling alleys, and retail stores, etc. ***This ordinance was left on the first reading at the July 15, 2003 City Council Meeting.***

C. NEW BUSINESS:

1. **Public Hearing Raze and Removal 226 North School Avenue:** A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by Timothy C. and Christine Klinger located at 226 N. School Avenue in the City of Fayetteville, Arkansas.

2. **Public Hearing Raze and Removal 323 N West Avenue:** A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by the Bank of Fayetteville, N.A. located at 323 N. West Avenue in the City of Fayetteville, Arkansas.

3. **USDA Forest Service Supplemental Lease Agreement No. 1**: A resolution authorizing the Mayor and the City Clerk to execute Amendment No. 1 to the lease agreement with the USDA Forest Service authorizing the City of Fayetteville to construct loading pads, approach ramps, and other civil works at the Fayetteville Municipal Airport associated with the air tanker operations base; and approving a budget adjustment recognizing the receipt of $1,200,000.00 as reimbursement for the City's expenditures.

4. **McClelland Consulting Engineers, Inc. Task Order No. 2**: A resolution approving Task Order No. 2 in the amount of $84,400.00 with McClelland Consulting Engineers for engineering, design, and construction oversight associated with the construction of the USDA Forest Service Tanker Base at the Fayetteville Municipal Airport; and approving a budget adjustment for the same amount.

5. **Police and Fire Pension LOPFI Agreement**: An ordinance electing coverage for eligible members of the Police Pension and Relief Fund and Firefighter Pension and Relief Fund under LOPFI and authorizing Mayor Coody to enter onto an agreement with LOPFI.

D. INFORMATIONAL:

1. **Council Tour: August 4, 2003**

Marinoni O & A
Broyles Road
A. 2. Page 1

STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
___ CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council Meeting of: ~~July 15, 2003~~ August 5, 2003

FROM:

Ron Petrie/Holly Jones	Community Planning & Engineering Services	Engineering
Name	Division	Department

ACTION REQUIRED: A Resolution allowing the Mayor to Purchase 70 feet of Right of way for the Extension of Broyles Road north of Persimmon Street across property owned by Paul Marinoni Jr. and Suellen Mary Marinoni, in the amount of $40,000.00, AND to obtain a 15-foot permanent easement, in the amount of $1700.00 and a 30-foot temporary construction easement, in the amount of $1700.00 for the future construction of sewer lines in connection with the new Wastewater Treatment Plant Project. Approval of a Budget Adjustment in the amount of $78,400.

COST TO CITY:

$43,400.00	$ -	Broyles Road Extension
Cost of this request	Category/Project Budget	Program Category / Project Name
5400-5700-5805-00	$ -	Water & Sewer Improvements
Account Number	Funds Used to Date	Program / Project Category Name
03026.1	$ -	Water & Sewer
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: ___ Budgeted Item X Budget Adjustment Attached

Budget Manager — Date 7-8-03

CONTRACT/GRANT/LEASE REVIEW:

Marsha Farthing, Accounting Manager — Date 7/8/03
Nancy Smith, Internal Auditor — Date 7/8/03
City Attorney — Date 7/9/03
Purchasing Manager — Date 7/9/03

STAFF RECOMMENDATION:

Division Head — Date 6-26-03
Department Director — Date 6-27-03
Finance & Internal Services Dir. — Date 7-9-03
Hugh Earnest, Chief Administrative Officer — Date 7-1-03
Dan Coody, Mayor — Date 7/10/03

Received in Mayor's Office 7/9/03 Date PH

Cross Reference:

Previous Ord/Res#: ___

Orig. Contract Date: ___

Orig. Contract Number: ___

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

7/14/03 TM

RESOLUTION NO. _____

A RESOLUTION APPROVING AN OFFER AND ACCEPTANCE CONTRACT BETWEEN THE CITY OF FAYETTEVILLE AND PAUL MARINONI, JR. AND SUELLEN MARY MARINONI IN AN AMOUNT NOT TO EXCEED FORTY-THREE THOUSAND FOUR HUNDRED DOLLARS ($43,400.00) FOR THE PURCHASE OF APPROXIMATELY SEVENTY (70) FEET OF RIGHT-OF-WAY FOR THE EXTENSION OF BROYLES ROAD AND TO OBTAIN PERMANENT AND TEMPORARY EASEMENTS FOR THE CONSTRUCTION OF SEWER LINES TO THE NEW WASTEWATER TREATMENT PLANT; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF SEVENTY-EIGHT THOUSAND FOUR HUNDRED DOLLARS ($78,400.00) FOR SAME.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves an Offer and Acceptance contract between the City of Fayetteville and Paul Marinoni, Jr. and Suellen Mary Marinoni in an amount not to exceed Forty-Three Thousand Four Hundred Dollars ($43,400.00) for the purchase of approximately seventy (70) feet of right-of-way for the extension of Broyles Road and to obtain permanent and temporary easements for the construction of sewer lines to the new Wastewater Treatment Plant. A copy of the contract is attached hereto marked Exhibit "A" and made a part hereof.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of Seventy-Eight Thousand Four Hundred Dollars ($78,400.00) for same.

PASSED AND APPROVED this 5th day of August, 2003.

APPROVED:

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
SONDRA SMITH, City Clerk

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Fayetteville City Council

THRU: Dan Coody, Mayor Dan Coody
Hugh Earnest, Chief Administrative Officer HE
Greg Boettcher, Water & Wastewater Director GB
Tim Conklin, Director of Community Planning & Engineering Services T.C.
Gary Coover, City Engineer GRC
Ron Petrie, Staff Engineer RP

FROM: Holly Jones, Land Agent hj

SUBJECT: Broyles Road Extension Right of Way & Easement Acquisition

DATE: July 3, 2003

Background:
The City of Fayetteville is planning the extension of Broyles Road north to Wedington Drive, pursuant to Resolution No. 22-03 (copy attached). The City surveyed 2.07 acres, owned by Paul Marinoni Jr. and Suellen Mary Marinoni, needed for right of way for this project (copy of survey attached). The City also obtained an appraisal on this 2.07 acre tract. Said appraisal valued the right of way area at $40,000 (copy of appraisal attached).

The City presented an Offer and Acceptance Contract to Mr. and Mrs. Marinoni based on the aforementioned appraisal and a copy is attached. Included in the offer, the City has requested a 15-foot Water/Sewer Easement be granted for the future sewer line construction, and in conjunction with the sewer line construction, a 30-foot temporary construction and grading easement has also been requested. We are paying Mr. and Mrs. Marinoni $1,700.00 each for both easements mentioned for a total sales price of $43,400.

The City will be providing a temporary barb-wire fence to be used during all phases of construction of the Broyles Road extension as well as the sewer improvements. At the end of construction of the future sewer improvements, a permanent fence will be placed on the West line of the 70-right of way of Broyles Road. It should be noted that this agreement will be made a part of both the road construction contract and the sewer improvement contract at the time they are bid.

Current Status:
Mr. and Mrs. Marinoni have accepted our offer of $43,400.00 for 2.07 acres of right of way for the extension of Broyles Road, for a 15-foot permanent water and sewer easement, and for a 30-foot temporary construction and grading easement. (Copy of signed Offer and Acceptance attached.)

Budget Adjustment:
A Budget Adjustment is requested in the amount of $78,400. $43,400 will be used for the purchase of the 2.07 acres and the two easements. The additional $35,000 is to cover the in-house engineering costs related to the acquisition of the land and any future in-house engineering work that will be done for the actual extension improvements. The $78,400 will be coming from the Wastewater Treatment Plant - Engineering capital project which is funded in the Water & Sewer Fund.

Recommendation:
Engineering staff respectfully requests that this purchase be approved, so that a closing may be set and preparations made for contracting the project.

Thank you

Marinoni O & A
Broyles Road
A. 2. Page 4

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department: Water & Wastewater	Date Requested	Adjustment Number
2003	Division: Water & Wastewater Director	8/5/2003	
	Program:		

Project or Item Requested:
$78,400 is needed in the Broyles Road Extension capital project.

Project or Item Deleted:
$78,400 from the Wastewater System Improvements - Engineering capital project.

Justification of this Increase:
The $43,400 of the funding is needed to purchase 2.07 acres of land near the location of the new Waste Water Treatment Plant which will be constructed in the future. The land will be used to extend Broyles Road north to Wedington Drive to be used as an access road to the new WWTP Plant. The remaining $35,000 is to cover associated in-house engineering expense and other expenses related to this project.

Justification of this Decrease:
There is sufficient funding remaining in this project to meet objectives.

Increase Budget (Decrease Revenue)

Account Name	Account Number				Amount	Project Number	
Land acquisition	5400	5700	5805	00	78,400	03026	1

Decrease Budget (Increase Revenue)

Account Name	Account Number				Amount	Project Number	
Professional services	5400	5700	5314	00	78,400	98047	1

Approval Signatures

	Date
Requested By: Kelly Jones	7/3/03
Budget Manager	7-8-03
Department Director	7-6-03
Finance & Internal Services Director	7-9-03
Mayor	

Budget Office Use Only

Type: A B C D E

	Initial	Date
Date of Approval		
Posted to General Ledger		
Posted to Project Accounting		
Entered in Category Log		

RESOLUTION NO. 22-03

A RESOLUTION TO EXPRESS THE CITY COUNCIL'S INTENT TO EXTEND BROYLES ROAD NORTH TO WEDINGTON DRIVE

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby expresses its intent to extend Broyles Road north to Wedington Drive to provide right-of-way for 48-inch sewer force mains and access to the site of the new wastewater plant.

PASSED and **APPROVED** this the 4th day of February, 2003.

APPROVED:

By: Dan Coody
DAN COODY, Mayor

ATTEST:

By: Sondra Smith
Sondra Smith, City Clerk

OFFER AND ACCEPTANCE CONTRACT

1. The **City of Fayetteville, Arkansas**, a municipal corporation, offers to buy, subject to the terms and conditions set forth herein, the following described property:

SEE ATTACHED EXHIBIT "A"
FOR PROPERTY DESCRIPTION

2. **Purchase Price**: Subject to the following conditions, the City of Fayetteville shall pay for the property at closing, **$40,000.00** for Tract "A" to be used as right of way of Broyles Road, **$1,700.00** for Tract "B" which is a 15-foot permanent Water/Sewer Easement, AND **$1,700.00** for Tract "C" which is a 30-foot Temporary Construction and Grading Easement for a total cash payment of **$43,400.00**.

3. **Contingent Earnest Money Deposit**: The City of Fayetteville will tender a check for **$ 800.00** to **Paul Marinoni, Jr. and Suellen Mary Marinoni** , as earnest money, which shall apply on the purchase price of this property within three weeks of the acceptance of this offer by Paul Marinoni Jr. and Suellen Mary Marinoni. This offer of purchase is contingent upon approval of the City Council of the City of Fayetteville, Arkansas, and, if they do not so approve, the earnest money deposit will be returned to the City of Fayetteville by Paul Marinoni, Jr. and Suellen Mary Marinoni . If title requirements are not fulfilled or Paul Marinoni, Jr. and Suellen Mary Marinoni fail(s) to fulfill any obligations under this contract, the earnest money shall be promptly refunded to the City of Fayetteville. If the City of Fayetteville fails to fulfill their obligations under this contract or, after all conditions have been met, the City of Fayetteville fails to close this transaction, the earnest money may, at the option of Paul Marinoni, Jr. and Suellen Mary Marinoni , become liquidated damages to Paul Marinoni, Jr. and Suellen Mary Marinoni .

4. Conveyance will be made to the City of Fayetteville by general Warranty Deed, except it shall be subject to recorded instruments and easements, if any, which do not materially affect the value of the property. Such conveyance shall include mineral rights owned by Paul Marinoni, Jr. and Suellen Mary Marinoni .

5. Paul Marinoni, Jr. and Suellen Mary Marinoni shall furnish a policy of title insurance in the amount of the purchase price from a title insurance company as selected by the City of Fayetteville. The City of Fayetteville and Paul Marinoni, Jr. and Suellen Mary Marinoni shall share equally in the cost of the title insurance.

6. Paul Marinoni, Jr. and Suellen Mary Marinoni agree(s) to allow the City of Fayetteville, if the City of Fayetteville so desires, at City of Fayetteville's expense, to survey the property. Paul Marinoni, Jr. and Suellen Mary Marinoni agree(s) to cure any title problems which may result from any differences between the recorded legal descriptions of the property and the survey description. Said title problems, if any, must be solved prior to closing to the satisfaction of the City of Fayetteville.

7. Taxes and special assessments due on or before closing shall be paid by Paul Marinoni, Jr. and Suellen Mary Marinoni . Insurance, general taxes, ad valorem taxes, special assessments and rental payments shall be prorated as of closing.

8. The closing date shall be within **thirty (30)** days after approval of this offer by the City Council. If such date of closing falls on a weekend or holiday, it will be held the following working day. In the even that this item is tabled by the City Council, then both parties agree that there shall be a limit of **4 calendar months** to complete the approval process. After that date, if it appears that closing will not happen within the allotted 4 months, Paul Marinoni, Jr. and Suellen Mary Marinoni and representatives of the City of Fayetteville will meet to decide if this purchase will move forward. A new contract will not be required, at the time, but a letter from Paul Marinoni, Jr. and Suellen Mary Marinoni will be required expressing their desire to sell the subject property and associated easements to the City of Fayetteville, based on this Offer and Acceptance Contract, accepted and agreed to by all parties.

9. Possession of the property shall be delivered to the City of Fayetteville on the date of closing.

10. Paul Marinoni, Jr. and Suellen Mary Marinoni hereby grant(s) permission for the City of Fayetteville or its employees or designates to enter the above described property and improvements for the purpose of inspection and/or surveying.

11. All fixtures, improvements and attached equipment are included in the purchase price.

12. Risk of loss or damage to the property by fire or other casualty occurring up to the time of closing is assumed by Paul Marinoni, Jr. and Suellen Mary Marinoni.

13. This agreement shall be governed by the laws of the State of Arkansas.

14. This agreement, when executed by both the City of Fayetteville and Paul Marinoni, Jr. and Suellen Mary Marinoni shall contain the entire understanding and agreement of the parties with respect to the matters referred to herein and shall supersede all price or contemporaneous agreements, representations and understanding with respect to such matters, and no oral representations or statements shall be considered a part hereof.

15. This contract expires, if not accepted by Paul Marinoni, Jr. and Suellen Mary Marinoni on or before the 20th day of June, 2003.

16. The City of Fayetteville shall submit this fully executed Offer and Acceptance Contract to the City Council for their approval within forty (40) days of acceptance by Paul Marinoni, Jr. and Suellen Mary Marinoni.

17. NOTICE: **THE CITY OF FAYETTEVILLE ASSERTS AND Paul Marinoni, Jr. and Suellen Mary Marinoni HEREBY ACKNOWLEDGES THAT THIS OFFER IS EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS OFFER OF PURCHASE BY THE CITY COUNCIL OF FAYETTEVILLE AND THAT THE FAILURE OF THE COUNCIL TO SO APPROVE WILL MAKE ALL PORTIONS OF THIS OFFER NULL AND VOID, INCLUDING, BUT NOT LIMITED TO, THE RETURN TO CITY OF FAYETTEVILLE OF THE $ 800.00 EARNEST MONEY DEPOSIT.**

SELLER:

Paul Marinoni Jr — Date: 6-20-03
Paul Marinoni Jr.

Suellen Mary Marinoni — Date: 6-20-03
Suellen Mary Marinoni

AGENT OR WITNESS:

________________ Date: ________

City of Fayetteville, Arkansas,
A municipal corporation

Dan Coody — Date: 6/16/03
Dan Coody, Mayor

Sondra Smith — Date: 6/19/03
Sondra Smith, City Clerk

Marinoni O & A
Broyles Road
A. 2. Page 8

CE CONTRACT

EXHIBIT "A"
PROPERTY DESCRIPTION

Tract "A"

A part of the Northeast Quarter (NE¼) of the Southeast Quarter (SE¼) of Section 11, Township 16 North, Range 31 West, Washington County, Arkansas, being a part of tract described in Book 658, at page 317 of the records of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, and being more particularly described as follows, to-wit: Beginning at a 1-inch pipe found for the Southeast (SE) corner of the NE¼ of the SE¼ of said Section 11, Township 16 North, Range 31 West; thence North 87°31'55" West 70.00 feet with the south boundary line of said NE¼ of the SE¼ to a 5/8 inch set iron pin; thence North 02°23'15" East 1251.63 feet parallel with the east line of said NE¼ of the SE¼ to a 5/8 inch set iron pin; thence along a curve to the left having an arc length of 47.08 feet, a radius of 30 feet, and a delta angle of 89°55'03" to a 5/8 inch set iron pin on the south right of way line of Wedington Drive; thence South 87°31'48" East 99.96 feet with said right of way to an Iron Bar found on the above mentioned east line of the NE¼ of the SE¼; thence South 02°23'15" West 1281.59 feet to the POINT OF BEGINNING. The above described property, having been surveyed by Bart L. Petray, contains 2.07 acres, more or less.

Tract "B"

PERMANENT EASEMENT DESCRIPTION:

A part of the NE¼ of the SE¼ of Section 11, Township 16 North, Range 31 West, Washington County, Arkansas, and being more particularly described as follows, to-wit: Beginning at a point which is North 87°31'55" West 70 feet from the SE corner of the NE¼ of the SE¼ of Section 11, Township 16 North, Range 31 West, said point being a 5/8 inch set iron pin on the West line of the right of way of the proposed extension of Broyles Road; thence along the West right of way line of the proposed Broyles Road North 02°23'15" East 1251.63 feet to a curve to the left having a radius of 30 and a chord bearing and distance of North 28°05'48" West 29.57 feet; thence parallel to the East line of the forty acre tract, South 02°23'15" West 1277.09 feet to the south line of the above described forty acre tract; thence South 87°31'55" East 15.00 feet to the point of beginning, containing 19,044 square feet, or 0.44 acre, more or less,

Tract "C"

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A part of the NE¼ of the SE¼ of Section 11, Township 16 North, Range 31 West, more particularly described as follows, to-wit: Beginning at a point which is North 87°31'55" West 85 feet from the SE corner of the NE¼ of the SE¼ of Section 11, Township 16 North, Range 31 West; thence running parallel to the proposed West right of way line of Broyles Road along the West line of a permanent 15-foot Water/Sewer Easement North 02°23'15" East 1277.09 feet to curve to the left, having a radius of 30 feet and a chord bearing and distance of North 70°50'22" West 15.67 feet; thence North 87°31'55" West 15.00 feet along the south right of way of Wedington Drive; thence South 02°23'15" West 1281.59 feet to the south line of the above described forty acre tract; thence South 87°31'55" East 30.00 feet to the point of beginning, containing 38,427 square feet, or 0.88 acre, more or less,

SIGNED FOR IDENTIFICATION:

Paul Marinoni Jr. Date: 6-20-03
Paul Marinoni, Jr.

6-20-03
Suellen Mary Marinoni Date:
Suellen Mary Marinoni

Dan Coody Date: 6/16/03
Dan Coody, Mayor

Sondra Smith Date: 6/19/03
Sondra Smith, City Clerk

EXHIBIT "B"
ADDENDUM TO OFFER & ACCEPTANCE CONTRACT
City of Fayetteville, Arkansas – Paul Marinoni, Jr. & Suellen Mary Marinoni

The City of Fayetteville agrees to the following:

- The five-strand barb-wire fence line acting as the property line running between your property and Mr. Sherwood's on the East side, will remain undisturbed.
- The City or its contractor and/or assigns will place a temporary fence of 5-strand barbed wire and steel T-posts, at the West line of the temporary construction easement acquisition area. This fence will be sturdy enough to hold cattle for an extended period of time.
- At the end of construction of the street right-of-way and the proposed future sewer line, the City or its assigns will be responsible for placing a permanent fence on the West line of the 70-foot right of way of Broyles Road.

These requirements will be given to the contractor when the construction contract for this project is awarded and will be made a part of the contract.

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF Benton)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Paul Marinoni, Jr. and Suellen Mary Marinoni, husband and wife**, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that **they** had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 20th day of June, 2003.

HOLLY F. JONES
NOTARY PUBLIC, STATE OF ARKANSAS
MY COMMISSION EXPIRES 05-01-2008
BENTON COUNTY

Holly F. Jones
Notary Public

MY COMMISSION EXPIRES:
5/1/2008

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF Benton)

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

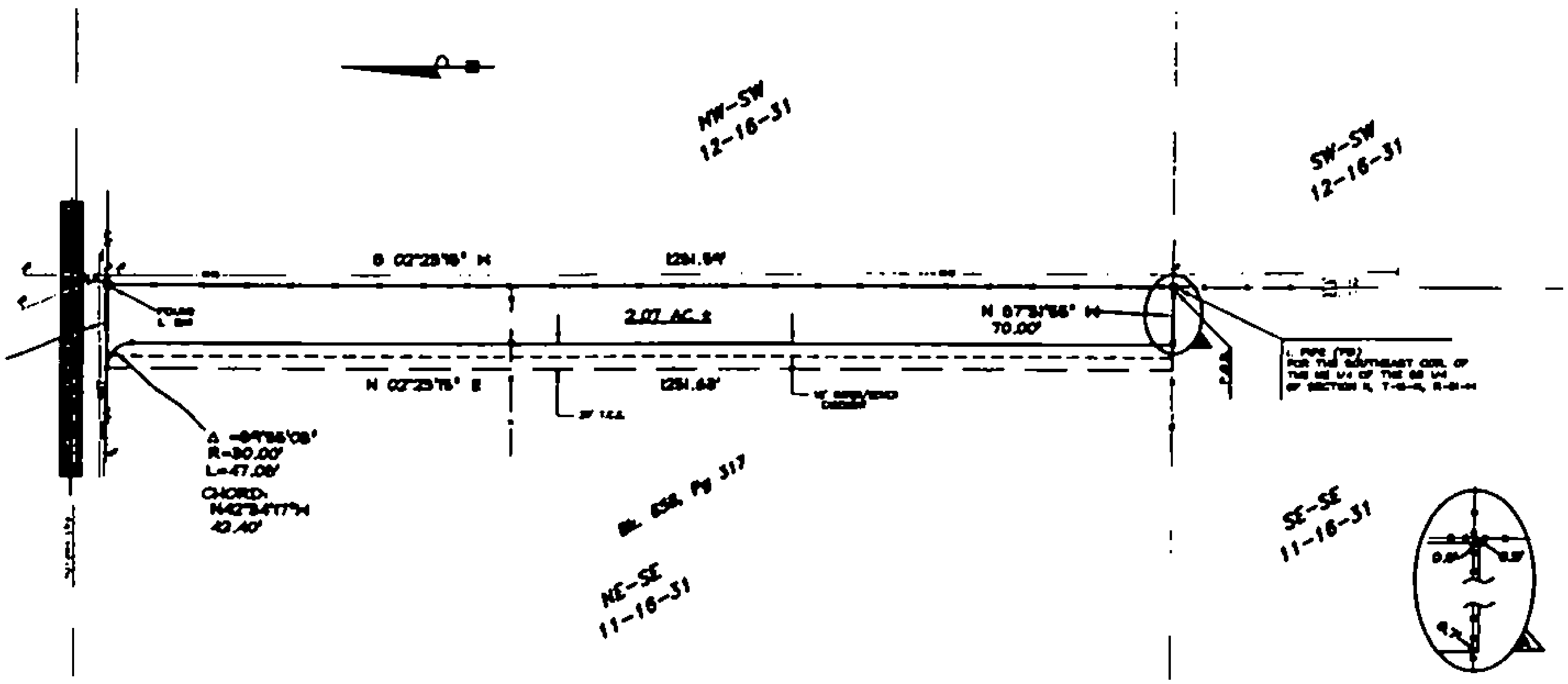
WITNESS my hand and seal on this 19th day of June, 2003.

Holly F. Jones
Notary Public

MY COMMISSION EXPIRES:
5/1/2008

HOLLY F. JONES
NOTARY PUBLIC, STATE OF ARKANSAS
MY COMMISSION EXPIRES 05-01-2008
BENTON COUNTY

Marinoni O & A
Broyles Road
A. 2. Page 11



LEGAL DESCRIPTION

All that certain tract or parcel of land being a part of the NE ¼ of the SE ¼ of Section 11, Township 16 North, Range 31 West, Washington County, Arkansas. Said tract being a part of that tract as described in Book 658 Page 317 of the Washington County records.
And being more particularly described by metes and bounds as follows:

BEGINNING at a 1" Pipe (FD) for the SE Corner of the NE ¼ of the SE ¼ of Section 11, Township 16 North, Range 31 West, Washington County, Arkansas.
THENCE - North 87° 31' 55" West for a distance of 70.00' with the south boundary line of said NE ¼ of the SE ¼ to a 5/8"I. Pin (SET);
THENCE - North 02° 23'15" East for a distance of 1251.63' parallel with the east boundary line of said NE ¼ of the SE ¼ to a 5/8" I. Pin (SET);
THENCE - Along a curve to the left having a arc length of 47.08', a radius of 30.00', and a delta of 89° 55' 03" to a 5/8" I. Pin (SET) on the south right-of-way line of Wedington Drive;
THENCE - South 87° 31' 48" East for a distance of 99.96' with said right-of-way to an Iron Bar (FD) on the above mentioned East boundary line of the NE ¼ of the SE ¼;
THENCE - South 02° 23' 15" West for a distance of 1281.59' to the POINT OF BEGINNING. The above described property having been surveyed by Bart L. Petrey contains 2.07 acres of land more or less.

FLOODPLAIN NOTE:
ACCORDING TO THE FLOOD INSURANCE RATE MAP EFFECTIVE JULY 2[illegible], MAP NUMBER [illegible], SAID PROPERTY IS NOT IN THE 100-YEAR FLOOD AREA.

CERTIFICATION: THIS IS TO CERTIFY that the plat hereon is a true representation of the above described property as determined by survey and that I, Bart L. Petrey, P.L.S. [illegible], have surveyed and marked on the ground the boundaries and corners as shown and that there are no encroachments or protrusions except as shown on said plat.

LEGEND
• 5/8" SET IRON PIN
O FOUND IRON PIN
POWER POLE
—UGT— UNDERGROUND TELEPHONE
—OHE— OVERHEAD ELECTRIC
—x— EXISTING FENCE

BEARINGS BASED ON
CITY OF FAYETTEVILLE
GPS MONUMENTATION

CODE NO. [illegible]

CITY ENGINEERING DIVISION
113 W. MOUNTAIN STREET
FAYETTEVILLE, ARKANSAS

BOUNDARY PLAT OF
BROYLES ROAD EXTENSION

SHEET NO. 1 of 1

Marinoni O & A
Broyles Road
A. 2. Page 12

SUMMARY OF SALIENT FEATURES

SUBJECT INFORMATION	Subject Address	4995 Wedington Dr./Broyles Rd
	Legal Description	NE SE 40 acres (PN#765-16189-000)
	City	Fayetteville
	County	Washington
	State	AR
	Zip Code	72704
	Census Tract	0105.06
	Map Reference	S-34
SALES PRICE	Sale Price	$ N/A
	Date of Sale	N/A
CLIENT	Borrower / Client	City of Fayetteville (Land Dept.)
	Lender	N/A
DESCRIPTION OF IMPROVEMENTS	Size (Square Feet)	
	Price per Square Foot	$
	Location	Good
	Age	
	Condition	
	Total Rooms	
	Bedrooms	
	Baths	
APPRAISER	Appraiser	Don Cramer
	Date of Appraised Value	May 28th, 2003
VALUE	Final Estimate of Value	$ 40,000

rrower City of Fayetteville (Land Dept.) File No. 900130
operty Address 4995 Wedington Dr./Broyles Rd
ty Fayetteville County Washington State AR Zip Code 72704
nder N/A

APPRAISAL AND REPORT IDENTIFICATION

This appraisal conforms to one of the following definitions:

- ☐ Complete Appraisal (The act or process of estimating value, or an opinion of value, performed without invoking the Departure Rule.)
- ☒ Limited Appraisal (The act or process of estimating value, or an opinion of value, performed under and resulting from invoking the Departure Rule.)

This report is one of the following types:

- ☐ Self Contained (A written report prepared under Standards Rule 2-2(a) of a Complete or Limited Appraisal performed under STANDARD 1.)
- ☒ Summary (A written report prepared under Standards Rule 2-2(b) of a Complete or Limited Appraisal performed under STANDARD 1.)
- ☐ Restricted (A written report prepared under Standards Rule 2-2(c) of a Complete or Limited Appraisal performed under STANDARD 1, restricted to the stated intended use by the specified client or intended user.)

Comments on Standards Rule 2-3

I certify that, to the best of my knowledge and belief:

- ☐ The statements of fact contained in this report are true and correct.
- ☐ The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions and conclusions.
- ☐ I have no (or the specified) present or prospective interest in the property that is the subject of this report, and no (or the specified) personal interest with respect to the parties involved.
- ☐ I have no bias with respect to the property that is the subject of this report or the parties involved with this assignment.
- ☐ My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- ☐ My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- ☐ My analyses, opinions and conclusions were developed and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- ☐ I have (or have not) made a personal inspection of the property that is the subject of this report.
- ☐ No one provided significant real property appraisal assistance to the person signing this certification. (If there are exceptions, the name of each individual providing significant real property appraisal assistance must be stated.)

Comments on Appraisal and Report Identification

Note any departures from Standards Rules 1-3 and 1-4, plus any USPAP-related issues requiring disclosure:

Joshua A. Smith, SR 2277 assisted in all aspects of this appraisal, including analysis, compilation and gathering market data

APPRAISER:

Signature: Don L. Cramer
Name: Don Cramer
Date Signed: May 28th, 2003
State Certification #:
or State License #: CG 2171
State: AR
Expiration Date of Certification or License: 06/03

ARKANSAS APPRAISER LICENSING & CERTIFICATION BOARD — STATE CERTIFIED GENERAL CG2171 — DON L. CRAMER

SUPERVISORY APPRAISER (only if required):

Signature:
Name:
Date Signed:
State Certification #:
or State License #:
State:
Expiration Date of Certification or License:

☐ Did ☐ Did Not Inspect Property

Marinoni O & A
Broyles Road
A. 2. Page 13

Marinoni O & A
Broyles Road
A. 2. Page 14

LAND APPRAISAL REPORT

[File No. 900130] Page #1]

File No. 900130

Borrower ___ Census Tract 0105.06 Map Reference S-34

Property Address 4995 Wedington Dr./Broyles Rd
City Fayetteville County Washington State AR Zip Code 72704
Legal Description NE SE 40 acres (PN#765-16189-000)
Sale Price $ N/A Date of Sale N/A Loan Term N/A yrs. Property Rights Appraised [X] Fee [ ] Leasehold [ ] De Minimis PUD
Actual Real Estate Taxes $ 1,858.18 (yr) Loan charges to be paid by seller $ N/A Other sales concessions None Noted
Lender/Client N/A Address N/A
Occupant Vacant Appraiser Don Cramer Instructions to Appraiser Estimate the Market Value of the subject 2.07+/- acres of vacant land.

Location	[ ] Urban	[ ] Suburban	[X] Rural	
Built Up	[ ] Over 75%	[ ] 25% to 75%	[X] Under 25%	
Growth Rate [ ] Fully Dev.	[ ] Rapid	[X] Steady	[ ] Slow	
Property Values	[X] Increasing	[ ] Stable	[ ] Declining	
Demand/Supply	[ ] Shortage	[X] In Balance	[ ] Oversupply	
Marketing Time	[X] Under 3 Mos.	[ ] 4-6 Mos.	[ ] Over 6 Mos.	
Present Land Use	5% 1 Family	% 2-4 Family	% Apts.	% Condo % Commercial
	% Industrial	95% Vacant	%	
Change in Present Land Use	[ ] Not Likely	[ ] Likely (*)	[X] Taking Place (*)	
	(*) From Farm Land	To Res./Commercial		
Predominant Occupancy	[X] Owner	[ ] Tenant	% Vacant	
Single Family Price Range	$ 40,000 to $ 150,000	Predominant Value $ 100,000		
Single Family Age	10 yrs. to 50 yrs.	Predominant Age 25 yrs.		

	Good	Avg.	Fair	Poor
Employment Stability	[ ]	[X]	[ ]	[ ]
Convenience to Employment	[ ]	[X]	[ ]	[ ]
Convenience to Shopping	[ ]	[X]	[ ]	[ ]
Convenience to Schools	[ ]	[X]	[ ]	[ ]
Adequacy of Public Transportation	[ ]	[X]	[ ]	[ ]
Recreational Facilities	[ ]	[X]	[ ]	[ ]
Adequacy of Utilities	[ ]	[X]	[ ]	[ ]
Property Compatibility	[ ]	[X]	[ ]	[ ]
Protection from Detrimental Conditions	[ ]	[X]	[ ]	[ ]
Police and Fire Protection	[ ]	[X]	[ ]	[ ]
General Appearance of Properties	[ ]	[X]	[ ]	[ ]
Appeal to Market	[ ]	[X]	[ ]	[ ]

Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise): This appraisal is being prepared for purposes of evaluating the subject property. The subject area has all requirements necessary to develop. The neighborhood characteristics are leaning more toward upscale residential and commercial influences, due largely in part to the activity on and near Wedington Dr.

Dimensions 1281.59' X 70' = 2.07 Sq. Ft. or Acres [ ] Corner Lot
Zoning classification Not Zoned Present Improvements [X] do [ ] do not conform to zoning regulations
Highest and best use [X] Present use [ ] Other (specify)

	Public	Other (Describe)	OFF SITE IMPROVEMENTS	
Elec.	[X]		Street Access [X] Public [ ] Private	Topo Level
Gas	[X]		Surface Asphalt/Grave;	Size 2.07 acres
Water	[X]		Maintenance [X] Public [ ] Private	Shape Rectangular
San. Sewer	[X]		[ ] Storm Sewer [ ] Curb/Gutter	View Average
	[X]	Underground Elect. & Tel.	[ ] Sidewalk [ ] Street Lights	Drainage Average

Is the property located in a HUD Identified Special Flood Hazard Area? [X] No [ ] Yes

Comments (favorable or unfavorable including any apparent adverse easements, encroachments, or other adverse conditions): 70 feet of the northern tip of the subject property fronts Wedington Dr.

The undersigned has recited three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to or more favorable than the subject property, a minus (-) adjustment is made thus reducing the indicated value of subject; if a significant item in the comparable is inferior to or less favorable than the subject property, a plus (+) adjustment is made thus increasing the indicated value of the subject.

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 1		COMPARABLE NO. 2		COMPARABLE NO. 3	
Address	4995 Wedington Dr./Broyles Rd Fayetteville	1309 Wedington Dr. Fayetteville		Dot Tipton Rd. Fayetteville		20 Double Springs Rd. Farmington	
Proximity to Subject							
Sales Price	$ N/A		$ 90,000		$ 23,000		$ 79,900
Price Per sq. ft.	$ N/A		$ .65		$ .31		$ .36
Data Source	Inspection/WashRec	MLS#392064		MLS#382417		MLS#377174	
Date of Sale and Time Adjustment	DESCRIPTION	DESCRIPTION	+(-)$ Adjust.	DESCRIPTION	+(-)$ Adjust.	DESCRIPTION	+(-)$ Adjust.
	N/A	03/21/2003		04/04/2002		02/15/2002	
Location	Good	Good		Good		Good	
Site/View	2.07/Good	3.20/Good	-30,000	1.71/Good	+15,000	5.00/Good	-40,000
Topography	Good/Level	Good/Level		Good/Level		Good/Level	
Visibility	Good	Good		Average	0	Good	
Accessibility	Good	Very Good	-25,000	Average	0	Average	0
Utilities	Average	Average		Average		Average	
Sales or Financing Concessions	None Noted	None Noted		None Noted		None Noted	
Net Adj. (Total)		[ ] + [X] -	$ 55,000	[X] + [ ] -	$ 15,000	[ ] + [X] -	$ 40,000
Indicated Value of Subject			$ 35,000		$ 38,000		$ 39,900

Comments on Market Data: See attached addenda. A diligent effort was made in the search for comparable sales that are the most similar, most recent, and closest in proximity to the subject property. The Market Data was researched for the past three years and the Comparables used extend over the past two years and are representative of the best sales available.

Comments and Conditions of Appraisal: The subject has access to all necessary supporting facilities including schools, recreation, and employment. The Subject property has no existing improvements.

Final Reconciliation: All weight is given the Sales Comparison Approach, as it reflects buyer and seller actions in the market place, and in the opinion of the appraiser, is the best indicator of value.

I ESTIMATE THE MARKET VALUE, AS DEFINED, OF SUBJECT PROPERTY AS OF May 28 03 to be $ 40,000

Don L. Cramer

Don Cramer
Appraiser(s) Review Appraiser (if applicable) [ ] Did [ ] Did Not Physically Inspect Property

[Y2K]

STAFF REVIEW FORM - FINANCIAL OBLIGATION

Multi-Craft Bid #03-42
Back-up Generators
A. 3. Page 1

X AGENDA REQUEST
CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council Meeting of: August 5, 2003

FROM:

Chris Bosch, Fire Chief	Fire Operations	Fire
Name	Division	Department

ACTION REQUIRED: A resolution approving the bid proposal in the sum of $103,885, plus a 10% contingency for the installation of back-up power generators for each of the Fire Department's five facilities. Total cost of this project, including contingency, will be $114,274.

COST TO CITY:

$103,885 Project Cost $10,389 Project Cont.	$ 192,000.00	Emergency Gas Generators
Cost of this request	Category/Project Budget	Program Category / Project Name
4470-9470-5801-00	$ 11,550.00	Fire Improvements
Account Number	Funds Used to Date	Program / Project Category Name
03002	$ 180,450.00	Sales Tax Capital
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item ____ Budget Adjustment Attached

Budget Manager — Date 7-17-03

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager — Date 7/18/03
Internal Auditor — Date 7/18/03
City Attorney — Date 7/21/03
Purchasing Manager — Date

STAFF RECOMMENDATION: Staff recommends approval of the resolution.

Division Head — Date

Received in Mayor's Office 7/21/03 Date

Department Director — Date 7/1/03

Finance & Internal Services Dir. — Date 7-21-03

Chief Administrative Officer — Date 7-22-03

Mayor — Date

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

New Item: Yes No

ENTERED 7/17/03

Multi-Craft Bid #03-42
Back-up Generators
A. 3. Page 2

Staff Review Form - Page 2

Description Fire Dept.Emergency Gas Generators Meeting Date August 5, 2003

Comments:

Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Manager

ADA Coordinator

Internal Auditor

Grants Coordinator

RESOLUTION NO. ______

A RESOLUTION AWARDING BID #03-42 TO MULTI-CRAFT CONTRACTORS, INC. IN THE AMOUNT OF ONE HUNDRED THREE THOUSAND EIGHT HUNDRED EIGHTY-FIVE DOLLARS ($103,885.00) TO INSTALL BACK-UP GENERATORS AT EACH OF THE FAYETTEVILLE FIRE DEPARTMENT'S FIVE FACILITIES; AND APPROVING A PROJECT CONTINGENCY IN THE AMOUNT OF TEN THOUSAND THREE HUNDRED EIGHTY-NINE DOLLARS ($10,389.00) FOR SAME.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas, hereby awards Bid #03-42 to Multi-Craft Contractors, Inc. in the amount of One Hundred Three Thousand Eight Hundred Eighty-Five Dollars ($103,885.00) to install back-up generators at each of the Fayetteville Fire Department's five facilities.

Section 2. That the City Council of the City of Fayetteville, Arkansas, hereby approves a Project Contingency in the amount of Ten Thousand Three Hundred Eighty-Nine Dollars ($10,389.00) for same.

PASSED and **APPROVED** this 5th day of August, 2003.

APPROVED:

By: ____________________
DAN COODY, Mayor

ATTEST:

By: ____________________
SONDRA SMITH, City Clerk

From the Desk of the Fire Chief

Fayetteville Fire Dept
303 W. Center St.
Fayetteville, AR. 72701
(479) 575-8365

Memo

To: Dan Coody, Mayor
Fayetteville City Council

From: Chris Bosch, Fire Chief

CC: Hugh Earnest, CAO

Date: July 1, 2003

Re: Back-Up Power Generators

Background

In the 2003 budget the Fire Department requested funding for the installation of back-up power generators for each of our facilities. In the event of a power failure these generators will allow our agency to continue to provide emergency service during both natural and man-made disaster.

This need for these auxiliary power sources was brought to our attention during the recent ice storm which caused extensive damage to the region. As you will recall, during that time areas of the City were without power for several days. Unfortunately due to this lack of power several of our Fire Department facilities were also without power. This loss of power made it extremely difficult for our units to enter and exit the stations and therefore placed constraints on our ability to assist those citizens who needed our help. Further, a lack of power at each Fire Station inhibited our ability to provide shelter for our citizens, if necessary.

Often times, during this type of crisis, the Fire Department is one of the first agencies called upon to assist citizens. Without back-up power generators we are unable to raise and lower our apparatus doors, which inhibits our ability to provide service. Further, without power our units are unable to receive calls for service from the Central Dispatching Center.

Current Situation

In June 2003 the Fire Department, in conjunction with the Building Maintenance Division and the Purchasing Office, posted bid specifications for the installation of natural gas powered back-up power generators for each of the five fire stations. The bid process closed on June 25, 2003 with the receipt of three bids. One of the bids did not include the required bid bond and subsequently was rejected.

The remaining two bids came in well under the amount budgeted for this project. The original budget for this project was estimated to be $180,000 for all facilities; however, the two remaining bids were returned with prices of $159,810 and $103,885 respectively.

After a careful review of the bid proposals we believe the bid for $103,885, which was submitted by Multi-Craft Contractors, Inc. presents the most reasonable cost. Further we believe the City has experienced success in working with Multi-Craft Contractors, Inc. on past projects.

Recommendation

Given these facts it is my recommendation that Council approve the attached agenda request allowing Multi-Craft Contractors, Inc. to proceed with the installation of these much needed generators, for the sum of $103,885. Further, it is my recommendation that Council approve a 10% contingency for this project, in the sum of $10,389, which will ensure successful completion.

If you have any questions regarding this process I will be happy to provide any follow-up information at your convenience.

BID: 03-42
DATE: 06/25/03
TIME: 11:00
CITY OF FAYETTEVILLE

DESCRIPTION: FIRE STATION GENERATORS

BIDDERS	TOTAL BID ITEM 1	ITEM 6 DED ALT	ITEM 7 DED ALT
NEAL HEFNER CONSTRUCTION	$159,810.00	$25,920	$26,649
MULTI-CRAFT CONSTRUCTION	$103,885.00	$17,910.00	$19,080.00

CERETIFIED BY: P Vice
P. VICE PURCH MGR

R Williams
WITNESS

PROPOSAL FORM

Total price for this project shall include installation, post construction cleanup, etc.

1.	Fire Station No. 1	$ 30,105.00
2.	Fire Station No. 4	$ 19,470.00
3.	Fire Station No. 6	$ 17,320.00
4.	Fire Station No. 2	$ 17,910.00
5.	Fire Station No. 5	$ 19,080.00
Total Bid – All Stations		$ 103,885.00

Deductive Alternates:

6.	Deduct Fire Station No. 2	$ 17,910.00
7.	Deduct Fire Station No. 5	$ 19,080.00

The Bidder understands the Owner reserves the right to reject any or all bids and to waive formalities deemed to be in the City's best interest.

Bidder agrees that this bid shall be good and may not be withdrawn for a period of sixty (60) calendar days after the scheduled closing time for receiving bids.

CONTRACTORS NAME Multi-Craft Contractors, Inc.

CONTRACTORS LICENSE # 0025810304

CONTACT PERSON Dennis Kelly

TITLE Executive Vice President

ADDRESS 2300 Lowell Road, 72764

P.O. Box 1760

Springdale, AR 72765-1760

TELEPHONE 479-751-4330 FAX 479-751-4399

SIGNATURE: Dennis Kelly EXEC. V.P.

All inclusive bids must be submitted no later than June 25th, 2003 at or before 11:00 a.m., to the City of Fayetteville, Purchasing Office, Room 306, 113 West Mountain Street, Fayetteville, Arkansas, 72701 in a sealed envelope marked *"Fire Station Generators"* "Bid 03-42." **Each bidder will be required to meet or exceed the specifications. Any deviation must be noted with specifications attached to bid.** Questions should be directed to Larry Rennie, Building Maintenance, (479) 575-8361.

PROPOSAL FORM

Total price for this project shall include installation, post construction cleanup, etc.

1.	Fire Station No. 1	$ 47,389.00
2.	Fire Station No. 4	$ 30,372.00
3.	Fire Station No. 6	$ 29,480.00
4.	Fire Station No. 2	$ 25,920.00
5.	Fire Station No. 5	$ 26,649.00
Total Bid – All Stations		$ 159,810.00

Deductive Alternates:

6.	Deduct Fire Station No. 2	$ 25,920.00
7.	Deduct Fire Station No. 5	$ 26,649.00

****

The Bidder understands the Owner reserves the right to reject any or all bids and to waive formalities deemed to be in the City's best interest.

Bidder agrees that this bid shall be good and may not be withdrawn for a period of sixty (60) calendar days after the scheduled closing time for receiving bids.

CONTRACTORS NAME: Neal Hefner Construction, Inc.

CONTRACTORS LICENSE #: 0012630404

CONTACT PERSON: Neal Hefner or Gary Fithian

TITLE: President / Proj. Manager

ADDRESS 2308 Turner, Suite 1

Springdale, AR 72764

TELEPHONE (479) 756-5602 FAX (479) 750-0865

SIGNATURE: Neal H

All inclusive bids must be submitted no later than June 25th, 2003 at or before 11:00 a.m., to the City of Fayetteville, Purchasing Office, Room 306, 113 West Mountain Street, Fayetteville, Arkansas, 72701 in a sealed envelope marked *"Fire Station Generators"* "Bid 03-42." **Each bidder will be required to meet or exceed the specifications. Any deviation must be noted with specifications attached to bid.** Questions should be directed to Larry Rennie, Building Maintenance, (479) 575-8361.

This contract will be substituted for an original with a signature from the contractor before the agenda session.

CONTRACT

THIS AGREEMENT, made and entered into the _ day of ______, 2003, by and between the City of Fayetteville, County of Washington, State of Arkansas, and ____, hereinafter called the Contractor.

WITNESSETH THAT:

WHEREAS, the City of Fayetteville has called for bids for installation of generators and related electrical in Fire Stations 1, 2, 4, 5 & 6, as set out in the Plans and Specifications and approved by the City of Fayetteville, Arkansas; and

WHEREAS, pursuant to the published calls for bids under said Plans and Specifications, the Contractor is the lowest and best qualified bidder for the construction of said Improvements;

NOW THEREFORE, the Contractor agrees with the City of Fayetteville to commence and complete the construction of:

Bid No. 03-42 which shall be the installation of generators and related electrical in Fire Stations #1, 2, 4, 5 & 6 for The City of Fayetteville, Arkansas, in accordance with the bid schedule, plan drawings, the contract documents including the project specifications, including all Work required for a complete and acceptable installation, for the unit and lump sum prices bid in the Bid Proposal, all of which become and are a part of this Contract, the total sum thus being

____

____ Dollars
words

($__________________________), such sum being the agreed amount upon which bonds and liabilities are based, and at his own cost and expense furnish all materials, supplies, labor, machinery, equipment, tools, supervision, bonds, insurance and other accessories and services necessary to complete the said construction in accordance with the conditions and prices stated in the Bid attached hereto and made a part hereof, and in accordance with the Technical Specifications, the General Conditions, the Supplementary Conditions, and in accordance with the Plans, which include all blueprints, and other drawings, and written or printed explanatory matter thereof.

The Contractor agrees to commence work under this contract within ten days of the issuance of the Notice to Proceed and totally complete all work within sixty (60) calendar days.

The City of Fayetteville agrees to pay the Contractor in current funds for the performance of the contract in accordance with the accepted Bid, subject to additions and deductions, as provided in the Specifications, and to make payment on account thereof as provided below.

As soon as is practicable after completion of each station, and in accordance with the bid Specifications, the City of Fayetteville will make payments to the Contractor for work performed , based upon the project manager's approval of work completed, said invoice being certified by the Contractor and accepted by the City of Fayetteville. Retainage shall be withheld from the partial payments as provided by Arkansas state laws by the City of Fayetteville until final completion and acceptance by the City of Fayetteville.

Time is hereby expressly declared to be of the essence of this contract, and the time of beginning, manner of progress and time of completion of the work hereunder shall be and are essential conditions hereof.

The Contractor agrees to commence work within ten (10) calendar days from the date of the Notice to Proceed and to proceed with the construction of the work and to prosecute the work with an adequate force and in a manner so as to complete the work within the time stipulated herein. If the Contractor fails in completing the contract within the time stipulated herein, the Contractor agrees to pay the City of Fayetteville, as liquidated damages the sum of one hundred dollars ($100.00) per day for each calendar day of delay in completion, said amounts being fixed and agreed upon by and between the parties hereto. Because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages City of Fayetteville would in such event sustain, said amounts are to be presumed by the parties to this contract to be the amounts of damage City of Fayetteville would sustain in related costs. Said amounts of liquidated damages shall be deductible from any amount due Contractor under the Final Estimate of said work, after the completion thereof, and Contractor shall be entitled to the Final Estimate less such amounts of liquidated damages.

If the Contractor be delayed at any time in the progress of the work by any act or neglect of the City of Fayetteville or of the City of Fayetteville's employees, or by any other Contractor employed by the City of Fayetteville, or by changes ordered in the work, or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by any cause which the Project Manager shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Project Manager may decide.

No such extension shall be made for delay occurring more than seven days before claim therefor is made in writing to the Project Manager. In the case of a continuing cause for delay, only one claim is necessary.

In the event the Contractor abandons the work hereunder or fails, neglects or refuses to continue the work after ten (10) days written notice, given Contractor by the City of Fayetteville, then the City of Fayetteville shall have the option of 1) declaring this contract at an end, in which event the City of Fayetteville shall not be liable to the Contractor for any work theretofore performed, or 2) requiring the surety hereto, upon ten (10) days notice, to complete and carry out the contract of Contractor; and in that event, should the surety fail, neglect or refuse to carry out said contract, 3) said City of Fayetteville may complete the contract as its own expense and maintain an action against the Contractor and the surety hereto for the actual cost of same, together with any damages or other expense sustained or incurred by City of Fayetteville in completing this contract, less the total amount provided for hereunder to be paid Contractor upon the completion of this contract.

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

The contractor shall ensure that the City of Fayetteville receives lien waivers from all material suppliers, subcontractors and sub-subcontractors and before work begins on the project. The contractor shall give written notice to the material supplie4rs, subcontractors and sub-subcontractors providing work on the project that states the following: "According to Arkansas Law, it is understood that no liens can be filed against public property if a valid and enforceable payment and performance bond is in place. Regarding this Project and Agreement, the valid and enforceable bonds are with ______________________." The contractor shall have each subcontractor, sub-subcontractor and material supplier execute a written receipt evidencing acknowledgment of this statement prior to commencement of the work of the subcontractor, sub-subcontractor or material supplier.

City contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act. (A.C.A. 25-19-101 et. Seq.) Only legally authorized photocopying cost pursuant to the FOIA may be assessed for this compliance."

Contractor shall hold harmless, defend and indemnify the City from any and all claims, actions, suits, charges and judgments whatsoever that arise out of performance or nonperformance of the services or subject matter called for in this contract, provided that nothing herein shall be construed to alter, limit or otherwise compromise that immunity afforded the City of Fayetteville under the Constitution and Statutes of the State of Arkansas.

This contract shall be binding upon the heirs, representatives, successors or assigns of the parties hereto, including the surety.

IN WITNESS WHEREOF, the City of Fayetteville and Contractor have hereto set their hands and seals, respectively.

____
Firm Name

By: ____________________________

____
Title of Authorized Person

____
Witness*

*If corporation, secretary should attest.

CITY OF FAYETTEVILLE, ARKANSAS

____
Dan Coody, Mayor

Attest:

____
Sondra Smith, City Clerk

End of Contract

Arkansas Parks Grant
Lake Fayetteville Bridge
A. 4. Page 1

STAFF REVIEW FORM - FINANCIAL OBLIGATION

XX AGENDA REQUEST
CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council Meeting of: August 5, 2003

FROM:

Connie Edmonston	Parks and Recreation	Operations
Name	Division	Department

ACTION REQUIRED: Approval of a resolution authorizing the City to apply for up to $250,000 from the Arkansas Parks and Tourism Outdoor Recreation Grant for the Lake Fayetteville Spillway Bridge Project.

COST TO CITY:

$ -0-	$ 348,595.00	Parks Development
Cost of this request	Category/Project Budget	Program Category / Project Name
1010-1505-01 2250-9250-5817.00	$ 42,590.00	Park Land Dedication Fund -NE Lake Recreation Improvements
Account Number	Funds Used to Date	Program / Project Category Name
02043	$ 306,005.00	Parks Development
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: x Budgeted Item ____ Budget Adjustment Attached

Budget Manager — Date: 7-17-03

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager — Date: 7/17/03
Internal Auditor — Date: 7/17/03
City Attorney — Date: 7/17/03
Purchasing Manager — Date: 7/18/03

STAFF RECOMMENDATION: Approval of resolution.

Division Head — Date: 7-15-03
Department Director — Date: 7-15-03
Finance & Internal Services Dir. — Date: 7-21-03
Chief Administrative Officer — Date: 7-19-03
Mayor — Date:

Received in Mayor's Office 7/18/03 Date J.H.

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

New Item: Yes No

Staff Review Form - Page 2

Description Arkansas Outdoor Recreation Grant Meeting Date August 5, 2003

Comments:

Reference Comments:

Budget Manager

Accounting Manager

City Attorney

David-Please see attached sample resolution from the Grant Program.

We have a format we use for all grants, But Thanks,

KW

Purchasing Manager

ADA Coordinator

Internal Auditor

Grants Coordinator

RESOLUTION NO. ______

A RESOLUTION AUTHORIZING THE FAYETTEVILLE PARKS AND RECREATION DIVISION TO APPLY FOR AN ARKANSAS PARKS AND TOURISM OUTDOOR RECREATION GRANT IN AN AMOUNT UP TO TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00) FOR THE LAKE FAYETTEVILLE SPILLWAY BRIDGE PROJECT.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Fayetteville Parks and Recreation Division to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount up to Two Hundred Fifty Thousand Dollars ($250,000.00) for the Lake Fayetteville Spillway Bridge Project.

PASSED and **APPROVED** this 5th day of August, 2003.

APPROVED:

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
SONDRA SMITH, City Clerk

TEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TO: Mayor Coody and City Council
THRU: Gary Dumas, Director of Operations
FROM: Connie Edmonston, Parks & Recreation Director C.E.
DATE: July 15, 2003
SUBJECT: Resolution to apply for Arkansas Outdoor Grant Program

Background
The Land and Water Conservation Fund (LWCF) is a federal program with funds derived from the sale of federal surplus real property, federal motor boat fuel tax, and Outer Continental Shelf mineral receipts. The Arkansas Natural and Cultural Resources Grant and Trust Fund (NCRGTF) is a state program with funds collected from a tax on the transfer of certain real estate in the State of Arkansas. LWCF and NCRGTF funds are included in the Department of Parks and Tourism's Outdoor Recreation Grants Program for funding outdoor recreation facilities. Only incorporated cities and counties may apply. This is a 50/50 reimbursable matching grant with a $250,000 maximum request on matching funds. Last year, Arkansas Parks and Tourism awarded our City with $100,000 for construction of the Walker Park Skate Park. Eastin Outdoors, Inc. was contracted to write that grant, and once again, we have entered into a contract with Eastin Outdoors for $6,000 to write the 2004 grant proposal. Grant deadline is August 29, 2003.

Current Status
Three public meetings were held on June 23, 27 and July 14, 2003 to gather input from the public of their recreational desires and to prioritize an eligible grant project. An outreach to groups such as ethnic minority populations, the elderly and persons with disabilities was attained through group meetings, e-mails, and telephone conversations. It was determined after obtaining public input that the Lake Fayetteville Spillway Bridge project should be submitted. This has been a highly requested project for the past twenty years. The bridge is estimated to have a 250 to 300 foot span. With the increasing popularity and usage of the 5-½ mile trail around the lake, the bridge is needed to make it more accessible and safe for park patrons.

The grant application must include detailed budgets, plans, specifications and bid documents that are ready for immediate bid and construction. Facilities constructed with this grant must be accessible to the handicapped. The spillway bridge is a very viable project to pursue for this grant. Carter Burgess design contract for the bridge was approved at the May 20, 2003 City Council meeting at a cost of $42,536. Capital funds in the amount of $218,595 was funded for this project, plus an additional $130,000 from the Northeast Park District's Park Land Dedication Fund was authorized by the Parks and Recreation Advisory Board at the November 4, 2002 and July 7, 2003 meetings. If this grant is received, funds remaining in our project budget will be for improvements to the trails system.

Recommendation
Parks and Recreation requests City Council approval of a resolution to authorize the City to apply for up to $250,000 from the Arkansas Parks and Tourism Outdoor Recreation Grant Program for the Lake Fayetteville Spillway Bridge project.

ATTACHMENTS
PRAB Meeting Minutes July 7, 2003
PRAB Meeting Minutes November 4, 2002

This development is over 100 units and would require a waiver of the ordinance.

Justification:

1) The development is providing adequate park services for its patrons including a swimming pool, club house, lake, picnic tables, and a playground, concrete sidewalk/trail along Futrall.

Ms. Eads commented the developers appeared to be providing amenities equivalent to those the city would provide for a park.

MOTION:

Mr. Hill moved to recommend to the City Council to accept money in lieu of a land dedication to satisfy the park land dedication requirement for Southern View Apartments.

Mr. Colwell seconded the motion.

Upon roll call, the motion was approved 5-0-0 with Mauritson absent for the vote.

3. **Park Land Dedication Fund Requests**

Park Staff recommends the following expenditures from the Park Land Dedication Fund:

Northeast Park District:

\$10,000	Picnic tables and grills for Lake Fayetteville Softball Complex
	Picnic tables, grills and sign for Braden Park
	Picnic tables and benches for East Mud Creek Trail
\$100,000	Lake Fayetteville Spillway Bridge

Northwest Park District:

\$10,000	Gary Hampton Softball Complex Equipment Shed

MOTION:

Ms. Eads moved to appropriate Ten Thousand Dollars (\$10,000) from the Northeast Park District for picnic tables and grills for Lake Fayetteville Softball Complex, for picnic tables, grills, and sign for Braden Park, and for picnic tables and benches for East Mud Creek Trail; One Hundred Thousand Dollars (\$100,000) from the Northeast Park District for Lake Fayetteville Spillway Bridge; and Ten Thousand Dollars (\$10,000) from the Northwest Park District for Gary Hampton Softball Complex Equipment Shed.

Mr. Shoulders seconded the motion.

Upon roll call, the motion was approved unanimously 6-0-0.

PARKS AND RECREATION ADVISORY BOARD

Meeting Minutes
July 7, 2003

Opening:
The regular meeting of the Parks and Recreation Advisory Board was called to order at 5:30 p.m. on July 7, 2003 in Room 326 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas by Chairperson Colwell.

Present:
Parks and Recreation Advisory Board members Bailey, Hill, Shoulders, Marley, Colwell, and Mauritson; City staff Edmonston, Coles, Hatfield, Hesse, Nelson, Ohman, Wright; and Audience.

7. **Park Land Dedication Funding Requests: Steve Hatfield**
Parks and Recreation Staff requested the following projects for funding from the Park Land Dedication Fund:

Northeast Park District: $30,000 for Lake Fayetteville Spillway Bridge Project
Northwest Park District: $200,000 for West Mud Creek Trail Project

Mr. Hatfield updated the status of the design and construction documents for the Lake Fayetteville spillway bridge. The location selected will simplify the bridge construction but will require a longer bridge.

Scott Mashburn questioned ADA accessibility and Mr. Marley requested leaving the current route around the spillway as an alternative for bicyclists.

West Mud Creek Trail was redesigned in-house and is now being reviewed by the State. The one-mile section will extend from Front Street along West Mud Creek to Steele Boulevard. Eventually the trail will tie into Gregg Street.

MOTION:

Mr. Mauritson moved to appropriate Thirty Thousand Dollars ($30,000) from the Northeast Park Land Dedication Fund for the Lake Fayetteville Spillway Bridge Project and Two Hundred Thousand Dollars ($200,000) from the Northwest Park Land Dedication Fund for the West Mud Creek Trail Project.

Mr. Shoulders seconded the motion.

Upon roll call, the motion was approved 6-0-0.

RESOLUTION NO. ____________

WHEREAS, ________________________, Arkansas seeks to improve the recreation facilities and wishes to seek grant funding assistance; and

WHEREAS, in order to obtain the funds necessary to develop and/or improve the site for such a recreation area, it is necessary to obtain a 50/50 Matching Grant from the Arkansas Department of Parks and Tourism's Outdoor Recreation Grant Program; and

WHEREAS, the plans for such recreation areas have been prepared and the price therefore has been established; and

WHEREAS, this governing body understands the grantee and grantor will enter into a binding agreement which obligates both parties to policies and procedures contained in the *Land and Water Conservation Fund Grants Manual* including, but not limited to the following; the park area defined by the project boundary map, submitted in the application, must remain in outdoor recreation use in perpetuity, regardless if the property is bought or developed with matching grant funds and; all present and future overhead utility lines within the project boundary must be routed away or placed underground and; the project area must remain open and available for use by the public at all resonable times of the day and year; facilities can be reserved for special events, league play, etc. but cannot be reserved, leased or assigned for exclusive use, and; the project area must be kept clean, maintained, and operated in a safe and healthful manner.

City Council/Quorum Court is well aware and apprised of the above-mentioned project, and will provide the local portion of the development cost of the entire project:.

NOW, THEREFORE, BE IT RESOLVED by the City Council/Quorum Court of ________________________, Arkansas that the Mayor/County judge is hereby authorized to make application to the Arkansas Department of Parks and Tourism for assistance to develop recreational facilities for the City/County; therefore such application shall be submitted as expediently as possible.

Passed this _______ day of ________________, 2003.

APPROVED: ______________________________ ______________________________

Mayor/County Judge Clerk

Left on 1st Reading

ALDERMAN AGENDA REQUEST FORM

Smoking in Certain Public Places
B. 1. Page 1

FOR: COUNCIL MEETING OF July ~~1~~ 15, 2003

FROM:

DON MARR, ALDERMAN and SHIRLEY LUCAS, ALDERMAN

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An ordinance to amend §95.05 **Regulation Of Smoking In Certain Public Places** of the Code of Fayetteville and to enact a replacement §95.05 **Regulation Of Smoking In Most Public Places And Places Of Employment** in order to remove exemptions for bars, pool halls, small restaurants, beauty salons, barber shops and designated smoking areas in enclosed public access areas in restaurants, theaters, roller rinks, bowling alleys, and retail stores, etc.

APPROVED FOR AGENDA:

Donald A. Marr 6-23-2003
Alderman Date

Shirley Lucas 6-23-03
Alderman Date

D. J. White 6/23/03
City Attorney (as to form) Date

ORDINANCE NO. ______

AN ORDINANCE TO AMEND §95.05 **REGULATION OF SMOKING IN CERTAIN PUBLIC PLACES** OF THE CODE OF FAYETTEVILLE AND TO ENACT A REPLACEMENT §95.05 **REGULATION OF SMOKING IN MOST PUBLIC PLACES AND PLACES OF EMPLOYMENT** IN ORDER TO REMOVE EXEMPTIONS FOR BARS, POOL HALLS, SMALL RESTAURANTS, BEAUTY SALONS, BARBER SHOPS AND DESIGNATED SMOKING AREAS IN ENCLOSED PUBLIC ACCESS AREAS IN RESTAURANTS, THEATERS, ROLLER RINKS, BOWLING ALLEYS, AND RETAIL STORES, ETC.

WHEREAS, Ordinance No. 3584 enacted on December 17, 1991, regulated smoking in numerous public places, but permitted designated smoking areas in restaurants, theaters, museums, galleries, malls, hotels, motels, banks, retail stores, health spas, roller rinks, bowling alleys, etc.; and

WHEREAS, Ordinance No. 3584 codified as §95.05 **Regulation of smoking in certain public places** did not apply to bars, separated bars in restaurants, beauty salons, barber shops, convenience stores, pool halls and small restaurants nor many places of employment; and

WHEREAS, scientific studies have proven that second hand tobacco smoke is a recognized carcinogen and is otherwise dangerous and causes diseases in the health of nonsmokers; and

WHEREAS, the United States Surgeon General has determined that separation of smokers and nonsmokers within the same airspace does not eliminate exposure of nonsmokers to second hand smoke; and

WHEREAS, employees who work in a smoke-filled business suffer 25%-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer; and

WHEREAS, the Fayetteville City Council has determined that further restrictions of smoking in enclosed public places and work places are needed to protect the health and safety of citizens and to ensure the right of nonsmokers to breathe smoke free air; and

WHEREAS, economic analyses have shown no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke free; and

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of

disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer; and

WHEREAS, The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respirator function to be a disability.

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 repeals **§95.05 Regulation of smoking in certain public places** of the Fayetteville Code, in its entirety and enacts the following new **§95.05 Regulation of smoking in most public places** of the Fayetteville Code to replace it:

"Sec. 95.05. Regulation of smoking in most public places.

(A) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Bar. An establishment that is devoted solely to the sale and service of alcoholic beverages for on-premises consumption and where the service of food, if any, is incidental to the consumption of such beverages.

Restaurant: An eating establishment, including but not limited to dining establishments, coffee shops, cafeterias, sandwich shops, private and public cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as non-residential kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

Enclosed area. All space partially enclosed between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

Health care facilities. All enclosed indoor areas in which health care is provided to the general public (other than areas to which smoking policy is already established by state law, A.C.A. §§20-27-701 through 20-27-703), including nursing and convalescent homes, optometrists', podiatrists', and chiropractors' offices, and physical therapy facilities.

Manager. The owner, lessee, or other person in charge of a public place.

Place of employment. An area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

Public place.

(1) Any enclosed indoor area that is used by the general public, except hotel and motel guest rooms and areas restricted to use only by employees or management of a private business; and

(2) Any swimming pool owned or operated by the city, including the entire area within the pool enclosure. A private residence shall not be considered a

public place for purposes of this section unless it is used as a health care or licensed child care facility.

Retail Tobacco Store. A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Smoking. Holding a lighted pipe, cigar, or cigarette of any kind, or lighting, or emitting or exhaling the smoke of, a pipe, cigar, or cigarette of any kind.

Sports arenas. Means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports or other events.

(B) *Restrictions on smoking in public places essential to members of the public.* No person shall smoke in the following public places:

(1) Health care facilities.

(2) Within the physical confines of licensed child care facilities. (As defined in A.C.A. §20-78-217)

(3) Polling places;

(4) Courtrooms and jury waiting and deliberation rooms;

(5) Rooms, halls or other places of meeting or public assembly, during such times as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city; provided that this section shall not apply to meetings of private organizations;

(6) Drug stores, grocery stores, banks, libraries, and laundromats;

(7) Public transportation terminals;

(8) Buses, taxis, and airport limousines operating within the city limits;

(9) Elevators accessible to the public;

(10) Restrooms; and

(11) Swimming pools owned or operated by the city.

(C) *Restrictions on smoking in certain other public places.* No person shall smoke in the following enclosed public places and places of employment or work places:

(1) Facilities primarily used for exhibiting any motion picture, lecture, musical recital, stage or other similar performance, except when smoking is part of a stage production;

(2) Enclosed walkways in malls and shopping centers;

(3) Hotels and motels, except hotel and motel rooms that are rented to guests and are designated as smoking rooms.

(4) Museums and galleries;

(5) Bank and retail stores doing business with the general public, except for retail tobacco stores whose primary source of revenue is the sale of tobacco and tobacco-related products;

(6) Restaurants, cafeterias, cafes, coffee shops, etc.

(7) Health spas, roller rinks, bowling alleys, and other indoor sports or recreation facilities, including pool halls;

(8) Bars, taverns, nightclubs, cocktail lounges, cabarets, etc.

(9) Beauty salons and barber shops;

(10) Convenience stores.

(11) An outside area within a reasonable distance of fifteen (15) feet from a main entrance to an enclosed area in which smoking is prohibited.

(12) Enclosed places of employment and work places if a nonsmoking employee is present or regularly enters or uses that portion of an enclosed place of employment or work place.

(13) Business vehicles with at least one nonsmoker as an occupant.

(D) The provisions of this section shall not apply to Retail tobacco stores whose primary source of revenue is the sale of tobacco and tobacco-related products.

(E) *Duties of managers of public places.*

(E) *Duties of managers of public places.*

(1) The manager of a public place in which smoking is prohibited or restricted shall place conspicuous signs at each public entrance up to a maximum of six entrances, and at appropriate places within the public place, notifying the public that Smoking is prohibited.

(2) The manager of a public place in which smoking is prohibited or restricted shall not knowingly permit, or fail to make reasonable efforts to prevent, smoking in any area where smoking is prohibited.

(F) *Enforcement.*

(1) This section shall be enforced by the Mayor or an authorized designee.

(2) Any citizen who desires to register a complaint under this section may initiate enforcement with the Mayor's office.

(3) An owner, manager, operator or employee of an establishment regulated by this section shall inform persons violating this section of the appropriate provisions thereof.

(4) A person who smokes in an area where smoking is prohibited by provisions of this section shall be guilty of a violation punishable by a fine not exceeding fifty dollars ($50.00).

(5) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Section shall be guilty of a violation, punishable by:

(a) A fine not exceeding one hundred dollars ($100.00) for a first violation;

(b) A fine not exceeding two hundred dollars ($200) for a second violation within one (1) year;

(c) A fine not exceeding five hundred dollars ($500) for each additional violation within one (1) year.

(6) In addition to the fines established by this Section, multiple violation of this Section by a person who owns, manages, operates or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(7) Each day on which a violation of this Section occurs shall be considered a separate and distinct violation.

(G) *Relation to other laws and regulations.*

Nothing in this section excuses noncompliance with any state or federal law, or any rule or regulation adopted pursuant thereto (including any rule adopted for the University of Arkansas or for the public schools), which prohibits or regulates smoking.

(H) *Jurisdiction.*

This section is not applicable nor enforceable in federal, state or county buildings including all facilities owned or operated by the University of Arkansas.

(Ord. No. 3584, 12-17-91)

PASSED and **APPROVED** this the 1st day of July, 2003.

APPROVED:

DRAFT

By: ____________________

DAN COODY, Mayor

ATTEST:

By: ____________________

Sondra Smith, City Clerk

Smoking in Certain Public Places
B. 1. Page 6

ALDERMAN AGENDA REQUEST FORM

FOR: COUNCIL MEETING OF July 1, 2003

FROM:

DON MARR, ALDERMAN and SHIRLEY LUCAS, ALDERMAN

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An ordinance to amend §95.05 **Regulation Of Smoking In Certain Public Places** of the Code of Fayetteville and to enact a replacement §95.05 **Regulation Of Smoking In Most Public Places And Places Of Employment** in order to remove exemptions for bars, pool halls, small restaurants, beauty salons, barber shops and designated smoking areas in enclosed public access areas in restaurants, theaters, roller rinks, bowling alleys, and retail stores, etc.

APPROVED FOR AGENDA:

Alderman ______ Date 6-20-03

Alderman ______ Date ______

City Attorney (as to form) ______ Date 6/20/03

KIT WILLIAMS
FAYETTEVILLE CITY ATTORNEY

DAVID J. WHITAKER
Assistant City Attorney
Judy Housley
Office Manager

Phone (479) 575-8313
FAX (479) 575-8315

THE CITY OF FAYETTEVILLE, ARKANSAS
113 W. Mountain, Suite 302
Fayetteville, AR 72701-6083

June 20, 2003

Don Marr
Fayetteville Alderman

845-2800 - Judy
By FAX: (479) 845-2801

Dear Don:

Attached is the revised smoking ordinance per your instruction. I also revised the Title to specifically mention "places of employment" and placed that within the second Whereas Clause. This is a major change in the law and so needs to be referred to in the title of the ordinance.

Please review this final (?) draft and let me know if any further changes are needed.

With kindest regards,

Kit Williams
Fayetteville City Attorney

KW/jh

Attachment

ORDINANCE NO. ______

AN ORDINANCE TO AMEND §95.05 **REGULATION OF SMOKING IN CERTAIN PUBLIC PLACES** OF THE CODE OF FAYETTEVILLE AND TO ENACT A REPLACEMENT §95.05 **REGULATION OF SMOKING IN MOST PUBLIC PLACES AND PLACES OF EMPLOYMENT** IN ORDER TO REMOVE EXEMPTIONS FOR BARS, POOL HALLS, SMALL RESTAURANTS, BEAUTY SALONS, BARBER SHOPS AND DESIGNATED SMOKING AREAS IN ENCLOSED PUBLIC ACCESS AREAS IN RESTAURANTS, THEATERS, ROLLER RINKS, BOWLING ALLEYS, AND RETAIL STORES, ETC.

WHEREAS, Ordinance No. 3584 enacted on December 17, 1991, regulated smoking in numerous public places, but permitted designated smoking areas in restaurants, theaters, museums, galleries, malls, hotels, motels, banks, retail stores, health spas, roller rinks, bowling alleys, etc.; and

WHEREAS, Ordinance No. 3584 codified as §95.05 **Regulation of smoking in certain public places** did not apply to bars, separated bars in restaurants, beauty salons, barber shops, convenience stores, pool halls and small restaurants nor many places of employment; and

WHEREAS, scientific studies have proven that second hand tobacco smoke is a recognized carcinogen and is otherwise dangerous and causes diseases in the health of nonsmokers; and

WHEREAS, the United States Surgeon General has determined that separation of smokers and nonsmokers within the same airspace does not eliminate exposure of nonsmokers to second hand smoke; and

WHEREAS, employees who work in a smoke-filled business suffer 25%-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer; and

WHEREAS, the Fayetteville City Council has determined that further restrictions of smoking in enclosed public places and work places are needed to protect the health and safety of citizens and to ensure the right of nonsmokers to breathe smoke free air; and

WHEREAS, economic analyses have shown no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke free; and

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of

lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer; and

WHEREAS, The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respirator function to be a disability.

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 repeals §95.05 **Regulation of smoking in certain public places** of the Fayetteville Code, in its entirety and enacts the following new §95.05 **Regulation of smoking in most public places** of the Fayetteville Code to replace it:

"**Sec. 95.05. Regulation of smoking in most public places.**

(A) *Definitions*. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Bar. An establishment that is devoted solely to the sale and service of alcoholic beverages for on-premises consumption and where the service of food, if any, is incidental to the consumption of such beverages.

Restaurant: An eating establishment, including but not limited to dining establishments, coffee shops, cafeterias, sandwich shops, private and public cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as non-residential kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

Enclosed area. All space partially enclosed between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

Health care facilities. All enclosed indoor areas in which health care is provided to the general public (other than areas to which smoking policy is already established by state law, A.C.A. §§20-27-701 through 20-27-703), including nursing and convalescent homes, optometrists', podiatrists', and chiropractors' offices, and physical therapy facilities.

Manager. The owner, lessee, or other person in charge of a public place.

Place of employment. An area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

Public place.

(1) Any enclosed indoor area that is used by the general public, except hotel and motel guest rooms and areas restricted to use only by employees or management of a private business; and

(2) Any swimming pool owned or operated by the city, including the entire area within the pool enclosure. A private residence shall not be considered a public place for purposes of this section

unless it is used as a health care or licensed child care facility.

Retail Tobacco Store. A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Smoking. Holding a lighted pipe, cigar, or cigarette of any kind, or lighting, or emitting or exhaling the smoke of, a pipe, cigar, or cigarette of any kind.

Sports arenas. Means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports or other events.

(B) *Restrictions on smoking in public places essential to members of the public.* No person shall smoke in the following public places:

Deleted highlighted area at the request of Shirley Lucas

(1) Health care facilities, except in private or ~~semi-private rooms occupied by one or more patients all of whom are smokers who have requested to be placed in rooms where smoking is permitted~~;

(2) Within the physical confines of licensed child care facilities. (As defined in A.C.A. §20-78-217)

(3) Polling places;

(4) Courtrooms and jury waiting and deliberation rooms;

(5) Rooms, halls or other places of meeting or public assembly, during such times as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city; provided that this section shall not apply to meetings of private organizations;

(6) Drug stores, grocery stores, banks, libraries, and laundromats;

(7) Public transportation terminals;

(8) Buses, taxis, and airport limousines operating within the city limits;

(9) Elevators accessible to the public;

(10) Restrooms; and

(11) Swimming pools owned or operated by the city.

(C) *Restrictions on smoking in certain other public places.* No person shall smoke in the following enclosed public places and places of employment or work places:

(1) Facilities primarily used for exhibiting any motion picture, lecture, musical recital, stage or other similar performance, except when smoking is part of a stage production;

(2) Enclosed walkways in malls and shopping centers;

(3) Hotels and motels, except hotel and motel rooms that are rented to guests and are designated as smoking rooms.

(4) Museums and galleries;

(5) Bank and retail stores doing business with the general public, except for retail tobacco stores whose primary source of revenue is the sale of tobacco and tobacco-related products:

(6) Restaurants, cafeterias, cafes, coffee shops, etc.

(7) Health spas, roller rinks, bowling alleys, and other indoor sports or recreation facilities, including pool halls;

(8) Bars, taverns, nightclubs, cocktail lounges, cabarets, etc.

(9) Beauty salons and barber shops;

(10) Convenience stores.

(11) An outside area within a reasonable distance of fifteen (15) feet from a main entrance to an enclosed area in which smoking is prohibited.

(12) Enclosed places of employment and work places if a nonsmoking employee is present or regularly enters or uses that portion of an enclosed place of employment or work place.

(13) Business vehicles with at least one nonsmoker as an occupant.

(D) The provisions of this section shall not apply to Retail tobacco stores whose primary source of revenue is the sale of tobacco and tobacco-related products.

(E) *Duties of managers of public places.*

(1) The manager of a public place in which smoking is prohibited or restricted shall place conspicuous signs at each public entrance up to a maximum of six entrances, and at appropriate places within the public place, notifying the public that Smoking is prohibited.

(2) The manager of a public place in which smoking is prohibited or restricted shall not knowingly permit, or fail to make reasonable efforts to prevent, smoking in any area where smoking is prohibited.

(F) *Enforcement.*

(1) This section shall be enforced by the Mayor or an authorized designee.

(2) Any citizen who desires to register a complaint under this section may initiate enforcement with the Mayor's office.

(3) An owner, manager, operator or employee of an establishment regulated by this section shall inform persons violating this section of the appropriate provisions thereof.

(4) A person who smokes in an area where smoking is prohibited by provisions of this section shall be guilty of a violation punishable by a fine not exceeding fifty dollars ($50.00).

(5) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Section shall be guilty of a violation, punishable by:

(a) A fine not exceeding one hundred dollars ($100.00) for a first violation;

(b) A fine not exceeding two hundred dollars ($200) for a second violation within one (1) year;

(c) A fine not exceeding five hundred dollars ($500) for each additional violation within one (1) year.

(6) In addition to the fines established by this Section, multiple violation of this Section by a person who owns, manages, operates or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(7) Each day on which a violation of this Section occurs shall be considered a separate and distinct violation.

(G) *Relation to other laws and regulations.*

Nothing in this section excuses noncompliance with any state or federal law, or any rule or regulation adopted pursuant thereto (including any rule adopted for the University of Arkansas or for the public schools), which prohibits or regulates smoking.

(H) *Jurisdiction.*

This section is not applicable nor enforceable in federal, state or county buildings including all facilities owned or operated by the University of Arkansas.

(Ord. No. 3584, 12-17-91)

PASSED and APPROVED this the 1st day of July, 2003.

APPROVED:

By: ____________________
DAN COODY, Mayor

ATTEST:

By: ____________________
Sondra Smith, City Clerk

Bentonville, AR 72712
Phone 479-845-2800
Fax 479-845-2801
Alt Ph 479-444-7671

HR Factor

Fax

To: Sondra
From: Don Marr
Fax: 479-718-7695
Pages: 7 (including the cover page)
Phone: 479-575-8323
Date: 6/20/03
Re: Revised Smoking Ord.
CC:

☑ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

Sondra, Don will request the addition to the agenda.

Thanks for your help,

Gail Eads

ORDINANCE NO. 3584

AN ORDINANCE TO REGULATE SMOKING IN CERTAIN PUBLIC PLACES AND TO AMEND CHAPTER 95 OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, ARKANSAS BY ADDING A NEW SECTION 95.05.

WHEREAS, studies by the Surgeon General of the United States, the National Academy of Sciences, the National Institute of Occupational Safety and Health, and other scientific and health organizations demonstrate that passive smoking, or involuntary exposure to other people's tobacco smoke, is a significant health hazard for elderly people, children, individuals with cardiovascular disease, and individuals with impaired respiratory function;

WHEREAS, health hazards caused by passive smoking include lung cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, bronchoconstriction and bronchospasm;

WHEREAS, non-smokers who suffer allergies, respiratory diseases and other ill effects of passive smoking may experience a loss of job productivity and may be forced to take periodic sick leave because of such adverse reactions;

WHEREAS, smoking is a frequent cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause losses to business;

WHEREAS, the Fayetteville business community has taken important steps to increase customer satisfaction by providing non-smoking areas, and this trend should be encouraged; and

WHEREAS, the purpose of this ordinance is to protect public health, safety and welfare by prohibiting smoking in certain public places essential to members of the public, and by restricting smoking to designated smoking areas in other specified public places;

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

Section 1. Chapter 95 of the Code of Fayetteville is hereby amended by adding Section 95.05 to read as follows:

§95.05 Regulating Smoking in Certain Public Places.

(a) Definitions.

(1) "Bar" means an area devoted to the sale and service of alcoholic beverages for on-premises consumption, where the service of food, if any, is only incidental to the consumption of such beverages.

(2) "Designated smoking area" means an area:

(A) that is separated from non-smoking areas; is designated by appropriate signs which are clearly visible to patrons in and entering the area, or is in a facility where conspicuous signs are posted that smoking is permitted in the entire facility except for non-smoking areas; contains ashtrays, containers, or other receptacles for extinguishing smoking materials; and does not include service lines or cashier areas; and

(B) that is situated so that smoke from the smoking area does not normally enter a non-smoking area; provided that in the case of a public place that is in business or operation on the date of enactment of this ordinance, whether under the same or new management, no new physical barriers or ventilation systems need to be installed, and such public place shall be deemed to satisfy this subparagraph (a)(2)(B) if it utilizes existing physical barriers or ventilation systems to minimize the drift of smoke into non-smoking areas.

(3) "Designated non-smoking area" means an area that is separated from smoking areas, and is designated by appropriate signs which are clearly visible to patrons and entering the area.

(4) "Health care facilities" means all enclosed indoor areas in which health care is provided to the general public (other than areas to which smoking policy is already established by state law (A.C.A.§§ 20-27-701 thru 703), including nursing and convalescent homes, optometrists', podiatrists', and chiropractors' offices, and physical therapy facilities.

(5) "Manager" means the owner, lessee, or other person in charge of a public place.

(6) "Public place" means (a) any enclosed indoor area that is used by the general public, except hotel and motel guest rooms and areas restricted to use only by employees or management of a private business; and (b) any swimming pool owned or operated by the city, including the entire area within the pool enclosure. A private residence shall not be considered a public place for purposes of this ordinance, unless it is used as a health care or licensed child care facility.

(7) "Smoking" means holding a lighted pipe, cigar, or cigarette of any kind, or lighting, or emitting or exhaling the smoke of, a pipe, cigar, or cigarette of any kind.

(b) Restrictions on Smoking in Public Places Essential to Members of the Public.

No person shall smoke in the following public places:

(1) health care facilities, except in private or semi-private rooms occupied by one or more patients all of whom are smokers who have requested to be placed in rooms where smoking is permitted;

(2) licensed child care facilities, except in areas in which children being cared for are never present;

(3) polling places;

(4) courtrooms and jury waiting and deliberation rooms;

(5) rooms, halls or other places of meeting or public assembly, during such times as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city; provided that this ordinance shall not apply to meetings of private organizations;

(6) drug stores, grocery stores, banks, libraries, and laundromats;

(7) public transportation terminals;

(8) buses, taxis, and airport limousines operating within the city limits;

(9) elevators accessible to the public;

(10 restrooms, except in facilities listed in subsection (d) of this ordinance; and

(11) swimming pools owned or operated by the city.

(c) Restrictions on Smoking in Certain Other Public Places.

No person shall smoke in the following public places, except in designated smoking areas:

(1) facilities primarily used for exhibiting any motion picture, lecture, musical recital,

stage or other similar performance, except when smoking is part of a stage production;

(2) enclosed walkways in malls and shopping centers;

(3) hotels and motels;

(4) museums and galleries;

(5) bank and retail stores doing business with the general public, except for retail stores whose primary source of revenue is the sale of tobacco and tobacco-related products;

(6) restaurants in business on the date of enactment of this ordinance, whether under the same or new management, if the seating capacity is 30 or less and the management posts a conspicuous notice on each public entrance stating that smoking is permitted throughout the restaurant; and

(7) health spas, roller rinks, bowling alleys, and other indoor sports or recreation facilities, except for pool halls.

(d) The provisions of this ordinance shall not apply to the following facilities, provided that the facility posts a conspicuous notice on each public entrance stating that smoking is permitted throughout the facility:

(1) bars, and separated bar areas of restaurants;

(2) beauty salons and barber shops;

(3) retail stores whose primary source of revenue is the sale of tobacco and tobacco-related products;

(4) gasoline stations and convenience stores; and

(5) pool halls; and

(6) restaurants in business on the date of enactment of this ordinance, whether under the same or new management, if the seating capacity is 30 or less.

(e) Duties of Managers of Public Places.

(1) The manager of public place to which this ordinance applies shall make one of the following three designations. The manager may

designate: (A) the entire public place as a non-smoking facility; or (B) separate areas of the public place as a designated smoking and non-smoking, if permitted by paragraph (c) of this ordinance; or (C) the entire public place as a smoking-permitted facility, if permitted by paragraph (d) of this ordinance.

(2) The manager of a public place, if the entire public place has been designated a smoking-permitted facility, shall post a conspicuous notice on each public entrance stating that smoking is permitted throughout the facility.

(3) The manager of a public place in which smoking is prohibited or restricted shall place conspicuous signs at each public entrance up to a maximum of six entrances, and at appropriate places within the public place, notifying the public that (A) smoking is prohibited, or (B) that smoking is prohibited except within designated smoking areas, or (C) that smoking is permitted except within designated non-smoking areas.

(4) The manager of a public place in which a smoking and non-smoking areas has been designated shall comply with the requirements of this ordinance for sitting of the designated smoking and non-smoking areas.

(5) The manager of a public place in which smoking is prohibited or restricted shall not knowingly permit, or fail to make reasonable efforts to prevent, smoking in any area where smoking is prohibited. The manager may fulfill this duty by asking smokers to refrain from smoking in a non-smoking area or directing smokers to designated smoking areas.

(6) Nothing in this ordinance shall preclude the manager of a public place listed in paragraphs (c) or (d) of this ordinance from designating all of the facility to be non-smoking, or from designating part of public place listed in paragraph (d) as a non-smoking area.

(f) Enforcement.

(1) The City Manager shall designate officers responsible for enforcing the provisions of this ordinance, with due regard for the circumstances of each type of facility subject to the ordinance.

(2) The violation of any provision of this ordinance shall be punishable by a fine of not less than $10.00 and not more than $100, except that in inadvertent first offender may be given a warning. Each day a violation of this ordinance continues shall be a separate offense.

(3) City officials responsible for issuing building permits and certificates of occupancy for facilities subject to this ordinance shall consider applicants' compliance with, or agreement to comply with paragraph (e)(4) as a factor in deciding whether to issue the permit.

(g) Relation to Other Laws and Regulations.

Nothing in this ordinance excuses noncompliance with any state or federal law, or any rule or regulation adopted pursuant thereto (including any rule adopted for the University of Arkansas or for the public schools), which prohibits or regulates smoking.

(h) Severability.

If any part of this ordinance, or the application of the same to any person or set of circumstances, is for any reason held to be void or invalid, the validity of the remaining parts of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby.

(i) Effective Date.

This ordinance shall be effective three months after the date of approval by the Fayetteville Board of Directors.

PASSED AND APPROVED this 17th day of December, 1991.

APPROVED:

By: Fred S. Vorsanger
Mayor

ATTEST:

By: Sherry L. Thomas
City Clerk

CHAPTER 95: HEALTH AND SANITATION

Section

§ 95.01 Unsightly or unsanitary conditions on real property; order and notice to correct.

(A) The mayor, or his duly authorized representative, is hereby authorized to order the owner of any real property within the city to cut weeds and grass growing thereon, remove garbage, rubbish and other unsanitary and unsightly articles and things therefrom and eliminate, fill up or remove any stagnant pool of water or any other unsanitary thing, place or condition on such property which might become a breeding place for mosquitoes, flies and germs harmful to the health of the community. Whenever any such condition is found to exist, the mayor, or his duly authorized representative, shall give the owner of the property written notice to perform such acts within 20 days. In case the owner of the property is unknown or his whereabouts is not known or he is a nonresident of this state, a copy of the written notice shall be posted upon the premises.

(B) It shall be unlawful for any person to fail or refuse to comply with any order and notice given pursuant to this section.
(Code 1965, § 11-1; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69)

Cross reference—Penalty, § 95.99.

§ 95.02 Abatement by city; costs responsibility of owner.

If the conditions described in a notice given pursuant to § 95.01 are not removed or corrected within 20 days after such notice is given, the mayor, or his duly authorized representative, is hereby authorized to enter upon the property and do whatever is necessary to correct or remove the conditions described, in the notice. The costs of correcting said conditions shall be charged to the owner or owners of the property and the city shall have a lien against such property for such costs.
(Code 1965, 11-2; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69; Ord. No. 2557, 9-4-79)

Cross reference—Penalty, § 95.99.

§ 95.03 Enforcement of lien; notice.

(A) The lien herein provided for may be enforced and collected in either one of the following manners:

(1) The lien may be enforced at any time within 18 months after work has been done, by an action in the chancery court; or

(2) The amount of the lien herein provided may be determined at a hearing before the city council held after 30 days' written notice by certified mail to the owner or owners of the property, if the name and whereabouts of the owner or owners be known, and if the name of the owner or owners cannot be determined, then only after publication of notice of such hearing in a newspaper having a bona fide circulation in Washington County for one insertion per week for four consecutive weeks; the determination of the city council shall be subject to appeal by the property owner in the chancery court; and the amount so determined at said hearing, plus 5% penalty for collection, shall be by the city council certified to the tax collector of the county, and by him placed on the tax books as delinquent taxes, and collected accordingly, and the amount, less 3% thereof, when so collected shall be paid to the city by the county tax collector.

(Code 1965, § 11-3; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69; Ord. No. 2557, 9-4-79; Ord. No. 2922, 5-17-83)

(B) In case the owner of any lot or other real property is unknown or his whereabouts is not known or he is a nonresident of this state, then a copy of the written notice hereinabove referred to shall be posted upon the premises and before any action to enforce such lien shall be had, the city clerk shall make an affidavit setting out the facts as to unknown address or whereabouts or nonresidence, and thereupon service of the publication as now provided for by law against nonresident defendants may be had, and an attorney ad litem shall be appointed to notify the defendant by registered letter addressed to his last known place of residence if same can be found.
(Code 1965, § 11-3.1; Ord. No. 2557, 9-4-79)

§ 95.04 Public nuisance; abatement.

(A) It shall be unlawful for the owners, occupants, tenants, or lessees of any dwelling or place of business to allow garbage, trash or other litter to accumulate on his premises, or to place or cause to be placed paper, cardboard or other litter in such manner as to cause unsightly or unsanitary conditions in the city.

(B) The sanitation superintendent or the health department sanitarian or their authorized representatives shall have the duty of notifying the owner, occupant, tenant, or lessee of a dwelling or place of business where one or more of the conditions described in subsection (A) of this section is found to exist.

(C) It shall be the duty of the owner, occupant, tenant or lessee of such premises to correct said condition or conditions within 30 days from date of receipt of such notice.

(D) If the owner, occupant, tenant, or lessee fails to obey such notice and continues to maintain said prohibited condition or conditions, such person shall be deemed in violation of this section and shall be subject to the penal provisions contained in this chapter.

(E) The provisions of this section are supplementary to, and do not amend or repeal the provisions of §§ 95.01 through 95.03 of this Code.
(Code 1965, § 10-5; Ord. No. 1194, 4-6-59; Ord. No. 1619, 8-19-68)

Cross reference—Penalty, § 95.99.

§ 95.05 Regulation of smoking in certain public places.

(A) Definitions.

Bar. An area devoted to the sale and service of alcoholic beverages for on-premises consumption, where the service of food, if any, is only incidental to the consumption of such beverages.

Designated smoking area.

(1) An area that is separated from nonsmoking areas; is designated by appropriate signs which are clearly visible to patrons in and entering the area, or is in a facility where conspicuous signs are posted that smoking is permitted in the entire facility except for nonsmoking areas; contains ashtrays, containers, or other receptacles for extinguishing smoking materials; and does not include service lines or cashier areas; and

(2) An area that is situated so that smoke from the smoking area does not normally enter a nonsmoking area; provided that in the case of a public place that is in business or operation on the date of enactment of this section, whether under the same or new management, no new physical barriers or ventilation systems need to be installed, and such public place shall be deemed to satisfy this subdivision if it utilizes existing physical barriers or ventilation systems to minimize the drift of smoke into nonsmoking areas.

Designated non-smoking area. An area that is separated from smoking areas, and is designated by appropriate signs which are clearly visible to patrons and entering the area.

Health care facilities. All enclosed indoor areas in which health care is provided to the general public (other than areas to which smoking policy is already established by state law (A.C.A. §§ 20-27-701 through 20-27-703), including nursing and convalescent homes, optometrists', podiatrists', and chiropractors' offices, and physical therapy facilities.

Manager. The owner, lessee, or other person in charge of a public place.

Public place.

(1) Any enclosed indoor area that is used by the general public, except hotel and motel guest rooms and areas restricted to use only by employees or management of a private business; and

(2) Any swimming pool owned or operated by the city, including the entire area within the pool enclosure. A private residence shall not be considered a public place for purposes of this section unless it is used as a health care or licensed child care facility.

Smoking. Holding a lighted pipe, cigar, or cigarette of any kind, or lighting, or emitting or exhaling the smoke of, a pipe, cigar, or cigarette of any kind.

(B) Restrictions on smoking in public places essential to members of the public. No person shall smoke in the following public places:

(1) Health care facilities, except in private or semi-private rooms occupied by one or more patients all of whom are smokers who have requested to be placed in rooms where smoking is permitted;

(2) Licensed child care facilities, except in areas in which children being cared for are never present;

(3) Polling places;

(4) Courtrooms and jury waiting and deliberation rooms;

(5) Rooms, halls or other places of meeting or public assembly, during such times as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city; provided that this section shall not apply to meetings of private organizations;

(6) Drug stores, grocery stores, banks, libraries, and laundromats;

(7) Public transportation terminals;

(8) Buses, taxis, and airport limousines operating within the city limits;

(9) Elevators accessible to the public;

(10) Restrooms, except in facilities listed in subsection (D) of this section; and

(11) Swimming pools owned or operated by the city.

(C) Restrictions on smoking in certain other public places. No person shall smoke in the following public places, except in designated smoking areas:

(1) Facilities primarily used for exhibiting any motion picture, lecture, musical recital, stage or other similar performance, except when smoking is part of a stage production;

(2) Enclosed walkways in malls and shopping centers;

(3) Hotels and motels;

(4) Museums and galleries;

(5) Bank and retail stores doing business with the general public, except for retail stores whose primary source of revenue is the sale of tobacco and tobacco-related products;

(6) Restaurants in business on the date of enactment of this section, whether under the same or new management, if the seating capacity is 30 or less and the management posts a conspicuous notice on each public entrance stating that smoking is permitted throughout the restaurant; and

(7) Health spas, roller rinks, bowling alleys, and other indoor sports or recreation facilities, except for pool halls.

(D) The provisions of this section shall not apply to the following facilities, provided that the facility posts a conspicuous notice on each public entrance stating that smoking is permitted throughout the facility:

(1) Bars, and separated bar areas of restaurants;

(2) Beauty salons and barber shops;

(3) Retail stores whose primary source of revenue is the sale of tobacco and tobacco-related products;

(4) Gasoline stations and convenience stores;

(5) Pool halls;

(6) Restaurants in business on the date of enactment of this section, whether under the same or new management, if the seating capacity is 30 or less.

(E) Duties of managers of public places.

(1) The manager of public place to which this section applies shall make one of the following three designations. The manager may designate:

(a) The entire public place as a nonsmoking facility; or

(b) Separate areas of the public place as a designated smoking and nonsmoking, if permitted by subsection (C) of this section; or

(c) The entire public place as a smoking-permitted facility, if permitted by subsection (D) of this section.

(2) The manager of a public place, if the entire public place has been designated a smoking permitted facility, shall post a conspicuous notice on each public entrance stating that smoking is permitted throughout the facility.

(3) The manager of a public place in which smoking is prohibited or restricted shall place conspicuous signs at each public entrance up to a maximum of six entrances, and at appropriate places within the public place, notifying the public that:

(a) Smoking is prohibited, or

(b) That smoking is prohibited except within designated smoking areas, or

(c) That smoking is permitted except within designated nonsmoking areas.

(4) The manager of a public place in which a smoking and nonsmoking area has been designated shall comply with the requirements of this section for siting of the designated smoking and nonsmoking areas.

(5) The manager of a public place in which smoking is prohibited or restricted shall not knowingly permit, or fail to make reasonable efforts to prevent, smoking in any area where smoking is prohibited. The manager may fulfill this duty by asking smokers to refrain from smoking in a nonsmoking area or directing smokers to designated smoking areas.

(6) Nothing in this section shall preclude the manager of a public place listed in subsections (C) or (D) of

this section from designating all of the facility to be nonsmoking, or from designating part of public place listed in subsection (D) as a nonsmoking area.

(F) Enforcement.

(1) The mayor shall designate officers responsible for enforcing the provisions of this section, with due regard for the circumstances of each type of facility subject to the section.

(2) The violation of any provision of this section shall be punishable by a fine of not less than $10.00 and not more than $100.00, except that an inadvertent first offender may be given a warning. Each day a violation of this section continues shall be a separate offense.

(3) City officials responsible for issuing building permits and certificates of occupancy for facilities subject to this section shall consider applicants' compliance with, or agreement to comply with subsection (E)(4) as a factor in deciding whether to issue the permit.

(G) Relation to other laws and regulations.

Nothing in this section excuses noncompliance with any state or federal law, or any rule or regulation adopted pursuant thereto (including any rule adopted for the University of Arkansas or for the public schools), which prohibits or regulates smoking.
(Ord. No. 3584, 12-17-91)

§ 95.99 Penalty.

(A) Any person failing to comply with an order as described by § 95.01 shall, upon conviction, be punished by a fine of not less than $10.00 nor more than $100.00.
(Code 1965, § 11-1; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69)

(B) Whoever violates § 95.04 shall be punished by a fine of not more than $500.00 or double that sum for each repetition of such offense, or violation; provided, no penalty shall be greater or less than the penalty provided for the same or a similar offense under the laws of the state. The penalty for allowing the continuation thereof shall not exceed $250.00 for each day that the same is unlawfully continued.
(Code 1965, § 1-5; Ord. No. 2128, 7-15-75)

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION August 5, 2003 per Hugh

Public Hearing Raze & Removal 226 N. School C. 1. Page 1

YES AGENDA REQUEST

For the Fayetteville City Council Meeting of: May 20, 2003

FROM:

Don Hancock	Com Res & Code Com	Com Plan & Engr Services
Name	Division	Department

ACTION REQUIRED: Public Hearing and Resolution to order the Raze and Removal of the dilapidated structure located at ~~262~~ North School Avenue, Fayetteville, AR 72702

226

SUMMARY EXPLANATION:
See attached Memo

STAFF RECOMMENDATION:

Division Head	4-15-03 Date	Received in Mayor's Office	4/21/03 PH Date
City Attorney	4/21/03 Date		
Department Director	4-16-03 Date	Cross Reference:	
Finance & Internal Services Dir.	4-16-03 Date	Previous Ord/Res#:	
Chief Administrative Officer	4-16-03 Date	Orig. Contract Date:	
Mayor	8/5/03 Date	Orig. Contract Number:	
		New Item:	Yes No

ENTERED

RESOLUTION NO. ______

A RESOLUTION ORDERING THE RAZING AND REMOVAL OF A DILAPIDATED AND UNSAFE STRUCTURE OWNED BY TIMOTHY C. AND CHRISTINE KLINGER LOCATED AT 226 N. SCHOOL AVENUE IN THE CITY OF FAYETTEVILLE, ARKANSAS.

WHEREAS, Timothy C. and Christine Klinger are the record owners of the real property situated at 226 N. School Avenue, City of Fayetteville, Washington County, Arkansas, more particularly described as set forth in Exhibit "A" attached hereto and made a part hereof; and,

WHEREAS, the City Council has determined that the structure located on said property is dilapidated, unsightly, unsafe, and detrimental to the public welfare; and,

WHEREAS, Timothy C. and Christine Klinger, having been properly served with a Violation Notice via Certified Mail, and given thirty (30) days to correct said violation, have refused to repair, or raze and remove said dilapidated, unsightly, and unsafe structure.

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

Section 1. That, by the authority granted pursuant to A.C.A. §14-56-203, and in accordance with the provisions of Ordinance No. 3948 of 1996, Timothy C. and Christine Klinger are hereby ordered to raze and remove forthwith, the dilapidated, unsightly, and unsafe structure located on the aforementioned real property. The manner of removing said structure shall be: dismantle by hand or bulldozer, and haul all debris to a landfill.

Section 2. That if Timothy C. and Christine Klinger do not comply with this order, the Mayor is hereby directed to cause the dilapidated, unsightly, and unsafe structure to be razed and removed; and a lien against the real property shall be granted and given the City, pursuant to A.C.A. §14-54-904, for the costs associated therewith.

PASSED and **APPROVED** this 20th day of May, 2003.

APPROVED:

By: ______________________

DAN COODY, Mayor

ATTEST:

By: ______________________

SONDRA SMITH, City Clerk

EXHIBIT "A"

A part of Lot Seven (7) in Block Five (5), Original Plat of the City of Fayetteville, Arkansas, being more particularly described as follows: Beginning at the Northwest corner of the South 46.00 feet of said Lot Seven (7); thence North 00 degrees 22 minutes 07 seconds West 1.50 feet along the West line of said Lot Seven (7) to a point in line with the North wall of an existing brick building at 226 N. School Ave.; thence North 89 degrees 57 minutes 50 seconds East 104.86 feet along the North wall of said building to the Northeast corner of said building; thence North 89 degrees 12 minutes 51 seconds East 38.64 feet; thence South 01 degree 56 minutes 31 seconds East 46.91 feet; thence South 89 degrees 53 minutes 10 seconds West along an existing curb 136.95 feet; thence North 88 degrees 23 minutes 01 seconds West 3.87 feet; thence North 58 degrees 27 minutes 08 seconds West 4.64 feet to the West line of said Lot Seven (7); thence North 00 degrees 22 minutes 07 seconds West 42.53 feet to the point of beginning.

Date: July 23, 2003

To: The Mayor and Council

From: Hugh Earnest
CAO

Subject: Raze and Removal Resolution

Background
Our Community Resources and Code Compliance Division has been active in moving against structures that no longer comply with minimum codes relating to the basic structure and integrity of the structure. As part of that process, an Unsafe Buildings Violation notice was sent the owners of a building at 226 N. School in February of 2003. The owners had until April 1 to acquire a permit and make repairs or demolish the building. This particular location has a long history with respect to its condition and compliance with our ordinances. I have attached a 1998 memo from Charles Venable that summarized the several commitments made regarding this structure.

Current Situation
We have had several conversations with Mr. Tom Klinger, who along with his wife is the owner of the building. Mr. Klinger has expressed a continued interest in working to improve the site and had apparently employed or authorized an individual to begin work on the grounds by removing a concrete pad adjacent to the building in question. However, no building permit was requested for work on the site. Mr. Klinger understands that we will carry this issue to the council meeting of August 5, 2003.

Recommendation
It is our opinion that the city has given every opportunity for this property to be re-developed and returned to profitable use. That willingness to cooperate is certainly evidenced in the 1998 memo from Mr. Venable and most recently by the slowness shown by the staff in moving this to the council agenda. While we certainly remain receptive to working with the owner, we believe it is in the public interest to request a resolution ordering the raze and removal of this structure.

THE CITY OF FAYETTEVILLE, ARKANSAS

Memo

To: Mayor Hanna and City Council

From: Charles E. Venable

Date: July 27, 1998

Subject: Property Located at 226 North School (Timothy Klinger)

Summary of Events

- City purchased a parcel of land totaling 19,530 square feet with a building totaling 4,284 square feet in April 1990 for $83,500.
- A portion of the land, 12,897 square feet, was converted into a parking lot for use by the Walton Arts Center, et al, following the purchase.
- On March 25, 1993, a public auction was held to dispose of the remaining parcel, 6,633 square feet, and the 4,284 square foot building. Five bids were received with the high bid in the amount of $21,100. This bid, from Timothy Klinger, was approved by the City Council on June 15, 1993.
- In February 1995, problems with the building were noted by the Inspections Division and Mr. Klinger was notified of a potential hazard.
- March 10, 1995, it was noted that Mr. Klinger had made a good faith effort but more corrections were needed.
- November 1995, Mr. Klinger was notified the back wall of the building was unsafe. This wall was removed in early December.
- December 2, 1996, a letter from Kevin Crosson was sent to Timothy Klinger requesting schedule and plans for the property since no work had been done on the site and the building was continuing to deteriorate.

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

- April 14, 1997, a follow up letter was sent to Mr. Klinger since no reply had been received from the December 2, 1996, letter.

- May 22, 1997, notification from Inspections Division that the building had become dilapidated, unsafe, and detrimental to the public welfare was forwarded to Mr. Klinger requesting the owner to obtain a building permit and either repair or demolish the structure.

- June 23, 1997, a building permit was requested from the Inspections Division for the stabilization of the structure and the removal of debris, secure from vandalism, and to reroof a portion of the structure.

- June 24, 1997, letter from Inspections Division notifying Mr. Klinger that on July 1, 1997, the City Council would consider a resolution to determine if the structure should be razed and removed.

- June 25, 1997, letter from Timothy Klinger to Jerry Rose regarding his concern on the proposed council action.

- June 26, 1997, Inspections Division met with Mr. Klinger.

- June 30, 1998, letter from Timothy Klinger to the Inspections Division stating that an architect, Cal Canfield, had been retained and that the following schedule was developed:
  1. Preparation of preliminary design - two to three months
  2. Preparation of construction documents - three to four months
  3. Total design effort completed within seven months
  4. Construction to begin in the spring 1998

- June 30, 1997, memo from the Inspection Division to the City Council giving the status of the property and recommending that Mr. Klinger be given the time to accomplish the objectives outlined in his June 30 letter.

- July 1, 1997, the raze and removal resolution was introduced to the City Council. After discussion with Mr. Klinger, the City Council voted to table the resolution until such time as there is no progress shown on the time line or to completion of promise made by Mr. Klinger.

- July 3, 1997, letter from Mr. Klinger to the Inspections Division setting out the method of alleviating the problems at the site. Mr. Klinger agreed to:
  1. Cover all openings with either plywood or fencing
  2. Seal the front of the structure with fencing to allow easy viewing of the interior
  3. Seal the south and east walls with plywood

4. Seal one opening on the south with fencing to allow viewing of the interior
5. Remove all loose blocks and bricks from the tops of all walls

- July 21, 1997, memo to Public Works and Inspections that the work was under way.

- August 12, 1997, letter to Mr. Klinger from Inspections notifying him that a portion of the north wall was unsafe.

- April 6, 1998, letter to Mr. Klinger from Inspections requesting status of proposed improvements.

- April 17, 1998, letter Mr. Klinger to Inspections stating that the architect, Cal Canfield, had been terminated and that discussions with Richard Alderman were ongoing. He also stated that a commitment for construction financing had been secured.

- July 23, 1998, memo from Inspections updating status of property stating that the building is secure although new graffiti has appeared on the inside of the north wall within with past six weeks. Also stated that no further communication had been received from Mr. Klinger since the April 17 letter.

CV:mm

cc Kevin Crosson
Bert Rakes
Jerry Rose

HELPING TO BUILD A BETTER COMMUNITY

City of Fayetteville, Arkansas
Community Code Enforcement
113 West Mountain Street
Fayetteville, Arkansas 72701
Fax 479- 444-3445

VIOLATION NOTICE

February 28, 2003

CASE NO. 1266

Owner: Timothy C & Christine L Klinger
P.O. Box 1064
Fayetteville, AR 72702

RE: Property @ 226 N. School Ave. OR 262 N. School Ave., Fayetteville, AR
WC Parcel# 765-01710-000

Dear Property Owner:

It appears that your property contains a violation of the Fayetteville Unified Development Ordinance. It is our goal to notify and assist property owners to correct violations of city ordinances before taking actual enforcement actions. Please feel free to call our office at (479) 575-8232 for clarification of this notice or advice on how to correct the problem.

Suspected Violation That Needs Correction:
§ 173.08 Unsafe Buildings. No persons, partnership, corporation or association, hereinafter referred to as "owner", shall keep or maintain any house or building within the corporate limits of the City which has become dilapidated, unsafe, unsanitary, or detrimental to the public welfare.

How This Violation Can Be Voluntarily Corrected:
Please obtain a building permit and make repairs as required or demolish the building and remove all debris from the lot.

Potential Penalties if not corrected within thirty (30) days from the service of this Notice include: Condemnation.

Appeal: If you disagree with our conclusion that your property contains a violation of the ordinance listed above, you have a right to file an appeal with the City Council.

Sincerely,

Sue Butler
Code Compliance Officer

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

7001 1940 0001 4913 4127

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

2-24-03

Sent To Timothy C & Christine L Klinger
Street, Apt. No.; or PO Box No. PO Box 1064
City, State, ZIP+4 Fay 72702

PS Form 3800, January 2001 See Reverse for Instructions

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Timothy C & Christine L.
Klinger
P.O. Box 1064
Fayetteville, AR
72702

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (*Printed Name*) Tim Kling

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

FAYETTEVILLE, AR MAR 1 2003 USPS

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Transfer from service label)* 7001 1940 0001 4913 4127

PS Form 3811, August 2001 Domestic Return Receipt 102595-01-M-2509

SR 5442/1266

FAYETTEVILLE

City of Fayetteville
Code Compliance Section
113 West Mountain Street
Fayetteville, AR 72701

Helping to build a better Community

FAYETTEVILLE

April 8, 2003

Timothy C & Christine Klinger
P O Box 1064
Fayetteville, AR 72702

RE: Enforcement of Ordinance173.08
Arkansas Code Ann. § 14-56-203

NOTICE TO PROPERTY OWNERS

Pursuant to A.C.A. §14-56-203 at 173.08 of the Fayetteville Code, you are placed upon Notice that the Fayetteville City Council will conduct a public hearing to determine if the dwelling located at 262 N School Ave, should be Razed and Removed. You are free to appear at this hearing to present any evidence or statements. Please call and inform me if you plan to appear at the public hearing. If you need additional information concerning this process, please call or if you have information that we are not aware of please call the Code Compliance Office (479-575-8270.

The hearing will be part pf a regular City Council meeting – probably on May 20, 2003 beginning at 6:00 p.m. at the City Administration Building, 113 W. Mountain St, Fayetteville, AR 72701. It is possible that this hearing may be conducted at a later meeting such as June 3, 2003 or thereafter. The City Council Meetings are advertised in local newspapers and will contain an item concerning this hearing. You may also call the Fayetteville City Clerk's Office (575-8323) for information confirming the date of the public hearing. If you need additional information concerning this process please call the Code Compliance Office (575-8270).

Sincerely,

Don Hancock

Don Hancock
Code Compliance
Project Coordinator

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

7001 1940 0001 4906 0594

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

Sent To: Tim & Christine Klinger
Street, Apt. No.; or PO Box No.: P O Box 1064
City, State, ZIP+4: Fay AR 72702

PS Form 3800, January 2001 — See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Timothy or Christine Klinger
P O Box 1064
Fay AR 72702

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) Tim Kl
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

FAYETTEVILLE AR APR 10 2003

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 1940 0001 4906 0594

PS Form 3811, August 2001 Domestic Return Receipt 262 N School 102595-01-M-2509

Public Hearing Raze & Removal 226 N. School C. 1. Page 12

Record 1 of 1 Last Updated 02/24/03

Parcel Number: **765-01710-000** Prev. Parcel Number: **135617-000-00** Type: **CI**
Location: **226 N SCHOOL AVE**
Owner Name: **KLINGER, TIMOTHY C & CHRISTINE L**
Mailing Address: **PO BOX 1064 FAYETTEVILLE AR 72702**
Lot: Block: S-T-R: **16-16-30**
Addition: **FAYETTEVILLE ORIGINAL**
School District: **FAYETTEVILLE SCHOOLS** Tax District: **011**
City: **FAYETTEVILLE**
Legal: **PT LOT 7 BLOCK 5**
Current Year A79 Credit Status:

Last Appraised: 2002	Appraised Value	Taxable Value
Land	51,750	6,768
Improvement	0	0
Total	51,750	6,768

Tax History

Year	Taxable Value	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Total Tax	Total Tax Paid	A79 Credit	A79 Status	Payment Status
2002	6,768	$351.67	$0.00	$0.00	$0.00	$351.67	$0.00			
2001	6,204	$322.36	$0.00	$0.00	$0.00	$322.36	$322.36			PAID
2000	5,640	$296.10	$0.00	$0.00	$0.00	$296.10	$296.10			PAID
1999	5,660	$289.79	$0.00	$0.00	$0.00	$289.79	$289.79			PAID
1998	5,660	$290.36	$0.00	$0.00	$0.00	$1,014.60	$1,014.60			PAID
1997	5,660	$290.36	$724.24	$0.00	$0.00	$1,014.60	$1,087.02			PAID
1996	5,660	$290.36	$724.24	$0.00	$0.00	$1,141.47	$1,069.05			PAID
1995	5,660	$0.00	$724.24	$0.00	$0.00	$724.24	$724.49			PAID

Available Tax Payment Receipt(s)

Year	Receipt #	Payment Date	Ad Valorem Tax	Imp. Dist. Tax	Timber Tax	Voluntary Tax	Penalty Tax	Payment
2001	112882	10/25/02	$322.36	$0.00	$0.00	$0.00	$0.00	$322.36
2000	9081	09/04/01	$296.10	$0.00	$0.00	$0.00	$0.00	$296.10
1999	9395	08/29/00	$289.79	$0.00	$0.00	$0.00	$0.00	$289.79
1997	4851	06/30/98	$0.00	$724.24	$0.00	$0.00	$0.00	$724.24
1997	10352	10/10/98	$0.00	$724.24	$0.00	$0.00	$0.00	$724.24
1996	8437	07/02/98	$0.00	$0.00	$0.00	$0.00	$72.42	$72.42
1995	9757	08/27/96	$0.00	$724.24	$0.00	$0.00	$0.00	$724.24
1994	12945	07/17/95	$0.00	$724.49	$0.00	$0.00	$0.00	$724.49

Deed History

Date	Book	Page	Grantee1	Grantee2	Deed Type	Sale Amount	Revenue Amount
10/14/1993	93	60983	KLINGER, TIMOTHY C. & CHRISTINE		WD	0	0.00

NO REV.

Public Hearing Raze & Removal 226 N. School C. 1. Page 13

4/5/1990	1361	822	CITY OF FAYETTEVILLE, A MUNICI-	PAL CORP	WD	42,000	92.40

PAGES 822/823. ALSO 01713.1362-503 CORR: WD, CORR 1361-822 BY ADDING FILE MARK PREVIOUSLY OMITTED. 1362-517 AFFIDAVIT STATING REV STAMPS PLACED ON DEED 1361-822 IN ERROR. 6/25/93 EXEMPTION DENIED/BLDG BOARDED UP.(SP)

10/23/1987	1248	322	FIRST FEDERAL SAVINGS OF ARK		TD	0	0.00

PAGES 322-329. ALSO 765-01713. 1304-412 QCD FROM SHIPLEYS. PT LOT 7 TRANSFERRED FROM 01707-000 PER QCD 1304-411 FILED 1/19/89. PT LOT 7 TRANSFERRED FROM 01709-000 PER QCD 1304-411 FILED 1/19/89. NO VALUE CHANGE. 1334-435 RECEIVER'S QCD, NO REV, ALSO 01713. 1350-800 CORR QCD-CORRECTS 1334-435.

1/1/1985	920	76	OZARK MOUNTAIN SPORTS, INC,		WD	0	0.00

Next Item | Previous Item | Return to Search Results | Modify Search | New Search

FILED FOR RECORD
'93 OCT 19 PM 4 02
WASHINGTON CO AR
A. KOLLMEYER

WARRANTY DEED
(CORPORATION)

KNOW ALL MEN BY THESE PRESENTS:

That the City of Fayetteville, a municipal corporation, a corporation organized under and by virtue of the laws of the State of Arkansas, hereinafter called Grantor, by its Mayor and City Clerk, duly authorized by proper resolution of its City Council, for and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration in hand paid by Timothy C. Klinger and Christine Klinger, husband and wife, hereinafter called Grantees, do hereby grant, bargain and sell unto the said Grantees and Grantee's heirs and assigns, the following described land situate in Washington County, State of Arkansas, to-wit:

A part of Lot Seven (7) in Block Five (5), Original Plat of the City of Fayetteville, Arkansas, being more particularly described as follows: Beginning at the Northwest corner of the South 46.00 feet of said Lot Seven (7); thence North 00 degrees 22 minutes 07 seconds West 1.50 feet along the West line of said Lot Seven (7) to a point in line with the North wall of an existing brick building at 226 N. School Ave; thence North 89 degrees 57 minutes 50 seconds East 104.86 feet along the North wall of said building to the Northeast corner of said building; thence North 89 degrees 12 minutes 51 seconds East 38.64 feet; thence South 01 degree 56 minutes 31 seconds East 46.91 feet; thence South 89 degrees 53 minutes 10 seconds West along an existing curb 136.95 feet ;thence North 88 degrees 23 minutes 01 seconds West 3.87 feet; thence North 58 degrees 27 minutes 08 seconds West 4.64 feet to the West line of said Lot Seven (7); thence North 00 degrees 22 minutes 07 seconds West 42.53 feet to the point of beginning.

TO HAVE AND TO HOLD the lands and appurtenances thereunto belonging unto the said Grantees and Grantees' heirs and assigns, forever. And said corporation hereby covenants with the said Grantees that it is lawfully seized of said land and premises, that the same is unencumbered, and that it will forever warrant and defend the title to the said lands against all legal claims whatever.

IN TESTIMONY WHEREOF, the name of the Grantor is hereunto affixed by its Mayor and its seal affixed by its City Clerk, this 14 day of October, 1993.

CITY OF FAYETTEVILLE

BY: Fred Hanna
Mayor

BY: Sherry L. Thomas
City Clerk

93 60983

ACKNOWLEDGMENT

State of Arkansas) County of Washington) ss.

On this the 14 day of October, 1993, before me, a notary public, qualified and acting, within and for the said County and State, appeared in person the within named Fred Hanna and Sherry L. Thomas to me personally known who stated that they were the Mayor and City Clerk of the City of Fayetteville, a municipal corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 14 day of October, 1993.

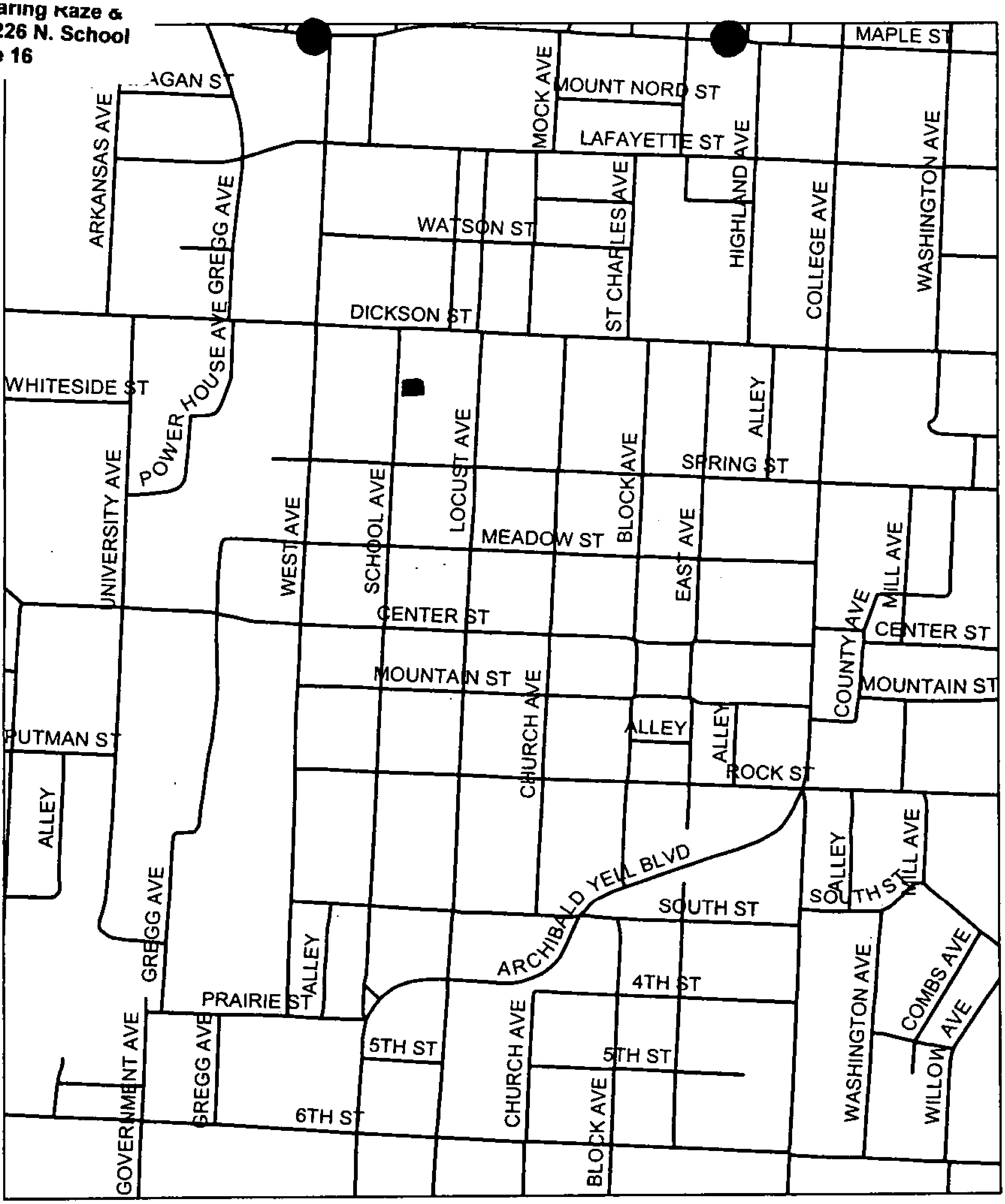
Bert Baker
Notary Public

NOTARY PUBLIC
BERT BAKER
WASHINGTON COUNTY

My commission expires:
July 11, 2002

93 60984

Public Hearing Raze &
Removal 226 N. School
C. 1. Page 16

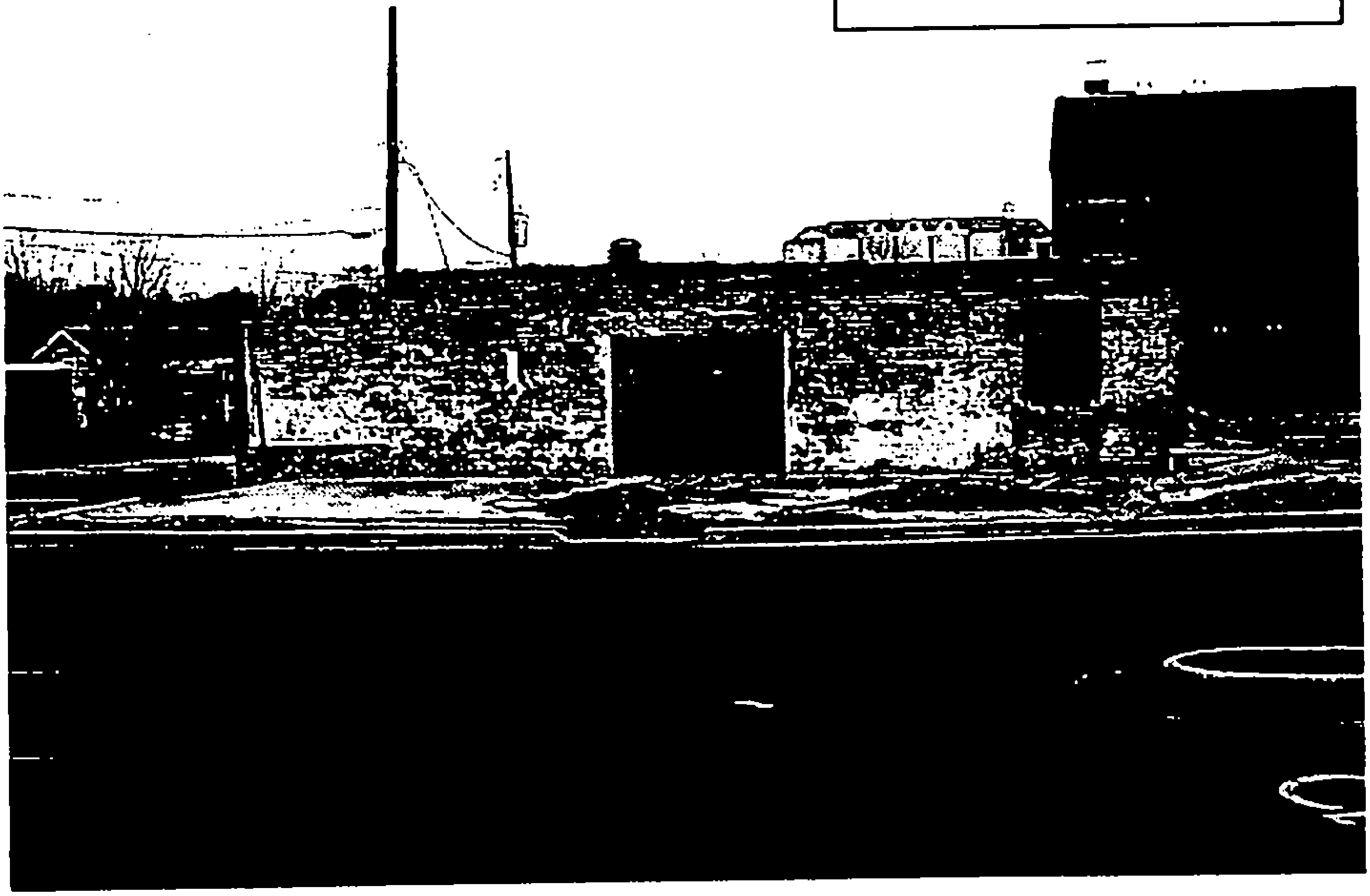


262 N. School

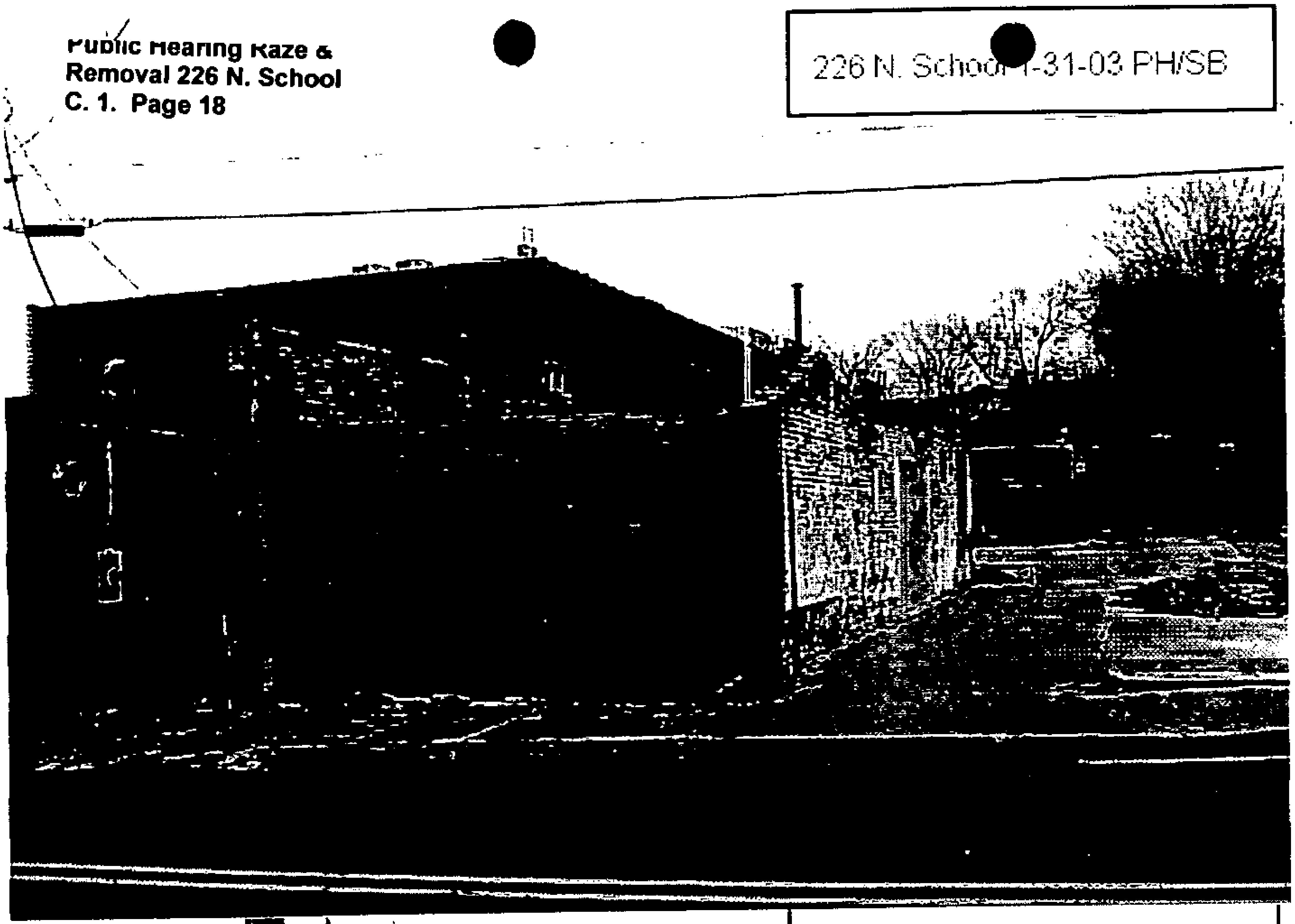
N

226 N Sch[illegible] 1-3

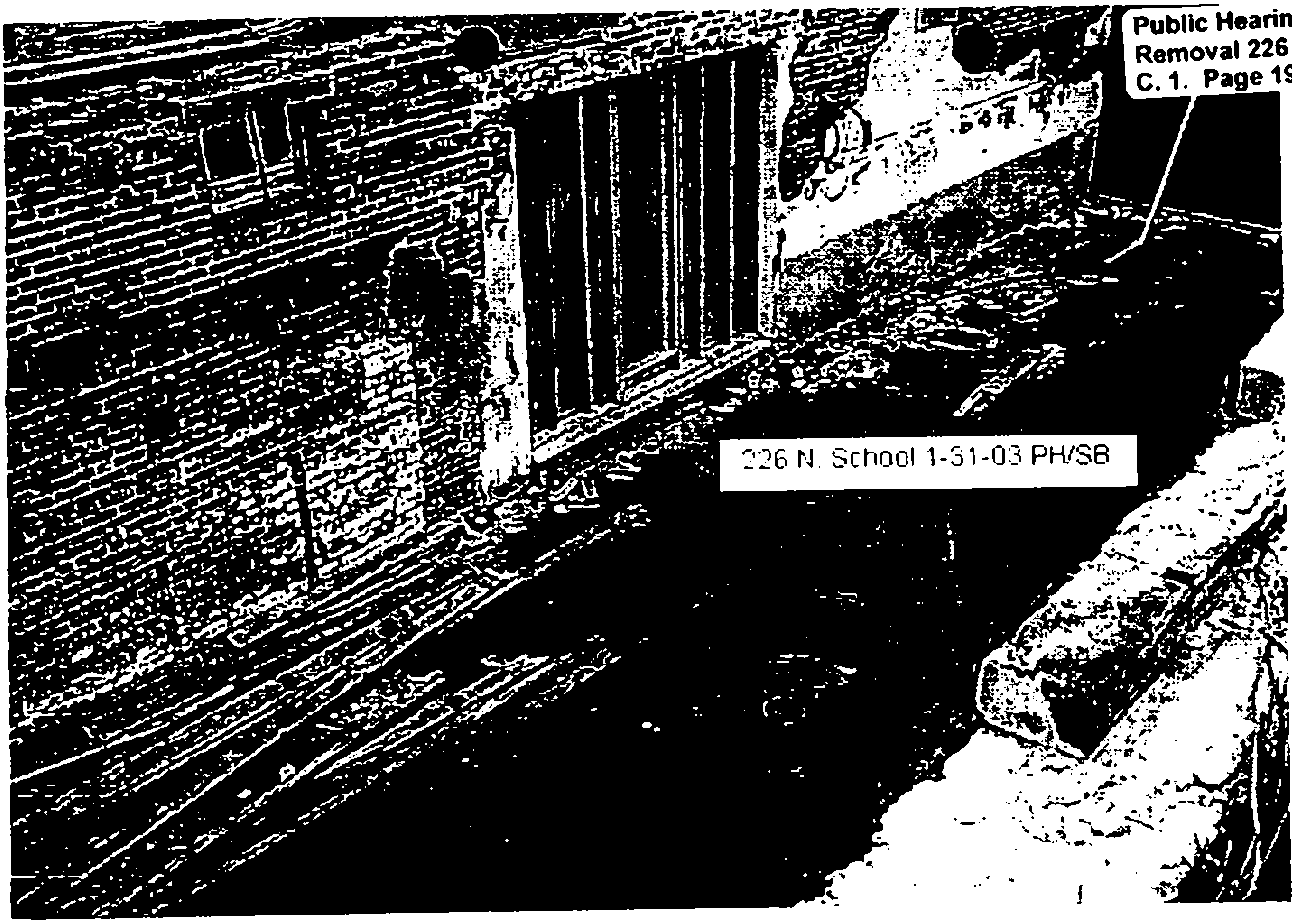
226 N School 1-31-03 PH/SB

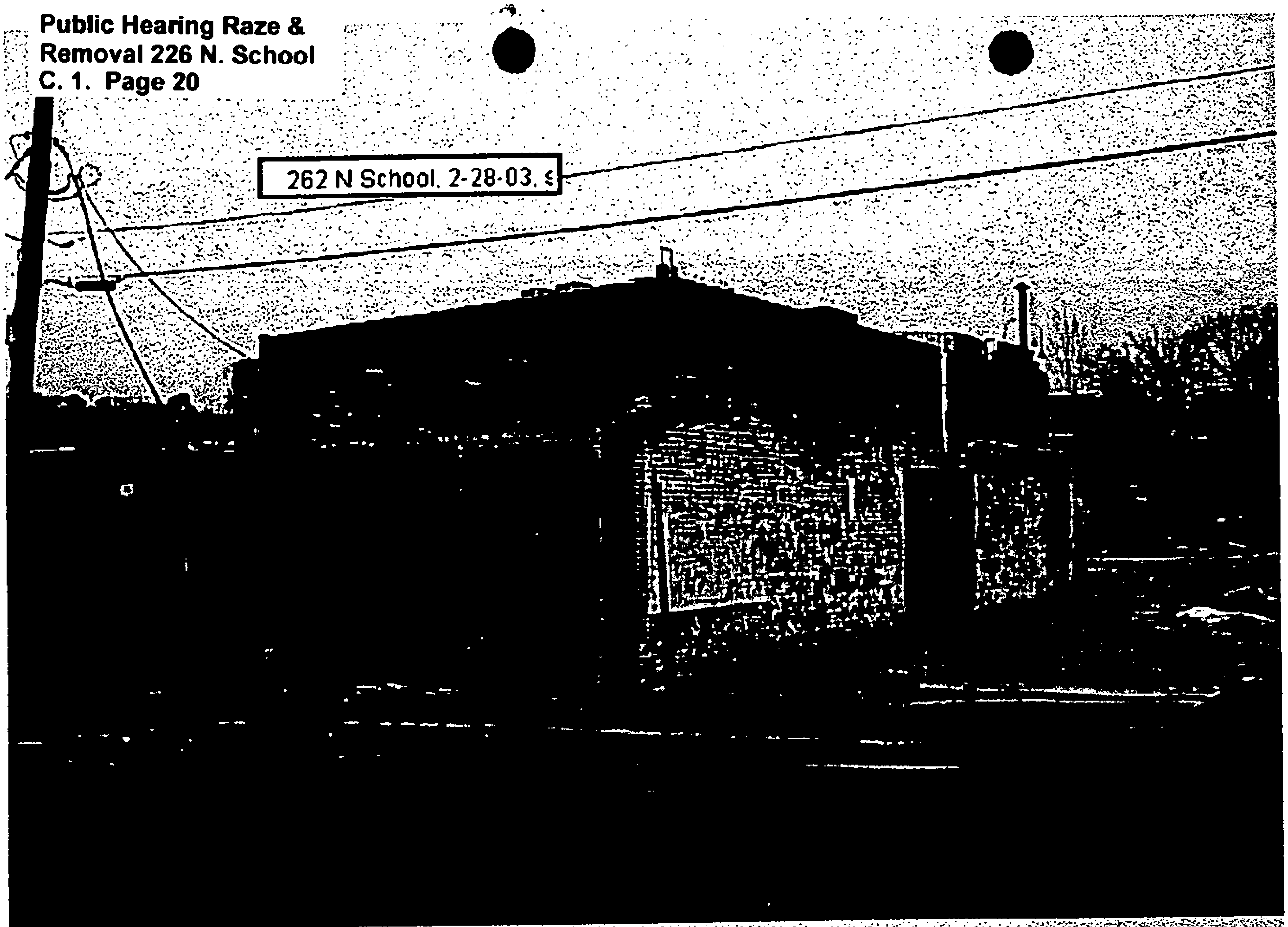


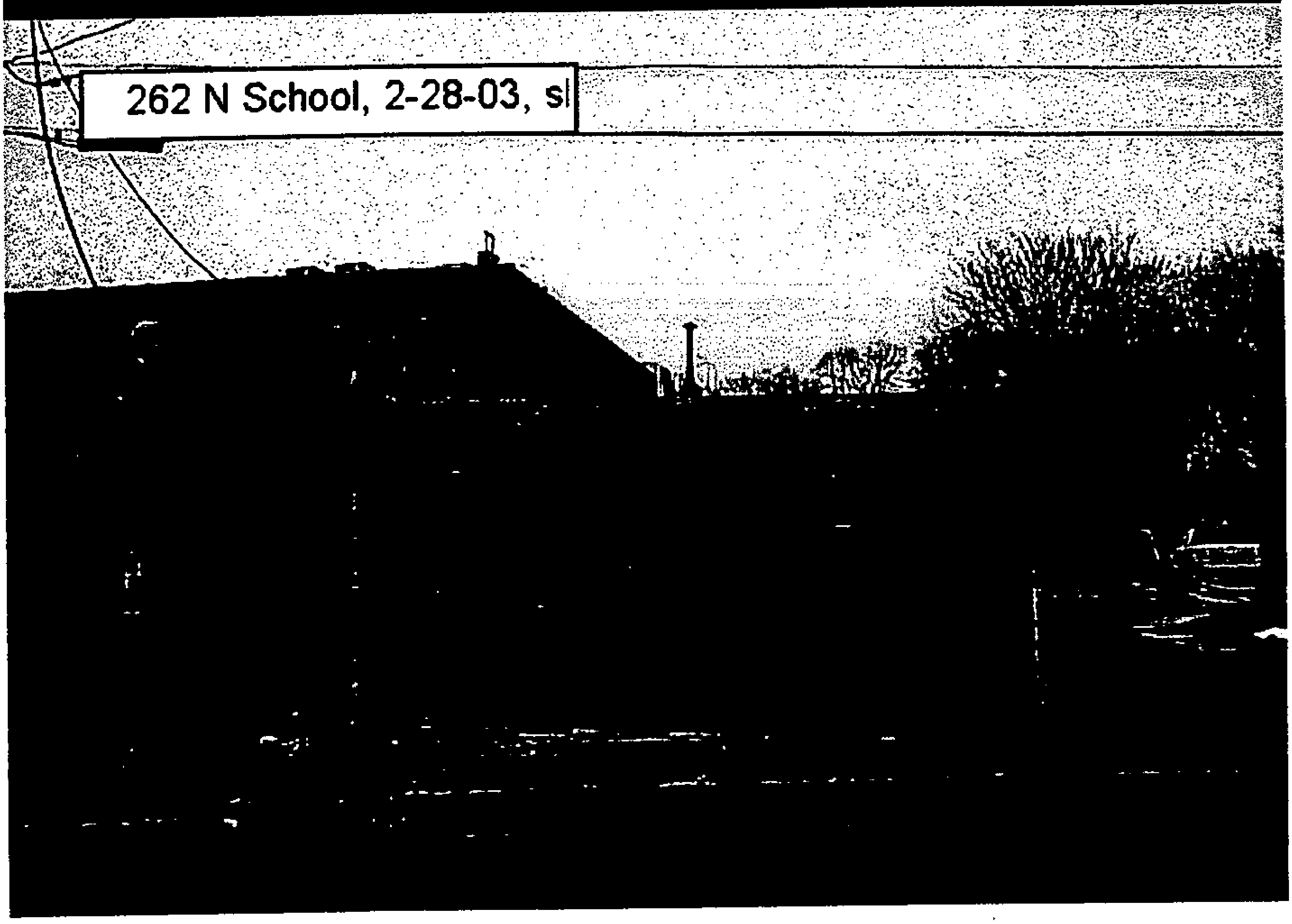
Public Hearing Raze &
Removal 226 N. School
C. 1. Page 18

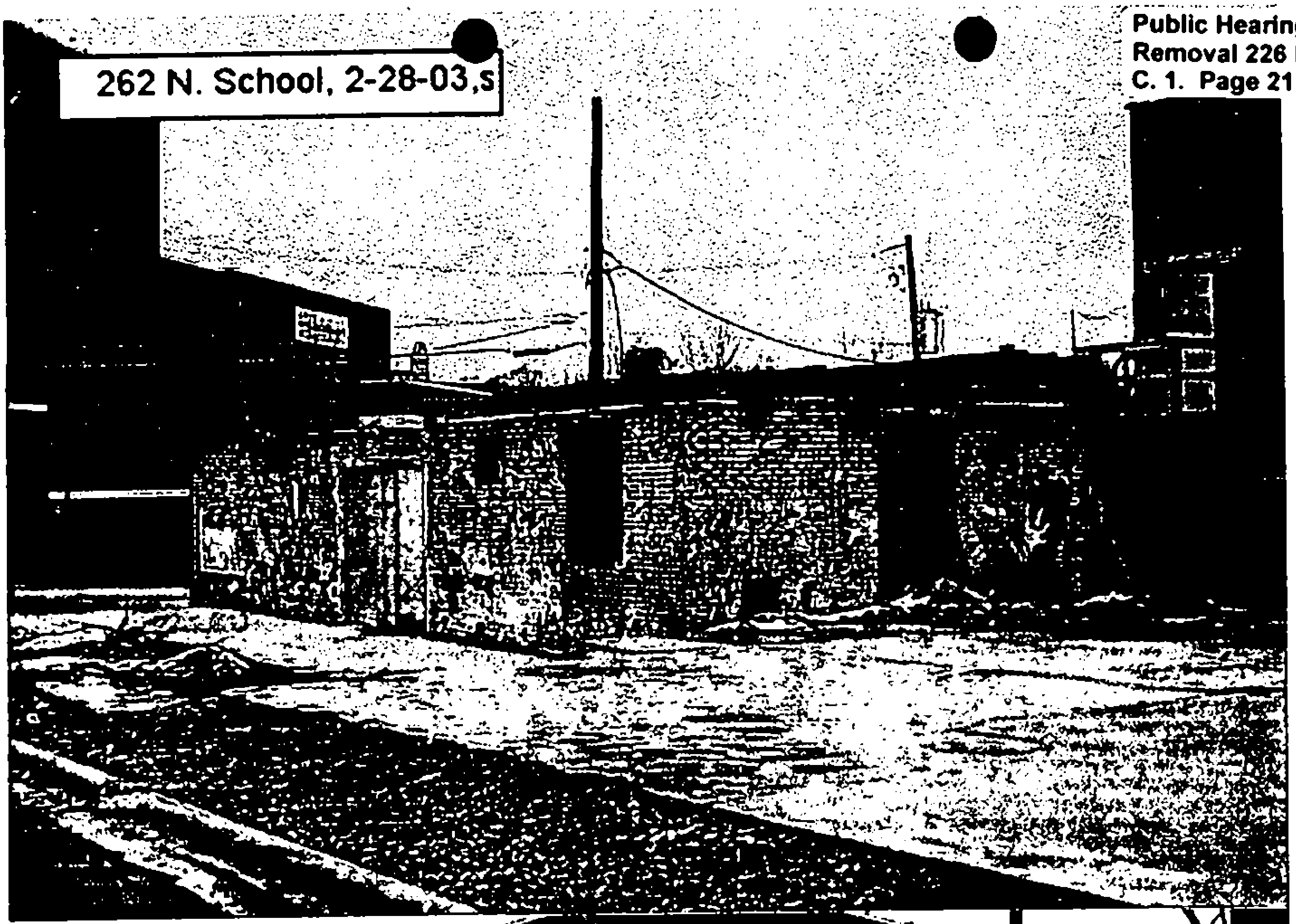


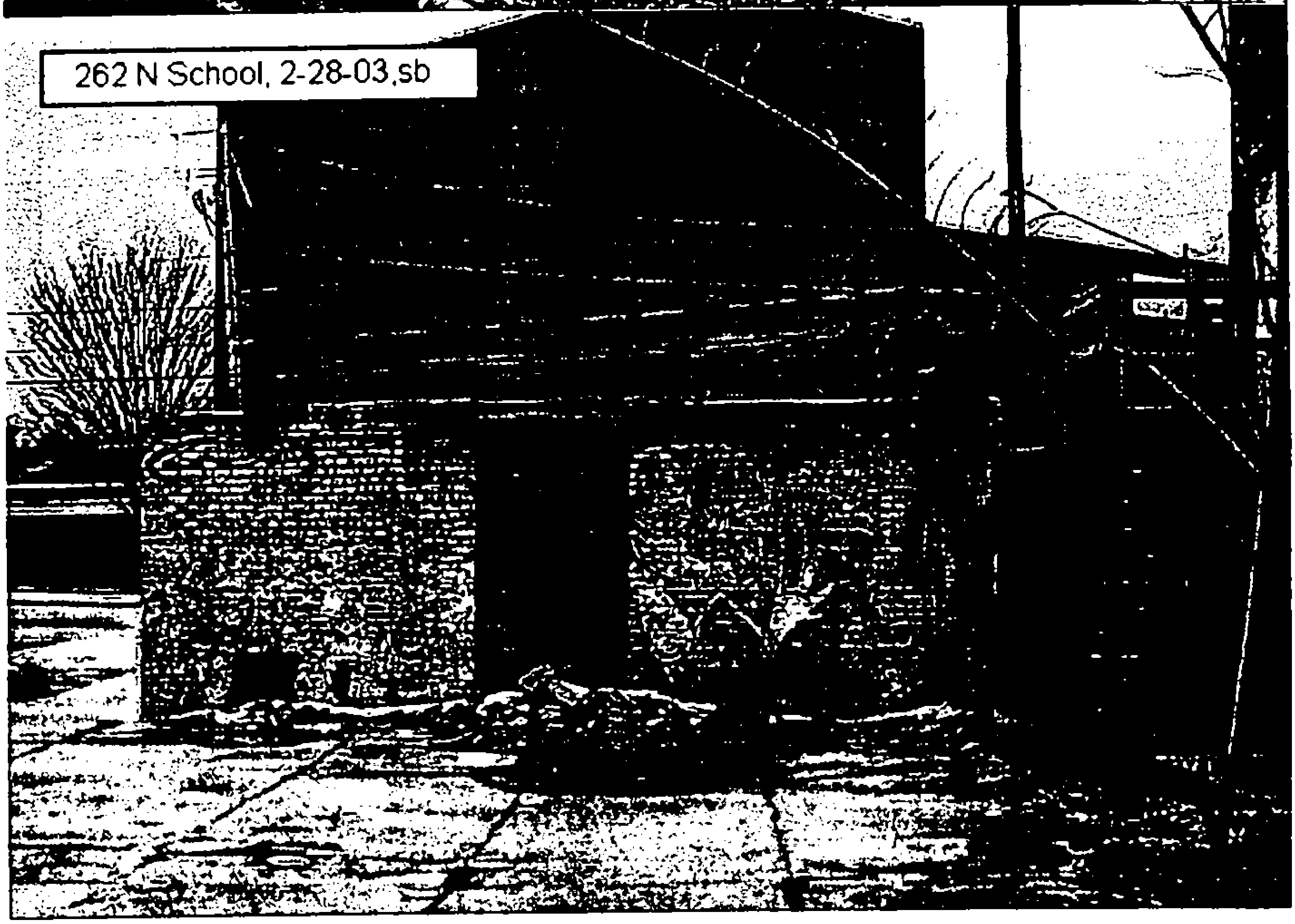
Public Hearing Raze & Removal 226 N. School C. 1. Page 19




262 N School, 2-28-03, s

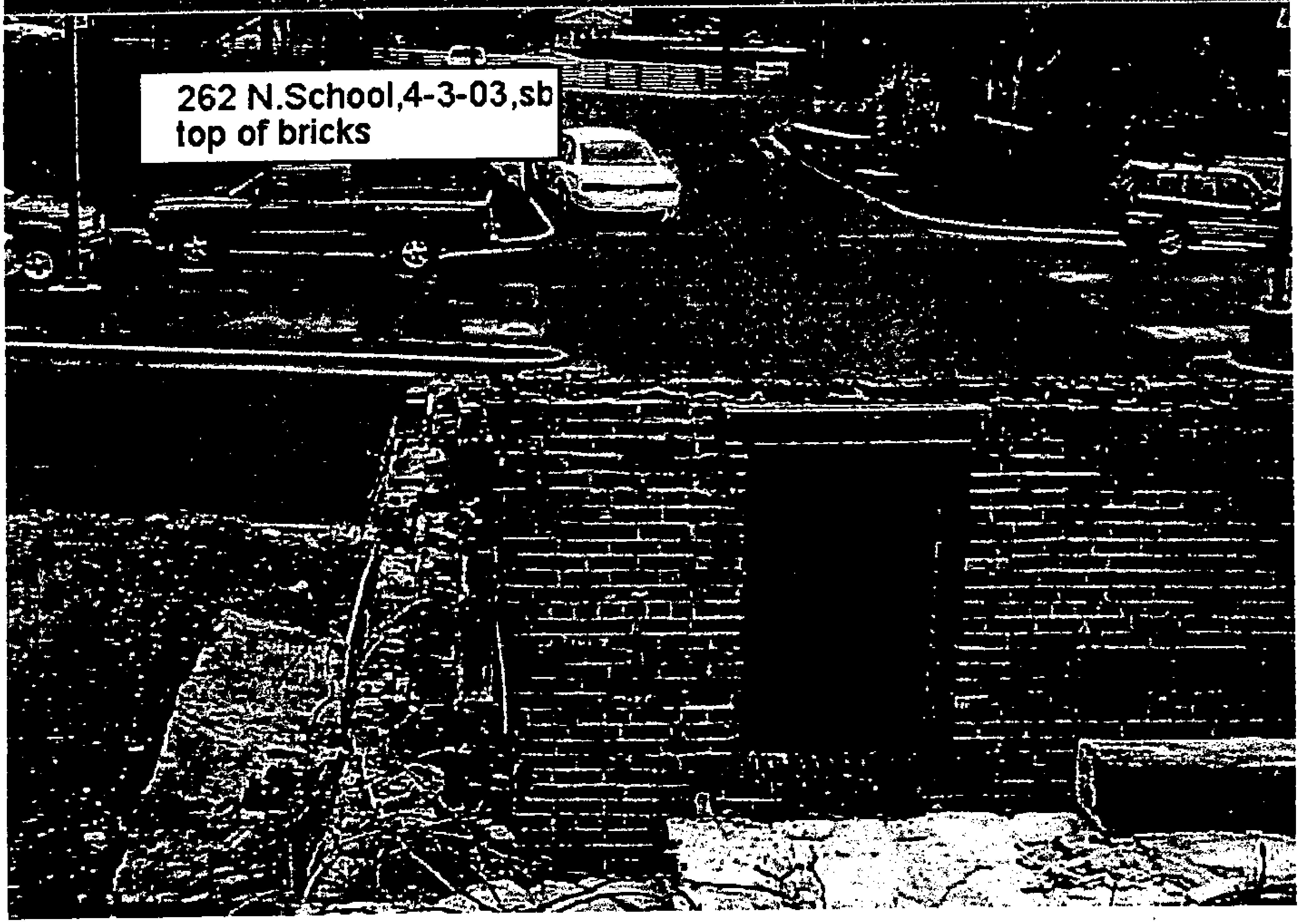

262 N School, 2-28-03, sl


262 N. School, 2-28-03,s

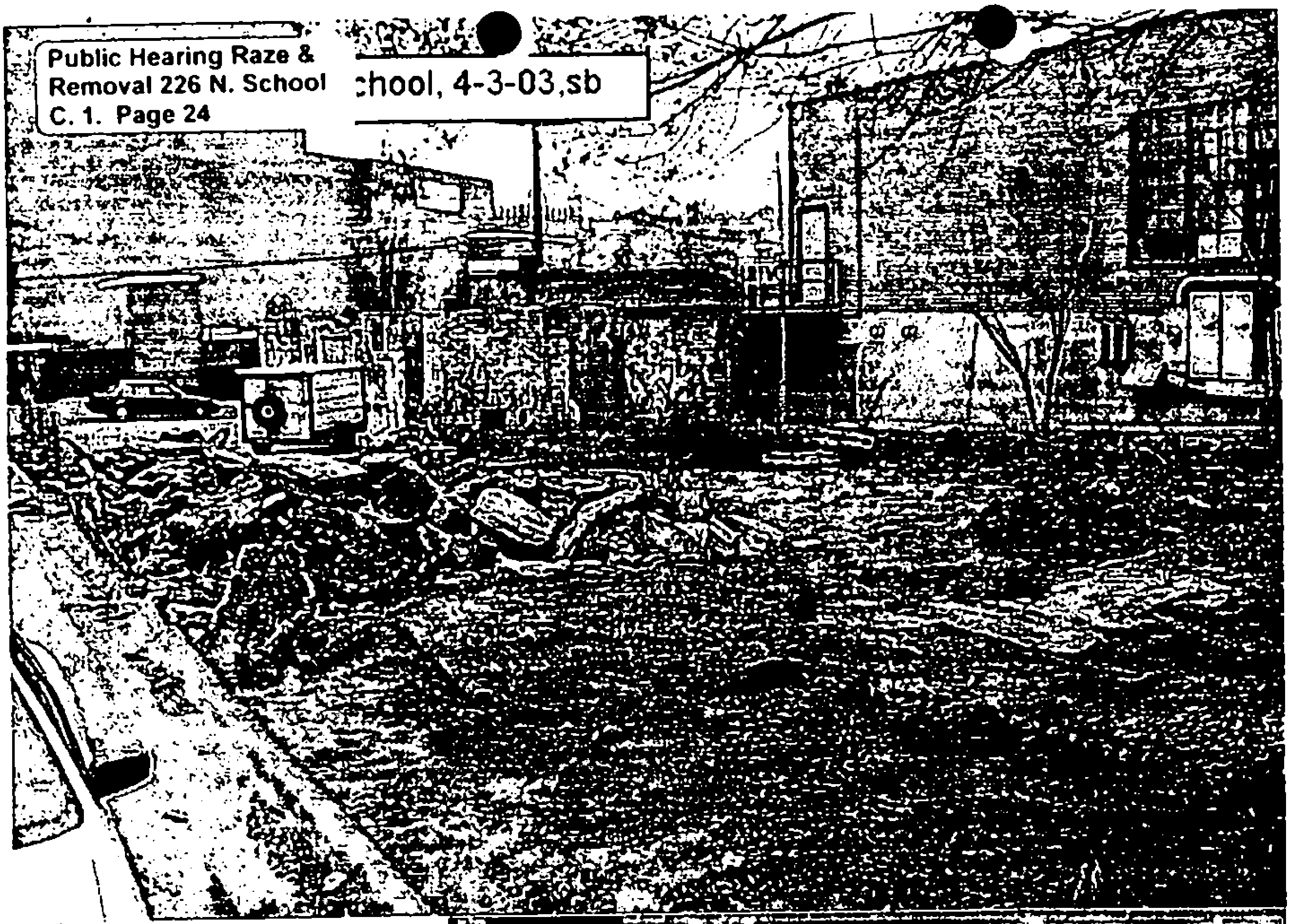

262 N School, 2-28-03,sb

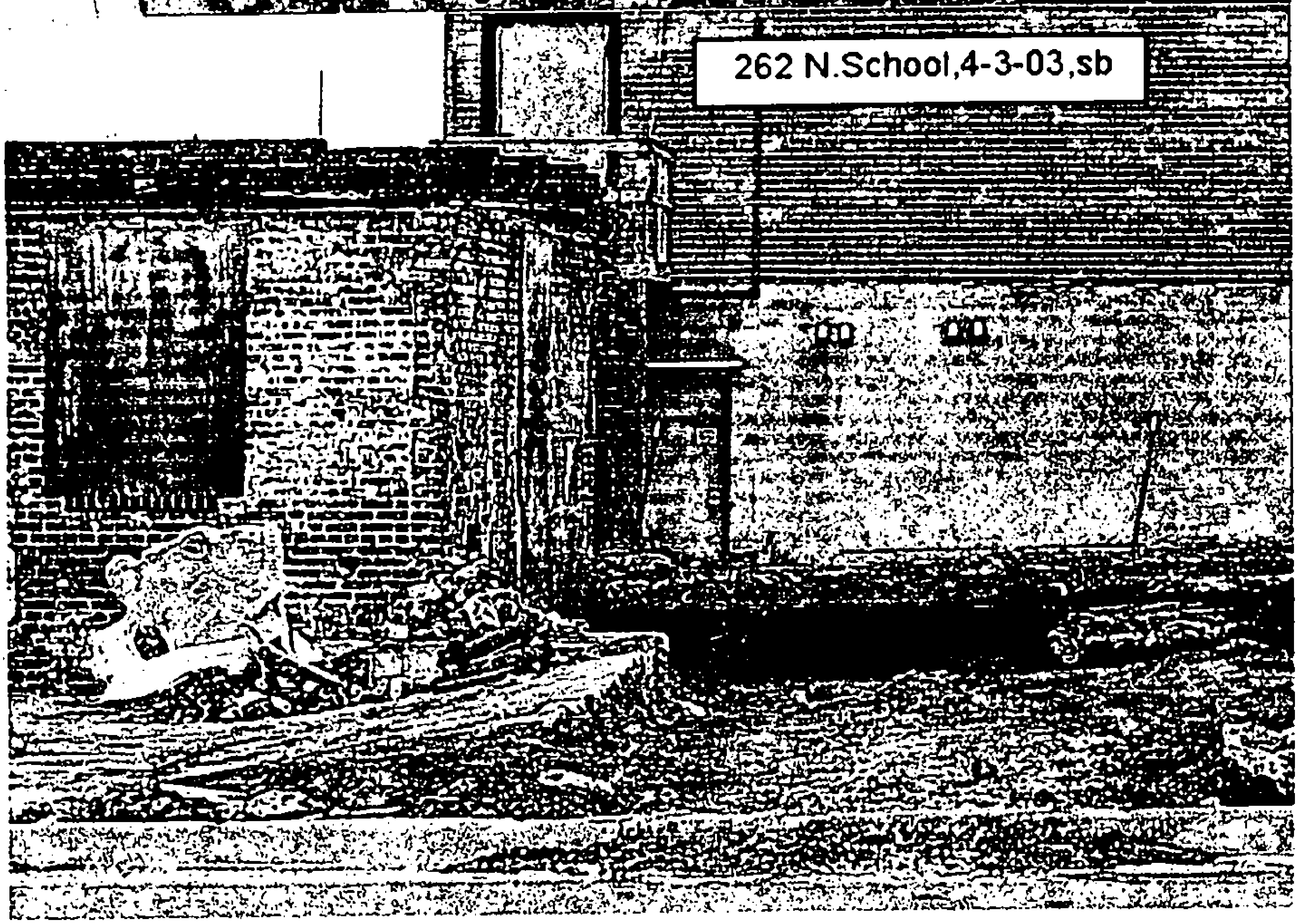
Public Hearing Raze &
Removal 226 N. School
C. 1. Page 22

hool,4-3 3,sb



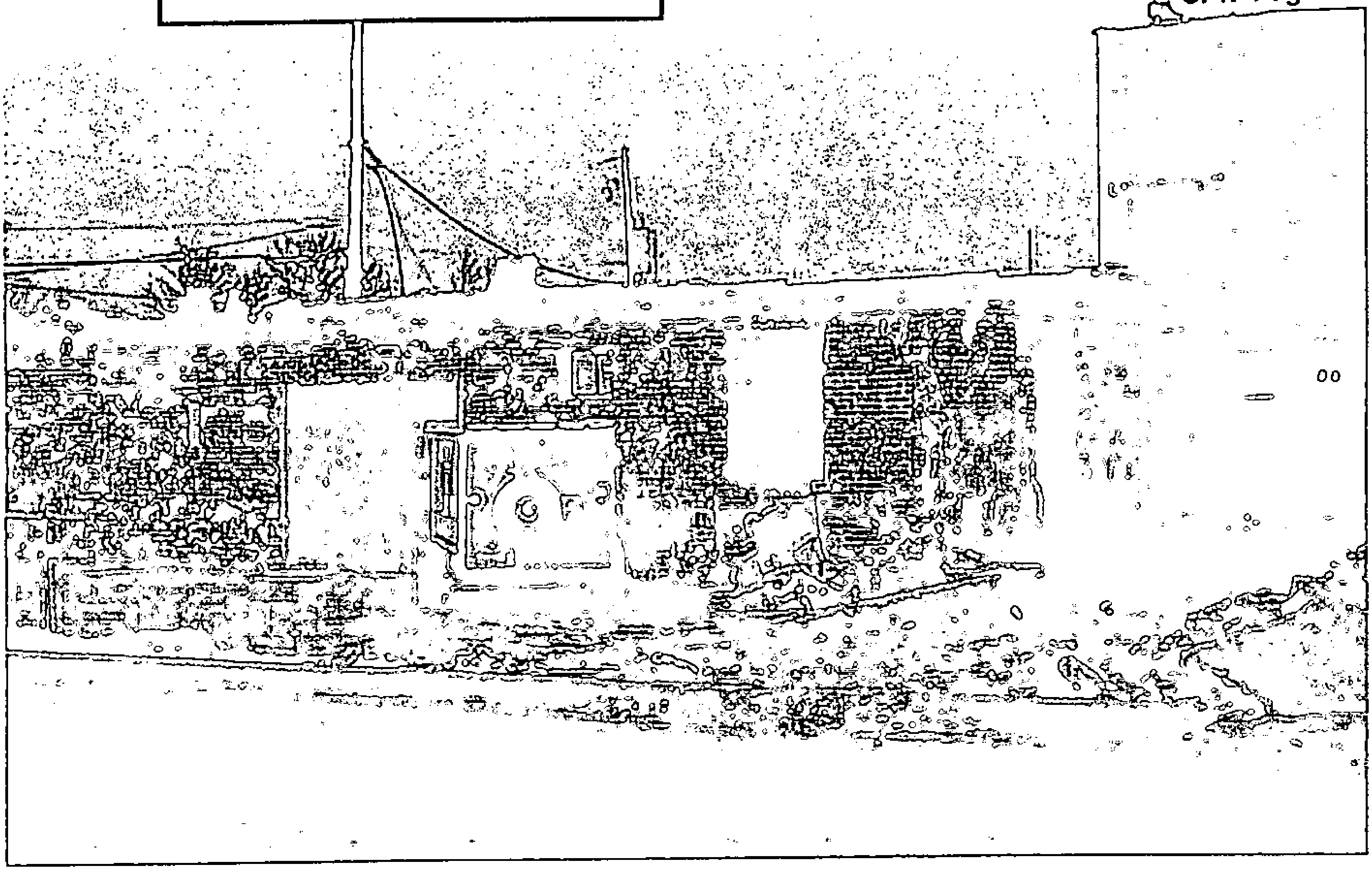
Public Hearing Raze & Removal 226 N. School C. 1. Page 24



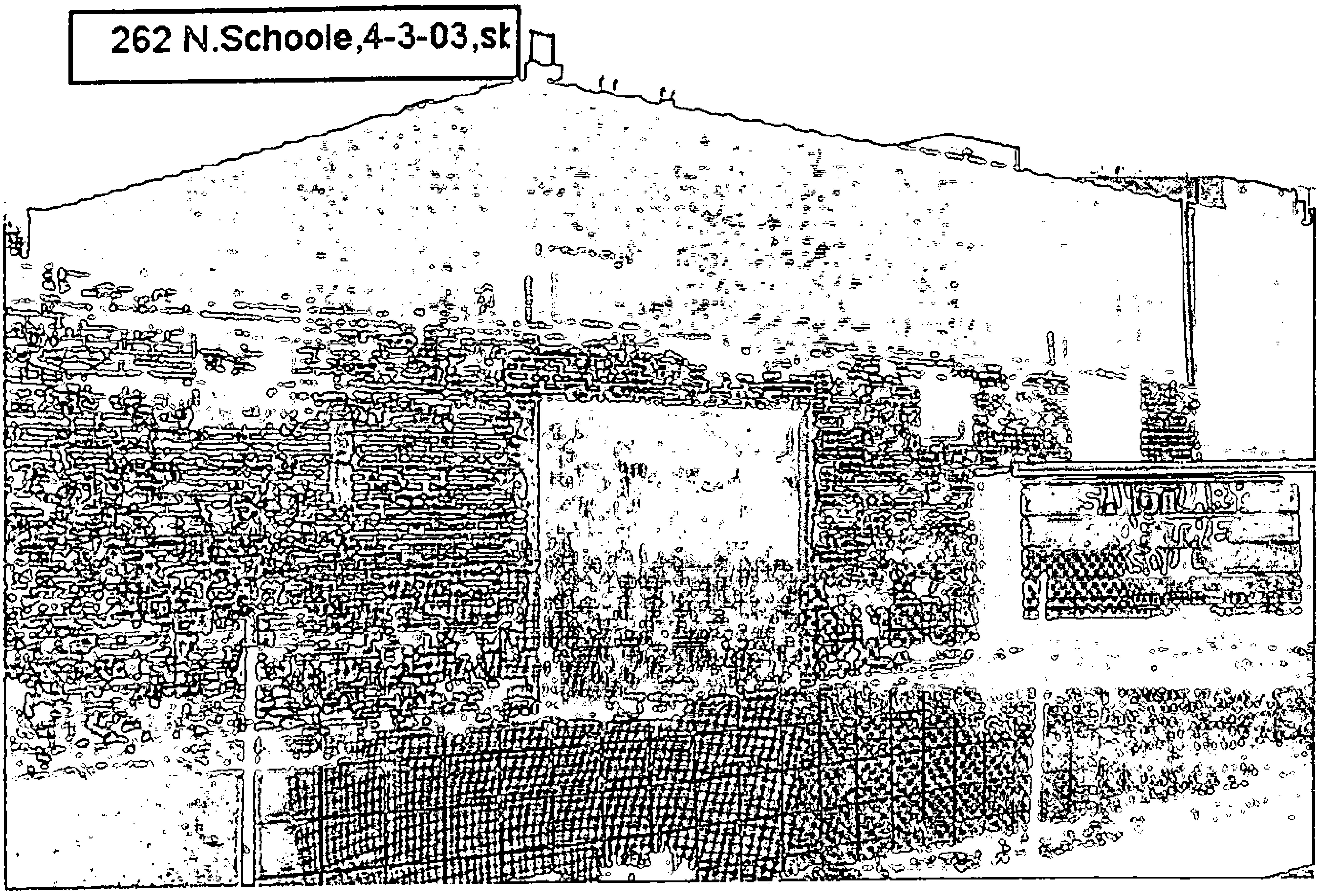


Public Hearing Raze & Removal 226 N. School C. 1. Page 23

262 N.School,4-3-03,sb



262 N.Schoole,4-3-03,sb



Public Hearing Raze &
Removal 323 N West AV.
C. 2. Page 1

to Hold
per Hugh

CODE COMPLIANCE

STAFF REVIEW FORM

AGENDA REQUEST ITEM

For the Fayetteville City Council meeting of **May ~~6~~ 20, 2003**

ACTION REQUIRED: Resolution to order the Raze and Removal of the dilapidated structure located at 323 N West Ave., Fayetteville, AR 72701.

FROM:

Don Hancock, Code Compliance Project Coordinator — 4-2-03 Date

STAFF RECOMMENDATION: Order the Raze and Removal of the dilapidated structure.

APPROVALS:

Yolanda Fields
Director, Community Resources & Code Compliance — 4-8-03 Date

Tim Conklin
Director, Community Planning & Engineering Services — 4-10-03 Date

Hugh Earnest Hugh Earnest
Chief Administrative Officer *See Comment — 4-14-03 Date

Kit Williams
City Attorney — 4/15/03 Date

Dan Coody Dan Coody
Mayor — 4/15/03 Date

ENTERED
TLM 5/21

Description: Resolution to order the Raze and Removal of the dilapidated structure located at 323 N West Ave., Fayetteville, AR 72701.

Meeting Date: May 6, 2003

Comments:

Community Resources & Code Compliance Director

Community Planning & Engineering Services Director

Chief Administrative Officer

City Attorney

Mayor

RESOLUTION NO. ______

A RESOLUTION ORDERING THE RAZING AND REMOVAL OF A DILAPIDATED AND UNSAFE STRUCTURE OWNED BY THE BANK OF FAYETTEVILLE, N.A. LOCATED AT 323 N. WEST AVENUE IN THE CITY OF FAYETTEVILLE, ARKANSAS.

WHEREAS, The Bank of Fayetteville, N.A. is the record owner of the real property situated at 323 N. West Avenue, City of Fayetteville, Washington County, Arkansas, more particularly described as set forth in Exhibit "A" attached hereto and made a part hereof; and,

WHEREAS, the City Council has determined that the structure located on said property is dilapidated, unsightly, unsafe, and detrimental to the public welfare; and,

WHEREAS, The Bank of Fayetteville, N.A., having been properly served with a Violation Notice via Certified Mail, and given thirty (30) days to correct said violation, has refused to repair, or raze and remove said dilapidated, unsightly, and unsafe structure.

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

Section 1. That, by the authority granted pursuant to A.C.A. §14-56-203, and in accordance with the provisions of Ordinance No. 3948 of 1996, The Bank of Fayetteville, N.A. is hereby ordered to raze and remove forthwith, the dilapidated, unsightly, and unsafe structure located on the aforementioned real property. The manner of removing said structure shall be: dismantle by hand or bulldozer, and haul all debris to a landfill.

Section 2. That if The Bank of Fayetteville, N.A. does not comply with this order, the Mayor is hereby directed to cause the dilapidated, unsightly, and unsafe structure to be razed and removed; and a lien against the real property shall be granted and given the City, pursuant to A.C.A. §14-54-904, for the costs associated therewith.

PASSED and **APPROVED** this 15th day of April, 2003.

APPROVED:

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
SONDRA SMITH, City Clerk

EXHIBIT "A"

A part of the NW¼ of the NE¼ of Section 16, T-16-N, R-30-W, more particularly described as commencing at the North Quarter-corner (N¼) of said Section; said point being a found iron pin; thence S 02-38-59 W 1322.08 feet to the Southwest corner of said 40-acre tract; said point being a set cotton spindle; thence along said 40-line S 87-03-28 E 276.43 feet; thence N 03-08-43 E 13.17 feet to the point of beginning; said point being a set nail (large 60D) at the back of a curb; thence along said curb line N 03-08-43 E 81.12 feet to a set iron pin; thence N 02-12-02 E 317.87 feet to the corner of a building; thence N 75-51-38 E 3.26 feet to a found iron pin; thence S 06-58-05 E 12.76 feet to a found iron pin; thence S 12-58-46 E 108.30 feet to a found iron pin; thence S 87-53-45 E 0.75 feet to a found iron pin; thence S 16-23-43 E 18.96 feet to a found iron pin to approximate angle point of an old building foundation; thence S 88-04-31 E 43.91 feet to a found iron pin on the West right-of-way of West Avenue; thence along said right-of-way S 02-27-31 W 266.12 feet to found chiseled 'X' at the intersection of the West right-of-way of said West Avenue and the North right-of-way of Dickson Street; thence along said right-of-way of Dickson Street N 87-03-14 W 84.37 feet to the point of beginning, containing .057 acres, or 24,993 square feet, more or less, City of Fayetteville, Arkansas.

Date: July 23, 2003

To: The Mayor and Council

From: Hugh Earnest
CAO

Subject: Raze and Removal resolution

Background

Our Community Resources and Code Compliance Division has been active in moving against structures that no longer comply with minimum codes relating to the basic structure and its integrity. As part of that process, an Unsafe Buildings Violation notice was sent the owners of a building at 323 N. West Avenue on February 14, 2003. The owners had until March 17, to either acquire a permit to make repairs or to demolish and remove the building. Our city staff was aware that the structure, the Waters-Pierce Oil Company Building, had been placed on the National Historic Register in 1988. We contacted the Department of Heritage's Historic Preservation Program Division and received from them a description of the building in 1988. That description did not match the current condition of the building and we were asked to submit photos depicting the current condition. We met that request and furnished that information to the state. The end result of this process is that the State Review Board of the Arkansas Historic Preservation Program will consider removal of this structure from the National Register at their meeting on August 6, 2003. A copy of that letter is attached.

Current Situation

We have not moved to request a raze and removal on this structure for several reasons. The structure itself had long been singled out by the appropriate state agency as a historic place. In addition, the property on which this building is located is being considered for purchase for uses other than its present use. The individual interested in the entire property had expressed interest in using the building as part of his re-development plan. However, we have discussed the status with Mr. John Lewis in his role as representing the several individuals who own the entire property. Mr. Lewis has had the building evaluated by engineers and he has been apprised that the structure itself has deteriorated to the point where its continued use is impractical. He is also aware that the probability of this structure being removed from the National Register is quite high.

Recommendation

While it is possible that some action by the purchaser of the property in question can occur in the very near future, we do not believe that we can delay any longer in requesting that the council approve a resolution to order the Raze and Removal of this structure. Given the condition of the structure and its unsafe condition, we believe that we have, at this time, no other option.

The Department of Arkansas Heritage

Mike Huckabee, Governor
Cathie Matthews, Director

Arkansas Arts Council
Arkansas Natural Heritage Commission
Historic Arkansas Museum
Delta Cultural Center
Old State House Museum

Arkansas Historic Preservation Program

1500 Tower Building
323 Center Street
Little Rock, AR 72201
(501)324-9880
fax: (501)324-9184
tdd: (501)324-9811
e-mail: info@arkansaspreservation.org
website: www.arkansaspreservation.org

RECEIVED
JUN 30 2003
CITY OF FAYETTEVILLE
MAYOR'S OFFICE

July 6, 2003

The Honorable Dan Coody
113 West Mountain
Fayetteville, AR 72701

Re: Waters-Pierce Oil Company Building, Fayetteville, Washington County

Dear Mayor Coody:

The State Review Board of the Arkansas Historic Preservation Program will consider removal of the above referenced property from the National Register of Historic Places on the basis that the property no longer meets the listing requirements as established by the State Review Board and federal National Register integrity guidelines. We sympathize with you regarding the loss of your property.

A National Register property can be removed from the list for a number of reasons: 1) the property ceases to possess the qualities that originally allowed it to be listed on the National Register because those qualities have been lost or destroyed; 2) additional information reveals that the property does not meet the National Register criteria for evaluation; 3) an error in professional judgement was made as to whether the property meets the criteria for evaluation; or 4) a prejudicial error exists in the nomination or listing process.

If you have any questions or comments about the consideration of this property for removal from the National Register please contact Ralph Wilcox of my staff at (501) 324-9787 within thirty days of the date of this letter. If the board approves the removal of this property from the National Register of Historic Places, the board's recommendation will be forwarded to the National Register office in Washington, D.C. The board will consider this action at its next meeting, which will be at 10 a.m. on August 6, 2003 in the ninth floor conference room of the Tower Building located at 323 Center Street in Little Rock.

Sincerely,

Ken Grunewald
Director

City of Fayetteville, Arkansas
Community Code Enforcement
113 West Mountain Street
Fayetteville, Arkansas 72701
Fax 479- 444-3445

HELPING TO BUILD A BETTER COMMUNITY

VIOLATION NOTICE

February 12, 2003

CASE NO. 1242

Owner: Bank of Fayetteville
Attn: John M. Lewis
P.O. Box 1728
Fayetteville, AR 72702

RE: Property @ 325 N. West Ave. Fayetteville, AR
WC Parcel#: 765-12867-000

Dear Property Owner:

It appears that your property contains a violation of the Fayetteville Unified Development Ordinance. It is our goal to notify and assist property owners to correct violations of city ordinances before taking actual enforcement actions. Please feel free to call our office at (479) 575-8232 for clarification of this notice or advice on how to correct the problem.

Suspected Violation That Needs Correction:
§ 173.08 Unsafe Buildings. No persons, partnership, corporation or association, hereinafter referred to as "owner", shall keep or maintain any house or building within the corporate limits of the City which has become dilapidated, unsafe, unsanitary, or detrimental to the public welfare.

How This Violation Can Be Voluntarily Corrected:
Please obtain a building permit and make repairs as required or demolish the building and remove all debris from the lot.

Potential Penalties if not corrected within thirty (30) days from the service of this Notice include: Condemnation.

Appeal: If you disagree with our conclusion that your property contains a violation of the ordinance listed above, you have a right to file an appeal with the City Council.

Sincerely,

Sue Butler
Code Compliance Officer

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7001 1940 0001 4913 3908

OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

2-12-03

Sent To Bank of Fay / John Lewis
Street, Apt. No.; or PO Box No. PO BOX 1728
City, State, ZIP+ 4 Fay 72702

PS Form 3800, January 2001 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Bank of Fayetteville
P.O. Box 1728
Fayetteville, AR 72702

ATTN: John Lewis

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☒ Agent ☐ Addressee

B. Received by (Printed Name) [illegible]
C. Date of Delivery 2/14/03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label) 7001 1940 0001 4913 3908

PS Form 3811, August 2001 Domestic Return Receipt 102595-01-M-2509

SR:5277 CA1242

Return to Nancy Schuster
The Bank of Fayetteville, N.A.
Post Office Box 1728
Fayetteville, AR 72702

$16.50 0293560 $550 23735 $220 143028 $220 143927

SPECIAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That **SHULER DEVELOPMENT CO., INC.**, (herein designated as the GRANTOR), a corporation organized under the laws of the State of Arkansas, with its principal place of business at Fayetteville, Arkansas, for and in consideration of the sum of Ten Dollars ($10.00), to it in hand paid by **THE BANK OF FAYETTEVILLE, N.A.** (herein designated as Grantee), receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey unto the Grantee and unto its heirs, successors, and assigns forever, the following lands and real estate situated in the County of Washington and State of Arkansas, to-wit:

See Attached Exhibit "A" For Legal Description (the "Property")

Together with all GRANTOR'S right, title, and interest and reversion in and to the improvements on the said Property.

TO HAVE AND TO HOLD the same unto the Grantee and unto its heirs, successors, and assigns forever, with all the privileges and appurtenances thereto belonging.

And the GRANTOR hereby covenants with the Grantee, its heirs, successors, and assigns, that it will forever warrant and defend the title to said lands against all lawful claims against Grantor or encumbrances created by GRANTOR or enforceable against GRANTOR, except for those matters or encumbrances set forth on Exhibit "B" attached hereto and made a part hereof, but against no other claims or encumbrances.

IN TESTIMONY WHEREOF, the Grantor has, by order of its Board of Directors, hereunto caused these presents to be signed by John M. Lewis, its President, and attested by Frank Kelly, its Secretary, and caused its corporate seal to be hereunto affixed this 1st day of December, 2000.

SHULER DEVELOPMENT CO., INC.

By: John M. Lewis
President

Attest:

Frank C. Kelly
Secretary

FILED FOR RECORD
'00 DEC 10 AM 10
WASHINGTON CO AR
K. HARNESS

APPROVED FOR RECORDATION
FAYETTEVILLE PLANNING
ADMINISTRATION
By [signature] Date 12/12/00

131160000

2000104171

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) §§
COUNTY OF WASHINGTON)

On this 1st day of December, 2000, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within-named JOHN M. LEWIS and FRANK KELLY, to me personally well known, who stated that they were the President and Secretary of SHULER DEVELOPMENT CO.,INC., a corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and on behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 1st day of December, 2000.

Nancy R. Schuster
Notary Public

My Commission Expires:
9-19-2001

This Instrument was prepared by WARNER, SMITH & HARRIS, PLC, P.O. Box 1626, Fort Smith, Arkansas 72902.

I certify under penalty of false swearing that at least the legally correct amount of documentary stamps have been placed on this instrument.

Gary Garton
GRANTEE/AGENT

GRANTEE/AGENT'S ADDRESS:

The Bank of Fayetteville, N.A.
One South Block Street
Fayetteville, AR 72701

EXHIBIT "A"

Legal Description

A part of the NW¼ of the NE¼ of Section 16, T-16-N, R-30-W, more particularly described as commencing at the North Quarter-corner (N¼) of said Section; said point being a found iron pin; thence S 02-38-59 W 1322.08 feet to the Southwest corner of said 40-acre tract; said point being a set cotton spindle; thence along said 40-line S 87-03-28 E 276.43 feet; thence N 03-08-43 E 13.17 feet to the point of beginning; said point being a set nail (large 60D) at the back of a curb; thence along said curb line N 03-08-43 E 81.12 feet to a set iron pin; thence N 02-12-02 E 317.87 feet to the corner of a building; thence N 75-51-38 E 3.26 feet to a found iron pin; thence S 06-58-05 E 12.76 feet to a found iron pin; thence S 12-58-46 E 108.30 feet to a found iron pin; thence S 87-53-45 E 0.75 feet to a found iron pin; thence S 16-23-43 E 18.96 feet to a found iron pin to approximate angle point of an old building foundation; thence S 88-04-31 E 43.91 feet to a found iron pin on the West right-of-way of West Avenue; thence along said right-of-way S 02-27-31 W 266.12 feet to a found chiseled 'X' at the intersection of the West right-of-way of said West Avenue and the North right-of-way of Dickson Street; thence along said right-of-way of Dickson Street N 87-03-14 W 84.37 feet to the point of beginning, containing .057 acres, or 24,993 square feet, more or less, City of Fayetteville, Arkansas.

EXHIBIT "B"

Encumbrances excepted from Grantor's Special Warranty Deed:

1. Rights arising under that certain Access Easement Agreement of even date of approximately 25 feet in width and opening on to West Avenue, City of Fayetteville, Arkansas, said easement being retained in favor of Grantor for the purpose of allowing the remaining portion of Grantor's property to have access across the Property described in Exhibit "A" directly on to West Avenue.

2. Rights or claims of parties in possession, boundary line disputes, overlaps, encroachments, and any other matters not shown by the public records.

3. Easements or claims of easements, not shown by the public records.

4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

5. Rights of way of Dickson Street and West Avenue.

FAYETTEVILLE

City of Fayetteville
Code Compliance Section
113 West Mountain Street
Fayetteville, AR 72701

Helping to build a better Community

FAYETTEVILLE

Mar 18, 2003

Bank of Fayetteville
ATTN: John Lewis
P O Box 1728
Fayetteville, AR 72702

RE: Enforcement of Ordinance173.08
Arkansas Code Ann. § 14-56-203

NOTICE TO PROPERTY OWNERS

Pursuant to A.C.A. §14-56-203 at 173.08 of the Fayetteville Code, you are placed upon Notice that the Fayetteville City Council will conduct a public hearing to determine if the Waters-Pierce Oil Company Building located at 323 N. West St., Fayetteville, Arkansas 72701, should be Razed and Removed. You are free to appear at this hearing to present any evidence or statements.

The hearing will be part of a regular City Council meeting – probably on May 6, 2003 beginning at 6:00 p.m. at the City Administration Building, 113 W. Mountain St, Fayetteville, AR 72701. It is possible that this hearing may be conducted at a later meeting such as May 20, 2003 or thereafter. The City Council Meetings are advertised in local newspapers and will contain an item concerning this hearing. You may also call the Fayetteville City Clerk's Office (575-8323) for information confirming the date of the public hearing. If you need additional information concerning this process please call the Code Compliance Office (575-8270).

Sincerely,

Don Hancock
Code Compliance
Project Coordinator

Public Hearing Raze &
Removal 323 N West AV.
C. 2. Page 14

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7001 1940 0001 4913 4028

OFFICIAL USE

Postage	$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	$	

Sent To Bank of Fayetteville (323 N West)
Street, Apt. No.; or PO Box No. PO Box 1728
City, State, ZIP+4 Fayetteville AR 72702

PS Form 3800, January 2001 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Bank of Fayetteville
John Lewis
PO Box 1728
Fayetteville AR 72702

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☒ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery 3/19

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

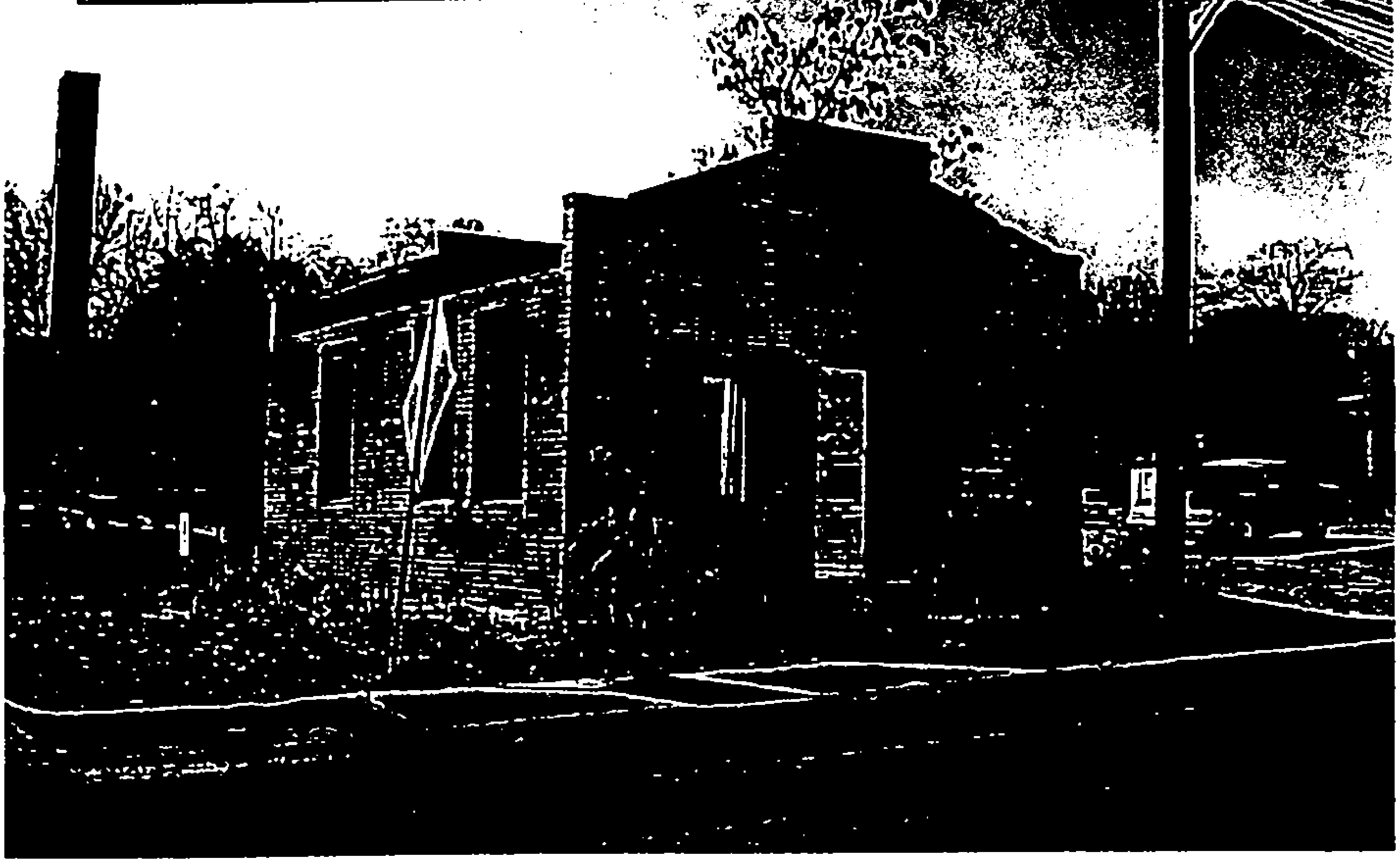
4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 1940 0001 4913 4028

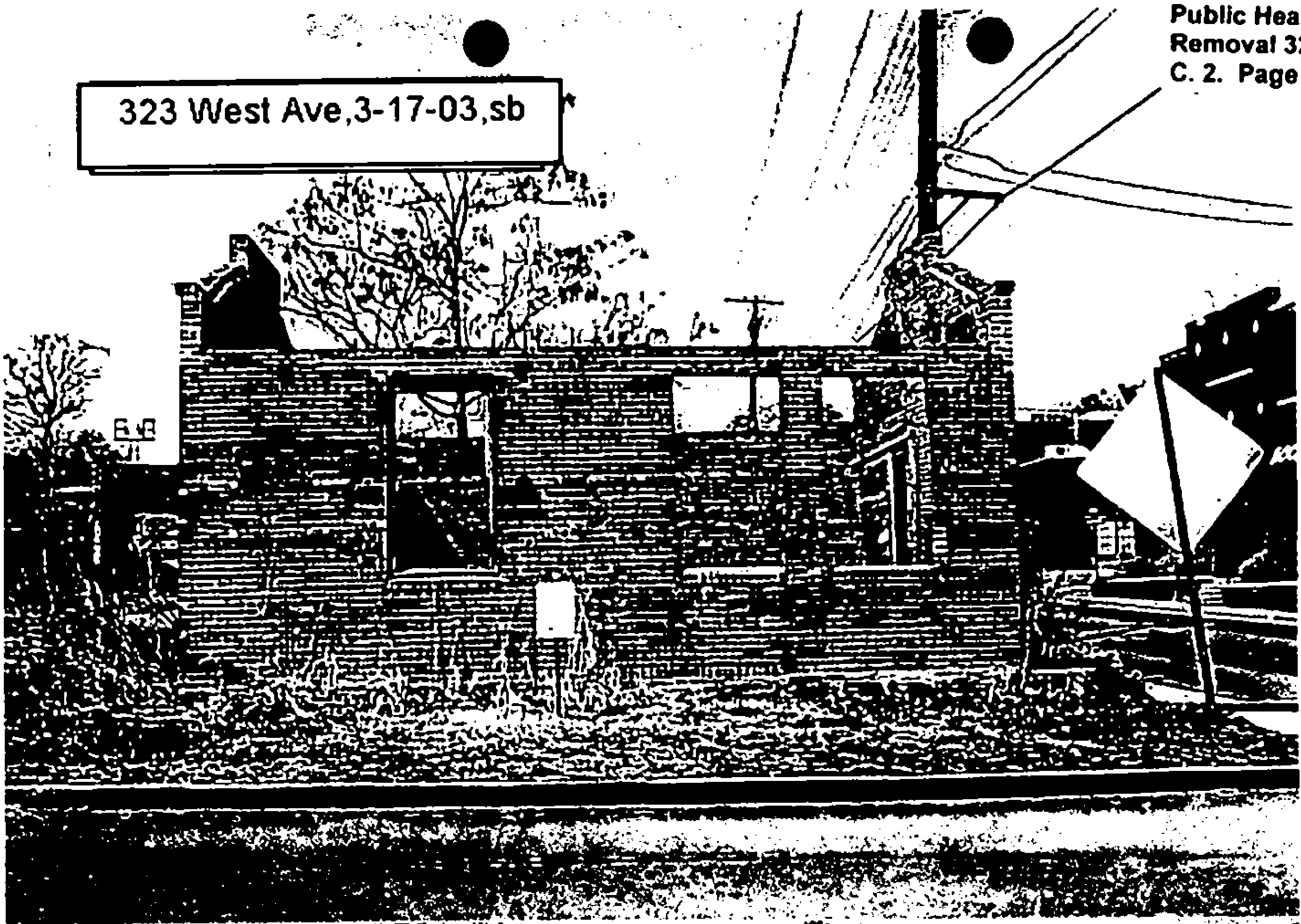
PS Form 3811, August 2001 Domestic Return Receipt 102595-01-M-2509

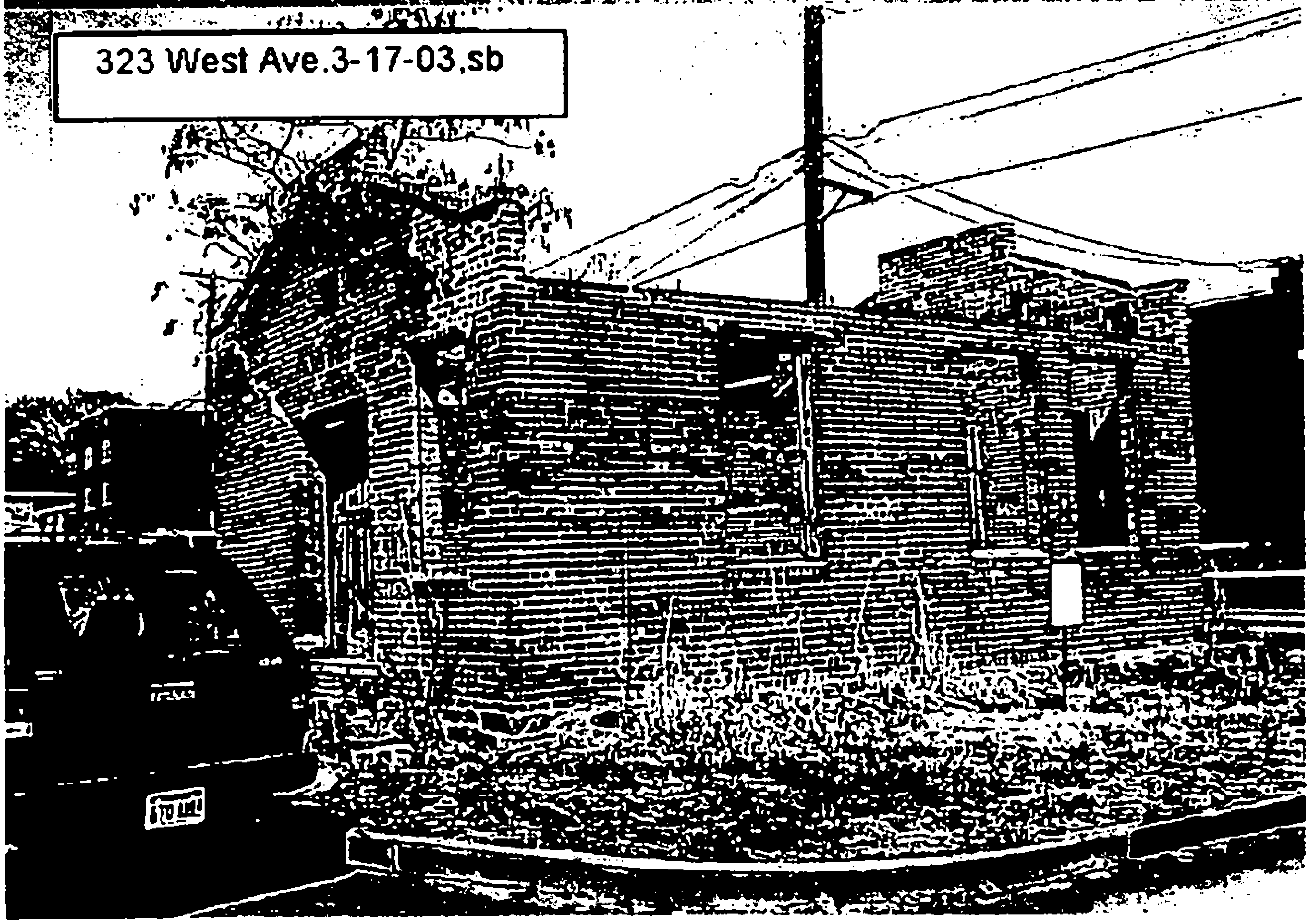
323 West Ave,3-17-03,sb

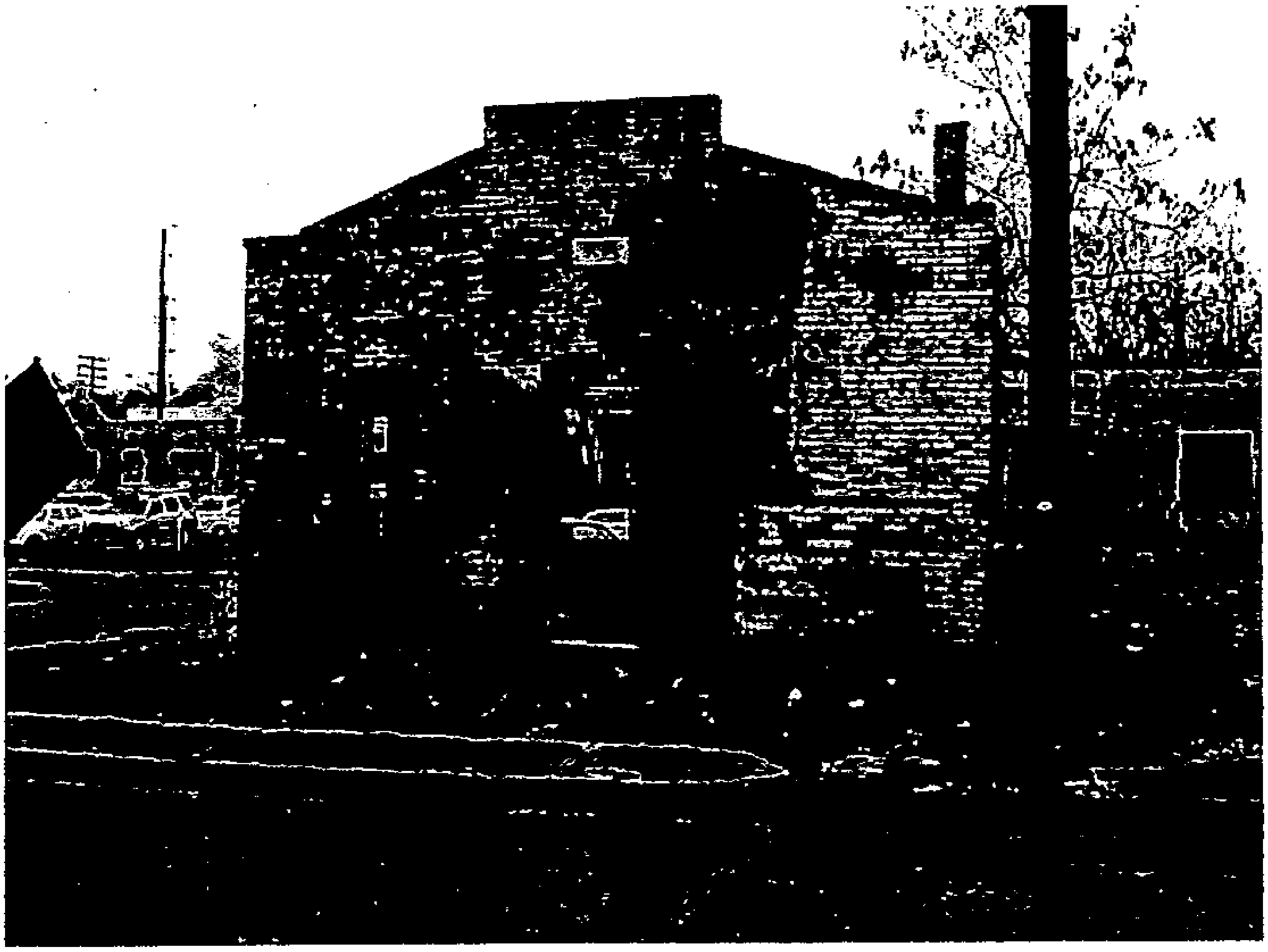
323 West Ave.,3-17-03,sb

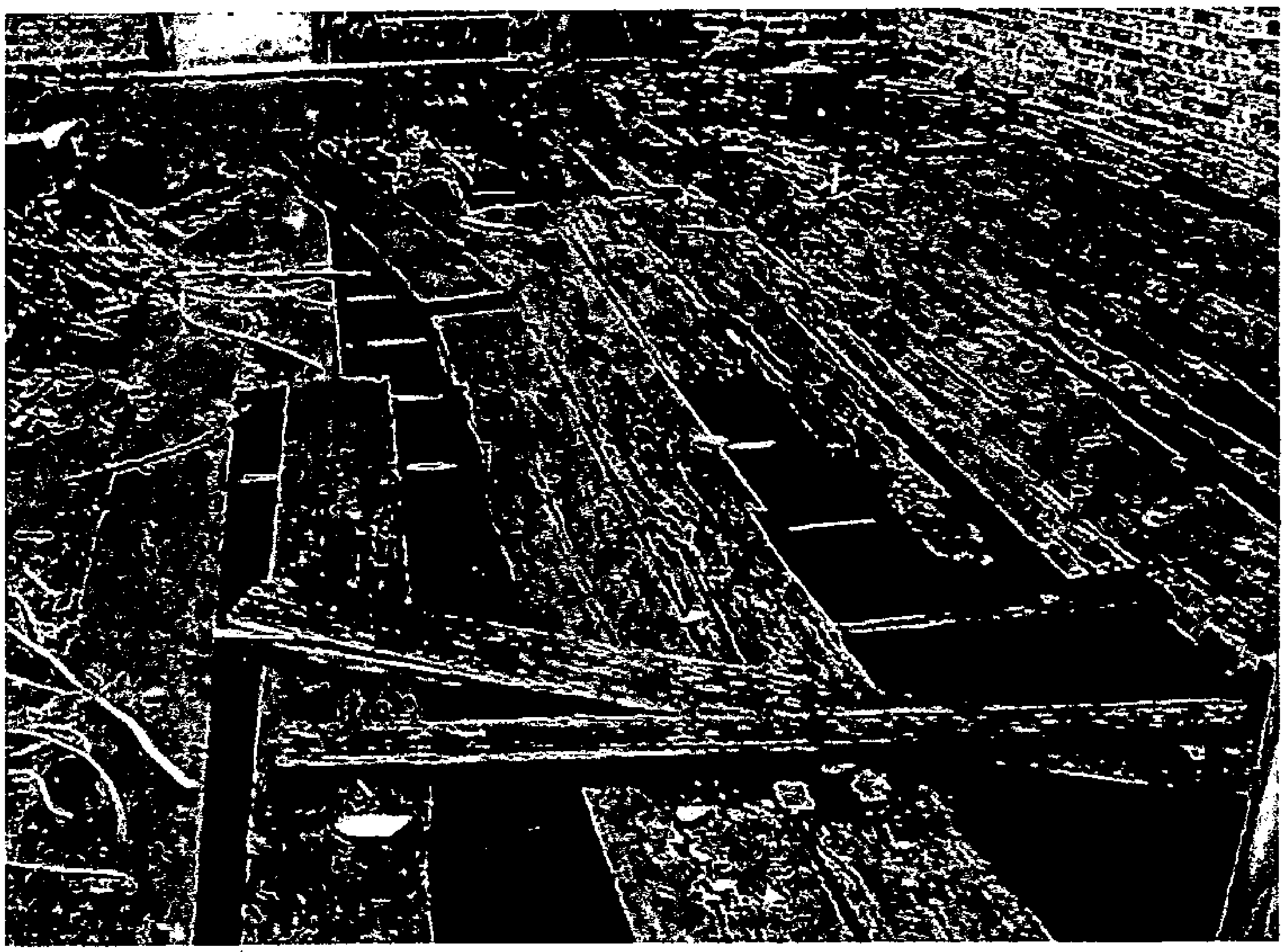


Public Hearing Raze &
Removal 323 N West AV.
C. 2. Page 17









STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
X CONTRACT REVIEW
GRANT REVIEW

USDA Supplemental Lease

For the Fayetteville City Council Meeting of: August 5, 2003

FROM:

Ray M. Boudreaux	Aviation & Economic Development	Airport
Name	Division	Department

ACTION REQUIRED: Approval of Supplemental Lease Agreement No.: 1, with the USDA Forest Service. Approval of a Budget Adjustment. Signature of the Mayor required.

COST TO CITY:

$1,200,000.00 (revenue)	$	Taxiway A Extension Phase I
Cost of this request	Category/Project Budget	Program Category / Project Name
5550.3960.5804.00	$ - $ -	Capital
Account Number	Funds Used to Date	Program / Project Category Name
03012	$ - $	Airport
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: Budgeted Item X Budget Adjustment Attached

Budget Manager — 7-22-03 Date

CONTRACT/GRANT/LEASE REVIEW:

Marsha Farthing — Accounting Manager — 7/22/03 Date

Internal Auditor — Date

City Attorney — Date

Purchasing Manager — 7/23/03 Date

STAFF RECOMMENDATION:

Division Head — Date

Department Director — July 21, 2003 Date

Finance & Internal Services Dir. — 7-23-03 Date

Chief Administrative Officer — 7-24-03 Date

Mayor — Date

Received in Mayor's Office 7/23/03 Date

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

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

ENTERED

Staff Review Form - Page 2

Description USDA Supplemental Lease Meeting Date August 5, 2003

Comments: Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Manager

ADA Coordinator

Internal Auditor

Grants Coordinator

RESOLUTION NO. ______

A RESOLUTION AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE AMENDMENT NO. 1 TO THE LEASE AGREEMENT WITH THE USDA FOREST SERVICE AUTHORIZING THE CITY OF FAYETTEVILLE TO CONSTRUCT LOADING PADS, APPROACH RAMPS, AND OTHER CIVIL WORKS AT THE FAYETTEVILLE MUNICIPAL AIRPORT ASSOCIATED WITH THE AIR TANKER OPERATIONS BASE; AND APPROVING A BUDGET ADJUSTMENT RECOGNIZING THE RECEIPT OF ONE MILLION TWO HUNDRED THOUSAND DOLLARS ($1,200,000.00) AS THE FOREST SERVICE'S PORTION OF THE COST-SHARE.

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

<u>Section 1</u>. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor and the City Clerk to execute Amendment No. 1 to the Lease Agreement with the United States Department Of Agriculture Forest Service authorizing the CITY of Fayetteville to construct loading pads, approach ramps, and other civil works at the Fayetteville Municipal Airport associated with the Air Tanker Operations Base. A copy of the Amendment, marked Exhibit "A" is attached hereto, and made a part hereof.

<u>Section 2</u>. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment recognizing the receipt of One Million Two Hundred Thousand Dollars ($1,200,000.00) as the Forest Service's portion of the cost-share.

PASSED and **APPROVED** this 5th day of August, 2003.

APPROVED:

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
SONDRA SMITH, City Clerk

TEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
DAN COODY, MAYOR

MEMORANDUM

TO: Dan Coody, Mayor
Members of the City Council
THRU: Staff Contract Review Committee
FROM: Ray M. Boudreaux, Director, ~~Aviation and~~ Economic Development
DATE: July 16, 2003
SUBJECT: Supplemental Lease agreement with USDA Forest Service

---

Background: In meetings with the FAA and the Forest Service, agreements were made for the construction of the new Fire Tanker Base ramp and taxiway system. The FAA will fund 90% of the taxiway project. (Grant 3-05-0020-031-2003/$1,232,723.00) We will apply for State Aeronautics support for 5% and the Airport will fund the remaining 5% which is approximately $60,000.00 in local funding. The USDA will fund the turn-outs and the loading and parking ramps for their aircraft at approximately $1,200,000.00. Agreement was made among the parties that McClelland Consulting Engineers would design and provide construction oversight for the entire project and that the project would be bid as one project. FAA required this to insure integrity of the pavement and to hopefully get a savings from the larger project for both the FAA and the USDA.

Attached is the supplemental lease agreement with the USDA that provides for their portion of the project to be administered by the City of Fayetteville and paid for by the USDA.

Budget Considerations: Attached please find a budget adjustment for the revenues from the USDA to pay for the design and construction of the Fire Tanker Base turnouts and parking ramp.

Requested Action: Approve supplemental lease agreement with the USDA Forest Service and a budget adjustment that accounts for cost share for design and construction of Fire Base turnouts and parking ramp.

Attachments: Staff Review Form
Supplemental Lease agreement (2 copies)
Budget Adjustment

Aviation and Economic Development Department
Fayetteville Municipal Airport, Drake Field
4500 South School Avenue, Suite F
Fayetteville, Arkansas 72701
Ray M. Boudreaux, Director

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department / Division / Program	Date Requested	Adjustment Number
2003	Department: General Government Division: Aviation & Economic Development Program: Airport Capital	8/5/2003	

Project or Item Requested:
$1,200,000 in the Taxiway "A" Extension Phase I - capital project.

Project or Item Deleted:
None. To recognize $1,200,000 in Federal Cost Sharing revenue from the USDA.

Justification of this Increase:
The funds are needed to construct the turn-outs and the loading/parking ramps of the Taxiway as part of a cost sharing project with the USDA Forestry Service.

Justification of this Decrease:
The USDA Forestry Service will fund its share of the design and construction of the project will is estimated to be $1,200,000.

Increase Budget (Decrease Revenue)

Account Name	Account Number				Amount	Project Number	
Building costs	5550	3960	5804	00	1,200,000	03012	1

Decrease Budget (Increase Revenue)

Account Name	Account Number				Amount	Project Number	
Federal Cost Sharing	5550	0955	4303	01	1,200,000	03012	1

Approval Signatures

	Date
Requested By	
Budget Manager	7-22-03
Department Director	
Finance & Internal Services Director	7-23-03
Mayor	

Budget Office Use Only

Type: A B C D E

	Initial	Date
Date of Approval		
Posted to General Ledger		
Posted to Project Accounting		
Entered in Category Log		

United States Department of Agriculture | Forest Service | Southern Region | 1720 Peachtree RD., NW
Atlanta, Georgia 30309

Supplemental Lease Agreement No.: 1
To Lease No: 57-43ZP-2-06

Date: July 14, 2003

Address of Premises: Fayetteville Municipal Airport
Drake Field
Fayetteville, AR 72701

THIS AGREEMENT, made and entered into this date by and between **City of Fayetteville, Arkansas**

Whose address is 113 West Mountain
Fayetteville, Arkansas 72701

Hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease.

NOW THEREFORE, these parties for the consideration hereinafter mentioned covenant and agree that the said Lease is amended, effective **July 03, 2003**, as follows:

This AGREEMENT is to authorize the City of Fayetteville, Arkansas, to construct two concrete loading pads in accordance with Clauses 2.01 and 3.01 of the original lease.

In addition to, or as a part of the airport improvement project covering the construction of Taxiway "A" which the Forest Service Air Tanker Base will front on, the City of Fayetteville, Arkansas agrees to construct two concrete loading pads, necessary approach ramps and associated civil works, the design of which will be based upon conceptual layouts provided by the Forest Service and agreed to in advance by both parties prior to initiating said construction. Work covered under this supplemental agreement is for a complete, turnkey project, including the design, construction and construction administration, including quality control. The total estimated cost of this work is $1.2 million. Actual payment, however, will be based upon the costs incurred, by applying actual project bid prices to measured quantities, and will be paid for on a monthly basis as the project progresses. No work will begin until costs are agreed to in advance. Contract files will have a record of all agreed to costs, attached is the base cost estimate. The completion date for this work is estimated to be no later than April 30, 2004.

ALL OTHER TERMS AND CONDITIONS OF THE LEASE SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the parties subscribed their names as of the above date.

LESSOR: CITY OF FAYETTEVILLE, ARKANSAS

By ______________________ ______________ ______________________
(Signature) (Date) (Title)

In Presence Of

By ______________________ ______________ ______________________
(Signature) (Date) (Title)

UNITED STATES OF AMERICA: PHYLLIS CARTER

By ______________________ ______________ **CONTRACTING OFFICER**
(Signature) (Date) (Official Title)

United States Department of Agriculture | Forest Service | Southern Region | 1720 Peachtree RD., NW Atlanta, Georgia 30309

Supplemental Lease Agreement No.: 1
To Lease No: 57-43ZP-2-06

Date: July 14, 2003

Address of Premises: Fayetteville Municipal Airport
Drake Field
Fayetteville, AR 72701

THIS AGREEMENT, made and entered into this date by and between **City of Fayetteville, Arkansas**

Whose address is 113 West Mountain
Fayetteville, Arkansas 72701

Hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease.

NOW THEREFORE, these parties for the consideration hereinafter mentioned covenant and agree that the said Lease is amended, effective **July 03, 2003**, as follows:

This AGREEMENT is to authorize the City of Fayetteville, Arkansas, to construct two concrete loading pads in accordance with Clauses 2.01 and 3.01 of the original lease.

In addition to, or as a part of the airport improvement project covering the construction of Taxiway "A" which the Forest Service Air Tanker Base will front on, the City of Fayetteville, Arkansas agrees to construct two concrete loading pads, necessary approach ramps and associated civil works, the design of which will be based upon conceptual layouts provided by the Forest Service and agreed to in advance by both parties prior to initiating said construction. Work covered under this supplemental agreement is for a complete, turnkey project, including the design, construction and construction administration, including quality control. The total estimated cost of this work is $1.2 million. Actual payment, however, will be based upon the costs incurred, by applying actual project bid prices to measured quantities, and will be paid for on a monthly basis as the project progresses. No work will begin until costs are agreed to in advance. Contract files will have a record of all agreed to costs, attached is the base cost estimate. The completion date for this work is estimated to be no later than April 30, 2004.

ALL OTHER TERMS AND CONDITIONS OF THE LEASE SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the parties subscribed their names as of the above date.

LESSOR: CITY OF FAYETTEVILLE, ARKANSAS

By ______________________ ______________ ______________________
(Signature) (Date) (Title)

In Presence Of

By ______________________ ______________ ______________________
(Signature) (Date) (Title)

UNITED STATES OF AMERICA: PHYLLIS CARTER

By ______________________ ______________ **CONTRACTING OFFICER**
(Signature) (Date) (Official Title)

McClelland Engineers
Task Order No. 2
C. 4. Page 1

STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
X CONTRACT REVIEW
GRANT REVIEW

McClelland Task No. 2

For the Fayetteville City Council Meeting of: August 5, 2003

FROM:

Ray M. Boudreaux	Aviation & Economic Development	Airport
Name	Division	Department

ACTION REQUIRED: Approval of Task Order No. 2 with McClelland Consulting Engineers, Inc. to perform engineering, design and construction oversight of the USDA FS portion of the airside pavement associated with the USDA FS tanker base. Approval of a Budget Adjustment. Signature of the Mayor required.

COST TO CITY:

$84,400.00	$	Taxiway A Extension Phase I
Cost of this request	Category/Project Budget	Program Category / Project Name
5550.3960.5804.00	$ -	Capital
Account Number	Funds Used to Date	Program / Project Category Name
03012	$ - $	Airport
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: ___ Budgeted Item X Budget Adjustment Attached

Budget Manager 2-22-03 Date

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager 7/22/03 Date — Internal Auditor Date

City Attorney 7/22/03 Date — Purchasing Manager 7/22/03 Date

STAFF RECOMMENDATION:

Division Head Date

Received in Mayor's Office 7/23/03 Date P.H

Department Director July 21, 2003 Date

Cross Reference:

Finance & Internal Services Dir. July 23, 2003 Date

Chief Administrative Officer 7-24-03 Date

Mayor Date

Previous Ord/Res#: Res # 12-02

Orig. Contract Date: 2/11/2002

Orig. Contract Number: #747 Task #9

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

ENTERED

Staff Review Form - Page 2

Description McClelland Task #2 Meeting Date August 5, 2003

Comments:

Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Manager

ADA Coordinator

Internal Auditor

Grants Coordinator

RESOLUTION NO. ______

A RESOLUTION APPROVING TASK ORDER NO. 2 IN THE AMOUNT OF EIGHTY-FOUR THOUSAND FOUR HUNDRED DOLLARS ($84,400.00) WITH McCLELLAND CONSULTING ENGINEERS FOR ENGINEERING, DESIGN, AND CONSTRUCTION OVERSIGHT ASSOCIATED WITH THE CONSTRUCTION OF THE USDA FOREST SERVICE TANKER BASE AT THE FAYETTEVILLE MUNICIPAL AIRPORT; AND APPROVING A BUDGET ADJUSTMENT FOR THE SAME AMOUNT.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves Task Order No. 2 in the amount of Eighty-Four Thousand Four Hundred Dollars ($84,400.00) with McClelland Consulting Engineers for engineering, design, and construction oversight associated with the construction of the USDA Forest Service tanker base at the Fayetteville Municipal Airport.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of Eighty-Four Thousand Four Hundred Dollars ($84,400.00) for same.

PASSED and **APPROVED** this 5th day of August, 2003.

APPROVED:

By: ________________________
DAN COODY, Mayor

ATTEST:

By: ________________________
SONDRA SMITH, City Clerk

TEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
DAN COODY, MAYOR

MEMORANDUM

TO: Dan Coody, Mayor
Members of the City Council
THRU: Staff Contract Review Committee
FROM: Ray M. Boudreaux, Director, Aviation and Economic Development
DATE: July 16, 2003
SUBJECT: Task Order No. 2 McClelland Consulting Engineers for design and construction oversight of the USDA Forest Service Fire Tanker Base.

Background: In meetings with the FAA and the Forest Service, agreements were made for the construction of the new Fire Tanker Base ramp and taxiway system. The FAA will fund 90% of the taxiway project. (Grant 3-05-0020-031-2003/$1,232,723.00) We will apply for State Aeronautics support for 5% and the Airport will fund the remaining 5% which is approximately $60,000.00 in local funding. The USDA will fund the turn-outs and the loading and parking ramps for their aircraft at approximately $1,200,000.00. Agreement was made among the parties that McClelland Consulting Engineers would design and provide construction oversight for the entire project and that the project would be bid as one project. FAA required this to insure integrity of the pavement and to hopefully get a savings from the larger project for both the FAA and the USDA. Task Order No. 9 with McClelland Consulting Engineers for the design and construction oversight of the Taxiway "A" extension for the USDA development was approved by the City Council February 5, 2002 ($116,730.0)

Budget Considerations: Attached please find a budget adjustment for the expenses associated with Task Order No. 2 for $84,400.00 for design and construction oversight of the USDA Forest Service Fire Tanker Base turnouts

Requested Action: Approve Task Order No.2 to McClelland Consulting Engineers for the design and construction oversight of the USDA Forest Service Fire Tanker Base turnouts and parking ramp and a Budget Adjustment for the associated expense of $84,400.00

Attachments: Staff Review Form
Task Order No. 2
Budget Adjustment

McClelland Engineers
Task Order No. 2
C. 4. Page 5

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department / Division / Program	Date Requested	Adjustment Number
2003	Department: General Government Division: Aviation & Economic Development Program: Airport Capital	8/5/2003	

Project or Item Requested:
$84,400 in the Taxiway "A" Extension Phase I - capital project.

Project or Item Deleted:
None. To recognize $84,400 in Federal Cost Sharing revenue from the USDA.

Justification of this Increase:
The funds are needed to construct the turn-outs and the loading/parking ramps of the Taxiway as part of a cost sharing project with the USDA Forestry Service.

Justification of this Decrease:
The USDA Forestry Service will fund its share of the design and construction of the project will is estimated to be $1,200,000. This $84,400 represents the preliminary engineering.

Increase Budget (Decrease Revenue)

Account Name	Account Number				Amount	Project Number	
Building costs	5550	3960	5804	00	84,400	03012	1

Decrease Budget (Increase Revenue)

Account Name	Account Number				Amount	Project Number	
Federal Cost Sharing	5550	0955	4303	01	84,400	03012	1

Approval Signatures

	Date
Requested By	
Budget Manager	7-12-03
Department Director	
Finance & Internal Services Director	7-23-03
Mayor	

Budget Office Use Only

Type: A B C D E

	Initial	Date
Date of Approval		
Posted to General Ledger		
Posted to Project Accounting		
Entered in Category Log		

MCE McCLELLAND CONSULTING ENGINEERS, INC.
DESIGNED TO SERVE

P.O. Box 1229
Fayetteville, Arkansas 72702-1229
479-443-2377
FAX 479-443-9241

July 10, 2003

RECEIVED
JUL 10 2003
AIRPORT

Mr. Ray Boudreaux
Airport Director,
Fayetteville Municipal Airport
4500 S. School Suite F
Fayetteville, AR 72701

Re: Proposed Task Order No. 2
USDA Forest Service Air Tanker Base

Dear Mr. Boudreaux:

In response to your request, please find three (3) copies of Task Order No. 2 for the above referenced project.

Please advise if you need further information regarding this Task Order. Thank you for this opportunity to extend our services.

Sincerely,

McCLELLAND CONSULTING ENGINEERS, INC.

R. Wayne Jones

R. Wayne Jones, P.E.
Vice President

Enclosure: Task Order No. 2 (3 copies)

J:\2002\022103\correspondence\boudreaux-0710.wpd:ch

TASK ORDER NO. 2

USDA Forest Service Air Tanker Base

FAYETTEVILLE MUNICIPAL AIRPORT

STATE OF ARKANSAS

COUNTY OF WASHINGTON

This Task Order is written pursuant to the basic agreement entitled CITY OF FAYETTEVILLE, AGREEMENT FOR ENGINEERING SERVICES, executed on April 30, 2003, as amended. The referenced basic agreement pertains to proposed improvements to Drake Field, Fayetteville's Municipal Airport. This Task Order entered into and executed on the date indicated below the signature block, by and between the City of Fayetteville and McClelland Consulting Engineers (MCE) sets forth the project description, project schedule, and engineering fees related to USDA forest Service Air Tanker Base at the Fayetteville Municipal Airport.

SECTION I - PROJECT DESCRIPTION

The project is to consist of: the preliminary and final engineering design for the airside paving for the USDA Forest Service Air Tanker Base on the east side of the Airport; preliminary and final cost estimates; meetings with the City's Airport Department and the Forest Service to review various aspects of the project; and engineering services associated with detailed design and construction.

SECTION II - PROJECT SCHEDULE

From the time the City of Fayetteville issues the Notice To Proceed (NTP), MCE will endeavor to execute the project as expeditiously as possible to enable the City of Fayetteville to solicit competitive bids for construction as soon as possible late July or August 2003.

SECTION III - SCOPE OF SERVICES

MCE shall, generally, provide those services listed in the basic agreement which are applicable to this specific Task Order. Specifically, this project is likely to include:

A. Performing preliminary engineering.

B. Formulating preliminary and final construction cost estimates.

C. Meeting with the City of Fayetteville and their Tenant to discuss design criteria, desired features, and schedule.

D. Performing the detailed design of the construction project as determined by the City of Fayetteville and their Tenet.

E. Advertising for competitive bids and recommending the award of a construction contract.

F. Construction administration and inspection.

G. Construction staking for a baseline and benchmark.

H. Construction materials testing.

I. Providing a set of "Record Drawings" at the completion of construction based upon the Contractor's mark-ups.

SECTION IV - FEES AND PAYMENTS

The following fees are to be paid to the Engineer as compensation for his services regarding the design of the USDA Forest Service Fire Fighting Tanker Base at Fayetteville Municipal Airport:

A. Preliminary Engineering; Phasing Plan, Cost Estimates, and Meetings
a lump sum of $ 10,000.

B. Detailed Plans & Specs: a lump sum of $ 22,000.

C. Bidding Service: a lump sum of $ 1,250.

D Construction Administration & Inspection: hourly rates, Not to Exceed

Contr. Admin	$ 3,416.
Observation	$ 35,084.
Record Drawings	$ 1,150.

E. Construction Staking: a lump sum of $ 500.

F. Construction materials testing: hourly rates & unit prices,
Not to Exceed $ 11,000.

Total Additional Engineering Services Not to Exceed $ 84,400.00

The USDA Forest Service will reimburse the City of Fayetteville for these engineering fees through their lease with the City of Fayetteville.

Appendices A, B, & C presents hourly rates for personnel anticipated to be assigned to this project and the unit prices as well as the basis of payments to be made to the MCE.

SECTON V - BASIC AGREEMENT IN EFFECT:

Except as amended specifically herein, the basic AGREEMENT FOR ENGINEERING

SERVICES shall remain in full force as originally approved and executed.

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

FOR THE CITY OF FAYETTEVILLE:

By: Dan Coody

Mayor

Attest: ______________________________

Date: ______________________________

FOR McCLELLAND CONSULTING ENGINEERS, INC.:

By: John C. Quinn

President

Attest: R Wayne Jones

Vice President

APPENDIX "A"
BASIS FOR PAYMENTS TO THE ENGINEER
TASK ORDER NO. 2
USAD Forest Service Air Tanker Base (Airside Facilities)
FAYETTEVILLE MUNICIPAL AIRPORT

LINE	CLASSIFICATION • / HOURLY RATE • / TASK DESCRIPTION	PROJECT DIRECTOR $105.00	PROJECT MGR./ENGR. $98.00	PROJECT ENGINEER $80.00	ENGINEERING TECHNICIAN $57.00	CADD OPER. 1 $59.00	CADD OPER. 2 $49.00	CADD OPER. 3 $34.00	LICENSED SURVEYOR $60.00	SURVEY CREW $95.00	CLERK TYPIST $35.00	INSPECTOR $47.50	MILEAGE $0.35	SUB.-CONS. FEE	DIRECT EXPENSE	EXTENDED TOTAL
A	PRELIMINARY DESIGN															
	SITE PLAN FOR TAXIWAY & APRON		1	4		1	6	4								$907.00
	GRADING PLAN FOR TAXIWAY & APRON		2	8			8	2								$1,296.00
	DRAINAGE PLAN FOR TAXIWAY & APRON		2	6		1	6	1								$1,063.00
	EROSION CONTROL PLAN		1	4		1	4	4								$809.00
	PAVEMENT JOINTING PLAN		2	8			8	2								$1,296.00
	PAVEMENT DETAILS		2	6		1	8									$1,127.00
	STRIPING PLAN		1	2			2	8								$628.00
	OUTLINE SPECIFICATIONS		2	6												$676.00
	PRELIMINARY QUANTITIES		2	8												$836.[illegible]
	PRELIMINARY COST ESTIMATE		1	2												$25[illegible]
	IN-HOUSE "QA" REVIEWS	2	2	2												$586.[illegible]
	REVIEW MEETINGS WITH AIRPORT & USDA		3	3											$4.00	$538.00
	SUBTOTAL, PRELIMINARY DESIGN PHASE	2	21	59	0	4	42	21	0	0	0	0	0	$0.00	$4.00	$10,000.00
B	DETAILED DESIGN															
	COVER		1	1				2								$246.00
	SITE PLAN FOR TAXIWAY & APRON		2	10		1	2	8								$1,425.00
	GRADING PLAN FOR TAXIWAY & APRON	1	6	16		2	4	10								$2,627.00
	DRAINAGE PLAN FOR TAXIWAY 7 APRON		4	10		1	2	8								$1,621.00
	EROSION CONTROL PLAN		1	6		1	2	4								$871.00
	PAVEMENT JOINTING PLAN	1	4	16		2	6	12								$2,597.00
	PAVEMENT DETAILS		2	12		2	2	8								$1,644.00
	STRIPING PLAN		1	4		1	2	4								$711.00
	PREPARE CONSTR MATERIALS TESTING PLAN	1	2	8												$941.00
	SPECIFICATIONS	1	4	20							24				$20.00	$2,957.00
	FINAL QUANTITIES		2	8	12											$1,520.00
	DETAILED COST ESTIMATE		1	4							2					$488.00
	IN-HOUSE "QA" REVIEWS	2	2	8							2				$50.00	$1,166.00
	REVIEW MEETINGS WITH AIRPORT & USDA	1	3	3									50		$30.00	$686.50
	REVISIONS TO CONTRACT DOCUMENTS	1	2	6		4	10	16			6				$76.50	$2,499.50
	SUBTOTAL, DETAILED DESIGN PHASE	8	37	134	12	14	30	72	0	0	34	0	50	$0.00	$178.50	$22,000.00
C	BIDDING		2	10							7				$9.00	$1,250.00
D	CONSTR. ADMIN. AND INSPECTION															
	CONSTR. ADMINISTRATION		8	32							2				$2.00	$3,416.00
	CONSTR. INSPECTION	2	8	40							6	645			$42.50	$35,084.00
	RECORD DRAWINGS		1	3		4	6	6							$10.00	$1,150.00
E	CONSTRUCTION STAKING				1				1	4					$3.00	$500.00
F	CONSTRUCTION MT'LS TESTING		1	6											$10,422.00	$11
	SUBTOTAL, CONSTRUCTION PHASE	2	18	81	1	4	6	8	1	4	8	645	0	$0.00	$10,479.50	$51
	GRAND TOTAL, ENGINEERING SERVICES	12	78	274	13	22	78	101	1	4	42	645	50	$0.00	$10,662.00	$84

APPENDIX B
TASK ORDER NO. 2
Hourly Rates for Personnel
Fayetteville Municipal Airport

CATEGORY	BILLABLE HOURLY RATE RANGE
Project Director	\$105 to \$130
Project Manager	\$85 to \$105
Engineer III	\$70 to \$85
Engineer II	\$50 to \$70
Engineer I	\$40 to \$50
Registered Surveyor	\$40 to \$55
Computer Technician	\$46 to \$55
Senior Engineering Technician	\$55 to \$65
Engineering Technician	\$45 to \$55
Survey Crew (2 man)	\$80 to \$105
Clerical Support	\$25 to \$45
CADD Technician III	\$50 to \$60
CADD Technician II	\$40 to \$50
CADD Technician I	\$25 to \$40
Soils Lab Supervisor	\$35 to \$50
Soils Technician II	\$30 to \$35
Soils Technician I	\$25 to \$30

APPENDIX C
CONSTRUCTION MATERIALS LABORATORY
FEE SCHEDULE
TASK ORDER NO. 2

GENERAL:

Laboratory Field Technician *	$ 32.00 per hour
AHTD-Qualified Technician*	38.00 per hour
Engineering Technician *	50.00 per hour
Senior Engineering Technician	61.00 per hour
Lab Supervisor	45.00 per hour
Consultation:	
Lab Supervisor	45.00 per hour
Field Engineer	65.00 per hour
Project Engineer	75.00 per hour
Project Manager	105.00 per hour
Principal Engineer	120.00 per hour
Lab Report Preparation	30.00 per hour

SOILS:

AHTD-Qualified Field Technician	38.00 per hour
Soils Field Technician (1-hour minimum)	32.00 per hour
In-Place Compaction Test-Nuclear Gauge ASTM D 2922	
Sample Pickup	
Nuclear Density Gauge Fee (per project, per day)	15.00 each
Liquid Limit, Plastic Limit, Plasticity Index (3 point) ASTM D 4318	48.00 each
Sieve Analysis-Washed No. 200 (Wet) ASTM D 1140	35.00 per sieve
Sieve Analysis-Dry ASTM D 422	8.00 per sieve
Hydrometer Analysis ASTM D 422	90.00 each
Specific Gravity ASTM D 854	50.00 each
Soils Classification, Unified or AASHTO ASTM D 2487 or AASHTO M 145	110.00 each
Laboratory Maximum Compaction Test ASTM D 698 or AASHTO T 99	120.00 each
Laboratory Maximum Compaction Test ASTM D 1557 or AASHTO T 180	135.00 each
Potential Volume Change-Swell Pressure	100.00 each
California Bearing Ratio-CBR ASTM D 1883 (3 point) (Proctor curve additional)	150.00 each
Shrinkage ASTM D 427	50.00 each
Soil Bearing Capacity (Engineering Tech., 2-hour minimum)	45.00 per hour
Non-ASTM Procedures Available On Request	

CONCRETE:

Concrete Mix Design	Price on Request
Review Concrete Mix Design (Lab Supervisor)	45.00 per hour
Confirm Concrete Mix Design	Price on Request
Concrete Field Technician * (1-hour minimum): [For any of the following 6 items:]	32.00 per hour
• Unit Weight and Yield of Freshly Mixed Concrete ASTM C 138	
• Concrete Cylinder or Beam Molding ASTM C 31	
• Concrete Cylinder or Beam Pickup	
• Concrete Slump Test ASTM C 143	
• Concrete Air Content Test ASTM C 231 or C 173	
• Cement Mortar or Group Sampling	
AHTD-Qualified Concrete Technician: [For any of the foregoing 6 items:]	38.00 per hour
Compressive Strength of Concrete Test Cylinders ASTM C 39 (pad cap)	10.00 each
Compressive Strength of Concrete Test Cylinders ASTM C 39 (sulfur capped)	15.00 each
Spare Cylinders Specimens Processed but not Tested	10.00 each
Schmidt Hammer Testing (Engineering Tech, 2-hour minimum)	45.00 per hour

* ACI Grade I Concrete Field Testing Technician

APPENDIX C
CONSTRUCTION MATERIALS LABORATORY
FEE SCHEDULE
TASK ORDER NO. 2

CONCRETE (Continued):	
Flexural Strength of Concrete Beams ASTM C 78 or C 293	25.00 each
Spare Beam Specimens Processed but not Tested	20.00 each
Compressive Strength of Grout Cubes	20.00 each
Compressive Strength of Cement Mortar Cubes	15.00 each
Concrete Coring (3" or 4"):	
Core Machine & Lab Technician	60.00 per hour
Additional Lab Technician, as required	32.00 per hour
Compressive Strength of Concrete Cores (3" or 4")	30.00 each
Other Core Sizes	Price on Request
Aggregate Sieve Analysis:	
Dry Sieve ASTM C 136	8.00 each
Wet Sieve ASTM C 117	35.00 each
Fineness Modules	25.00 each
Decantation	30.00 each
Deleterious Materials	60.00 each
Specific Gravity and Absorption of Aggregate ASTM C 127 & C 128	85.00 each
Dry Rodded Unit Weight of Aggregate ASTM C 29	50.00 each
Sodium or Magnesium Sulfate Soundness (5 cycles) ASTM C 88	250.00 each
Additional Cycles	50.00 each
ASPHALT:	
Asphalt Mix Design	Price on Request
Review Asphalt Mix Design (Lab Supervisor)	45.00 per hour
Asphalt Field Technician	
In-Place Compaction Test-Nuclear Gauge (Lab Technician)	32.00 per hour
Sample Pickup	32.00 per hour
Marshall Test including Stability, Flow, Laboratory Density, Percent Air Voids, Percent Voids in Mineral Aggregate (3 specimens per test)	225.00 each
Extraction including percent Bitumen and Aggregate Gradation	170.00 each
Laboratory Density of Cored Plugs including Depth Measurement	25.00 each
Asphalt Coring (3" or 4"):	
Core Machine & Lab Technician	60.00 per hour
Additional Lab Technician, if required	32.00 per hour
Sample Pickup	32.00 per hour
FIREPROOFING:	
Unit Weight, Bonding Strength, Thickness and Sampling (actual time required for Lab Technicians)	32.00 per hour/Tech.
Report Preparation (Lab Supervisor)	45.00 per hour
STRUCTURAL STEEL:	
Bolt Torque Testing: Lab Technician(s)	32.00 per hour
Field Engineer	65.00 per hour
Pneumatic Torque Wrench Calibration (twice per day)	50.00 each
Visual Weld Inspection Field Engineer	70.00 per hour

Services not Listed are Available on Request

Police & Fire Pension
LOPFI Agreement
C. 5. Page 1

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

XX AGENDA REQUEST

For the Fayetteville City Council Meeting of: August 5, 2003

FROM:

Stephen Davis		Finance & Internal Services
Name	Division	Department

ACTION REQUIRED: Request approval of an ordinance that transfers the financial responsibility and management of the Fireman's Pension and Relief Fund and the Policemen's Pension and Relief Fund to Arkansas Local Police and Fire Retirement System (LOPFI) stipulating that the City of Fayetteville concurs with providing the beneficiaries of these pension plans with the current benefits and adding a 3% compounding COLA.

SUMMARY EXPLANATION:

This item is presented for City Council review and approval in an effort to provide the beneficiaries of the two closed pension plans (Firemen's Pension and Relief Fund and Policemen's Pension and Relief Fund) with a more stable funding future and provide for a compounded cost of living increase (COLA). The benefit to the City is that the City's future financial liability will be determined and any unfunded accrued actuarial liability will be amortized over thirty (30) years. Beneficiaries of both pension plans have met and overwhelmingly support the transfer of the pension plans to LOPFI management and control. The Police Pension Board's resolution is included as an attachment to this request. The Fire Pension Board is scheduled to meet and approve a similar resolution on July 31, 2003.

By approving this transfer, City Council will be providing similar retirement benefits to all firefighters and police officers - retired and active.

STAFF RECOMMENDATION:

Marsha Farthing 7/23/03
Division Head Date

7/23/03
City Attorney Date

Received in Mayor's Office ______ Date

Department Director Date

Cross Reference:

Stephen Davis 7-23-03
Finance & Internal Services Dir. Date

Previous Ord/Res#:

Hugh Earnest 7-23-03
Chief Administrative Officer Date

Orig. Contract Date:

Orig. Contract Number:

New Item: Yes No

Mayor Date

ORDINANCE NO. _____

AN ORDINANCE ELECTING COVERAGE FOR ELIGIBLE MEMBERS OF THE POLICE PENSION AND RELIEF FUND AND FIREFIGHTER PENSION AND RELIEF FUND UNDER LOPFI AND AUTHORIZING MAYOR COODY TO ENTER INTO AN AGREEMENT WITH LOPFI

WHEREAS, the Board of Trustees of the Police Pension and Relief Fund and Firefighter Pension and Relief Fund have elected to have its eligible members covered under the Arkansas Local Police and Fire Retirement System (LOPFI) as stated by resolutions dated July 17, 2003 and July 31, 2003; and

WHEREAS, both said Board of Trustees have by said Resolutions requested the City of Fayetteville, Arkansas to act as agent for the administration of its retirement coverage for all its Relief Fund participants under LOPFI.

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 states that if accepted by Arkansas Local Police and Fire Retirement System (LOPFI), the administration of the retirement program coverage for all Police Pension and Relief Fund and Firefighter Pension and Relief Fund participants shall be transferred to the Arkansas Local Police and Fire Retirement System (LOPFI) pursuant to the authority of Act 364, Acts of Arkansas, 1981, as amended, and including other acts of the State Legislature, provided that such retirement coverage for said Relief Fund participants shall mean the administration of that fund only and not a change in the Relief Fund's benefit program.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor to enter into an agreement with the Arkansas Local Police and Fire Retirement System (LOPFI) to administer the Police Pension and Relief Fund and Firefighter Pension and Relief Fund as stated in Section 1 hereof.

Section 3. It is the intent of the City Council and it is hereby ordained that the provisions of this Ordinance shall be codified into the Code of Ordinances of Fayetteville, Arkansas, and the sections thereof may be renumbered and relettered as necessary to accomplish such intention.

Section 4. That the City Council of the City of Fayetteville, Arkansas hereby requests that its police and firefighter pension receive a three percent

(3%) compounded Cost of Living Adjustment annually.

PASSED and **APPROVED** this the 5th day of August, 2003.

APPROVED:
By: ______________________
DAN COODY, Mayor

DRAFT

ATTEST:
By: ______________________
Sondra Smith, City Clerk

TEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: Mayor and City Council

Through: Stephen Davis, Finance and Internal Services Director

From: Denise Grizzle, Accounting Coordinator

Date: July 23, 2003

Subject: Merging Closed Pension Plans with LOPFI

Background

The City of Fayetteville has two closed pension plans, the Policemen's Pension and Relief Fund (Police Pension) and the Firemen's Pension and Relief Fund (Fire Pension). The attached memo dated June 12, 2003 to the Police Pension Board and the Fire Pension Board discusses the specifics of these closed plans. In addition, it addresses the decline of the actuarial soundness of the pension funds, the risks to the pension funds associated with that decline, and three approaches in response to the funds current fiscal condition.

Discussion

There are also risks to the City which need to be addressed regarding the aforementioned decline in the soundness of these pension funds. First, if the City maintains administration within one to two years a liability will have to be recorded on the City's financial statements. Recording a liability could negatively impact the City's bond rating and increase the cost of borrowing which may deter a future City Council from issuing bonds. Also, if the City maintains administration a future City Council will most likely be faced with the decision of whether or not to use General Fund revenues to fund the liability for these pension plans. If General Fund revenues are not used to fund this liability, the other option would be to reduce benefits to the retirees and their beneficiaries.

Each Pension Board has conducted a public meeting with their respective retirees and beneficiaries with both groups overwhelmingly supporting the transfer of the closed pension plans to LOPFI. The Police Pension Board resolution is included in this packet and the Fire Pension Board is scheduled to approve a similar resolution at their regularly scheduled meeting July 31. Both resolutions are/will be conditioned on City Council approving a 3% compound COLA. It should be noted that the current Police and Fire uniform employees who participate in LOPFI receive a 3% compound COLA as part of their retirement benefit.

BE IT FURTHER RESOLVED, that an ordinance be passed by the City Council expressing the full intent of this resolution. And, upon the adoption of that ordinance, the administration and assets of the Fayetteville Police Pension and Relief Fund shall be transferred to LOPFI.

CERTIFICATION

We hereby certify that the above resolution represents the desires of the Board. Passed and approved this 17th day of July, 2003.

Signed:

Mayor Dan Coody	______________
City Clerk Sondra Smith	Sondra Smith
Member Randy Bradley	Randy Bradley
Member Jerry Friend	Jerry Friend
Member Dr. James Mashburn	James D. Mashburn
Member Jerry Surles	Jerry Surles
Member Tim Helder	T. Helder

EVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: The Firemen's Pension and Relief Fund Board, and,
The Policemen's Pension and Relief Fund Board

From: Marsha Farthing, Accounting Manager

Thru: Stephen Davis, Finance and Internal Service Director

Subject: Pension Plans

Date: June 12, 2003

Background

The City of Fayetteville has two closed pension plans, the Policemen's Pension and Relief Fund (Police Pension) and the Firemen's Pension and Relief Funds (Fire Pension). By state law the plans were closed in 1983 and all police officers and fire fighters hired since 1983 are enrolled in the Arkansas Local Police and Fire Retirement System (LOPFI). The old pension plans are supported by a .4 City millage, state insurance tax turnback, member contributions (6% of gross salary), City contributions (12% of gross salary) and investment earnings. In addition to these sources, the Police Pension Fund receives revenue from fines and forfeitures from the District Court. Currently, the Police Pension has three active members and Fire Pension has eleven active members, nine of which have elected to participate in the DROP Plan. In general, the annual retirement benefit for the police and fire personnel in these plans is 90% of the member's highest salary at their retirement date.

Each pension plans is controlled by an individual, independent board of trustees that has fiduciary responsibilities to the beneficiaries. The Boards are comprised of a combination of retired and active or all retired members as directed by state law, plus the City Clerk and the Mayor. The City performs all administrative duties for the pension plans including but not limited to record keeping for the funds, writing of the monthly pension checks, accounting for the tax withholding for the members, reconciling bank accounts and recording all investment transactions from their investment manager. Both pension funds manage their own investments and are currently using Longer Investments as their investment manager. The City also completes annual reports for the State

RESOLUTION

A RESOLUTION REGARDING THE TRANSFER OF THE FAYETTEVILLE POLICE PENSION AND RELIEF FUND TO THE LOPFI SYSTEM

Whereas, the Board of Trustees of the Fayetteville Police Pension and Relief Fund is now providing, or will provide in the future, retirement coverage for some of it's eligible employees under the Arkansas Local Police and Fire Retirement System (LOPFI) pursuant to the authority of Act 364, Acts of Arkansas, 1981 as amended, and including Act 655, Acts of Arkansas, 1983; and

Whereas, the Board of Trustees of the Fayetteville Police Pension and Relief Fund now desires to provide retirement coverage for all of it's employees, including Pension and Relief Fund participants under the Arkansas Local Police and Retirement Fund System, pursuant to the Authority of Act 354, Act of Arkansas, 1981, as amended, and including Act 655, Acts of Arkansas, 1983, so long as such retirement coverage for Relief Fund participants shall mean the administration of that Fund only and not a change (decrease) in the benefit program; and

Whereas, the Board of Trustees of the Fayetteville Police Pension and Relief Fund has reviewed and received the latest report of the Fayetteville Police Pension and Relief Fund from the retirement systems actuary which states the annual computed employer rate, unfunded liabilities, Fund assets and annual revenues; and

Whereas, the LOPFI System has said it shall administer the Pension and Relief Fund at an annual cost not to exceed ½ of 1% of active members pay plus 1% of average annual relief fund assets; and

Whereas, the Board of Trustees of the Fayetteville Police Pension and Relief Fund hereby mutually agree that it is in the best interest of the Relief Fund itself, Relief Fund participants and the Board of Trustees to have the Fund administered by LOPFI; and

Whereas, the Board of Trustees on behalf of the Fayetteville Police Pension and Relief Fund, hereby elects to provide for the administration of it's retirement coverage for all of it's Relief Fund participants under the LOPFI; and

Whereas, the Board of Trustees of the Fayetteville Police Pension and Relief Fund has voted to allow the administration of it's assets to be transferred to LOPFI; and

THEREFORE BE IT RESOLVED, that as a condition to transferring the administration and assets of Fayetteville Police Pension and Relief Fund to LOPFI, the Board of Trustees of the Fayetteville Police Pension and Relief Fund requests that the City of Fayetteville adopt a 3% compounded Cost of Living Adjustment (COLA), to be applied annually and paid to all retired full paid Fayetteville Police Pension and Relief Fund participants both current and future.

The unfunded accrued liability with a 3% compound COLA is calculated at $9,151,677. Provided that the City maintains their actuarially required contribution (ARC), there will be no liability for the City to record on its' financial statements.

Retirement benefits for the closed plan are calculated at 90% of salary at the time of retirement. The only exception to this is firefighters who elect DROP. DROP participants retirement benefits are calculated at 90% of salary at the time of election. Retirement benefits for LOPFI participants are calculated by multiplying their final average pay (average of three highest paid years) by 3% then by their number of years of service. This generally tends to be around 85% of salary.

Recommendation

Based on the mutual benefits of moving the administration and management of the closed pension plans to LOPFI, Staff recommends approval of an ordinance authorizing the move. Per the attached resolutions, the recommendation from the pension boards is to merge their plans with LOPFI with a 3% compound Cost of Living Adjustment (COLA). This will preserve their benefits, and reduce the risks to the City in regards to funding.

Pension Review Board which are used for the biennial actuarial reports required by the state.

The last two actuarial reports for the pension funds indicated that the funds were actuarially unsound and that the City and the Boards should consider increasing the actuarial contributions to the funds to cover any deficits. These reports indicate the unfunded actuarial accrued liability at 4.5 million for the Police Pension and 4.3 million for the Fire Pension.

Discussion

There are several contributing factors that have led to the decline in the actuarial soundness of these pension funds. Base benefits for members are set by state law at 50% of the highest salary year during their service time. In the late 90's both pension plans followed the provisions of the law to increase their retirement benefits to 90% of salary. When the increases were implemented the funds were actuarially sound and the State Pension Review Board approved the increases at the time. This has greatly increased the pension's expenses. Additionally, over the past few years, most members in these plans have become eligible for retirement. When active members retire revenues to the funds decrease and correspondingly pension benefits paid to retired members increase. There are currently very few active members contributing to the plans. Along those same lines, the insurance turnback received from the state is allocated to the old pension plans and the new pension plans based on the ratio of members in each plan. Membership in LOPFI is steadily growing, while the closed pension plans are decreasing in size. Therefore, the old plans receive less turnback each year when compared to the previous year. Finally and most definitely a major factor in the declining portfolios of the old pension plans is the decline over the past few years of the financial markets in which they are invested.

On a more positive note, the last Arkansas Legislature passed House Bill 1244 that will be of benefit to the City's old pension plans. The distribution method of the state insurance turnback has been changed. In the past the turnback was allocated based on the area and population of the location. The new formula divides the money on a needs basis based on the actuarial cost of the old plan. The feedback the City is receiving is that our pension plans will receive an increase in turnback this year, perhaps as much as double last year's.

The Pension Boards have three approaches that can be taken in response to the current fiscal condition of the pension funds.

1. Do nothing with the expectation that the plans investments in the financial markets will rebound enough to make the funds whole again. Even if the financial markets were to return to the 1990's level, it is uncertain if the funds would be sound. If the markets grow slower than anticipated than there is the risk of the funds becoming insolvent in which case they would need to seek assistance from the Arkansas Fire and Police Pension Guarantee Fund. The local pension

must be receiving one mill in property taxes to apply for assistance from this fund.

2. Increase contributions to the plans to make up deficits by either increasing the property tax millage or increasing the City's contribution to the plans. Increasing property taxes would require a public vote. Increasing the City's contribution would require City Council approval and would add expenses to General Fund that would take away from current services.

3. Combine the old plans with the open retirement plan for police and fire, the LOPFI plan. Act 364 of 1981 allows the responsibility and liability for the administration of the old pension plans to be assigned to LOPFI. This is only a change in administration of the plans and the benefits will remain the same. The unfunded liability in the plans will be amortized over 30 years. This means that the percentage the City currently pays for the active LOPFI members through payroll will be increased to cover the unfunded part of the old plans. The percentage increase is determined after an actuarial survey has been completed on the old plans. The City will continue to receive the revenues for the old plans, (i.e. property taxes, state insurance turnback). These revenues hopefully will offset the increase in the contributions required by LOPFI. Attached is a copy of the process required by LOPFI to assign the plans to them.

The auditors of the City have recommended that the City investigate the benefits and costs of merging the Plans with LOPFI, therefore the City has requested an actuarial study for each pension plan for the year ended December 31, 2002. The cost will be $2,000 for each pension plan and we would request the pension funds to reimburse the City for half of the cost of the analysis.

Also under State Law 24-11-406 and 24-11-804 plans with fewer than four active members may be designated as inactive by the employer. Both of the City's plans meet the criteria to be deemed a small fund with three active members in the Police Pension and two active members in the Fire Pension. The administration of the fund can be assigned to LOPFI by the City Council.

One other thing needs to be clarified. LOPFI is not administered by the state government. LOPFI is a statewide retirement plan for police officers and firefighters and was established as a non-profit entity under ACT 362 of 1981 as a fiduciary for political subdivisions and their employees who are its participants. The plan is administered by a five member Board of Trustees all of which are appointed by the Governor. The Board of Trustees has appointed day to day operations of the plan with an Executive Director, currently Cathryn Hinshaw.

From an accounting standpoint, the City has not yet reached the point where a liability for the unfunded contributions to the plans has been booked. But if no action is taken to stabilize the pension funds, within the next year or two the City will have to book the unfunded liabilities of each of these pension plans.

Recommendation

Staff is recommending combining the police and fire pension plans with LOPFI in 2003. This action will secure the benefits for the retirees and secure the City's future financial obligation to the plans to a manageable level.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

To: The Firemen's Pension and Relief Fund Board, and
The Policemen's Pension and Relief Fund Board

From: Marsha Farthing, Accounting Manager MF

Thru: Stephen Davis, Finance and Internal Services Director SD

Subject: Police and Fire Pension and Relief Funds

Date: June 17, 2003

Please find attached a letter from the Arkansas Local Police and Fire Retirement System explaining the steps required to move the administration of the pension funds to LOPFI and an example of a resolution and an ordinance to present to City Council. Also attached is a copy of the state law governing the administration of small funds.

In my first memo I stated that a major factor in the decline of the pension portfolios was due to the decline of the financial markets in which they are invested. However the Police Pension Fund, over the past several years, has exceeded the actuarial rate of return assumption and has been invested in accordance with the plan's adopted investment policy.

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

LOPFI

ARKANSAS LOCAL POLICE & FIRE RETIREMENT SYSTEM

P.O. Box 34164
Little Rock, Arkansas 72203
Telephone: (501) 682 - 1745
Fax: (501) 682 - 1751
email: info@lopfi-prb.com
website: www.lopfi-prb.com

To: Interested Public Employers and Local Boards of Trustees

From: Arkansas Local Police and Fire Retirement System

Re: Procedure for Administrative Conversion of Local Police and Fire Pension Funds to LOPFI

Date: February, 2002

Act 364 of 1981, as amended, allows the responsibility and liability for administration of a local police or fire pension fund to be assigned to the Arkansas Local Police and Fire Retirement System (LOPFI). The procedure for making such an administrative conversion is discussed below. **PLEASE NOTE** that this is only a change in administration. **THE CONDITIONS FOR RETIREMENT UNDER THE LOCAL PENSION FUND WILL REMAIN THE SAME. And, under most conditions, the benefits payable from the fund will remain the same.** The exceptions are the benefits that are only payable upon the pension fund being "actuarially sound", i.e., the $350/month base benefit for paid police and fire plans and $50/month base for volunteer; and for fire pension funds, the co-equal spouse benefit.

Procedure For Administrative Conversion of Local Pension Plans to LOPFI

1. A majority of the trustees of a local pension board shall adopt and sign a resolution requesting the local governing body (City Council; Board of Directors; or Board of Commissioners) to pass an ordinance transferring the administration of the local pension fund to the Board of Trustees of the Arkansas Local Police and Fire Retirement System (LOPFI).

2. When the resolution is filed with the LOPFI office, LOPFI will cause an actuarial valuation to be performed, which will set the first year's employer contribution rate for both the local plan and the LOPFI covered employees of the affected department. The LOPFI Board will assess the cost of the actuarial work back to the locality. For plans with 5 or fewer participants, the fee is $500, adding $40 for each additional participant up to 30, at which time the fee is $1,500. **Checks should be made payable to, "Gabriel, Roeder, Smith, & Co.".**

3. After reviewing the actuary's employer cost report, the local governing body may adopt an ordinance authorizing the presiding officer of the political subdivision to sign a contract for administrative services from LOPFI for the local pension fund. The secretary of the governing body shall certify the ordinance as correct.

4. Pursuant to the ordinance, the LOPFI Board of Trustees will make a determination whether to take fiduciary responsibility for the plan.

5. LOPFI administration shall become effective the first day of the month following the elapse of 60 days from the adoption of the ordinance, or later if agreed upon by both the locality and LOPFI. All records must be received from the local plan by the LOPFI office no later than 20 working days prior to our beginning administration on the first of the next month.

(iii) If there are no active members of the pension fund, all four (4) employee members shall be elected from and by the retired membership of the pension fund;

(B) The board shall select one (1) of the police members as secretary of the board to serve for a period of two (2) years or until his successor is elected and qualified;

(C) However, if no retirant is available to serve on the board, all four (4) employee positions shall be held by active members of the pension fund and shall all be elected by secret ballot by the active members of the pension fund for two-year terms as provided above.

(D) The board shall have the power to make all rules and regulations needful for its guidance to implement the provisions regarding board composition;

(4) The six (6) members provided for in subdivisions (1)-(3) of this subsection shall elect one (1) more member who shall be a reputable physician and who shall represent the board of trustees in the examination of any member of the department upon a claim of disability;

(5) The number of active members or retired members to serve on the board shall be determined by the proportionate number of active members to retired members:

(A) When the number of active members equals seventy-five percent (75%) of the total of retired members and active members, the board shall be comprised of three (3) active members and one (1) retired member.

(B) When the number of active members equals fifty percent (50%) of the total of retired members and active members, the board shall be comprised of two (2) active members and two (2) retired members.

(C) When the number of retired members equals seventy-five percent (75%) of the total of retired members and active members, the board shall be comprised of one (1) active member and three (3) retired members.

(b) The police officer members and the physician representative of the board shall serve for a period of two (2) years or until their successors are elected and qualified.

(c) The board shall have the absolute control and management of the funds provided for in this subchapter and of all moneys donated, paid, or assessed for the relief or pension of disabled, superannuated, and retired members of the police department, their surviving spouses and minor children, or dependent parents solely dependent upon members for their support.

(d)(1) The board shall make all necessary rules and regulations for its government and the discharge of its duties and shall hear and decide all applications for relief or pension under this subchapter.

(2) All decisions upon applications shall be final and conclusive and not subject to review or reversal except by the board.

(3) The board shall cause to be kept a record of all its meetings and proceedings.

History. Acts 1937, No. 250, §§ 3, 4; Pope's Dig., §§ 9858, 9859; Acts 1985, No. 390, § 1; A.S.A. 1947, §§ 19-1803, 19-1804; Acts 1987, No. 405, § 2; 1991, No. 365, § 1.

Amendments. The 1991 amendment rewrote (a)(3)(A); and added (a)(5).

CASE NOTES

ANALYSIS

Action against pension board.
Hearing on pension claim.

Action Against Pension Board.

If the circuit court's unappealed dismissal of mandamus suit was based on subsection (d) precluding judicial review of board's decision, the dismissal would not be res judicata as to the police officer's civil rights suit in the federal courts. Hirrill v. Merriweather, 629 F.2d 490 (8th Cir. 1980).

Hearing on Pension Claim.

Police officer was entitled to have his pension claim considered by a body of reasonable and fair-minded persons who were able and willing to give the claim fair consideration and to grant it if meritorious. Hirrill v. Merriweather, 629 F.2d 490 (8th Cir. 1980).

24-11-406. Administration of small funds by Arkansas Local Police and Fire Retirement System.

(a) In those local police pension and relief funds which cover fewer than four (4) active members, a local board of trustees may no longer exist, and the fund may be designated as inactive by the employer.

(b) Administrative responsibility for the fund shall be assigned to the Arkansas Local Police and Fire Retirement System, as allowed by §§ 24-10-301 and 24-10-302 and as provided in the following procedure:

(1)(A) The actuary under contract to the system shall compute the retirement reserve for vested and active members and for eligible beneficiaries of the inactive fund. After receiving the report of the actuary, the employer shall transfer the computed reserve to the system to be held in an account designated as the retirement reserve for the inactive fund and from which the system shall pay eligible beneficiaries.

(B) The retirement reserve and any additional employer contributions shall include such amounts as are necessary to provide administrative expenses for the system, but such expenses shall not exceed a total of one-half of one percent (0.5%) of active member payroll, if any, plus one percent (1%) of annual reserve assets.

(2) Any excess assets of the fund remaining after the retirement reserve is created shall be transferred to an account designated by the employer, to be used solely for the purpose of making payments to the system for employee coverage administered under the system and for no other purpose.

(3) If a former member of the local pension fund returns to service in which the employee would have again become a member of the local fund, the past service credit may be purchased by the employer for the employee under the system, and the purchase costs shall be amortized in the same manner as other service credit purchases are amortized under the system.

(4)(A) No benefit amendments shall be made in benefits payable from the inactive fund under the administration of the system.

(B) Should the law mandate an increase in benefits to retired members or their beneficiaries, the increases shall be payable from the retirement reserve of the inactive fund.

(C) No prorating of benefits shall be allowed in inactive funds under the administration of the system.

(D) If the retirement reserve of an inactive fund shall become inadequate to pay full benefits to eligible recipients, the system shall require of the employer, and the employer shall remit, such actuarially computed amounts as are necessary to pay full benefits to current and future eligible recipients.

(5)(A) Once a fund becomes inactive and a retirement reserve is created as required by this section, the employer may continue to collect such millages, fines, fees, state insurance tax turnback, and other revenues as allowed by law for the support of police retirement programs.

(B) The revenues shall be deposited locally in an account designated by the employer solely for making payments to the system and shall be used for no other purpose.

(6)(A) All employer contributions for inactive funds shall be made in such amounts, and in such manner, form, and frequency, as the Board of Trustees of the Arkansas Local Police and Fire Retirement System shall require.

(B) The pension records of inactive funds, and other materials and reports as may be required by the board to administer the inactive funds, shall be provided to the Local Police and Fire Retirement System in such manner as the board shall require.

History. Acts 1937, No. 250, § 4; Pope's Dig., § 9859; Acts 1985, No. 927, § 1; A.S.A. 1947, § 19-1804.

24-11-407. List of retired police officers.

(a) There shall be kept in the office of the board of trustees by the secretary a book known as the list of retired police officers.

(b) This book shall give the full and complete history and record of action of the board of trustees in retiring any and all persons under this subchapter.

(c) The record shall give the name, date of joining the department, date of retirement and reason thereof, and the date and finding of the physician of each examination made of disabled members of the department retired under the provisions of this subchapter.

History. Acts 1937, No. 250, § 12; Pope's Dig., § 9867; A.S.A. 1947, § 19-1812.

24-11-408. Treasurer as custodian of fund.

(a) The treasurer shall be the custodian of the pension fund and shall keep his books and accounts concerning the funds in such manner as may be prescribed by the board.

(b) The books and accounts shall be subject to the inspection of any member of the board.

(c)(1) The treasurer shall, within ten (10) days after his selection, execute a bond to the board of trustees with good and sufficient securities, in such penal sum as the board shall direct, conditioned for the faithful performance of the duties of his office and that, on the expiration or retirement of his term of office, he shall surrender and deliver to his successor all unexpended moneys and all property which may have come into his hands as treasurer of the fund.

(2) The bond shall be filed in the office of the board of trustees and, in case of a breach of the bond, suit may be brought on the bond in the name of the board or in the name of any person or persons injured by the breach.

History. Acts 1937, No. 250, § 17; Pope's Dig., § 9872; A.S.A. 1947, § 19-1817.

A.C.R.C. Notes. The operation of subsection (c) of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The subsection may again become effective upon cessation of coverage under that program. See § 21-2-703.

24-11-409. Deposit of moneys.

The board shall deposit all moneys in the bank selected as the fiscal agent of the city in which it is located, but only if the moneys draw the same rate of interest as the city receives on its deposits; otherwise, the board shall make its own selection of the bank.

History. Acts 1937, No. 250, § 14; Pope's Dig., § 9869; A.S.A. 1947, § 19-1814.

24-11-410. Investment.

(a) The board of trustees shall have the power to draw sums from its treasury, only upon warrants signed by the chairman and countersigned by the policemen's pension and relief fund, to invest in the name of the board of trustees of the policemen's pension and relief fund in interest-bearing bonds of the United States, of the State of Arkansas, or of the city in which the board is located, in a local government joint investment trust pursuant to § 19-8-301 et seq., in the Arkansas Local Police and Fire Retirement System, or in savings and loan associations duly established and authorized to do business in this state.

(b) All securities shall be deposited with the treasurer of the board of trustees of the pension and relief fund and shall be subject to the order of the board.

(c)(1) In those pension and relief funds in which assets exceed five hundred thousand dollars ($500,000), the board of trustees may employ an investment advisor as defined in § 24-10-402(a)(1)(B) to invest the assets, subject to the terms, conditions, limitations, and restrictions imposed by law upon the Arkansas Local Police and Fire Retirement System, as provided by §§ 24-10-401 — 24-10-411.

(2) Investments shall not be limited to interest-bearing bonds.

July 16, 2003

Ms. Cathyrn E. Hinshaw, Executive Director
Arkansas Local Police & Fire Retirement System
P.O. Drawer 34164
Little Rock, Arkansas 72203

Re: Fayetteville Paid Service Firemen — Combined Contribution Rates

Dear Cathyrn:

Enclosed are 3 copies of a memorandum containing summary results of these valuations. The results include Benefit Program 2 for the LOPFI group.

Respectfully submitted,

David L. Hoffman   Mita D. Drazilov

DLH:hgb
Enclosures

CC: Heidi G. Barry

July 16, 2003

City of Fayetteville
Fayetteville, Arkansas

Re: PAID SERVICE FIREMEN
Coverage by Two Plans

Ladies and Gentlemen:

Submitted in this report are the results of the actuarial valuations which determine the employer contribution rates required to support, for your employees, the benefits provided by:

- The Arkansas Local Police and Fire Retirement System ("LOPFI")
  LOPFI Plan Coverage (For Employees Hired After December 31, 1982)
  and
- "Closed Plan" Coverage (The Relief and Pension Fund For Employees Hired Before January 1, 1983).

The date of the valuations was December 31, 2002. The valuations were based on data furnished by your LOPFI administrative staff. The actuarial methods and assumptions were the same as those used in the regular valuation as of that date. These include an investment return assumption of 8.0% and a wage inflation assumption of 4.0%.

The non-financial assumptions used to determine contributions are on file at the LOPFI office. In our opinion, they produce results which are reasonable.

Member information is summarized in the following table:

	December 31, 2002 Valuation Data							
			Averages					
Group	Active Members	Payroll	Pay	Age (Yrs.)	Serv. (Yrs.)	Retired Members	Monthly Benefit	Average Age (Yrs.)
Paid – LOPFI	74	$2,822,500	$38,142	34.0	8.8	4	$6,859	48.6
– Local	5	202,587	40,517	45.2	20.4	49#	90,584	61.4
Total	79	$3,025,087	$38,292	34.7	9.5	53#	97,443	60.4

#Includes DROP participants.

mation for the Local Pension & Relief Fund was derived from the independent audit report provided to us. The date of the audit report was December 31, 2002.

The funding value of assets for both the Local Fund, $9,937,619, and LOPFI, $5,932,051, as of December 31, 2002 was used in computing the expected employer contribution rate. The funding value of assets for the Local Fund was determined by applying the ratio of the total funding value of assets for LOPFI over the total market value for LOPFI to the reported market value for the Local Fund, $8,938,115. The actual amount transferred to LOPFI will depend on the market value of Local Fund assets when they are actually liquidated and may differ substantially from the value as of December 31, 2002. This will likely impact the actual rate computed in the next valuation of the combined plans. A $500,000 difference, either higher or lower, would cause a decrease/increase in the computed employer contribution rate of approximately 1% of active member payroll.

For purposes of this valuation, we allocated all Local Fund assets to the Local Fund paid service group. As Fayetteville does not maintain a volunteer fire group in LOPFI there will be no volunteer active members on which to base an employer contribution. We would recommend that all liabilities and assets for the Local Fund volunteer group be transferred to the paid service group if the Local Fund is administered by LOPFI.

The hypothetical Retired Reserve Account balance for Local Pension & Relief Fund paid benefit recipients as of December 31, 2002 is $11,430,838. If higher benefits are adopted, a higher reserve transfer will be required. In either case, if the Fund transfers administration to LOPFI, a reserve transfer amount must be computed and would be made to fully fund the liabilities associated with those benefit recipients.

The new combined employer contribution rates are shown on pages 5 and 6.

Alternate benefit provisions valued for paid Local plan members were as follows:

(a) Currently under the Local Plan, members receive no post-retirement increases.
(b) Proposed 3.0% simple escalator for current and future retirees.
(c) Proposed 3.0% compound escalator for current and future retirees.

These labels have been applied to the results shown on page 5.

Scenario	Actuarial Accrued Liability	Valuation Assets	Unfunded Accrued Liabilities
(a)	$17,977,239	$15,869,670	$2,107,569
(b)	$21,242,290	$15,869,670	$5,372,620
(c)	$22,145,274	$15,869,670	$6,275,604

If you have any questions concerning this report or LOPFI in general, please contact the LOPFI office in Little Rock.

PROPOSED COMBINED CONTRIBUTION RATE
Relationships Between

LOPFI Plan Coverage (For Employees Hired After December 31, 1982)
"Closed Plan" Coverage (The Relief and Pension Fund For Employees Hired Before January 1, 1983)

LOPFI Plan. The valuation results are the same as they would have been if LOPFI had not begun to administer the Closed Plan.

Closed Plan administration may cause one modification of future LOPFI financial activity: if the length of the financing period for unfunded liabilities causes Closed Plan assets to temporarily dip below zero, LOPFI would loan the shortages until the financing period is completed. When the Closed Plan financing period is completed, LOPFI will have been fully repaid (including investment credits) and the Closed Plan will be fully funded.

Closed Plan. The financing period for Closed Plan unfunded liabilities is 30 years, from December 31, 2002. This period is longer than the previous financing periods, and is reasonable only because of the ability to borrow from LOPFI should Closed Plan assets temporarily dip below zero.

The longer the financing period for unfunded liabilities, the lower the employer contribution rate during the financing period.

Employer Contribution Rate. Each year the actuarial valuation determines a single employer contribution rate which covers the combination of LOPFI and the Closed Plan. The single, combined contribution rate for Volunteer Service is converted to monthly dollars by multiplying the rate by the number of active members (LOPFI and Closed Plan active members combined). Similarly, the single, combined contribution rate for Paid Service is converted to annual dollars by multiplying the rate by the combined annual payroll of LOPFI and Closed Plan active members.

The LOPFI account is credited with dollars in the basic LOPFI-only procedure.

The Closed Plan account is credited with the difference between (i) the total, combined contribution dollars and (ii) the LOPFI-only contribution dollars.

Fayetteville Paid Firemen
Arkansas Firemen Relief and Pension Fund
Benefit Provisions Valued and/or Considered
(December 31, 2002)

Voluntary Retirement

Eligibility - 20 years of service regardless of age.

Amount - Annual benefit equal to 50% of highest year's pay. Minimum benefit is $4,200 per year. If acquired more than 20 years of service credit, benefit is increased by $240 annually for each additional year of service credit. (Maximum $1,200 annual addition). If acquired more than 25 years of service credit, retirant's benefit is increased at age 60 by 1.25% of highest year's pay for service over 25 years. (Maximum benefit is 100% of final salary).

Disability Retirement

Eligibility - Permanent physical or mental disability.

Amount - (Non-Duty Disability) Computed as voluntary retirement benefit.

(Duty Disability) Annual benefit equal to the greater of; voluntary retirement benefit, or 65% of final salary. Temporary hospital, nursing and weekly sick benefits may also be available.

Death Benefits

Eligibility - Death before 20 years of service not occurring while performing work in gainful employment outside the fire department or death after 20 years of service. Also applicable to retired members.

Amount - Widow receives benefit member was receiving or, in the case of an active employee, the amount the member would have received had the member retired the date of death. (Excluding the additional amount payable at member's age 60 for service over 25 years). Minimum widow benefit is $4,200 annually. Each child receives $1,500 annually up to age 19.

Member Contributions

6% of salary.

Member contributions are refundable without interest upon termination of employment prior to becoming eligible for retirement or death benefits.

Fayetteville
PAID SERVICE FIREMEN
NOT COVERED BY SOCIAL SECURITY

COMBINED EMPLOYER CONTRIBUTIONS TO PROVIDE LOPFI MEMBER BENEFITS & CLOSED PLAN BENEFITS

Employer Portion is State and Local Combined

Computed December 31, 2002

	% of Active Payroll		
	(a)	(b)	(c)
	Current	Simple	Compound
Employer Normal Cost For LOPFI Benefits	13.27%	13.27%	13.27%
Unfunded accrued liabilities (30 years remaining)	3.80%	9.70%	11.33%
COMPUTED EMPLOYER RATE FOR COMBINED BENEFITS	17.07%	22.97%	24.60%

Determining Employer Dollar Contributions

For each month, the $ per member combined contribution rate is converted to dollars — and then promptly contributed to LOPFI.

Based upon the combined annual payroll submitted for this valuation, $3,025,087, the annual employer contribution dollars would be $516,382 for scenario (a), $694,862 for scenario (b), and $744,171 for scenario (c).

However, in budgeting combined dollars for a fiscal period, be sure you use the number of members you are budgeting for that same fiscal period (which will probably be different than the number of members reported here).

Fayetteville
PAID SERVICE FIREMEN
NOT COVERED BY SOCIAL SECURITY
EMPLOYER CONTRIBUTIONS TO PROVIDE LOPFI MEMBER BENEFITS

Employer Portion is State and Local Combined

Computed December 31, 2002

Contributions	% of Active Payroll
Normal cost of benefits:	
Age and Service	17.48%
Casualty	1.61
Total	19.09
Member contributions: Total	6.00
Future refunds	0.18
Usable for monthly benefits	5.82
Employer Normal Cost	13.27
Unfunded accrued liabilities	(0.46)
COMPUTED EMPLOYER RATE FOR LOPFI MEMBERS	12.81%

Determining Employer Dollar Contributions

For each month, the percent-of-payroll contribution rate is converted to dollars -- and then promptly contributed to your account with LOPFI.

Based upon the annual payroll for paid members submitted for this valuation, $2,822,500, the annual employer contribution dollars would be $361,562.

However, in budgeting LOPFI dollars for a fiscal period be sure you use the payroll dollars you are budgeting for that same fiscal period (which will probably be different than the payroll dollars reported here).

Fayetteville
VOLUNTEER SERVICE FIREMEN

EMPLOYER CONTRIBUTIONS TO PROVIDE CLOSED PLAN BENEFITS

Employer Portion is State and Local Combined

Computed December 31, 2002

	(a) Current	(b) Simple	(c) Compound
Present value of future benefits for the current 13 volunteer service benefit recipients.	$86,050	$98,998	$100,923
Employer contribution amortizing present value of future benefits as a level dollar amount over 30 years	$7,353	$8,460	$8,624

These costs are provided for comparison to current costs for volunteer service members of this group. As no volunteer fire group is supported by Fayetteville under LOPFI, when the last member of this group leaves active employment, the current basis for determining a contribution will no longer be practical. As noted on page 2 of this report, no assets were considered in determining these costs above.

It may be more practical to immediately move the liabilities and assets for the volunteer members into the paid group immediately if the decision is made to administer this group through LOPFI. In either case, there would be no difference in the long term costs (or contributions) for this group.

GABRIEL, ROEDER, SMITH & COMPANY
Consultants & Actuaries

One Towne Square • Suite 800 • Southfield, Michigan 48076 • 248-799-9000 • 800-521-0498 • fax 248-799-9020

July 15, 2003

City of Fayetteville
Fayetteville, Arkansas

Re: PAID SERVICE POLICE
Coverage by Two Plans

Ladies and Gentlemen:

Submitted in this report are the results of the actuarial valuations which determine the employer contribution rates required to support, for your employees, the benefits provided by:

- The Arkansas Local Police and Fire Retirement System ("LOPFI")
  LOPFI Plan Coverage (For Employees Hired After December 31, 1982)
  and
- "Closed Plan" Coverage (The Relief and Pension Fund For Employees Hired Before January 1, 1983).

The date of the valuations was December 31, 2002. The valuations were based on data furnished by your LOPFI administrative staff. The actuarial methods and assumptions were the same as those used in the regular valuation as of that date. These include an investment return assumption of 8.0% and a wage inflation assumption of 4.0%.

Member information is summarized in the following table:

	December 31, 2002 Valuation Data							
			Averages					
Group	Active Members	Payroll	Pay	Age (Yrs.)	Serv. (Yrs.)	Retired Members	Monthly Benefit	Average Age (Yrs.)
Paid – LOPFI	89	$3,379,455	$37,971	33.4	6.9	1	$2,069	60.0
– Local	7	377,835	53,976	50.3	26.0	53	86,935	65.0
Total	96	$3,757,290	$39,138	34.6	8.3	54	89,004	64.9

The new combined employer contribution rates are shown on pages 5 and 6.

The non-financial assumptions used to determine contributions are on file at the LOPFI office. In our opinion, they produce results which are reasonable.

Asset information for the Local Pension & Relief Fund was derived from the independent audit report provided to us. The date of the audit report was December 31, 2002.

The funding value of assets for both the Local Fund, $11,291,244, and LOPFI, $8,673,873, as of December 31, 2002 were used in computing the expected employer contribution rate. The funding value of assets for the Local Fund was determined by applying the ratio of the total funding value of assets for LOPFI over the total market value for LOPFI to the reported market value for the Local Fund, $10,155,823. The actual amount transferred to LOPFI will depend on the market value of Local Fund assets when they are actually liquidated and may differ substantially from the value as of December 31, 2002. This will likely impact the actual rate computed in the next valuation of the combined plans. A $700,000 difference, either higher or lower, would cause a decrease/increase in the computed employer contribution rate of approximately 1% of active member payroll.

The hypothetical Retired Reserve Account balance for Local Pension & Relief Fund paid benefit recipients as of December 31, 2002 is $11,030,928. If higher benefits are adopted, a higher reserve transfer will be required. If the Fund transfers administration to LOPFI, a reserve transfer would be made to fully fund the liabilities associated with those benefit recipients.

Alternate benefit provisions valued for paid Local plan members were as follows:

(a) Currently under the Local Plan, members receive no post-retirement increases.
(b) Proposed 3.0% simple escalator for current and future retirees.
(c) Proposed 3.0% compound escalator for current and future retirees.

These labels have been applied to the results shown on page 5.

Scenario	Actuarial Accrued Liability	Valuation Assets	UAL
(a)	$18,434,776	$19,965,117	($1,530,341)
(b)	$21,889,444	$19,965,117	$1,924,327
(c)	$22,841,190	$19,965,117	$2,876,073

If you have any questions concerning this report or LOPFI in general, please contact the LOPFI office in Little Rock.

'ROPOSED COMBINED CONTRIBUTION RATE

Relationships Between

LOPFI Plan Coverage (For Employees Hired After December 31, 1982)

"Closed Plan" Coverage (The Relief and Pension Fund For Employees Hired Before January 1, 1983)

LOPFI Plan. The valuation results are the same as they would have been if LOPFI had not begun to administer the Closed Plan.

Closed Plan administration may cause one modification of future LOPFI financial activity: if the length of the financing period for unfunded liabilities causes Closed Plan assets to temporarily dip below zero, LOPFI would loan the shortages until the financing period is completed. When the Closed Plan financing period is completed, LOPFI will have been fully repaid (including investment credits) and the Closed Plan will be fully funded.

Closed Plan. The financing period for Closed Plan unfunded liabilities is 30 years, from December 31, 2002. This period is longer than the previous financing periods, and is reasonable only because of the ability to borrow from LOPFI should Closed Plan assets temporarily dip below zero.

The longer the financing period for unfunded liabilities, the lower the employer contribution rate during the financing period.

Employer Contribution Rate. Each year the actuarial valuation determines a single employer contribution rate which covers the combination of LOPFI and the Closed Plan. The single, combined contribution rate for Volunteer Service is converted to monthly dollars by multiplying the rate by the number of active members (LOPFI and Closed Plan active members combined). Similarly, the single, combined contribution rate for Paid Service is converted to annual dollars by multiplying the rate by the combined annual payroll of LOPFI and Closed Plan active members.

The LOPFI account is credited with dollars in the basic LOPFI-only procedure.

The Closed Plan account is credited with the difference between (i) the total, combined contribution dollars and (ii) the LOPFI-only contribution dollars.

Fayetteville Paid Police

Arkansas Police Relief and Pension Fund

Benefit Provisions Valued and/or Considered

(December 31, 2002)

Voluntary Retirement

Eligibility - 20 years of service regardless of age.

Amount - Annual benefit equal to 50% of highest year's pay. Minimum benefit is $4,200 per year. If acquired more than 20 years of service credit, benefit is increased by $240 annually for each additional year of service credit. (Maximum $1,200 annual addition). If acquired more than 25 years of service credit, retirant's benefit is increased at age 60 by 1.25% of highest year's pay for service over 25 years. (Maximum benefit is 100% of final salary).

Disability Retirement

Eligibility - Permanent physical or mental disability.

Amount - (Non-Duty Disability) Computed as voluntary retirement benefit.

(Duty Disability) Annual benefit equal to the greater of; voluntary retirement benefit, or 65% of final salary. Temporary hospital, nursing and weekly sick benefits may also be available.

Death Benefits

Eligibility - Death before 20 years of service not occurring while performing work in gainful employment outside the fire department or death after 20 years of service. Also applicable to retired members.

Amount - Widow receives benefit member was receiving or, in the case of an active employee, the amount the member would have received had the member retired the date of death. (Excluding the additional amount payable at member's age 60 for service over 25 years). Minimum widow benefit is $4,200 annually. Each child receives $1,500 annually up to age 19.

Member Contributions

6% of salary.

Member contributions are refundable without interest upon termination of employment prior to becoming eligible for retirement or death benefits.

Fayetteville
PAID SERVICE POLICE
NOT COVERED BY SOCIAL SECURITY

COMBINED EMPLOYER CONTRIBUTIONS TO PROVIDE LOPFI MEMBER BENEFITS & CLOSED PLAN BENEFITS

Employer Portion is State and Local Combined

Computed December 31, 2002

	% of Active Payroll		
	(a)	(b)	(c)
Contributions	**Current**	**Simple**	**Compound**
Employer Normal Cost For LOPFI Benefits	12.07%	12.07%	12.07%
Unfunded accrued liabilities (30 years remaining)	(2.22%)	2.80%	4.18%
COMPUTED EMPLOYER RATE FOR COMBINED BENEFITS	9.85%	14.87%	16.25%

Determining Employer Dollar Contributions

For each month, the $ per member combined contribution rate is converted to dollars — and then promptly contributed to LOPFI.

Based upon the combined annual payroll submitted for this valuation, $3,757,290, the annual employer contribution dollars would be $370,093 for scenario (a), $558,709for scenario (b), and $610,560 for scenario (c).

However, in budgeting combined dollars for a fiscal period, be sure you use the number of members you are budgeting for that same fiscal period (which will probably be different than the number of members reported here).

Fayetteville
PAID SERVICE POLICE
NOT COVERED BY SOCIAL SECURITY
EMPLOYER CONTRIBUTIONS TO PROVIDE LOPFI MEMBER BENEFITS

Employer Portion is State and Local Combined

Computed December 31, 2002

Contributions	% of Active Payroll
Normal cost of benefits:	
Age and Service	16.06%
Casualty	1.67
Total	17.73
Member contributions: Total	6.00
Future refunds	0.34
Usable for monthly benefits	5.66
Employer Normal Cost	12.07
Unfunded accrued liabilities	(4.15)
COMPUTED EMPLOYER RATE FOR LOPFI MEMBERS	7.92%

Determining Employer Dollar Contributions

For each month, the percent-of-payroll contribution rate is converted to dollars -- and then promptly contributed to your account with LOPFI.

Based upon the annual payroll for paid members submitted for this valuation, $3,379,455, the annual employer contribution dollars would be $267,653.

However, in budgeting LOPFI dollars for a fiscal period be sure you use the payroll dollars you are budgeting for that same fiscal period (which will probably be different than the payroll dollars reported here)

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody**, Mayor

THRU: **Sondra Smith**, City Clerk

FROM: **Kit Williams**, City Attorney

DATE: **August 6, 2003**

RE: **Passed Ordinances and Resolutions from City Council meeting of August 5, 2003**

The following Ordinances and Resolutions were passed at the last City Council meeting and are ready for the mayor's signature.

Enclosed are:

1. **Marinoni Offer and Acceptance/Broyles Road:** Resolution approving offer and acceptance contract between the City of Fayetteville and Paul Marinoni, Jr. and Suellen Mary Marinoni in amount not to exceed $43,400.00 for purchase of approximately 70 feet of right-of-way for extension of Broyles Road and to obtain permanent and temporary easements for construction of sewer lines to new wastewater treatment plant and approving budget adjustment in amount of $78,400.00 for same;

2. **Multi-Craft Contractors, Inc. Bid #03-42 – Back-up Generators:** Resolution awarding bid #03-42 to Multi-Draft Contractors, Inc in amount of $103,885.00 to install back-up generators at each of Fayetteville Fire Department's five facilities and approving project contingency in amount of $10,389.00 for same;

3. **Arkansas Parks & Tourism Outdoor Recreation Grant/Lake Fayetteville Spillway Bridge Project:** Resolution authorizing Fayetteville Parks & Recreation Division to apply for Arkansas Parks and Tourism Outdoor Recreation grant in amount of up to $250,000.00 for Lake Fayetteville Spillway Bridge Project;

4. **USDA Forest Service Supplemental Lease Agreement No. 1:** Resolution authorizing Mayor and City Clerk to execute Amendment No. 1 to Lease Agreement w/USDA Forest Service Authorizing City of Fayetteville to construct loading pads, approach ramps, and other civil works at Fayetteville Municipal Airport associated w/Air Tanker Operations Base, and approving budget adjustment recognizing receipt of $1,200,000.00 as Forest Service's portion of cost share;

5. **McClelland Consulting Engineers, Inc. Task Order No. 2:** Resolution approving Task Order No. 2 in amount of $84,400.00 w/McClelland Consulting Engineers for engineering, design and construction oversight associated w/construction of USDA Forest Service Tanker Base at Fayetteville municipal Airport and approving budget adjustment for same amount.

Tentative Agenda
For
City Council Meeting
August 5, 2003

A meeting of the Fayetteville City Council will be held on August 5, 2003 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Cody Hiland – Public Service Commission.

A. CONSENT:

Change date

1. **Approval Of The Minutes:** Approval of the July 8, 2003 meeting minutes.
   Approval of the December 17, ~~2003~~ 2002 meeting minutes.

2. **Marinoni Offer and Acceptance/Broyles Road:** A resolution approving an offer and acceptance contract between the City of Fayetteville and Paul Marinoni, Jr. and Suellen Mary Marinoni in an amount not to exceed $43,400.00 for the purchase of approximately seventy (70) feet of right-of-way for the extension of Broyles Road and to obtain permanent and temporary easements for the construction of sewer line to the new wastewater treatment plant; and approving a budget adjustment in the amount of $78,400.00 for same.

3. **Multi-Craft Contractors, Inc. Bid #03-42 Back-Up Generators:** A resolution awarding Bid #03-42 to Multi-Craft Contractors, Inc. in the amount of $103,885.00 to install back-up generators at each of the Fayetteville Fire Department's five facilities; and approving a project contingency in the amount of $10,389.00 for same.

4. **Arkansas Parks and Tourism Outdoor Recreation Grant/Lake Fayetteville Spillway Bridge Project:** A resolution authorizing the Fayetteville Parks and Recreation Division to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount up to $250,000.00 for the Lake Fayetteville Spillway Bridge Project.

B. OLD BUSINESS:

Exhibit #8

1. **Smoking in Certain Public Places:** An ordinance to amend §95.05 **Regulation Of Smoking In Certain Public Places** of the code of Fayetteville and to enact a replacement §95.05 **Regulation Of Smoking In Most Public Places And Places Of Employment** in order to remove exemptions for bars, pool halls, small restaurants, beauty salons, barber shops and designated smoking areas in enclosed public access areas in restaurants, theaters, roller rinks, bowling alleys, and retail stores, etc. ***This ordinance was left on the first reading at the July 15, 2003 City Council Meeting.***

C. NEW BUSINESS:

1. **Public Hearing Raze and Removal 226 North School Avenue:** A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by Timothy C. and Christine Klinger located at 226 N. School Avenue in the City of Fayetteville, Arkansas.

2. **Public Hearing Raze and Removal 323 N West Avenue:** A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by the Bank of Fayetteville, N.A. located at 323 N. West Avenue in the City of Fayetteville, Arkansas.

Consent

3. **USDA Forest Service Supplemental Lease Agreement No. 1:** A resolution authorizing the Mayor and the City Clerk to execute Amendment No. 1 to the lease agreement with the USDA Forest Service authorizing the City of Fayetteville to construct loading pads, approach ramps, and other civil works at the Fayetteville Municipal Airport associated with the air tanker operations base; and approving a budget adjustment recognizing the receipt of $1,200,000.00 as reimbursement for the City's expenditures.

Consent

4. **McClelland Consulting Engineers, Inc. Task Order No. 2:** A resolution approving Task Order No. 2 in the amount of $84,400.00 with McClelland Consulting Engineers for engineering, design, and construction oversight associated with the construction of the USDA Forest Service Tanker Base at the Fayetteville Municipal Airport; and approving a budget adjustment for the same amount.

5. **Police and Fire Pension LOPFI Agreement:** An ordinance electing coverage for eligible members of the Police Pension and Relief Fund and Firefighter Pension and Relief Fund under LOPFI and authorizing Mayor Coody to enter ~~onto~~ into an agreement with LOPFI.

D. INFORMATIONAL:

1. **Council Tour: August 4, 2003**

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/Northwest Arkansas Times newspaper, printed and published in Lowell, Arkansas, and that from my own personal knowledge and reference to the files of said publication, that advertisement of:

Final Agenda was inserted in the regular editions on 8/4/03.

PO# 03-0000154001

** Publication Charge: $ 20.41

Subscribed and sworn to before me this 4th day of Aug, 2003.

Sheri Denise Sutton
Notary Public

My Commission Expires: 5-1-07

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

OFFICIAL SEAL
SHERI DENISE SUTTON
NOTARY PUBLIC . ARKANSAS
WASHINGTON COUNTY
COMMISSION EXP. 05/01/07

RECEIVED
AUG 06 2003
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

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

FINAL AGENDA
FOR
CITY COUNCIL MEETING
AUGUST 5, 2003

City of Fayetteville

A MEETING OF THE FAYETTEVILLE CITY COUNCIL WILL BE HELD ON AUGUST 5, 2003 AT 6:00 P.M. IN ROOM 219 OF THE CITY ADMINISTRATION BUILDING LOCATED AT 113 WEST MOUNTAIN STREET, FAYETTEVILLE, ARKANSAS.

CODY HILAND - PUBLIC SERVICE COMMISSION.

KIT WILLIAMS - HMR TAX

A. CONSENT:

1. APPROVAL OF THE MINUTES: APPROVAL OF THE JULY 8, 2003 MEETING MINUTES. APPROVAL OF THE DECEMBER 17, 2002 MEETING MINUTES.
2. MARINONI OFFER AND ACCEPTANCE/BROYLES ROAD: A RESOLUTION APPROVING AN OFFER AND ACCEPTANCE CONTRACT BETWEEN THE CITY OF FAYETTEVILLE AND PAUL MARINONI, JR. AND SUELLEN MARY MARINONI IN AN AMOUNT NOT TO EXCEED $43,400.00 FOR THE PURCHASE OF APPROXIMATELY SEVENTY (70) FEET OF RIGHT-OF-WAY FOR THE EXTENSION OF BROYLES ROAD AND TO OBTAIN PERMANENT AND TEMPORARY EASEMENTS FOR THE CONSTRUCTION OF SEWER LINE TO THE NEW WASTEWATER TREATMENT PLANT; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF $78,400.00 FOR SAME.
3. MULTI-CRAFT CONTRACTORS, INC. BID #03-42 BACK-UP GENERATORS: A RESOLUTION AWARDING BID #03-42 TO MULTI-CRAFT CONTRACTORS, INC. IN THE AMOUNT OF $103,885.00 TO INSTALL BACK-UP GENERATORS AT EACH OF THE FAYETTEVILLE FIRE DEPARTMENT'S FIVE FACILITIES, AND APPROVING A PROJECT CONTINGENCY IN THE AMOUNT OF $10,389.00 FOR SAME.
4. ARKANSAS PARKS AND TOURISM OUTDOOR RECREATION GRANT/LAKE FAYETTEVILLE SPILLWAY BRIDGE PROJECT: A RESOLUTION AUTHORIZING THE FAYETTEVILLE PARKS AND RECREATION DIVISION TO APPLY FOR AN ARKANSAS PARKS AND TOURISM OUTDOOR RECREATION GRANT IN AN AMOUNT UP TO $250,000.00 FOR THE LAKE FAYETTEVILLE SPILLWAY BRIDGE PROJECT.
5. USDA FOREST SERVICE SUPPLEMENTAL LEASE AGREEMENT NO. 1: A RESOLUTION AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE AMENDMENT NO. 1 TO THE LEASE AGREEMENT WITH THE USDA FOREST SERVICE AUTHORIZING THE CITY OF FAYETTEVILLE TO CONSTRUCT LOADING PADS, APPROACH RAMPS, AND OTHER CIVIL WORKS AT THE FAYETTEVILLE MUNICIPAL AIRPORT ASSOCIATED WITH THE AIR TANKER OPERATIONS BASE, AND APPROVING A BUDGET ADJUSTMENT RECOGNIZING THE RECEIPT OF $1,200,000.00 AS REIMBURSEMENT FOR THE CITY'S EXPENDITURES.
6. MCCLELLAND CONSULTING ENGINEERS, INC. TASK ORDER NO. 2: A RESOLUTION APPROVING TASK ORDER NO. 2 IN THE AMOUNT OF $84,400.00 WITH MCCLELLAND CONSULTING ENGINEERS FOR ENGINEERING, DESIGN, AND CONSTRUCTION OVERSIGHT ASSOCIATED WITH THE CONSTRUCTION OF THE USDA FOREST SERVICE TANKER BASE AT THE FAYETTEVILLE MUNICIPAL AIRPORT; AND APPROVING A BUDGET ADJUSTMENT FOR THE SAME AMOUNT.

B. OLD BUSINESS:

1. SMOKING IN CERTAIN PUBLIC PLACES: AN ORDINANCE TO AMEND §95.05 REGULATION OF SMOKING IN CERTAIN PUBLIC PLACES OF THE CODE OF FAYETTEVILLE AND TO ENACT A REPLACEMENT §95.05 REGULATION OF SMOKING IN MOST PUBLIC PLACES AND PLACES OF EMPLOYMENT IN ORDER TO REMOVE EXEMPTIONS FOR BARS, POOL HALLS, SMALL RESTAURANTS, BEAUTY SALONS, BARBER SHOPS AND DESIGNATED SMOKING AREAS IN ENCLOSED PUBLIC ACCESS AREAS IN RESTAURANTS, THEATERS, ROLLER RINKS, BOWLING ALLEYS, AND RETAIL STORES, ETC. THIS ORDINANCE WAS LEFT ON THE FIRST READING AT THE JULY 15, 2003 CITY COUNCIL MEETING

C. NEW BUSINESS

1. PUBLIC HEARING RAZE AND REMOVAL 226 NORTH SCHOOL AVENUE: A RESOLUTION ORDERING THE RAZING AND REMOVAL OF A DILAPIDATED AND UNSAFE STRUCTURE OWNED BY TIMOTHY C. AND CHRISTINE KLINGER LOCATED AT 226 N. SCHOOL AVENUE IN THE CITY OF FAYETTEVILLE, ARKANSAS.
2. PUBLIC HEARING RAZE AND REMOVAL 323 N WEST AVENUE: A RESOLUTION ORDERING THE RAZING AND REMOVAL OF A DILAPIDATED AND UNSAFE STRUCTURE OWNED BY THE BANK OF FAYETTEVILLE, N.A. LOCATED AT 323 N. WEST AVENUE IN THE CITY OF FAYETTEVILLE, ARKANSAS.
3. POLICE AND FIRE PENSION LOPFI AGREEMENT: AN ORDINANCE ELECTING COVERAGE FOR ELIGIBLE MEMBERS OF THE POLICE PENSION AND RELIEF FUND AND FIREFIGHTER PENSION AND RELIEF FUND UNDER LOPFI AND AUTHORIZING MAYOR COODY TO ENTER INTO AN AGREEMENT WITH LOPFI.

D. INFORMATIONAL:
1. CITY COUNCIL BUDGET BRIEFING MEETING: AUGUST 4, 2003, ROOM 219 AT 5:00 PM.