

Aldermen

Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith



Ward 1 Position 1 - Robert Reynolds
Ward 1 Position 2 - Brenda Thiel
Ward 2 Position 1 - Kyle B. Cook
Ward 2 Position 2 - Don Marr
Ward 3 Position 1 - Robert K. Rhoads
Ward 3 Position 2 - Robert Ferrell
Ward 4 Position 1 - Shirley Lucas
Ward 4 Position 2 - Lioneld Jordan

**Final Agenda
City of Fayetteville Arkansas
City Council Meeting
October 4, 2005**

A meeting of the Fayetteville City Council will be held on October 4, 2005 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Call to Order
Roll Call
Pledge of Allegiance**

Introduction of the 2005 Citizen's Police Academy Graduates

A. CONSENT:

1. **Approval of the August 25, 2005 Special City Council meeting minutes and the September 6, 2005 City Council meeting minutes.**

APPROVED

2. **Arkansas Parks & Tourism Grant – Botanical Gardens:** A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in the amount of \$250,000.00 for the construction of Phase 1A of the Botanical Gardens.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 198-05.

3. **State and Tribal Assistance Grant (STAG) – Sanitary Sewer System Improvements:** A resolution authorizing the Mayor to apply for and accept a State and Tribal Assistance Grant (STAG) from the U.S. Environmental Protection Agency for Sanitary Sewer System Improvements; designating the Mayor as the City's authorized representative in all matters relating to the procurement and administration of said grant; and approving a budget adjustment recognizing \$481,200.00 in Grant Revenue.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 199-05.

4. **South Fayetteville Community Development Corporation - Waiving of Fees:** A resolution to waive the Building Permit Fee and other developmental fees for South Fayetteville Community Development Corporation.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 200-05.

B. UNFINISHED BUSINESS:

1. **ANX 05-1488 (Collins/Kinghorn, 533/534):** An ordinance annexing that property described in annexation petition ANX 05-1488 for property located at 6102 and 6110 Lake Sequoyah Drive, containing 17.33 acres. *This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.*

THIS ITEM WAS TABLED INDEFINITELY.

2. **Planning Commission Appeal: Collins/Kinghorn Rezoning:** An ordinance rezoning that property described in rezoning petition RZN 05-1489 for approximately 17.64 acres located at 6102 and 6110 Lake Sequoyah Drive from R-A, Residential Agricultural, to RSF-4, Residential Single Family, 4 units per acre. *This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.*

THIS ITEM WAS TABLED INDEFINITELY.

3. **C-PZD 05-1670 (Pratt Place Inn, 481):** An ordinance establishing a Commercial Planned Zoning District titled C-PZD 05-1670, Pratt Place Inn, located at the west end of Markham Road, containing approximately 72 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.*

THIS ITEM WAS LEFT ON THE SECOND READING OF THE ORDINANCE.

4. **R-PZD 05-1636 (Wellspring):** An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1636, Wellspring, located at Ruppel Road and Highway 16, containing approximately 152 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.*

THIS ITEM WAS TABLED TO THE OCTOBER 18, 2005 CITY COUNCIL MEETING.

C. NEW BUSINESS:

1. **Re-Approval of Resolution # 188-05:** *This item was approved at the September 20, 2005 City Council meeting but the amount in the resolution that was to be paid to Landers Ford was incorrect.*

William's Tractor LB75B Backhoe and Landers Ford F550 4x4: A resolution authorizing the purchase of one (1) Skid Steer Loader and one (1) LB75B Backhoe from William's Tractor in the amount of \$77,192.41; and the purchase of one (1) F550 4x4 Cab and Chassis with Dump Body from Landers Ford in the amount of \$38,243.00 for use at the Fayetteville Municipal Airport; and approving a budget adjustment in the amount of \$115,435.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 201-05.

2. **VAC 05-1689 (JDM Investments):** An ordinance approving VAC 05-1689 submitted by Roger Trotter for property located between 2716 and 2728 North Candlewood Drive, vacating a right of way as indicated on the attached map and legal description.
This item was moved from New Business #13 to #2 at the October 4, 2005 City Council Meeting.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4767.

3. **Sales and Use Tax Refunding and Capital Improvement Bonds, Series 2005A – Wastewater Treatment:** An ordinance authorizing the issuance and sale of the City's not to exceed (1) \$27,000,000 of Sales and Use Tax Refunding and Capital Improvement Bonds, Series 2005A, and (2) \$65,000,000 of Sales and Use Tax Capital Improvement Bonds, Series 2005B, for the purpose of Refunding the City's outstanding Sales and Use Tax Capital Improvement Bonds, Series 2004, and financing a portion of the cost of improvements to the City's Wastewater Treatment Sewerage and related facilities; authorizing the execution and delivery of a Trust Indenture pursuant to which the Series 2005 Bonds will be issued and secured; authorizing the execution and delivery of an Official Statement pursuant to which the Series 2005 Bonds will be offered; authorizing the execution and delivery of a Bond Purchase Agreement providing for the sale of the Series 2005 Bonds; authorizing the execution and delivery of a Continuing Disclosure Agreement; authorizing the execution and delivery of an Escrow Deposit Agreement providing for the Defeasance and Redemption of the Series 2004 Bonds; and prescribing other matters relating thereto.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4768.

4. **EPA and Audubon Arkansas Cost Share:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share in the amount of \$25,000.00 with the U.S. Environmental Protection Agency (EPA) and Audubon Arkansas to fund the collection of Water Quality Data along College Branch in the City of Fayetteville to assist staff with storm water ordinance revisions in compliance with Federal MS4 Storm Water Regulations.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4769.

5. **Fayetteville Municipal Property Owners' Improvement District #9 – Biella:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 9 – Biella.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4770.

6. **Southwestern Bell Telephone Service Agreement:** An ordinance waiving the requirements of formal competitive bidding and approving a five-year renewal of the service agreement with Southwestern Bell Telephone, L.P. in the amount of \$69,000.00 to provide Plexar Custom Telecommunications Service.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4771.

7. **Fayetteville Depot, LLC Lease Agreement:** A resolution approving a lease agreement with Fayetteville Depot, LLC for property located at the northwest corner of Dickson Street and West Avenue to provide parking enforcement and revenue collection services for a proposed parking lot.

THIS ITEM WAS TABLED TO THE OCTOBER 18, 2005 CITY COUNCIL MEETING.

8. **Associated Time & Parking Controls, Inc.:** An ordinance waiving the requirements of formal competitive bidding and approving the purchase of Parking Revenue Collection Equipment from Associated Time and Parking Controls, Inc. in the amount of \$46,805.10; approving a 10% contingency in the amount of \$4,408.50; and approving a budget adjustment in the amount of \$51,213.60.

THIS ITEM WAS TABLED TO THE OCTOBER 18, 2005 CITY COUNCIL MEETING.

9. **Parking Management Division Position:** A resolution authorizing the addition of one (1) full-time position in the Parking Management Division; and approving a budget adjustment in the amount of \$3,282.00.

THIS ITEM WAS TABLED TO THE OCTOBER 18, 2005 CITY COUNCIL MEETING.

10. **RZN-05-1687 (Hopmann):** An ordinance rezoning that property described in rezoning petition RZN 05-1687 for approximately 0.18 acres located at 935 North College Avenue from R-O Residential-Office to C-1, Neighborhood Commercial.

THIS ITEM WAS LEFT ON THE SECOND READING OF THE ORDINANCE.

11. **RZN-05-1688 (JDM Investments):** An ordinance rezoning that property described in rezoning petition RZN 05-1688 for approximately 6.34 acres located at 2806 Crossover, north boundary of Candle Wood Subdivision from R-A Residential-Agricultural to RSF-4, Residential Single Family, 4 units per acre.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4772.

12. **RZN-05-1711 (Mathias):** An ordinance rezoning that property described in rezoning petition RZN 05-1711 for approximately 1.25 acres located at Highway 62 West from R-A, Residential-Agricultural to C-1, Neighborhood Commercial.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4773.

- 13. VAC 05-1632 (East Square Development):** An ordinance approving VAC 05-1632 submitted by Bob Kohler for an alley located on the City Block between East Avenue and College Avenue and Center Street and Mountain Street, as indicated on the attached map and legal description.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4774.

- 14. VAC 05-1686 (Schultz):** An ordinance approving VAC 05-1686 submitted by N. Arthur Scott for property located at 1921 South Vale Avenue, vacating a portion of the right of way as indicated on the attached map and legal description.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4775.

- 15. R-PZD 05-1543 (Vantage Center):** An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1543, Vantage Center, located at the end of Shepard Lane adjacent to Frontage Road, containing approximately 4.7 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4776.

- 16. Amend Title XI: Chapter 117, Article IV: Taxicabs:** An ordinance amending Title XI: Chapter 117, Article IV: Taxicabs, of the Code of Fayetteville to provide a Rate Structure and Zone Map for the City of Fayetteville Taxi Coupon Program.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4777.

- 17. 2005 Millage Levy:** An ordinance levying a tax on the Real and Personal Property within the City of Fayetteville, Arkansas, for the year 2005 fixing the rate thereof at 2.0 mils for General Fund – Operations, 0.4 mils for the Firemen's Pension and Relief Fund, 0.4 mils for the Policemen's Pension and Relief Fund and 1.0 mil for the Fayetteville City Library; and certifying the same to the County Clerk of Washington County, Arkansas.

THIS ITEM WAS LEFT ON THE FIRST READING OF THE ORDINANCE.

D. INFORMATIONAL:

Council Tour: October 3, 2005 – 4:30 PM

Meeting adjourned 11:15 p.m.

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

8

Subject:	Consent				
Motion To:		Approve			
Motion By:		Reynolds			
Seconded:		Marr			
Consent Passed 198-05 through 200-05	Cook	✓			
	Marr	✓			
	Rhoads	absent during vote.			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Mayor Coody				

7-0

Subject:	ANK 05-1488 Collins / Kinghorn				
Motion To:	.	Table Indef.			
Motion By:		Marr			
Seconded:		Lucas			
<u>Table Indef.</u> B.1 Unfinished	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Mayor Coody				

8-0

Subject:	Planning Commission Appeal Collins / Kinghorn				
Motion To:		Table Indef.			
Motion By:		Marr			
Seconded:		Reynolds			
<u>Table Indef.</u> B.2 Unfinished	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Mayor Coody				

8-0

Subject:	C-PZD 05-1670 (Pratt Place Inn)				
Motion To:		2nd read			
Motion By:		Cook			
Seconded:		Reynolds			
B.3. Unfinished Left on the Second Reading	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Mayor Coody				

8-0

Subject:	R-PZD 05-1636 (Wellspring)				
Motion To:		Table to 10/18/05			
Motion By:					
Seconded:					
B.4. Unfinished Tabled to 10/18/05 City Council Meeting	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Mayor Coody				

8-0

Subject:	LB75B Backhoe Williams Tractor / Lander Jerd				
Motion To:		Add to the Agenda		Approve	
Motion By:		Marr		Reynolds	
Seconded:		Cook		Marr	
Add to the Agenda Passed 201-05	Cook	✓		✓	
	Marr	✓		✓	
	Rhoads	✓		✓	
	Ferrell	✓		✓	
	Lucas	✓		✓	
	Jordan	✓		✓	
	Reynolds	✓		✓	
	Thiel	✓		✓	
	Mayor Coody				

8-0

8-0

Subject:	UAC 05-1689 (JDM Investments)				
Motion To:		Move to #1 New Business			
Motion By:		Ferrell			
Seconded:		Reynolds			
Moved from #13 to #1 New Business Passed	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Mayor Coody				

8-0

Subject:	VAC 05-1689 (JDM Investments)				
Motion To:		2nd read	3rd read	Pass	
Motion By:		Marr	Reynolds		
Seconded:		Reynolds	Marr		
Added to New Business <u>Passed</u> 4767	Cook	✓	✓	N	
	Marr	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	N	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Thiel	✓	✓	✓	
	Mayor Coody				
		8-0	8-0	6-2	

Subject:	Sales & Use Tax Series 2005A Wastewater				
Motion To:		2nd read	3rd read	Pass	
Motion By:		Cook	Ferrell		
Seconded:		Ferrell	Cook		
C.I. New Business <u>Passed</u> 4768	Cook	✓	✓	✓	
	Marr	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Thiel	✓	✓	✓	
	Mayor Coody				
		8-0	8-0	8-0	

Subject:	EPA & Audubon Arkansas Cost Share.				
Motion To:		2nd read	3rd read	Pass	
Motion By:		Marr	Marr		
Seconded:		Lucas	Thiel		
C. 2. New Business <u>Passed</u> 4769	Cook	✓	✓	✓	
	Marr	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Thiel	✓	✓	✓	
	Mayor Coody				
		8-0	8-0	8-0	

Subject:	Jayettesville Municipal Property Owners' Improvement				
Motion To:		2nd read	3rd read	Pass	District #9 Biella
Motion By:		Ferrell	Ferrell		
Seconded:		Cook	Cook		
C. 3. New Business <u>Passed</u> 4770	Cook	✓	✓	✓	
	Marr	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Thiel	✓	✓	✓	
	Mayor Coody				
		8-0	8-0	8-0	

Subject:	S W Bell Telephone Service Agreement				
Motion To:		2nd read	3rd read	Pass	
Motion By:		Cook	Cook		
Seconded:		Marr	Marr		
C.4. New Business <u>Passed</u> 4771	Cook	✓	✓	✓	
	Marr	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Thiel	✓	✓	✓	
	Mayor Coody				

8-0

8-0

8-0

Subject:	Jayetteville Depot, LLC Lease Agreement				
Motion To:		Table until 10/18/05			
Motion By:		Rhoads			
Seconded:		Ferrell			
C.5. New Business Tabled until 10/18/05	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	abstain			
	Thiel	✓			
	Mayor Coody				

7-0

Subject:	Associated Time & Parking Controls				
Motion To:		Table to 10/18/05			
Motion By:		Ferrell			
Seconded:		Thiel			
Cler. New Business Tabled to 10/18/05	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Mayor Coody				

8-0

Subject:	Parking Management Position				
Motion To:		Table to 10/18/05			
Motion By:		Rhoads			
Seconded:		Marr			
C.7. New Business Tabled to 10/18/05	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Mayor Coody				

8-0

Subject:	RZN - 05-1687 (Hopmann)				
Motion To:		2nd read	3rd read		
Motion By:		Ferrell	Ferrell		
Seconded:		Rhoads	Lucas		
C. 8. New Business Left on the Second reading	Cook	✓	N		
	Marr	✓	N		
	Rhoads	✓	✓		
	Ferrell	✓	✓		
	Lucas	✓	✓		
	Jordan	✓	✓		
	Reynolds	✓	N		
	Thiel	✓	N		
	Mayor Coody				

8-0

4-4 (failed)

Subject:	RZN - 05-1688 JDM (INvestments)				
Motion To:		2nd read	3rd read	Pass	
Motion By:		Ferrell	Ferrell		
Seconded:		Rhoads	Reynolds		
C. 9. New Business Passed 4772	Cook	✓	✓	✓	
	Marr	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Thiel	✓	✓	✓	
	Mayor Coody				

8-0

8-0

8-0

Subject:		RZN 05-1711 (Mathias)			
Motion To:		2nd read	3rd read	Pass	
Motion By:		Lucas	Reynolds		
Seconded:		Jordan	Ferrell		
C. 10. New Business <u>Passed</u> 4773	Cook	✓	✓	N	
	Marr	✓	✓	N	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Thiel	✓	✓	✓	
	Mayor Coody				
		8-0	8-0	6-2	

Subject:		VAC - 05-1632 (East Square Redevelopment)			
Motion To:		2nd read	3rd read	Pass	
Motion By:		Ferrell	Marr		
Seconded:		Marr	Reynolds		
C. 11. New Business <u>Passed</u> 4774	Cook	✓	✓	✓	
	Marr	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Thiel	✓	✓	✓	
	Mayor Coody				
		8-0	8-0	8-0	

Subject:	VAC - 05-1686 (Schultz)				
Motion To:		2nd read	3rd read	Pass	
Motion By:		Lucas	Reynolds		
Seconded:		Jordan	Lucas		
C. 12. New Business <u>Passed</u> 4775	Cook	✓	✓	✓	
	Marr	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Thiel	✓	✓	✓	
	Mayor Coody				

8-0

8-0

8-0

Subject:	VAC 05-1689 (JDM Investments)				
Motion To:					
Motion By:					
Seconded:		Moved to # 1			
C. 13. Moved to # 1 New Business	Cook				
	Marr	New Business			
	Rhoads				
	Ferrell				
	Lucas				
	Jordan				
	Reynolds				
	Thiel				
	Mayor Coody				

Subject:	R-PZD 05-1543 (Vantage Center)				
Motion To:		2nd read	3rd read	Pass	
Motion By:		Marr	Reynolds		
Seconded:		Ferrell	Ferrell		
C. 14, New Business <u>Passed</u> 4776	Cook	✓	N	✓	
	Marr	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Thiel	✓	✓	✓	
	Mayor Coody				

8-0

7-1

8-0

Subject:	Amend Title XI Chapter 117, Article IV				
Motion To:		2nd read	3rd read	Pass	Toticals
Motion By:		Marr	Reynolds		
Seconded:		Reynolds	Ferrell		
C. 15 New Business <u>Passed</u> 4777	Cook	✓	✓	✓	
	Marr	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Thiel	✓	✓	✓	
	Mayor Coody				

8-0

8-0

8-0

Subject:	2005 Millage Levy				
Motion To:					
Motion By:					
Seconded:					
C. 16. New Business This Ordinance was left on the first Reading	Cook				
	Marr				
	Rhoads				
	Ferrell				
	Lucas				
	Jordan				
	Reynolds				
	Thiel				
	Mayor Coody				

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Cook				
	Marr				
	Rhoads				
	Ferrell				
	Lucas				
	Jordan				
	Reynolds				
	Thiel				
	Mayor Coody				

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Cook				
	Marr				
	Rhoads				
	Ferrell				
	Lucas				
	Jordan				
	Reynolds				
	Thiel				
	Mayor Coody				

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Cook				
	Marr				
	Rhoads				
	Ferrell				
	Lucas				
	Jordan				
	Reynolds				
	Thiel				
	Mayor Coody				

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Cook				
	Marr				
	Rhoads				
	Ferrell				
	Lucas				
	Jordan				
	Reynolds				
	Thiel				
	Mayor Coody				

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Cook				
	Marr				
	Rhoads				
	Ferrell				
	Lucas				
	Jordan				
	Reynolds				
	Thiel				
	Mayor Coody				

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 - Robert Reynolds
Ward 1 Position 2 - Brenda Thiel
Ward 2 Position 1 - Kyle B. Cook
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Ward 3 Position 1 - Robert K. Rhoads
Ward 3 Position 2 - Robert Ferrell
Ward 4 Position 1 - Shirley Lucas
Ward 4 Position 2 - Lioneld Jordan

**Final Agenda
City of Fayetteville Arkansas
City Council Meeting
October 4, 2005**

A meeting of the Fayetteville City Council will be held on October 4, 2005 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Call to Order
Roll Call
Pledge of Allegiance**

Introduction of the 2005 Citizen's Police Academy Graduates

A. CONSENT:

- 1. Approval of the August 25, 2005 Special City Council meeting minutes and the September 6, 2005 City Council meeting minutes.**
- 2. Arkansas Parks & Tourism Grant – Botanical Gardens:** A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in the amount of \$250,000.00 for the construction of Phase 1A of the Botanical Gardens.
- 3. State and Tribal Assistance Grant (STAG) – Sanitary Sewer System Improvements:** A resolution authorizing the Mayor to apply for and accept a State and Tribal Assistance Grant (STAG) from the U.S. Environmental Protection Agency for Sanitary Sewer System Improvements; designating the Mayor as the City's authorized representative in all matters relating to the procurement and administration of said grant; and approving a budget adjustment recognizing \$481,200.00 in Grant Revenue.
- 4. South Fayetteville Community Development Corporation - Waiving of Fees:** A resolution to waive the Building Permit Fee and other developmental fees for South Fayetteville Community Development Corporation.

B. UNFINISHED BUSINESS:

1. **ANX 05-1488 (Collins/Kinghorn, 533/534):** An ordinance annexing that property described in annexation petition ANX 05-1488 for property located at 6102 and 6110 Lake Sequoyah Drive, containing 17.33 acres. *This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.*
2. **Planning Commission Appeal: Collins/Kinghorn Rezoning:** An ordinance rezoning that property described in rezoning petition RZN 05-1489 for approximately 17.64 acres located at 6102 and 6110 Lake Sequoyah Drive from R-A, Residential Agricultural, to RSF-4, Residential Single Family, 4 units per acre. *This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.*
3. **C-PZD 05-1670 (Pratt Place Inn, 481):** An ordinance establishing a Commercial Planned Zoning District titled C-PZD 05-1670, Pratt Place Inn, located at the west end of Markham Road, containing approximately 72 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.*
4. **R-PZD 05-1636 (Wellspring):** An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1636, Wellspring, located at Ruppel Road and Highway 16, containing approximately 152 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.*

C. NEW BUSINESS:

1. **Sales and Use Tax Refunding and Capital Improvement Bonds, Series 2005A – Wastewater Treatment:** An ordinance authorizing the issuance and sale of the City's not to exceed (1) \$27,000,000 of Sales and Use Tax Refunding and Capital Improvement Bonds, Series 2005A, and (2) \$65,000,000 of Sales and Use Tax Capital Improvement Bonds, Series 2005B, for the purpose of Refunding the City's outstanding Sales and Use Tax Capital Improvement Bonds, Series 2004, and financing a portion of the cost of improvements to the City's Wastewater Treatment Sewerage and related facilities; authorizing the execution and delivery of a Trust Indenture pursuant to which the Series 2005 Bonds will be issued and secured; authorizing the execution and delivery of an Official Statement pursuant to which the Series 2005 Bonds will be offered; authorizing the execution and delivery of a Bond Purchase Agreement providing for the sale of the Series 2005 Bonds; authorizing the execution and delivery of a Continuing Disclosure Agreement; authorizing the execution and delivery of an Escrow Deposit Agreement providing for the Defeasance and Redemption of the Series 2004 Bonds; and prescribing other matters relating thereto.
2. **EPA and Audubon Arkansas Cost Share:** An ordinance waiving the requirements of formal competitive bidding and approving a cost share in the amount of \$25,000.00 with the U.S. Environmental Protection Agency (EPA) and Audubon Arkansas to fund the collection of Water Quality Data along College Branch in the City of Fayetteville to assist staff with storm water ordinance revisions in compliance with Federal MS4 Storm Water Regulations.

3. **Fayetteville Municipal Property Owners' Improvement District #9 – Biella:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 9 – Biella.
4. **Southwestern Bell Telephone Service Agreement:** An ordinance waiving the requirements of formal competitive bidding and approving a five-year renewal of the service agreement with Southwestern Bell Telephone, L.P. in the amount of \$69,000.00 to provide Plexar Custom Telecommunications Service.
5. **Fayetteville Depot, LLC Lease Agreement:** A resolution approving a lease agreement with Fayetteville Depot, LLC for property located at the northwest corner of Dickson Street and West Avenue to provide parking enforcement and revenue collection services for a proposed parking lot.
6. **Associated Time & Parking Controls, Inc.:** An ordinance waiving the requirements of formal competitive bidding and approving the purchase of Parking Revenue Collection Equipment from Associated Time and Parking Controls, Inc. in the amount of \$46,805.10; approving a 10% contingency in the amount of \$4,408.50; and approving a budget adjustment in the amount of \$51,213.60.
7. **Parking Management Division Position:** A resolution authorizing the addition of one (1) full-time position in the Parking Management Division; and approving a budget adjustment in the amount of \$3,282.00.
8. **RZN-05-1687 (Hopmann):** An ordinance rezoning that property described in rezoning petition RZN 05-1687 for approximately 0.18 acres located at 935 North College Avenue from R-O Residential-Office to C-1, Neighborhood Commercial.
9. **RZN-05-1688 (JDM Investments):** An ordinance rezoning that property described in rezoning petition RZN 05-1688 for approximately 6.34 acres located at 2806 Crossover, north boundary of Candle Wood Subdivision from R-A Residential-Agricultural to RSF-4, Residential Single Family, 4 units per acre.
10. **RZN-05-1711 (Mathias):** An ordinance rezoning that property described in rezoning petition RZN 05-1711 for approximately 1.25 acres located at Highway 62 West from R-A, Residential-Agricultural to C-1, Neighborhood Commercial.
11. **VAC 05-1632 (East Square Development):** An ordinance approving VAC 05-1632 submitted by Bob Kohler for an alley located on the City Block between East Avenue and College Avenue and Center Street and Mountain Street, as indicated on the attached map and legal description.
12. **VAC 05-1686 (Schultz):** An ordinance approving VAC 05-1686 submitted by N. Arthur Scott for property located at 1921 South Vale Avenue, vacating a portion of the right of way as indicated on the attached map and legal description.
13. **VAC 05-1689 (JDM Investments):** An ordinance approving VAC 05-1689 submitted by Roger Trotter for property located between 2716 and 2728 North Candlewood Drive, vacating a right of way as indicated on the attached map and legal description.

- 14. R-PZD 05-1543 (Vantage Center):** An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1543, Vantage Center, located at the end of Shepard Lane adjacent to Frontage Road, containing approximately 4.7 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan.
- 15. Amend Title XI: Chapter 117, Article IV: Taxicabs:** An ordinance amending Title XI: Chapter 117, Article IV: Taxicabs, of the Code of Fayetteville to provide a Rate Structure and Zone Map for the City of Fayetteville Taxi Coupon Program.
- 16. 2005 Millage Levy:** An ordinance levying a tax on the Real and Personal Property within the City of Fayetteville, Arkansas, for the year 2005 fixing the rate thereof at 2.0 mils for General Fund – Operations, 0.4 mils for the Firemen's Pension and Relief Fund, 0.4 mils for the Policemen's Pension and Relief Fund and 1.0 mil for the Fayetteville City Library; and certifying the same to the County Clerk of Washington County, Arkansas.

D. INFORMATIONAL:

Council Tour: October 3, 2005 – 4:30 PM

From: Shannon Gabbard
To: Broyles, Lana
Date: 9/21/05 4:36PM
Subject: Citizen's Police Academy Graduation

Lana,

Can we borrow about five minutes of the Councils time at the beginning of the Council meeting on October 4, 2005? We would like to introduce 12 of the 2005 Citizen's Police Academy graduates to the Mayor and the Council and present them with their certificates.

Thanks,

Shannon

Aldermen

Ward 1 Position 1 - Robert Reynolds
Ward 1 Position 2 - Brenda Thiel
Ward 2 Position 1 - Kyle B. Cook
Ward 2 Position 2 - Don Marr
Ward 3 Position 1 - Robert K. Rhoads
Ward 3 Position 2 - Robert Ferrell
Ward 4 Position 1 - Shirley Lucas
Ward 4 Position 2 - Lioneld Jordan

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



**City Council
Special Meeting Minutes
August 25, 2005**

A Special Meeting of the Fayetteville City Council was held on August 25, 2005 at 4:45 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order.

PRESENT: Alderman Reynolds, Thiel, Cook, Marr, Ferrell, Lucas, Jordan, Mayor Coody, City Attorney Kit Williams, Deputy City Clerk Gina Roberts, Staff, Press, and Audience.

ABSENT: Alderman Rhoads

Pledge of Allegiance

New Business:

Mid-America Environmental Solutions Remediation Services Contract: An ordinance waiving competitive bidding, increasing the amount authorized for clean-up costs to \$270,000.00, approving a Contract/Work Plan Agreement not to exceed \$270,000.00 with Mid-America Environmental Solutions, Inc., and approving a budget adjustment of \$225,000.00.

City Attorney Kit Williams: The first ordinance that went out did not include the \$55,000 contingency that was requested. I redrafted the ordinance and have given you a copy. I will read the redrafted ordinance.

City Attorney Kit Williams read the ordinance.

David Jurgens Water and Sewer Maintenance Superintendent: The amount that was originally authorized for this project was \$70,000 and at that time it wasn't certain whether this

would be considered a hazardous material spill or not. It turns out that it does have to be considered a hazardous material spill. It is not like we are working with something that is really dangerous or hazardous but this product is listed as a hazardous material.

We think this cost will be the maximum cost for the contractor. I recognize that I am asking for a large contingency, the reason for that is that we may have to do some stream sampling and ground water monitoring wells, the contingency is to cover those potentials. I have discussed this with ADEQ and OMI. ADEQ said this type of spill normally runs in the \$250,000 to \$300,000 range. ADEQ thought the prices that we received were definitely competitive and that changing contractors would be a mistake since we have a work plan in place and we have a permit from a hazardous material landfill site in Illinois. I think this is a reasonable cost for what we have to do.

I apologize for having to call a special City Council meeting but we have a big hole in the ground and the more water that gets into that hole lends to a potential problem with ground water, so we need to continue to work as fast as we can.

Alderman Reynolds: When Mr. Davis was here and we met on this he felt like \$70,000 was the most that we were going to spend on this. He was told that most of the site was not hazardous. So why all of a sudden are we spending \$200,000 more?

David Jurgens: I was not involved with the discussions at that point, but in talking to the contractor, OMI and ADEQ the \$70,000 was based off the waste not having to be hauled to a hazardous landfill and not having to have certified hazardous material employees on site. That was the optimistic view point, that this site would not be deemed a hazardous material work site. \$115,000 of this amount is for transportation to the landfill because you have to have a hazardous material licensed CDL operator and the landfill disposal itself. You have to haul it to a landfill that will accept this waste.

Alderman Reynolds: Is Peoria Illinois the people that tested the soil or did OMI test it here?

David Jurgens: We tested the soil here and then we sent the soil sample results to Peoria, Illinois for them to determine if they could accept this material into their landfill. A hazardous material landfill doesn't accept every hazardous material.

Alderman Reynolds: How many tons are we talking about that have to be shipped to Peoria, Illinois?

David Jurgens: The maximum estimate is 500 tons. We have hauled 90 tons thus far and we are estimating no more than 400 more having to go.

Alderman Reynolds: That's just the Gregg Avenue site?

David Jurgens: Yes sir. One of the reasons that we estimated this high is because the tank under ground will float from ground water if we don't anchor it down, we are down to the concrete slab that is under ground, that is the anchor for the tank. Once we break that slab we

will see what we are running into. We are hoping that we are not going to see very much below that. What we have seen so far is that the contamination didn't go out laterally into the soil; it all seems to have gone down. This is a time and material contract so we will only be paying for the actual work performed.

Robert Ferrell: It seems like we talked about repairing these tanks at a Water and Sewer meeting. How many tanks are there?

David Jurgens: We have four other tanks that are not petroleum products, three are on the Noland Plant site and one of them is at the lift station in Farmington. We are looking at, in the next CIP budget, having all of those removed or if we have funds left over in this tank removal project we may then come forward and ask you to use the left over funds to go out for bids to remove those tanks. There are no indications of any contamination at any of those tanks.

Robert Ferrell: They have all been inspected?

David Jurgens: They all have leak detection; they all meet all the requirements and there has been no indication of any problems but we still want to get those things out of the ground.

Robert Ferrell: On one of the tests it stated, in the water there was a trace amount that was above the standard. In subsequent testing if you test it two more times and you don't see any amounts in there, is that a good sign that it may not cost as much or is the testing going to have to be on going?

David Jurgens: That is going to depend on what we work out with ADEQ and will be part of the closure report. ADEQ will then make their determination of whether we need to do further stream sampling or ground water sampling.

Alderman Reynolds: Where are we going to get this \$325,000?

David Jurgens: We are pulling this out of Fund Balance.

Alderman Marr: If 400 tons is the maximum that you think we will have, when you started the presentation you talked about a significant contingency because of unknown cost, you then further explained it and it seems like you have taken into account the worst case scenario. Why do we need the contingency amount?

David Jurgens: The contingency is in case we have to do stream sampling which may have to be done for one year or ground water monitoring wells and ground water sampling which may also possibly be done for one year. It is a project contingency for related work that might need to be completed by other firms to determine if there is any residual contamination that will be determined by ADEQ at a future date.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4746 as Recorded in the Office of the City Clerk.

Meeting Adjourned at 5:05 PM.

Dan Coody, Mayor

Sondra Smith, City Clerk/Treasurer

Aldermen

Ward 1 Position 1 - Robert Reynolds
Ward 1 Position 2 - Brenda Thiel
Ward 2 Position 1 - Kyle B. Cook
Ward 2 Position 2 - Don Marr
Ward 3 Position 1 - Robert K. Rhoads
Ward 3 Position 2 - Robert Ferrell
Ward 4 Position 1 - Shirley Lucas
Ward 4 Position 2 - Lioneld Jordan

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



**City of Fayetteville Arkansas
City Council
Meeting Minutes
September 6, 2005**

A meeting of the Fayetteville City Council was held on September 6, 2005 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order.

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

Pledge of Allegiance

A presentation of the Final Check for the Blair Library Construction was given by Anne de Noble, Library Board of Trustees and Louise Schaper, Executive Director.

Louise Schaper and Anne de Noble gave a brief update of the new Blair Library.

Anne de Noble stated the project has come in under budget. She presented the City with a check in the amount of \$416,500 from the proceeds of the sale of the old library to be used to pay the last major invoice on the project.

Mayor Coody announced that today he had to declare Fayetteville a disaster area so that we could be eligible for FEMA refunding of all the expenses that we are going to be facing with the influx of evacuates and the influx of all the materials that we are going to be experiencing.

CONSENT:

Approval of the August 2, 2005 and the August 16, 2005 City Council Meeting Minutes.

Approved

Arkansas Parks and Tourism Outdoor Recreation Grant: A resolution authorizing the Fayetteville Parks and Recreation Division to accept an Arkansas Parks and Tourism Outdoor Recreation Grant in the amount of \$40,000.00 for the Braden Park Project; and approving a budget adjustment recognizing the grant revenue.

Resolution 167-05 as Recorded in the Office of the City Clerk.

Braden Park Contract Award: A resolution approving a contract with Midland Construction, Inc. in the amount of \$109,962.00 for the construction of Braden Park; approving a 10% project contingency in the amount of \$10,996.00; and approving a budget adjustment in the amount of \$20,178.00 for same.

Resolution 168-05 as Recorded in the Office of the City Clerk.

University of Arkansas Cost Share Agreement: A resolution approving a cost-share agreement with the University of Arkansas in an amount not to exceed \$40,000.00 from the Economic Development Fund to obtain engineering services related to the continued development of the Arkansas Research and Technology Park (ARTP)

Resolution 169-05 as Recorded in the Office of the City Clerk.

McClelland Consulting Engineers Task Order No. 11: A resolution approving Task Order No. 11 with McClelland Consulting Engineers in the amount of \$31,150.00 for detailed architectural and engineering design for the Phase 1 renovation of the terminal building at the Fayetteville Municipal Airport.

Resolution 170-05 as Recorded in the Office of the City Clerk.

Cinnabar Service Company Easement Negotiation: A resolution to approve an additional \$42,000.00 for Cinnabar Service Company for easement negotiation assistance for the Wastewater System Improvement Project.

Resolution 171-05 as Recorded in the Office of the City Clerk.

ADM 05-1662 Master Street Plan Amendment for Shiloh Drive: A resolution amending the Master Street Plan, reclassifying Shiloh Drive south of Joyce Boulevard, north of Mud Creek from a collector street to a local street in the manner recommended by the Planning Commission for Large Scale Development (LSD) 05-1593.

Resolution 172-05 as Recorded in the Office of the City Clerk.

APAC Change Order Amendment: A resolution rescinding the change order contained in Resolution No. 155-05 and approving a revised change order to the construction contract with APAC Arkansas, Inc., McClinton Anchor Division reducing the contract amount by \$278,481.85.

Resolution 173-05 as Recorded in the Office of the City Clerk.

Floyd S. Salser Jr. & Associates Water Meter Testing Purchase: A resolution awarding Bid #05-52 to Floyd S. Salser, Jr. & Associates in the amount of \$161,590.00 for the purchase of a meter test bench for testing and repairing water meters; and approving a contingency in the amount of \$8,000.00.

Resolution 174-05 as Recorded in the Office of the City Clerk.

Razorback Road W&S Relocations Project Amendment #1: A resolution approving Amendment #1 to the contract with McClelland Consulting Engineers, Inc. in an amount not to exceed \$116,960.00 for final design, bidding, construction administration, and resident services during construction for water and sewer relocation for highway improvements to Razorback Road.

Resolution 175-05 as Recorded in the Office of the City Clerk.

Wedington Drive W&S Relocations Project Amendment #1: A resolution approving Amendment #1 to the contract with McClelland Consulting Engineers, Inc. in an amount not to exceed \$145,793.00 for final design, bidding, construction administration, and resident services during construction for water and sewer relocation for highway improvements to Wedington Drive.

Resolution 176-05 as Recorded in the Office of the City Clerk.

Alderman Jordan moved to approve the Consent Agenda. Alderman Marr seconded the motion. Upon roll call the motion passed unanimously.

UNFINISHED BUSINESS:

Amend § 96.05 Motor Vehicle and Motorcycle Sound Limit: An ordinance to amend § 96.05 Motor Vehicle and Motorcycle Sound Limit of the Code of Fayetteville. ***This ordinance was left on the second reading at the May 3, 2005 City Council meeting. This item was tabled at the May 17, 2005 City Council meeting until the September 6, 2005 City Council Meeting.***

Alderman Thiel moved to suspend the rules and go to the third and final reading. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Thiel stated that she thinks that we need to look at this proposed ordinance again. She stated the proposal that is before the Council would reduce the sound level decimals allowed. She believes if we pass this ordinance it would give the Police Department an enforcement tool and would also be consistent with other cities the size of Fayetteville and their decimal level.

Alderman Ferrell asked Chief Johnson how much additional work this would create for his existing officers if this ordinance is passed.

Chief Johnson stated that he does not know if lowering the decimal level would generate that many more complaints.

Alderman Reynolds asked what effect this would have on Bikes, Blues and BBQ.

Chief Johnson stated that is not part of their plan to write additional tickets due to the decimal level of motorcycles.

Alderman Reynolds stated he does not want to do anything to harm that festival.

Alderman Marr stated the ordinance that is before the Council recommends that this apply to greater than a 1,000 pounds, the motorcycle section remains unchanged.

Alderman Ferrell said he understands some of the concern but he feels our Police Department has plenty to do as it is and if there is a problem under the existing ordinance it can be policed.

Nelson Driver the Event Director for Bikes, Blues and BBQ informed the Council of some of the things they are doing to try to reduce the noise during this event. He addressed some of the problems they have seen.

Alderman Thiel stated this ordinance amendment does not deal with motorcycles at all. She stated this proposal came about because of complaints about engine braking on hills. She said she certainly does not want to do anything to adversely affect Bikes, Blues and BBQ.

Nelson Driver stated they are doing some proactive things to try to cut down as much of the noise that they can during this event.

Alderman Ferrell said that he thinks that Bikes, Blues and BBQ is a great event here in this town.

Alderman Lucas said she agrees with Alderman Ferrell about Bikes, Blues and BBQ.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-1. **Alderman Reynolds, Thiel, Cook, Marr, Rhoads, Lucas and Jordan** voting yes. **Alderman Ferrell** voting no.

Ordinance 4747 as Recorded in the Office of the City Clerk.

Mally Wagon Road Sewer Service: A resolution to allow extension of sewer service outside the City's corporate limits on a 25 acre parcel on Mally Wagon Road less than a quarter mile from the city limits. *This item was tabled at the August 2, 2005 City Council meeting until the September 6, 2005 City Council Meeting.*

Crystal Goedereis representing the project gave a brief description of the project. She stated the concerns that Planning had with this project have been addressed. She said that this project will be developed to City specifications so that when this property is annexed it will meet the City requirements. She stated they are 0.2 miles from the City sewer and they propose to pay all

of the cost plus all the impact fees. She said it is costing them more to do it this way but she feels the citizens will benefit from this.

Jeremy Pate stated that the Planning staffs concern was the plan that was presented showed this developed to RSF-7 standards and we currently have an ordinance that doesn't allow for that standard. They have changed this to allow for RSF-4 standards.

Alderman Reynolds thanked the Planning staff for working with the developer and thanked the developer for developing this property to City standards.

Alderman Cook said the Water and Sewer Committee discussed the idea of extending sewer services outside the City. They did not come to a conclusion on extending sewer services outside the City. He stated this development is not the issue for him, the issue is does the City Council want to make the decision to start extending services outside the City limits. He asked why we would want to extend City services outside the City limits when it doesn't necessarily benefit the citizens of Fayetteville. It is going to cost more for the City in the way of maintenance. He asked how far do we go and how many more will request this.

Alderman Thiel said the residents of this subdivision are not going to expect fire and police protection. She also said that the City would be getting a subdivision built to City standards, they would pay impact fees, park land dedication and it would keep them from being on septic systems.

Crystal Goedereis stated this would allow for affordable lots and allow for moderately priced homes in this area.

Alderman Jordan asked what price range she foresees for these homes.

Crystal Goedereis stated she hopes to sell the lots for around \$40,000 and that probably \$150,000 to \$180,000 homes would be built on this property.

Alderman Marr said this is a policy decision. He asked when will it be too far outside the city if we start allowing services outside the City limits. He also asked if they bring these items in will that be the new location point in which we go to?

David Jurgens, Water and Wastewater Director stated that it will be to far when the proximity is such that it is not economical for the developer to hook up to the sewer system. When a sewer system becomes adjacent to a property they must hookup. From my stand point I think it would be better to own the system now so we will know it has good maintenance and have it completely finished rather than having to go into a fully developed area and dig up the yards to put in a sewer system.

Alderman Reynolds stated he will support this because it is being developed to City standards.

Alderman Lucas asked if the houses that are between the City and this development will be able to tie onto the sewer without coming into the City.

David Jurgens stated that those houses would have to petition to the City Council to be able to tie onto our sanitary sewer system. He stated any connection outside the City limits must go through this process.

Alderman Marr asked if we do give them services without them being a part of the City what is the motivation for a person to annex.

City Attorney Kit Williams stated the applicant has agreed to be annexed into the City of Fayetteville as soon as it is legally possible. I think that anyone that comes to you requesting services, that this should be a condition for them also, that as soon as it is legally possible that they will in fact annex.

Alderman Lucas stated she has a real struggle with this. She does not like things that are not built to City standards and that we will not get impact fees on. She feels she has to be consistent even though they have done a good job on this and therefore she can not support this.

Mayor Coody stated that eventually we would be annexing land that would have substandard development on it, septic systems and all kinds of problems that we would be inheriting at that point is probably the best argument as to why we should do this.

Alderman Reynolds moved to approve the resolution. **Alderman Thiel** seconded the motion. Upon roll call the resolution passed 4-4. **Alderman Reynolds, Thiel, Rhoads and Ferrell** voting yes. **Alderman Cook, Marr, Lucas and Jordan** voting no. **Mayor Coody** voted yes thus breaking the tie.

Resolution 177-05 as Recorded in the Office of the City Clerk

Planning Commission Appeal (HondaPro): A request to appeal the Planning Commission's motion to deny rezoning request RZN 05-1524 rezoning Lots 14, 15 and 16 of the Parker's Plat of Valley View Acres from RSF-4, Residential Single Family, 4 Units Per Acre and R-O , Residential Office, to C-2, Thoroughfare Commercial. *This item was tabled at the July 19, 2005 City Council meeting until the August 2, 2005 City Council meeting. This item was tabled at the August 2, 2005 City Council meeting until the August 16, 2005 City Council Meeting. This item was tabled at the August 16, 2005 City Council meeting until the September 6, 2005 City Council Meeting.*

City Attorney Kit Williams: The Planning Commission voted 7-1 against this. It is up to the City Council if you want to sustain the Planning Commission or if you want to hear the appeal. If you want to hear the appeal I will then read the ordinance.

Jeremy Pate gave a brief summary of the project. He stated the applicant has given a Bill of Assurance. He stated the land use plan in the particular area is residential. He stated staff does not recommend a C-2 zoning in this location.

Alderman Thiel asked even with the Bill of Assurance if staff was still opposed to this zoning.

Jeremy Pate: I think it goes a long way. Even with the current business, staff has received calls from the neighbors regarding noise issues with the property. Staff has also received several phone calls in support of this rezoning.

Mayor Coody: Since this has changed so much since the Planning Commission heard it would it be out of line to ask them to reconsider this?

Jeremy Pate: I believe that is one of the options the Council has.

Alderman Marr: This particular business is in a pretty industrial area. I haven't received a single call against it. The screening was a concern and the noise issue that was related to the salvage operation, which I think has been taken care of and removed from the site. I have received phone calls and letters in support of this business. I don't think we need to send it back to the Planning Commission, I think they have addressed the things that needed to be addressed if we are going to rezone the property.

Mayor Coody: If we refer it back to the Planning Commission it would go back now if we vote it down it would be a year before they could bring it back.

Jeremy Pate: If you referred it back to the Planning Commission they would vote on it again and it would also come back before the Council with a new recommendation based on the Bill of Assurance offered.

Alderman Cook moved to approve the appeal. Alderman Reynolds seconded the motion. Upon roll call the motion passed 6-2. Alderman Reynolds, Thiel, Cook, Marr, Rhoads, and Ferrell voting yes. Alderman Lucas and Jordan voting no.

City Attorney Kit Williams read the ordinance.

Hannah McNeill with Key Architectural representing the owner of the property gave a brief description of the project.

Alderman Cook moved to suspend the rules and go to the second reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Reynolds moved to suspend the rules and go to the third and final reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Lucas said she is concerned about the invasion into the neighborhood. She asked if this could be rezoned R-O.

Jeremy Pate: Not with this particular business, that is the challenge. Staff would support residential office. This business would not be allowed as a conditional use in an R-O zoning.

Hannah McNeill stated R-O is very limited in what business can be in that zoning. It would be financially better to do apartments there than R-O. You have C-2 zoning a little to the north.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 6-2. **Alderman Reynolds, Thiel, Cook, Marr, Rhoads, and Ferrell** voting yes. **Alderman Lucas and Jordan** voting no.

Ordinance 4748 as Recorded in the Office of the City Clerk.

R-PZD 05-1463 (Oakbrooke Subdivision): An ordinance establishing a residential planned zoning district titled R-PZD 05-1463, Oakbrooke Phase I, located west of Ruppel Road and east of Bridgeport Subdivision, containing approximately 20.9 acres, amending the Official Zoning Map of the City of Fayetteville; and adopting the associated Residential Development Plan as approved by the Planning Commission. *This item was left on the first reading at the July 19, 2005 City Council meeting. This item was left on the second reading at the August 2, 2005 City Council meeting. This item was left on the third reading at the August 16, 2005 City Council meeting. This item was tabled at the August 16, 2005 City Council meeting until the September 6, 2005 City Council meeting.*

Jeremy Pate gave a brief update on the project. He stated staff is recommending that the development be allowed to proceed without a connection for a sewer assessment. There has been a lot of discussion with the neighbors and amendments to the project. Without a formal amendment by the Council to adopt those amendments to this PZD, they will not be part of this particular request. The amendments are to limit the attached lots to Lots 56 through 73 only and a 1,400 square foot minimum on the homes.

Alderman Lucas: So there is nothing written up on these changes.

Jeremy Pate: The items are in the revised covenants however covenants can change without the City being aware of the changes.

Alderman Jordan: We need to put those in the PZD as amendments to the PZD, will that lock them in?

Jeremy Pate: Yes

John Nooncaster voiced his concerns about the sewer improvement district that has been discussed. He stated the City does not have an effective or fair way to allocate sewer improvements.

Karen Stewart a citizen, voiced her concerns regarding the drainage on the Oakbrooke property. She stated there are wet lands on the property and detention ponds. She is concerned about the removability of the detention pond.

Colleen Pool presented a petition to the Council stating the neighbors want homes that are a minimum of 1,400 square feet.

Tracy Hoskins, Paradigm Development stated the three changes he is willing to make to the project due to concerns from the neighborhood.

Alderman Jordan stated the neighborhood was also concerned about the infrastructure in that area. Ruppel Road is a real concern to the neighbors.

Alderman Lucas stated the infrastructure was a concern at the neighborhood meetings that she and Alderman Jordan had.

Sondra Smith, a resident of Bridgeport stated the citizens of Bridgeport do have a concern with Ruppel Road. She stated they understand that the developer can not do anything about Ruppel Road but it is something that we feel the City Council does need to address, it is a 10 foot wide lane on each side. The total width of the road is 20 feet and you will be dumping three schools and 1,000 additional trips a day onto that road.

Alderman Ferrell stated the Street Committee is very aware of this. I brought up the importance of Ruppel Road at one of the meetings. I am trying to get this road moved up when we start building.

Alderman Marr stated 780 square feet homes are selling in Ward 2 and increasing property values. I understand the concerns though. I would like to hear about the infrastructure. I have a concern about the sewer capacity.

Tracy Hoskins We have another development that has been approved that has 211 taps that were calculated into this new report. We are willing to subornate 109 taps from that development to take care of the Oakbrooke development until the west side plant is complete. Should by chance that development come on line before the west side improvements are complete, we will be happy to pay any fees or assessments that are due at that time.

Alderman Marr: Is that apart of this Bill of Assurance.

Tracy Hoskins: No.

Alderman Marr: Are you adding that tonight?

Tracy Hoskins: That is correct; I have submitted a draft copy of the Bill of Assurance to the City Attorney.

City Attorney Kit Williams: Are you offering that now to the City Council?

Tracy Hoskins: Yes, that's fine; I have no problem offering that to the City Council.

City Attorney Kit Williams read the Bill of Assurance for the Council.

Alderman Thiel stated she is also concerned about the infrastructure.

Jeremy Pate stated the developer will pay approximately \$7,500 in bridge assessment fees and approximately \$21,000 for Ruppel Road assessments.

A discussion followed on the fees this developer will pay for bridge improvements and street improvements to Ruppel Road.

Jim Ramsey with Paradigm Development presented a Power Point presentation regarding the subdivision.

Alderman Lucas asked if the developer was going to be building the homes.

Jim Ramsey: Yes.

Alderman Lucas: So they are going to be built to sale?

Jim Ramsey: Yes.

Alderman Jordan: What will the price per square foot be for the homes?

Tracy Hoskins: We figure they will typically sale for \$125.00 per square foot.

A discussion followed on the set backs between the homes.

Alderman Jordan: If you have a 1,200 square foot house at \$125.00 a square foot that would be approximately \$150,000. The Chamber of Commerce has said that an attainable house is \$139,000. Jeremy isn't there another addition going in by this property called Bellwood.

Jeremy Pate: Yes.

Alderman Jordan: And then across the street we are going to have another one come before us that is 1150 units. So will all these subdivisions cause some problems with safety on that road?

A discussion followed on Ruppel Road and the possible improvements that will be needed to the road.

Alderman Lucas stated there are several things that have concerned her about this project. One of them is the PZD ordinance. I thought when we received the PZD we would know what is being put in the PZD. My greatest concern is the infrastructure of Ruppel Road. This PZD will compound a dangerous condition. There are no bikers and no walkers on this road because there are no shoulders, no sidewalks and no trails.

Kit gave us information some time back about rezonings and it stated that an issue would be whether this proposed development would compound a dangerous traffic condition. It also stated whether the existing and proposed transportation infrastructure serving the new development can handle the anticipated increase flow without causing or compounding a dangerous traffic condition. I feel like 1090 trips more on Ruppel Road is compounding that condition.

There has been public opposition to this and for very good reasons. These people opposed this subdivision on the same basis as the people that opposed Vu Tara, a dangerous traffic situation, safety of their children and compatibility with adjacent neighborhoods. These people have been

maligned because they have insinuated that these people are against affordable housing when all they are trying to do is protect their property and their investment. It's their investment and it's their property. I want to make it clear that they were not against affordable housing, I am not against affordable housing, I live in an affordable housing neighborhood. They have been maligned by saying that they were against affordable housing because they were against this development and that's not true.

A discussion followed on the present zoning of the property and how many units could be put on the property as it is currently zoned.

Alderman Marr: Was the assessment for this subdivision done the same as other subdivisions, because several of us feel the assessment is low.

Ron Petrie, City Engineer: Assessments are based on the street frontage, the amount of traffic and the cost of the street that could be built. In many incidents we use more than the frontage, as long as it meets the rough portionality. This is just the recommendation by staff. Each development is completely individual.

Alderman Jordan moved to amend Section 2 of the ordinance to add that the minimum square footage of the homes will be 1,400 square feet, only lots 56 through 73 can have attached units and lots 52 through 54 will be for Club House or residential homes only. Further, based on the Bill of Assurance offered to the City Council on September 6, 2005 concerning subordinating 109 sewer taps from the previously approved Laureate Fields to be used by Oakbrooke Subdivision Phases I and II. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 5-3. Alderman Reynolds, Thiel, Marr, Rhoads, and Ferrell voting yes. Alderman Cook, Lucas and Jordan voting no.

Ordinance 4749 as Recorded in the Office of the City Clerk.

R-PZD 05-1555 (Oakbrooke Subdivision): An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1555, Oakbrooke Phase II, located west of Ruppel Road and east of Bridgeport Phase II, containing approximately 11.5 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the Planning Commission. *This item was left on the second reading at the August 2, 2005 City Council meeting. This item was left on the second reading at the August 16, 2005 City Council meeting. This item was tabled at the August 16, 2005 City Council meeting until the September 6, 2005 City Council meeting.*

Alderman Ferrell moved to suspend the rules and go to the third and final reading. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to amend Section 2 of the ordinance to add that the minimum square footage of the homes will be 1,400 square feet, only lots 56 through 73 can have

attached units and lots 52 through 54 will be for Club House or residential homes only. Further, based on the Bill of Assurance offered to the City Council on September 6, 2005 concerning subordinating 109 sewer taps from the previously approved Laureate Fields to be used by Oakbrooke Subdivision Phases I and II. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

Karen Stewart voiced her concerns about the street connectivity between Bellwood and Oakbrooke.

A discussion followed on the connectivity between and from the subdivisions.

Kit Williams asked the developer if the Bills of Assurances that he offered in the previous development are being offered to the City Council in this development.

Tracy Hoskins: Absolutely.

A resident of Bridgeport voiced her concerns about the traffic that cuts through Bridgeport from other developments. She stated that Ruppel Road is dangerous and that no one walks or bikes on that road because they would get killed. She stated Ruppel Road is a very narrow road and it is dangerous.

Mayor Coody asked staff to look at the traffic in this subdivision and the surrounding area to see if there is a way to slow the traffic down.

Ron Petrie stated they have done a study and this area did not come close to meeting the criteria in the traffic calming policy. I have heard a lot of complaints on the policy so you may want to look at it in the future.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 5-3. Alderman Reynolds, Thiel, Marr, Rhoads, and Ferrell voting yes. Alderman Cook, Lucas and Jordan voting no.

Ordinance 4750 as Recorded in the Office of the City Clerk.

Hay Group Salary and Benefits Survey Contract: An ordinance waiving the requirements of formal competitive bidding; and approving a contract with Hay Group, Inc. in the amount of \$28,000.00 to accomplish the Salary and Benefits Survey Project; and approving a travel contingency not to exceed \$1,600.00. *This item was left on the first reading at the August 16, 2005 City Council meeting.*

Alderman Marr moved to table the ordinance indefinitely. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Lucas was absent during the vote.

This ordinance was tabled indefinitely.

HMR Tax Revision: An ordinance amending §§ 35.19 & 35.30 to change the definition of concession stands as it pertains to the collection of HMR tax. *This item was left on the first reading at the August 16, 2005 City Council meeting. This item was forwarded to the Ordinance Review Committee.*

Alderman Thiel moved to table the ordinance indefinitely. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was tabled indefinitely.

NEW BUSINESS:

The following item was added to the City Council agenda:

Firemen's Lawsuit: A resolution to approve the settlement agreement with the Plaintiffs in the Peter T. Reagan, et al v. City of Fayetteville, Federal District Court Civil Case No. 05-5045.

Alderman Rhoads moved to add the Firemen's Lawsuit settlement to the agenda. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the resolution.

City Attorney Kit Williams: I would like to state in my 4 ½ years as Fayetteville City Attorney I have never recommended a settlement payment to a plaintiff that has sued the City until now. Early in this litigation it became apparent that the complex and complicated issue surrounding firefighter over time issues were neither clear nor easy to resolve. I had always thought overtime rules were simple. Well, it is different with firefighters. Firefighters work 24 hour shifts every three days and they have very different, complex and sometimes unclear over time rules. These special rules, only for firefighters, start overtime at 53 hour per week or 106 hours for two weeks or 159 hours for three weeks or 212 hours for four weeks. These varying look back periods affect not only the amount of over time to be paid, but when it is paid. For many years Fayetteville has used a three week look back period even though all employees were paid every two weeks.

One of Assistant Chief Marion Doss's main jobs was figuring out the Fire Department's payroll for this very complicated overtime computation formula. Basically the Fire Department has been relied upon for at least 15 years to apply their unique rules to the Fair Labor Standards Act to their payroll.

In July, 2002 Chief Bosch issued his mid-year report to administration, in this report he reported that in the past we might not have been in compliance with the Fair Labor Standards Act. He stated he had made changes in 2002 to "ensure that employees receive their overtime pay as required by the Fair Labor Standards Act". Unfortunately shortly before this suit was filed the City administration found out that Chief Bosch may not have brought the City into complete compliance with the Fair Labor Standards Act, thus we immediately sought advice and resolution to these issues by the Department of Labor. Many Firefighters had already sought legal council and decided to go ahead and file suit.

Our Personnel and Payroll Department spent innumerable hours compiling and analyzing firefighter payroll records in an attempt to see whether we had violated the Fair Labor Standards Act. My analysis is that the City probably committed sufficient technical errors in applying the law and that plaintiff's attorneys would likely be awarded attorney's fees against us. Those technical violations were our apparent failure to include the bi-weekly \$20.00 EMT and the Hazmat premium pay in overtime calculations. These were the primary components of the resolution to the firefighters and the settlement offer that I made after consultation with Mayor Coody.

Another much larger issue faced the City. For over a decade the Fire Department has sought to even out bi-weekly pay checks by some sort of averaging procedure. Firefighters are scheduled to work a 96 hour two week pay period and then two 120 hour two week pay periods. This way each firefighter works one 24 hour day on and then has two days off. Three shifts of firefighters can then man all the fire stations. The averaging method, which has probably been used for more than a decade, over paid firefighters during this 96 hour pay period but then under paid them during their two 120 hour pay periods. A two year analysis showed that the City had paid about the right total amount to the firefighters. Even though this averaging method may have been preferred by the firefighters, it does not appear to be sanctioned by the Fair Labor Standards Act. The danger to the taxpayer is that we might not be allowed to set off our over payments against the pay periods when we under paid. Two Federal Circuit Courts have held that a City could not count over payments against these under payments. One Federal Circuit Court determined that these could be counted to reduce or eliminate any under payment amount. With the Circuit Courts of appeal in disagreement no one knew for sure how the Eighth Circuit Court of appeals, which is our circuit, would decide that issue. If we could not count our over payments to offset our under payments, then the Fayetteville tax payers would be out hundreds of thousands of dollars.

Obviously the initial demands on the plaintiffs D.C. attorney was quite large. Although that is a true risk I do not believe that the local Federal District Court or the Eighth Circuit would agree with those circuit courts and that over payments of payroll by cities could not be used to offset under payments.

We are prepared to present additional theories in an effort to protect taxpayer funds. The question is why I would recommend for the first time to accept this settlement offer. First, there is a reasonable chance that despite our best efforts, the court could decide against in this issue of whether over payments could be used to offset under payments. Second, the small technical mistakes that we made in not including EMT pay and Hazmat pay and the overtime calculations could justify very large attorney fees being awarded against us. The plaintiff, the firefighters might receive less than they would under this proposed settlement, but it is likely that their attorneys would receive much, much more. With pretrial discovery, motions, trial preparation and the trial itself, the attorney's fees would probably be over \$100,000. With hundreds of thousands of dollars riding on whether we could offset under payments of wages with over payments, the losing side would almost certainly appeal to the Eighth Circuit and maybe even seek circuitry to the United States Supreme Court. Since we would probably end up paying both our own retained lawyers, the specialist that we hired in 2004 and plaintiff's attorneys, the final legal bill would likely be hundreds of thousands of dollars. That would be a giant waste of tax payer resources since we can settle for the fair amount that is presented tonight.

This is where I need to acknowledge the plaintiffs firefighters attorneys especially Mark Martin. If Marks's interest had been his own fee he would have never seriously negotiated. He would simply have prepared for trial and then the appeal and wait for the City to write him a big attorney's fee check. Instead Mark kept foremost in his mind the best interest of his clients who could well receive less than the amount he negotiated for if this went to trial and appeal. He has foregone a large fee to ensure his clients received a fair settlement. But, more than that Mark and I during our negotiations tried to take the long view. A trail would be unavoidably divisive and advisory, while what would be best for Fayetteville and for the firefighters and the citizens would be a fair resolution and a coming together of our government and our employees to do what is best for Fayetteville. That is the third reason that I recommend this settlement. For those reasons I can without qualification recommend a settlement to you. This settlement removes a danger of a large judgment if our over payments are not allowed to offset our under payments. The settlement pays attorneys fees of \$20,000, which otherwise could top \$100,000 easily and most importantly provides a resolution of all possible payroll and employment issues so we can come together, move forward and work to serve the citizens of Fayetteville to ensure that we remain one of the safest, most livable and most prosperous city's in the nation. The settlement is basically a payment of \$30,000 to the firefighters and \$20,000 to their attorneys. We do have a signed agreement by the firefighter's attorneys after all the firefighters have agreed to it.

Alderman Rhoads: Which Circuit allowed for the offset of over payments?

City Attorney Kit Williams: It was the Texas Circuit that allowed that.

Alderman Ferrell: Do all the fire departments in Arkansas and throughout the country come under the same Fair Labor?

City Attorney Kit Williams: That's my understanding. All professional fire departments.

Alderman Marr: All of our current pay practices are being done accurately at this point forward as it relates to the issue of pay and what's included in the overtime calculation?

City Attorney Kit Williams: Yes that is correct and we are also working with the Department of Labor for all the City employees. I don't know if every decision has been made in that particular case but we were going to comply with what the Department of Labor tells us to do in how we shall pay overtime for all City employees. The biggest problem was in the firefighters because of such a complicated system that frankly I don't think we knew how to do it for many, many years. It is only after this situation occurred that we really probably have figured out all the latest rules and wrinkles that are required for this overtime pay.

Alderman Marr: So this settlement takes us all the way through the point at which we are now paying correctly.

City Attorney Kit Williams: That's correct.

Mayor Coody: And when you said this case, talking about the DOL, just to make sure that everyone knows, we are not being sued by anybody else in the City. We are working to resolve any overtime or pay issues that we might have had over the last who knows how many years.

City Attorney Kit Williams: We invited the Department of Labor to come in to work out a structured settlement. They have done that, they would not do that in relation to the firefighters because after we invited them to come in the firefighters did institute suit and so they did not want to get involved in that. We have been and will continue to talk with them to make sure that we are paying every employee correctly.

Mayor Coody: Yes, which is our intent, to treat everybody exactly fairly and play by the law.

Alderman Marr: Do you anticipate when the rest of the employees will be resolved?

City Attorney Kit Williams: I think we are getting very close to that a lot of it has already been analyzed; we have been working very closely with the Department of Labor and through our own labor lawyer specialist who has been working with their person. So most of this should be resolved very quickly now. I think it is in a matter of a month or two at the longest. We have already done the hard work, which is analyzing the pay records and I think all of that should be resolved very quickly now.

Alderman Reynolds: How many departments did the Department of Labor go through?

City Attorney Kit Williams: They went through every department. They interviewed representatives from every department. They interviewed every division within the city with the exception of the firefighter division because that was already in litigation.

Alderman Reynolds: So we don't know that conclusion?

City Attorney Kit Williams: Well we do to a large extent; we know there are very minor problems but nothing substantial in any of those.

Mayor Coody: I want to say thanks to you Kit because I know how many long hours and how much hard work you put into this and I know you don't recommend settling these things very lightly. You and Mark have worked together very well. I want to say thanks to Mark too because he has done a very good job and you have done a very good job and if it weren't for you guys, if we had just left it all to the high dollar lawyers we would still be working this thing out. Thanks very much for doing a good job for us.

Alderman Marr moved to approve the resolution. Alderman Cook seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 178-05 as Recorded in the Office of the City Clerk.

The following item was added to the City Council agenda:

Hurricane Katrina Funds: A resolution authorizing the use of up to \$100,000.00 from the Replacement & Disaster Recovery Fund for use in collecting and distributing aid to Hurricane Katrina survivors; and the use of 1851 East Huntsville Road (Mexican Original Bldg) as a disaster Relief Collection and Distribution Center; approving a budget adjustment in the amount

of \$100,000.00 recognizing grant revenue from the Federal Emergency Management Agency (FEMA); and declaring an emergency.

Alderman Jordan moved to add the Hurricane Katrina Relief Funds to the agenda. Alderman Thiel seconded the motion. Upon roll call the motion passed unanimously.

Mayor Coody: This is \$100,000 that we would use from the emergency fund that we have set up for disasters. Certainly the disaster on the Gulf Coast has repercussions up here that we have to deal with.

Alderman Cook: You had to declare Fayetteville a disaster area for this to work?

Mayor Coody: Yes. In order to get a refund from FEMA.

Steve Davis, Finance and Internal Services Director: In order to perfect our claim for future reimbursements for FEMA the Chief Executive of a local government unit has to declare a local emergency. On September 3, 2005 the President designated all 75 counties in Arkansas as a Category B disaster area related to Hurricane Katrina. The funds that we are asking to be appropriated are interest earnings from the replacement fund. We fully anticipate that the majority of these monies will be reimbursed by FEMA.

Mayor Coody gave a brief description of what the City of Fayetteville is going to do to help.

Alderman Jordan moved to approve the resolution. Alderman Thiel seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 179-05 as Recorded in the Office of the City Clerk.

The following item was added to the City Council agenda:

Taxicab Fee Adjustment: An ordinance amending Title XI: Chapter 117, Article IV: Taxicabs, of the Code of Fayetteville to allow for a fuel surcharge; and declaring an emergency.

Alderman Cook moved to add the Taxicab Fee Adjustment to the agenda. Alderman Marr seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Rhoads: What were these numbers before?

City Attorney Kit Williams: We added a fuel charge everything else is the same.

Alderman Rhoads: What happens if gas goes down drastically?

City Attorney Kit Williams: You are free to adjust it up and down as you see fit as long as it is reasonable for the operations.

Steve Davis: Gave a brief description of the meeting that he had with the taxicab owners.

A discussion followed on the rates that are currently charged and the vouchers that the City gives out to citizens.

Alderman Reynolds moved to suspend the rules and go to the second reading. **Alderman Ferrell** seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Reynolds moved to suspend the rules and go to the third and final reading. **Alderman Ferrell** seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

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

Alderman Marr moved to approve the emergency clause. **Alderman Ferrell** seconded the motion. Upon roll call the emergency clause passed unanimously.

Ordinance 4751 as Recorded in the Office of the City Clerk.

Walker House Demolition: A resolution to authorize bids and approve the lowest qualified bid received for the demolition and disposal of the Walker House located at 901 South College Avenue.

Alderman Jordan moved to approve the resolution. **Alderman Thiel** seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 180-05 as Recorded in the Office of the City Clerk.

Amend § 34.27 Sale of Municipally Owned Real Property: An ordinance amending § 34.27, Code of Fayetteville to exempt the dedication of real property to the Arkansas State Highway Commission from the requirements of the ordinance; and declaring an emergency.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the second reading. **Alderman Cook** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Rhoads** was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Cook seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Rhoads was absent during the vote.

Alderman Jordan moved to approve the emergency clause. Alderman Cook seconded the motion. Upon roll call the emergency clause passed 7-0. Alderman Rhoads was absent during the vote.

Ordinance 4752 as Recorded in the Office of the City Clerk.

Razorback Road (Hwy 112) Widening Project: A resolution approving the sale of 3 parcels of land (approximately 18,441 square feet total) to the Arkansas State Highway Commission for right-of-way associated with the Razorback Road widening for a total purchase price of \$34,475.00.

Alderman Marr moved to approve the resolution. Alderman Jordan seconded the motion. Upon roll call the resolution passed 7-0. Alderman Rhoads was absent during the vote.

Resolution 181-05 as Recorded in the Office of the City Clerk.

Gregg Avenue (Hwy 180) Widening Project: A resolution approving the transfer of 2 parcels of land (approximately 12,614 square feet total) to the Arkansas State Highway Commission for right-of-way associated with the Gregg Avenue Widening.

Alderman Marr moved to approve the resolution. Alderman Jordan seconded the motion. Upon roll call the resolution passed 7-0. Alderman Lucas was absent during the vote.

Resolution 182-05 as Recorded in the Office of the City Clerk.

Amend § 166.05 Large Scale Development (LSD): An ordinance to clarify that the miscellaneous requirements for large scale developments found in § 166.05 (C) (6) and (7) also apply to preliminary plats.

City Attorney Kit Williams read the ordinance.

Alderman Cook moved to suspend the rules and go to the second reading. Alderman Marr seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4753 as Recorded in the Office of the City Clerk.

ANX 05-1628 (Lamberth-Carlton): An ordinance annexing that property described in Annexation Petition ANX 05-1628 for property located east of Deadhorse Mountain Road, containing 13.00 acres.

Jeremy Pate gave a brief description of the annexation.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 6-2. Alderman Reynolds, Thiel, Marr, Rhoads, Ferrell and Lucas voting yes. Alderman Cook and Jordan voting no.

Ordinance 4754 as Recorded in the Office of the City Clerk.

RZN 05-1629 (Dixie Development): An ordinance rezoning that property described in rezoning petition RZN 05-1629 for approximately 8.8 acres located at Lot 12 CMN Business Park, northwest of the Van Asche and Mall Avenue intersection from R-O Residential-Office to C-2, Thoroughfare Commercial.

City Attorney Kit Williams read the ordinance.

Alderman Cook moved to suspend the rules and go to the second reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Cook moved to suspend the rules and go to the third and final reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4755 as Recorded in the Office of the City Clerk.

RZN 05-1696 (Staggs): An ordinance rezoning that property described in rezoning petition RZN 05-1696 for approximately 0.68 acres located at 2824 S School Avenue from C-2, Thoroughfare Commercial to R-O, Residential Office.

City Attorney Kit Williams read the ordinance.

Alderman Reynolds moved to suspend the rules and go to the second reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Rhoads seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4756 as Recorded in the Office of the City Clerk.

ADM 05-1656 Adoption of the Downtown Master Plan Street Classification System: A resolution amending the Master Street Plan and the General Plan 2020 to adopt the Downtown Master Plan Street Classification System and cross sections as proposed by Dover Kohl and Associates.

Alderman Marr moved to approve the resolution. Alderman Jordan seconded the motion.

A discussion followed on what boundaries the resolution includes.

Tim Conklin, Director of Current Planning: College Avenue, Archibald Yell, School Avenue and Sixth Street west of School has been removed for a later discussion.

Alderman Jordan moved to amend the resolution to remove College Avenue, Archibald Yell, School Avenue and Sixth Street west of School. Alderman Lucas seconded the motion. Upon roll call the motion passed 6-2. Alderman Reynolds, Thiel, Rhoads, Ferrell, Lucas and Jordan voting yes. Alderman Cook and Marr voting no.

Daniel Hintz, Executive Director of Downtown Partners asked that the Council look at the items that were removed in a timely manner.

Upon roll call the resolution passed unanimously.

Resolution 183-05 as Recorded in the Office of the City Clerk.

Adoption of §161.08 District RSFH-8: An ordinance amending Title XV: Unified Development Code, of the Code of Fayetteville, to provide a new Residential Zoning District.

Alderman Thiel moved to table the ordinance indefinitely. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was tabled indefinitely.

Amend § 166.08 Design Standards: An ordinance to amend § 166.08 Design Standards by adding a new subsection to Section (F) Residential Lots.

City Attorney Kit Williams read the ordinance.

Alderman Reynolds moved to suspend the rules and go to the second reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 5-3. Alderman Reynolds, Thiel, Rhoads, Ferrell and Lucas voting yes. Alderman Cook, Marr and Jordan voting no.

Ordinance 4757 as Recorded in the Office of the City Clerk.

Steve Davis: The taxicab companies would like a motion to reconsider their item because apparently I did not fully state their case. They also need an increase in the mileage rate

Alderman Reynolds moved to reconsider the ordinance. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

Brice Curry, Dynasty Cab gave a brief description of what they need in the way an increase.

Tony Catroppa, Tony C Cab stated they needed an increase of the \$1.00 surcharge and an increase from \$1.50 to \$2.10 per mile and a \$2.00 pick up fee.

A discussion followed on the rates that are charged in other city's in the area.

Alderman Rhoads asked that we get some input from staff before increasing the mileage.

City Attorney Kit Williams: If you table this you have not done anything. The motion to reconsider put this back before the Council at square one. Nothing has been passed at this point in time the issue is now before you. If you table it the \$1.00 surcharge will not be in affect. You would need to pass this again just like you did the first time to keep the \$1.00 surcharge in affect.

Alderman Ferrell moved to add the \$1.00 surcharge. **Alderman Marr** seconded the motion. There was no vote on the motion

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the second reading. **Alderman Marr** seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. **Alderman Marr** seconded the motion. Upon roll call the motion passed unanimously.

Brice Curry gave the Council information on the cost of running his cab company.

Alderman Rhoads stated he has some questions about the increase. He stated he is concerned about making that kind of increase without having adequate independent research by the City.

City Attorney Kit Williams read the ordinance.

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

Alderman Marr moved to approve the emergency clause. **Alderman Jordan** seconded the motion. Upon roll call the emergency clause passed unanimously.

Meeting Adjourned at 10:30 PM.

Dan Coody, Mayor

Sondra Smith, City Clerk/Treasurer

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

A. 3
State and Tribal Assistance Grant (STAG)
Sanitary Sewer System Improvements
Page 1 of 18

10/4/2005
City Council Meeting Date

David Jurgens
Submitted By

Water/Wastewater
Division

Water/Wastewater
Department

Action Required:

Resolution authorizing Mayor to apply for and accept a State and Tribal Assistance Grant (STAG) Program Application from the US Environmental Protection Agency for sanitary sewer system improvements; designating the Mayor as the City's Authorized Representative in all matters relating to the procurement and administration of said grant, and approving a budget adjustment recognizing \$481,200 in grant revenue.

\$0.00
Cost of this request

\$ 5,419,133.00
Category / Project Budget

Sanitary Sewer Rehabilitation
Program Category / Project Name

5400.5700.5815.00
Account Number

\$ 1,080,401.65
Funds Used to Date

Sewer Mains Construction
Program / Project Category Name

02017
Project Number

\$ 4,338,731.35
Remaining Balance

Water/Sewer
Fund Name

Budgeted Item

XX

Budget Adjustment Attached

XX

David Jurgens
Department Director

25 Sep 05
Date

Previous Ordinance or Resolution # 156-04

Original Contract Date: N/A

D. J. White
City Attorney

9/26/05
Date

Original Contract Number: N/A

John Deane
Finance and Internal Service Director

9-26-05
Date

Received in City Clerk's Office

ENTERED
9/26/05

Don Coody
Mayor

9/27/05
Date

Received in Mayor's Office

ENTERED
9/26/05

Comments:

CITY COUNCIL AGENDA MEMO

To: Fayetteville City Council

Thru: Mayor Dan Coody

From: David Jurgens, Water/Wastewater Director, Interim



Date: September 25, 2005

Subject: Resolution authorizing Mayor to apply for and accept a State and Tribal Assistance Grant (STAG) Program Application from the US Environmental Protection Agency for sanitary sewer system improvements; designating the Mayor as the City's Authorized Representative in all matters relating to the procurement and administration of said grant, and approving a budget adjustment recognizing \$481,200 in grant revenue.

RECOMMENDATION

Fayetteville City Administration recommends approval of a resolution authorizing the Mayor to apply for and accept a STAG grant, execute all required documents, furnish required information and act as the City's Authorized Representative in all matters relating to the procurement and administration of said grant.

BACKGROUND

Fayetteville has been the recipient of \$481,100 in USEPA Grant Assistance from the State and Tribal Assistance Grant Program for 2005. Receipt of this award was made on September 22, 2005. This EPA grant funding was approved for sanitary sewer rehabilitation and is proposed to be merged into the City's ongoing sewer rehabilitation funding to accelerate the program. The EPA grant provides a maximum of 55% of the costs, with the remaining 45% being the required local match.

DISCUSSION

Consultant work on sanitary sewer rehabilitation has been proceeding. It is anticipated that these funds will be used for rehabilitation in the Hamesting sewer basin. Field investigations have been underway in this area since June, 2005.

BUDGET IMPACT

Sanitary sewer rehabilitation is a budgeted project. The EPA Grant proceeds will be combined with the City's budgeted funds and the 2003/2004 STAG grants to execute rehabilitation projects throughout the sanitary sewer system. A budget adjustment recognizing \$481,200 in grant revenue is attached.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND ACCEPT A STATE AND TRIBAL ASSISTANCE GRANT (STAG) FROM THE U. S. ENVIRONMENTAL PROTECTION AGENCY FOR SANITARY SEWER SYSTEM IMPROVEMENTS; DESIGNATING THE MAYOR AS THE CITY'S AUTHORIZED REPRESENTATIVE IN ALL MATTERS RELATING TO THE PROCUREMENT AND ADMINISTRATION OF SAID GRANT; AND APPROVING A BUDGET ADJUSTMENT RECOGNIZING \$481,200.00 IN GRANT REVENUE.

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 Mayor to apply for and accept a State and Tribal Assistance Grant (STAG) from the U. S. Environmental Protection Agency for sanitary sewer system improvements.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby designates the Mayor as the City's Authorized Representative in all matters relating to the procurement and administration of said grant.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment recognizing \$481,200.00 in grant revenue.

PASSED and APPROVED this 4th day of October, 2005

APPROVED:

By

DAN COODY, Mayor

ATTEST:

By

SONDRA SMITH, City Clerk

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

A. 3
State and Tribal Assistance Grant (STAG)
Sanitary Sewer System Improvements
Page 4 of 18

Budget Year 2005	Department: Water & Wastewater Division: Water & Sewer Maintenance Program: Sewer Mains Construction	Date Requested 9/25/2005	Adjustment Number
----------------------------	--	------------------------------------	-------------------

Project or Item Added/Increased: \$481,200 is requested in the Sewer Improvements account of the Sanitary Sewer Rehabilitation- EPA Rehabilitaiton Grant Project.	Project or Item Deleted/Reduced: None. This action is required to recognize receipt of \$481,200 in the Federal Grants account.
---	---

Justification of this Increase: Funding will be used for sanitary sewer rehabiltiation to include repairs to sanitary sewer mains and manholes.	Justification of this Decrease: A grant was received from the Environmental Protection Agency for the purpose of sanitary sewer rehabilitation.
---	---

Increase Expense Budget (Decrease Revenue Budget)

Account Name	Account Number				Amount	Project Number
Sewer improvements	5400	5700	5815	00	481,200	02017

Decrease Expense Budget (Increase Revenue Budget)

Account Name	Account Number				Amount	Project Number
Federal grants-Capital	5400	0940	4309	00	481,200	02017

Approval Signatures  Requested By 25 Sep 05 Date  Budget Manager 9-26-05 Date  Department Director 25 Sep 05 Date  Finance & Internal Services Director Sept 26, 2005 Date Mayor _____ Date		Budget Office Use Only Type: A B C <u>D</u> E Date of Approval _____ Initial _____ Date _____ Posted to General Ledger _____ Initial _____ Date _____ Posted to Project Accounting _____ Initial _____ Date _____ Entered in Category Log _____ Initial _____ Date _____	
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

A. 3
State and Tribal Assistance Grant (STAG)
Sanitary Sewer System Improvements
Page 5 of 18

RECEIVED

SEP 22 2005

CITY OF FAYETTEVILLE
MAYOR'S OFFICE

SEP 20 2005

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Honorable Dan Coody
Mayor
City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

RE: Sanitary Sewer Rehabilitation Project
Assistance Agreement: XP-966062-01-0

Dear Mayor Coody:

I am pleased to advise you that your application and work plan for Federal assistance in support of the referenced project have been approved. The amount offered is \$481,200 subject to the terms and conditions of the award.

To complete this award, please sign and date both copies of the enclosed Cooperative Agreement. Retain one original for your file and return one original directly to Linda Lyons, Management Division (6MD-RX) within three (3) calendar weeks after receipt. We suggest that you send this document by Certified Mail.

Thank you for your efforts in this vital area of environmental protection within the State of Arkansas.

Sincerely yours,


Miguel I. Flores
Director
Water Quality Protection Division

Enclosure

cc: Honorable Mike Huckabee, Governor of Arkansas

XP - 96606201 - 0 Page 1

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement		ASSISTANCE ID NO.			DATE OF AWARD SEP 13 2005
			PRG	DOC ID	AMEND#	
			XP -	96606201	- 0	
			TYPE OF ACTION New			
PAYMENT METHOD: ACH			MAILING DATE SEP 20 2005			ACH#
RECIPIENT TYPE: Municipal			Send Payment Request to: Las Vegas Finance Center			
RECIPIENT: City of Fayetteville 113 West Mountain Street Fayetteville, AR 72701 EIN: 71-6018462			PAYEE: City of Fayetteville 113 West Mountain Street Fayetteville, AR 72701			
PROJECT MANAGER Mr. David Jurgens 113 West Mountain Street Fayetteville, AR 72701 E-Mail: djurgens@ci.fayetteville.ar.us Phone: 479-575-8318		EPA PROJECT OFFICER Rajen Patel Water Quality Protection Division, 6WQ-AP E-Mail: Patel.Rajen@epamail.epa.gov Phone: 214-665-2788		EPA GRANT SPECIALIST Linda Lyons Procurement and Grants Section, 6MD-RX E-Mail: Lyons.Linda@epamail.epa.gov Phone: 214-665-7419		
PROJECT TITLE AND DESCRIPTION AR-City of Fayetteville Sanitary Sewer Rehabilitation Project The project consists of rehabilitation of sanitary sewer manholes and sewer lines to be identified in the sanitary sewer evaluation study underway for the City Basin I-15. Rehabilitation of sewer lines will utilize open cut replacement, cured-in-place piping and pipe bursting methods. The project is anticipated to significantly reduce the inflow/infiltration in the entire project area, thereby reducing the maintenance cost and sewer main blockages.						
BUDGET PERIOD 01/01/2006 - 12/31/2008		PROJECT PERIOD 01/01/2006 - 12/31/2008		TOTAL BUDGET PERIOD COST \$874,910.00		TOTAL PROJECT PERIOD COST \$874,910.00
NOTE: The Agreement must be completed in duplicate and the Original returned to the appropriate Grants Management Office listed below, within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA. Receipt of a written refusal or failure to return the properly executed document within the prescribed time, may result in the withdrawal of the offer by the Agency. Any change to the Agreement by the Recipient subsequent to the document being signed by the EPA Award Official, which the Award Official determines to materially alter the Agreement, shall void the Agreement.						
OFFER AND ACCEPTANCE						
The United States, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers Assistance/Amendment to the <u>City of Fayetteville</u> for <u>55.00</u> % of all approved costs incurred up to and not exceeding <u>\$481,200</u> for the support of approved budget period effort described in application (including all application modifications) cited in the Project Title and Description above, signed <u>08/01/2005</u> included herein by reference.						
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)				AWARD APPROVAL OFFICE		
ORGANIZATION / ADDRESS				ORGANIZATION / ADDRESS		
Management Division, 6MD-RX 1445 Ross Avenue, Suite 1200 Dallas, TX 75202-2733				U.S. EPA, Region 6 Water Quality Protection Division (6WQ) 1445 Ross Avenue Dallas, TX 75202-2733		
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY						
SIGNATURE OF AWARD OFFICIAL 		TYPED NAME AND TITLE Miguel I. Flores, Director Water Quality Protection Division (6WQ)			DATE SEP 13 2005	
This agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and assistance regulations. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2) the recipient agrees (a) that the award is subject to the applicable provisions of 40 CFR Chapter 1, Subchapter B and of the provisions of this agreement (and all attachments), and (b) that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by EPA to have been overpaid will be refunded or credited in full to EPA.						
BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION						
SIGNATURE 		TYPED NAME AND TITLE Dan Coody, Mayor			DATE	

EPA Funding Information

XP - 96606201 - 0 Page 2

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 481,200	\$ 481,200
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$ 393,710	\$ 393,710
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 874,910	\$ 874,910

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.606 - Surveys - Studies - Investigations and Special Purpose Grants	Consolidated Appropriations Act of 2005 (PL 108-447)	40 CFR PART 31

Fiscal									
Site Name	DCN	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	WA0015	05	E4	0600GKV	202B51E	4183	-	-	240,600
-	WA0015	05	E4	0600QOM	202B51E	4183	-	-	240,600
									481,200

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Approved Budget	
Program Element Classification (Construction)	Approved Allowable Budget Period Cost
1. Administration Expense	\$0
2. Preliminary Expense	\$0
3. Land Structure, Right Of Way	\$0
4. Architectural Engineering Basic Fees	\$0
5. Other Architectural Engineering Fees	\$0
6. Project Inspection Fees	\$0
7. Land Development	\$0
8. Relocation Expenses	\$0
9. Relocation Payments to Individuals & Bus.	\$0
10. Demolition and Removal	\$0
11. Construction and Project Improvement	\$874,910
12. Equipment	\$0
13. Miscellaneous	\$0
14. Total (Lines 1 thru 13)	\$874,910
15. Estimate Income	\$0
16. Net Project Amount (Line 14 minus 15)	\$874,910
17. Less: Ineligible Exclusions	\$0
18. Add: Contingencies	\$0
19. Total (Share: Recip <u>45.00%</u> Fed <u>55.00%</u>)	\$874,910
20. TOTAL APPROVED ASSISTANCE AMOUNT	\$481,200

Administrative Conditions

This Assistance Agreement is awarded in accordance with the **Federal Grants and Cooperative Agreement Act of 1977**. Areas of substantial EPA involvement, beyond the normal exercise of performance evaluation and program review, have been detailed in specific output objectives which resulted from negotiation between EPA and the recipient. These areas are included in the application for this award and have become a part of this Agreement.

1. The recipient covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this Agreement, in accordance with all applicable provisions of **40 CFR Chapter 1, Subchapter B**. The recipient warrants, represents, and agrees that it and all its contractors, employees and representatives, will comply with all APPLICABLE provisions of **40 CFR Chapter 1, Subchapter B, INCLUDING BUT NOT LIMITED TO** the provisions of **40 CFR Parts 31, 32, 34, and 35**. This award may be reduced or terminated at such time the recipient fails to comply with the program objectives, grant award conditions, or Federal reporting requirements.
2. Recipient standards of administration, property management, procurement and financial management, as well as records and facilities of recipients, their contractors and subcontractors are subject to audit and inspection by the Comptroller General of the United States and the U.S. Environmental Protection Agency in accordance with Office of Management and Budget (OMB) Circulars A-87, A-102, or A-110, as appropriate, A-133 and 40 CFR Part 31. The recipient's standards governing procurement will be in accordance with 40 CFR, Part 31.36 and OMB Circular A-102. The recipient shall maintain a financial management system which meets the requirements of 40 CFR Part 31.20.
3. Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.
4. In accordance with EPA Order 1000.25 and Executive Order 13101, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition, the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration. Please note that Section 901 of Executive Order 13101, dated September 14, 1998, revoked Executive Order 12873, Federal Acquisition, Recycling, and Waste Prevention in its entirety.
5. In accordance with **40 CFR Part 31.41**, the recipient shall submit an **annual Financial**

Status Report (FSR), Standard Form 269 or 269A, to:

Grants Team (6MD-RX)
U. S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

The final Financial Status Report (FSR) is due on or before 90 days after the end of the budget period. In accordance with Agency policy, all project expenditures reported by the recipient shall be deemed to include both the Federal and recipient share of the expenditures. **The final Financial Status Report (FSR) shall be submitted to:**

U.S. Environmental Protection Agency
Las Vegas Finance Center
P.O. Box 98515
Las Vegas, Nevada 89193-8515

6. The recipient agrees to ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds, complies with the Hotel and Motel Fire Safety Act of 1990.
7. Under the Paperwork Reduction Act of 1995, Office of Management and Budget (OMB) clearance must be obtained prior to collecting information from 10 or more persons and will use EPA's name while collecting the information under this project. The term "person" means an individual, partnership, association, corporation, business, trust, or legal representative, an organized group of individuals, a State, territory, or local government or branch thereof, or a political subdivision of a State, territory, or local government or a branch of a political subdivision. The EPA Project Officer is responsible for requesting clearance from OMB.
8. In accordance with OMB Circular A-133, the recipient shall obtain a single audit if it expends \$500,000 or more a year in federal awards. The recipient shall also submit a copy of the audit report to:

Grants Team (6MD-RX)
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

9. The Federal share of allowable expenditures chargeable to this assistance project will be financed by the EPA AUTOMATED CLEARING HOUSE (EPA-ACH) PAYMENT SYSTEM.

The recipient will strictly adhere to the accounting and reporting procedures described in the EPA-ACH Recipient's Manual for the duration of the project. Four conditions should receive

special attention:

- a. Cash drawdowns will be made only as actually needed for disbursements.
- b. The recipient will provide timely reporting of cash disbursements and balances through semi-annual submission (within fifteen (15) days after June 30 and December 31 of each calendar year) of the Federal Cash Transactions Report (SF-272) to:

U.S. Environmental Protection Agency
Las Vegas Finance Center
P.O. Box 98515
Las Vegas, Nevada 89193-8515
- c. The recipient will impose the same standards of timing and reporting on secondary recipients, if any.
- d. When a drawdown under the EPA-ACH Payment System occurs, the recipient must show the Assistance Agreement Number(s) under "Financial Data" on the EPA-ACH Payment Request Form. Requests for payment should be faxed to:

(702) 798-2411
Las Vegas Finance Center
Attention: Anedia Feaster

10. In accordance with **40 CFR Part 31.41**, the recipient shall submit an **annual Financial Status Report (FSR), Standard Form 269 or 269A**, to:

Grants Team (6MD-RX)
U. S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

The final Financial Status Report (FSR) is due on or before 90 days after the end of the budget period. In accordance with Agency policy, all project expenditures reported by the recipient shall be deemed to include both the Federal and recipient share of the expenditures. For construction grants when required in accordance with 40 CFR Part 31.41(e)(2)(iii), the Federal agency may substitute the Financial Status Report specified in Part 31.41(b) for the Outlay Report and Request for Reimbursement, Standard Form 271. **The final Financial Status Report (FSR) shall be submitted to:**

U.S. Environmental Protection Agency
Las Vegas Finance Center
P.O. Box 98515
Las Vegas, Nevada 89193-8515

11. The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements:
- a. The recipient accepts the applicable FY 2003 Minority Business Enterprise (MBE)/Women's Business Enterprise (WBE) "fair share" goals/objectives negotiated with EPA by the Arkansas Department of Environmental Quality as follows:

MBE: CONSTRUCTION - 0%; SUPPLIES - 1.0%; SERVICES - .7%; EQUIPMENT - 1.91%
WBE: CONSTRUCTION - 0%; SUPPLIES - 4.3%; SERVICES - 5.4%; EQUIPMENT - 3.35%

If the recipient wishes to negotiate their own FY 2005 MBE/WBE goals, the recipient must submit proposed MBE/WBE goals based on an availability analysis, or, at their option, a disparity study, of qualified MBEs and WBEs to do the work in the relevant market for construction, services, supplies and equipment. The recipient agrees to submit proposed "fair share" objectives, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 30 days of award. EPA will conclude "fair share" negotiations within 30 days of receiving the submission. Once EPA approves the objectives, the recipient agrees to apply them in accordance with paragraphs 1.(b)-(f).

- b. (1) The recipient agrees to ensure, to the fullest extent possible, that at least the applicable "fair share" objectives of Federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organization owned or controlled by socially and economically disadvantaged individuals, women and Historically Black Colleges and Universities.
- (2) For assistance agreements related to research under the Clean Air Act Amendments of 1990, the recipient agrees to ensure, to the fullest extent possible, that at least the applicable "fair share" objectives of Federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women, disabled Americans, Historically Black Colleges and Universities, Colleges and Universities having a student body in which 40% or more of the students are Hispanic, minority institutions having a minority student body of 50% or more, and private and voluntary organizations controlled by individuals who are socially and economically disadvantaged.
- c. The recipient agrees to include in its bid documents the applicable "fair share" objectives and require all of its prime contractors to include in their bid documents for subcontracts the negotiated "fair share" percentages.
- d. The recipient agrees to follow the six affirmative steps or positive efforts stated in 40 CFR Section 30.44(b), 31.36(e), or 35.6580, as appropriate, and retain records documenting compliance.
- e. The recipient agrees to submit an EPA form 5700-52A "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the

Federal fiscal year quarter the recipient receives the award and continuing until the project is completed. These reports must be submitted to the Regional MBE/WBE Coordinator within 30 days of the end of the Federal Fiscal quarter (January 30, April 30, July 30, and October 30). For assistance awards for continuing environmental programs and assistance awards with institutions of higher education, hospitals and other non-profit organizations, the recipient agrees to submit an EPA form 5700-52A to the Regional MBE/WBE Coordinator by October 30 of each year. (Reporting form available at www.epa.gov/osdbu.)

- f. If race and/or gender neutral efforts prove inadequate to achieve a "fair share" objective, the recipient agrees to notify EPA in advance of any race and/or gender conscious action it plans to take to more closely achieve the "fair share" objectives.
12. The recipient also agrees and is required to utilize the six affirmative steps if a contract is awarded under this agreement relative to small businesses in rural areas (SBRAs) in compliance with Section 129 of Public Law 100-50, 40 CFR 30.44(b) and 40 CFR 31.36(e).
13. EPA may take corrective action under 40 CFR Parts 30, 31, and 35, as appropriate, if the recipient fails to comply with the MBE/WBE terms and conditions.
14. The Recipient agrees that upon receipt of this funding assistance award, that the enclosed SF-3881 (ACH Vendor/Miscellaneous Payment Enrollment Form) will be completed and returned to the EPA Las Vegas Finance Center. The Recipient should further contact the EPA Project Officer listed on the first page of the Cooperative Agreement to obtain instructions for setting up the A Dual Signatory Process @ in the Electronic Funds Transfer (EFT) System. Thereafter, the Recipient will be supplied with appropriate forms and instructions for requesting reimbursements.
15. The assistance recipient agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225) of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.
16. In accordance with 40 CFR 30.27(b) or 31.36(j)(1), EPA's participation in the salary (excluding overhead) paid to individual consultants is limited to the maximum hourly rate for a level 4 of the Executive Schedule, which is currently approximately \$67.22 per hour or \$537.76 per day (2005).
17. Pursuant to EPA's annual Appropriations Act, the chief executive officer of this recipient agency shall require that no grant funds have been used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. As mandated by this Act, the recipient agrees to provide certification to the award official via EPA Form 5700-53,

Lobbying and Litigation Certificate, within 90 days after the end of project period. The form can be accessed at <http://www.epa.gov/ogd/forms/adobe/5700-53.pdf>.

18. Recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States. Any Part 30 recipient shall abide by its respective OMB Circular (A-21 or A-122), which prohibits the use of Federal grant funds to participate in various forms of lobbying or other political activities.
19. The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.
20. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
21. Recipient shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions." Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.
22. Recipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

Programmatic Conditions

1. In accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, EPA is required to conduct an environmental review on the project funded by this grant. Accordingly:

The recipient agrees to provide EPA, in a timely fashion, an environmental information document (EID) containing all the necessary information on the project including a written analysis of the alternatives and the environmental impacts of the project. The EID must be of sufficient scope and detail to enable EPA to perform an environmental review under NEPA and other Federal environmental statutes.

The recipient agrees not to take any action on the project beyond conceptual design (Conceptual design is essentially the same as facility planning as defined

in EPA's Construction Grants program), including but not limited to, beginning the preparation of plans and specifications, purchasing land, advertising or awarding design and/or construction contracts, initiating construction or requesting reimbursement from EPA for costs associated with such actions until such time as EPA has completed its environmental review in accordance with NEPA and 40 CFR Part 6 and 1500 *et seq.* Completion of this review will be evidenced by the issuance of a Categorical Exclusion (CE), the conclusion of the Finding of No Significant Impact (FNSI) process, or the issuance of a Record of Decision (ROD).

The recipient agrees that, upon completion of the NEPA review, design and construction shall be undertaken in accordance with the results of that review, including but not limited to, the implementation of measures EPA identifies as reasonable to mitigate the environmental impacts of the project. EPA reserves the right to unilaterally terminate this grant in the event the recipient fails to comply with this condition, in accordance with 40 CFR Section 31.43.

2. This award is subject to all applicable Federal crosscutting laws and authorities as well as EPA, Office of Wastewater Management, policy guidance dated June 6, 2005 - attached hereto as Attachment A.
3. The recipient will work with the EPA Las Vegas Finance Center (LVFC) to setup the U.S. Department of Treasury's "Automated Standard Application For Payment" (ASAP) system. ASAP is an electronic payment system that the recipient will access via the Internet. Once enrolled in ASAP, the recipient should contact their EPA Project Officer for instructions on submitting the payment requests. The recipient will submit the reimbursement request *Standard Form (SF) 271* (Attachment B) and appropriate invoices to their Project Officer for approval. When the Project Officer approves the payment, they will notify the recipient to withdraw the approved amount from the ASAP system.

If the recipient has not completed the enrollment process for ASAP and is requesting payment, the recipient should contact their Project Officer to obtain instructions for setting up the "Dual Signatory Process" in the EPA "Automated Clearing House" (ACH) payment system. Once the recipient has been setup in ACH, the recipient will submit their payment requests to the Project Officer. The recipient will submit the reimbursement request *SF-271*, appropriate invoices, and the *Payment Request Form* (Attachment B) to their EPA Project Officer for approval.

Recipients using ACH will be required to complete their enrollment in the ASAP system. Once enrolled in the ASAP system, the recipient will follow the procedures outlined in the paragraph above.

4. The recipient agrees to provide locational information/data (e.g., latitude and longitude) of the proposed project in accordance with instructions to be provided by EPA and submit the information to EPA Project Officer for its inclusion in an

EPA national database.

5. Federal laws and regulations shall apply except in those cases where State requirements are more stringent than Federal requirements. Where questions arise as to applicability, the EPA Project Officer should be contacted.
6. As a part of the environmental review, the recipient will ensure that all environmental review documentation developed will be consistent with the EPA Region 6 document, *NEPA Handbook for Special Appropriation Projects*, Attachment C.
7. Project management and execution will be very closely monitored by EPA representatives throughout the assistance agreement's project and budget periods. Effective implementation of the scope of work involves a jointly supported strong ongoing collaboration between the recipient and EPA. Technical assistance and coordination will be routine. EPA and the recipient will maintain a continuous dialogue for the rapid identification, solution, and escalation of problems to top level managers.

In addition, EPA representatives will be specifically responsible for assuring that the following post-award activities take place:

- Review of periodic payment requests;
- Interim inspections;
- Review of change orders and claims;
- Review and approval of final payment requests;
- Analysis of environmental review documents for NEPA-compliance, if appropriate; and
- Determination that the project is capable of meeting its objectives.

Also, EPA representatives will assure that the recipient understands and meets requirements related to the National Environmental Policy Act and numerous cross-cutting Federal authorities.

8. EPA Region 6 "Supplemental Conditions for Federally Assisted Water and Wastewater Treatment Facilities" attached hereto as Attachment D, must be included in all construction contract bidding documents, and shall control where a conflict arises with other contract provisions. Certain provisions also pertain to professional services contracts, and these provisions must be applied as appropriate.
9. Executed site certificate(s) shall be submitted to the EPA Project Officer, as evidence that sites, easements and rights-of-way have been acquired.
10. The recipient will ensure that any design and construction performed under this assistance agreement shall be consistent with the EPA document, *Guidance on*

Quality Assurance for Environmental Technology, Design, Construction and Operation (EPA QA/G-11), Attachment E.

11. All of the following must be submitted to and approved by EPA before recipient may advertise for bids for construction.
 - a. Plans and specifications and addenda to the plans and specifications.
 - b. Architect/Engineer (A/E) agreement for construction services.
 - c. A project schedule.

All change orders executed after the award of contract must be submitted and approved by EPA.

12. The recipient agrees to submit proposed and existing procurement actions, including subcontracts, that will use EPA assistance for review as soon as available. All procurement actions must comply with the provisions of 40 CFR Part 31, specifically 40 CFR 31.36.
13. The recipient also agrees to provide forty-five (45%) percent of project costs with nonfederal matching funds.
14. The recipient agrees to meet the project schedule provided with the grant application or the most recent amended schedule approved by the EPA Project Officer unless justifiable delays occur due to unexpected circumstances.
15. The recipient understands that the use of recipient's work force to perform grant-funded construction is subject to provisions of OMB Circular No. A-87. Recipient agrees that the rates paid for direct labor and the types of fringe benefits for recipient's work force performing grant-funded construction will be in accordance with normal rates and benefits applicable to similar work performed by recipient's work force. Recipient agrees to maintain adequate file information to support both the basis for pay rates and benefits, and the total costs charged to the grant.

Added at Agenda
Session 9/27/05
A, 4.

ALDERMAN AGENDA REQUEST FORM

A. 4
South Fayetteville Community Development
Corporations - Waiving of Fees
Page 1 of 2

FOR: COUNCIL MEETING OF OCTOBER 4, 2005

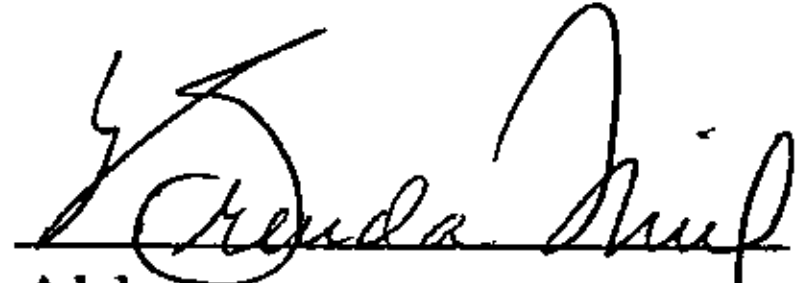
FROM:

ALDERMAN BRENDA THIEL

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A Resolution To Waive The Building Permit Fee And Other Developmental Fees For
South Fayetteville Community Development Corporation

APPROVED FOR AGENDA:


Alderman

9/16/05
Date


City Attorney (as to form)

9-16-05
Date

RESOLUTION NO. _____

A RESOLUTION TO WAIVE THE BUILDING PERMIT
FEE AND OTHER DEVELOPMENTAL FEES FOR SOUTH
FAYETTEVILLE COMMUNITY DEVELOPMENT
CORPORATION

WHEREAS, South Fayetteville Community Development Corporation is a non-profit organization dedicated to assisting lower income people to build and own their own affordable homes; and

WHEREAS, it serves the public interest and is beneficial to the City as a whole that South Fayetteville Community Development Corporation helps to provide such affordable housing in Fayetteville.

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 finds that waiving the building permit fee and all other developmental fees normally required by the Unified Development Code for the South Fayetteville Community Development Corporation home construction project serves the public interest and is beneficial to the City as a whole.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby waives the normal building permit fee and all other developmental fees normally required by the Unified Development Code for the South Fayetteville Community Development Corporation home construction projects located in Fayetteville, Arkansas during the remainder of 2005 and from all of 2006.

PASSED and APPROVED this the 4th day of October, 2005.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk



THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

To: Mayor Dan Coody, City Council
From: Jeremy Pate, Director of Current Planning *JP*
Date: September 28, 2005
Subject: Pratt Place Master Development Plan - Planned Zoning District

Attached you will find information requested from City Council members for this proposal, as well as a request from the applicant to modify one component of the Planned Zoning District request:

- 1) A traffic generation summary has been provided indicating average 24-hour weekday and weekend vehicle trips (volume) based on the proposed zoning (C-PZD) and permitted uses and the existing zoning (RSF-4, R-A) and permitted uses. The proposal significantly reduces the potential volume of traffic from that of the permitted residential density and that of the proposed uses.
- 2) The Exhibit "A" legal description for this rezoning request has been revised and accepted by the Fayetteville GIS division, and is included for your information.
- 3) The applicant requests a 15-year time frame in which to build the maximum of four log cabins to be used in the conjunction with the Pratt Place Inn. The conditions of approval drafted by staff (Condition #15) currently states that the cabins and the Innkeeper house are to begin construction within three years of the Large Scale Development approval by the Planning Commission. This request would revise condition #15 to allow for a period of 15 years for the four cabins to be constructed.
- 4) Staff has contacted the applicant regarding placing Planning Areas 2 and 3 and a portion of Planning Area 1 into a Conservation Easement, to be administered by a third party land trust, at the request of a City Council member. Mr. Archer, the applicant, has received my request and has stated that he will be contacting me shortly. I will pass this information along to the Mayor and City Council as it becomes available.

Please let me know if you have any questions.

Pratt Place
Summary of Multi-Use Trip Generation
Average Weekday Driveway Volumes
September 27, 2005

Land Use	Size	24 Hour	AM Pk Hour		PM Pk Hour	
		Two-Way Volume	Enter	Exit	Enter	Exit
Single Family Detached Housing						
	4 Dwelling Units	38	1	2	3	1
Hotel	12 Rooms	99	4	3	4	3
Quality Restaurant	60 Seats	172	0	0	10	5
Recreation Community Center						
	6 Th.Gr.Sq.Ft.	137	5	3	4	7
Total		<u>446</u>	10	8	21	16

Note: A zero indicates no data available.
Source: Institute of Transportation Engineers
Trip Generation, 6th Edition, 1997.

TRIP GENERATION BY MICROTRANS

Pratt Place
Summary of Multi-Use Trip Generation
Saturday and Sunday Driveway Volumes
September 27, 2005

Land Use	Size	Saturday			Sunday		
		24 Hr	Peak Hour		24 Hr	Peak Hour	
		2-Way	Vol.	Enter Exit	2-Way	Vol.	Enter Exit
Single Family Detached Housing							
	4 Dwelling Units	40	2	2	35	2	2
Hotel	12 Rooms	98	5	4	71	3	4
Quality Restaurant	60 Seats	169	11	8	129	9	5
Recreation Community Center							
	6 Th.Gr.Sq.Ft.	55	4	4	82	5	4
Total		<u>362</u>	22	18	317	19	15

Note: A zero indicates no data available.
Source: Institute of Transportation Engineers
Trip Generation, 6th Edition, 1997.

TRIP GENERATION BY MICROTRANS

Pratt Place
Summary of Average Vehicle Trip Generation
For 207 Dwelling Units of Single Family Detached Housing
September 27, 2005

	24 Hour Two-Way Volume	7-9 AM Pk Hour		4-6 PM Pk Hour	
		Enter	Exit	Enter	Exit
Average Weekday	<u>1981</u>	39	116	135	75

	24 hour Two-Way Volume	Peak Hour	
		Enter	Exit
Saturday	<u>2089</u>	106	89
Sunday	<u>1817</u>	95	83

Note: A zero indicates no data available.
Source: Institute of Transportation Engineers
Trip Generation, 6th Edition, 1997.

TRIP GENERATION BY MICROTRANS

EXHIBIT "A"
C-PZD 05-1670

TRACT 1:

PART OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 17, TOWNSHIP 16 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID NORTHWEST QUARTER (SW ¼ OF THE NW ¼), THENCE SOUTH 88° 58' 47" WEST ALONG THE SOUTH LINE OF SAID SW ¼ OF THE NW ¼ SOUTH 330.00 FEET TO THE POINT OF BEGINNING AND RUN THENCE ALONG SAID SOUTH LINE SOUTH 88° 58' 47" WEST 986.40 FEET TO THE SOUTHWEST CORNER OF SAID SW ¼ OF THE NW ¼; THENCE NORTH 00° 03' 33" EAST ALONG THE WEST LINE OF SAID SW ¼ OF THE NW ¼ 132.91 FEET TO THE NORTHWEST CORNER OF SAID SW ¼ OF THE NW ¼; THENCE NORTH 00° 03' 33" EAST ALONG THE WEST LINE OF THE NW ¼ OF THE NW ¼ OF SAID SECTION 17, 660.00 FEET; THENCE NORTH 88° 58' 47" EAST 660.00 FEET; THENCE SOUTH 00° 03' 33" WEST 132.00 FEET; THENCE NORTH 88° 58' 47" EAST 660.00 FEET TO THE EAST LINE OF SAID NW ¼ OF THE NW ¼ THENCE NORTH 00° 03' 33" EAST ALONG SAID EAST LINE 112.00 FEET; THENCE NORTH 88° 58' 47" EAST 480.00 FEET; THENCE SOUTH 00° 03' 33" WEST 640.00 FEET TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE NW ¼ (NE ¼ OF THE NW ¼) OF SAID SECTION 17; THENCE SOUTH 88° 58' 47" WEST ALONG SAID SOUTH LINE 480.00 FEET TO THE SOUTHWEST CORNER OF SAID NE ¼ OF THE NW ¼; THENCE SOUTH 00° 03' 33" WEST ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NW ¼ (SE ¼ OF THE NW ¼) OF SAID SECTION 17, 20.00 FEET; THENCE NORTH 88° 58' 47" EAST 400.00 FEET; THENCE SOUTH 6° 22' 44" WEST 222.40 FEET; THENCE SOUTH 40° 35' 44" WEST 113.90 FEET; THENCE SOUTH 58° 40' 00" WEST 213.70 FEET; THENCE SOUTH 22° 33' 00" WEST 247.04 FEET; THENCE SOUTH 88° 58' 47" WEST 27.75 FEET TO THE WEST LINE OF SAID SE ¼ OF THE NW ¼; THENCE SOUTH 00° 03' 33" WEST ALONG SAID WEST LINE 16.96 FEET; THENCE SOUTH 88° 58' 47" WEST 266.80 FEET; THENCE NORTH 00° 03' 33" EAST 115.00 FEET; THENCE SOUTH 88° 58' 47" WEST 270.00; THENCE SOUTH 00° 03' 33" WEST 270.00 FEET; THENCE NORTH 88° 58' 47" EAST 95.00 FEET; THENCE SOUTH 00° 03' 33" WEST 100.00 FEET; THENCE NORTH 88° 58' 47" EAST 100.00 FEET; THENCE NORTH 00° 03' 33" EAST 100.00 FEET; THENCE NORTH 88° 58' 47" EAST 75.00 FEET; THENCE NORTH 00° 03' 33" EAST 105.00 FEET; THENCE NORTH 88° 58' 47" EAST 266.80 FEET TO THE EAST LINE OF SAID SW ¼ OF THE NW ¼; THENCE SOUTH 00° 03' 33" WEST ALONG SAID EAST LINE 265.00 FEET; THENCE SOUTH 88° 58' 47" WEST 330.00 FEET; THENCE SOUTH 00° 03' 33" WEST 329.00 FEET TO THE POINT OF BEGINNING, CONTAINING 63.86 ACRES, MORE OR LESS.

TRACT 2:

PART OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER (SE ¼ OF THE NW ¼) OF SECTION 17, TOWNSHIP 16 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, DESCRIBED AS FOLLOWS:
COMMENCE AT THE SOUTHWEST CORNER OF SAID SE ¼ OF THE NW ¼;
THENCE NORTH 00° 03' 33" EAST ALONG THE WEST LINE OF SAID SE ¼ OF THE NW ¼ 660.00 FEET; THENCE NORTH 88° 58' 47" EAST 317.00 FEET TO THE WEST LINE OF PRATT WOODS SUBDIVISION AS SHOWN IN PLAT RECORD 12-48 OF THE RECORDS OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF WASHINGTON COUNTY; THENCE ALONG SAID WEST LINE OF PRATT WOODS SUBDIVISION NORTH 00° 13' 25" EAST 305.20 FEET TO THE POINT OF BEGINNING AND RUN THENCE NORTH 00° 13' 25" EAST 34.10 FEET TO A ROAD, THENCE WITH THE EAST LINE OF SAID ROAD NORTH 38° 34' 00" EAST 113.9 FEET; THENCE NORTH 4° 21' 00" EAST 222.40 FEET TO A FENCE ALONG THE SOUTH SIDE OF MARKHAM ROAD; THENCE NORTH 88° 58' 47" EAST 913.00 FEET TO THE EAST LINE OF SAID SE ¼ OF THE NW ¼; THENCE ALONG SAID EAST LINE SOUTH 00° 47' 51" WEST 256.21 FEET TO THE NORTH LINE OF PRATT WOODS SUBDIVISION, THENCE ALONG SAID NORTH LINE THE FOLLOWING SIXTEEN COURSES: THENCE NORTH 41° 17' 57" WEST 76.78 FEET; THENCE NORTH 59° 38' 40" WEST 64.85 FEET; THENCE NORTH 80° 31' 33" WEST 77.14 FEET; THENCE NORTH 51° 01' 58" WEST 34.56 FEET; THENCE SOUTH 84° 18' 57" WEST 48.85 FEET; THENCE SOUTH 62° 23' 46" WEST 82.89 FEET; THENCE SOUTH 28° 24' 54" WEST 56.24 FEET; THENCE NORTH 84° 38' 35" WEST 64.07 FEET; THENCE SOUTH 85° 26' 22" WEST 110.16 FEET; THENCE NORTH 72° 48' 32" WEST 57.76 FEET; THENCE SOUTH 68° 24' 25" WEST 110.51 FEET; THENCE SOUTH 82° 35' 13" WEST 72.06 FEET; THENCE SOUTH 72° 12' 26" WEST 67.51 FEET; THENCE SOUTH 27° 34' 06" WEST 54.77 FEET; THENCE SOUTH 85° 05' 37" WEST 70.39 FEET; THENCE SOUTH 70° 56' 40" WEST 80.54 FEET TO THE POINT OF BEGINNING, CONTAINING 4.57 ACRES, MORE OR LESS.

TRACT 3

PART OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER (NE ¼ OF THE NW ¼) OF SECTION 17, TOWNSHIP 16 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, DESCRIBED AS FOLLOWS:
COMMENCE AT THE SOUTHEAST CORNER OF SAID NE ¼ OF THE NW ¼, THENCE NORTH 320.00 FEET; THENCE WEST 499.65 FEET TO THE EAST RIGHT OF WAY LINE OF CROSS AVENUE; THENCE SOUTH ALONG SAID EAST RIGHT OF WAY LINE 320.00 FEET; THENCE EAST 499.65 FEET TO THE POINT OF BEGINNING, CONTAINING 3.67 ACRES, MORE OR LESS.

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C. 1
Sales and Use Tax Refunding and Capital
Improvement Bonds, Series 2005 A -
Wastewater Treatment
Page 1 of 14

4-Oct-05

City Council Meeting Date

Stephen Davis

Submitted By

FIS Director

Division

Finance & Internal Services

Department

Action Required:

Approval of a bond ordinance authorizing the Mayor to execute a bond purchase agreement authorizing the issuance of up-to \$27 million in Sales and Use Tax Refunding and Capital Improvement Bonds to be used to fund a portion of the costs associated with the Wastewater System Improvements Project (West-side Treatment Plant) and authorize City Staff to prepare the required budget amendments/payments to implement the bond purchase agreement.

Debt Service Funded By a Dedicated

3/4% Sales & Use Tax

Cost of this request

Account Number

Project Number

Category/Project Budget

Funds Used to Date

Remaining Balance

WSIP

Program Category / Project Name

Program / Project Category Name

Wastewater Construction Improvement

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

Previous Ordinance or Resolution #

4624, 4389 &
4327 and 4718

Original Contract Date:

Original Contract Number:

Received in City Clerk's Office

Received in Mayor's Office

Department Director

City Attorney

Finance and Internal Service Director

Mayor

Comments:

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

C. 1
Sales and Use Tax Refunding and Capital
Improvement Bonds, Series 2005 A -
Wastewater Treatment
Page 2 of 14

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Coody and Fayetteville City Council

FROM: Stephen Davis, Finance & Internal Services Director 

DATE: September 21, 2005

SUBJECT: **Bond Ordinance – Wastewater System Improvements Project Sales & Use Tax Refunding and Capital Improvement Bonds 2005A**

Recommendation

Approval of a bond ordinance authorizing the Mayor to execute a bond purchase agreement authorizing the City to issue refunding bonds in the amount of \$27 million and capital improvements bonds in the amount of \$65 million to be used to fund a portion of the costs associated with the Wastewater System Improvements Project (West-side Treatment Plant and associated Lines/Lift Stations) and authorize City Staff to prepare the required budget amendments/payments to implement the bond purchase agreement.

Background/Discussion

Fayetteville citizens by public vote authorized the issuance of up-to \$125 million in sales tax backed bonds to fund the projects costs associated with the WSIP improvements. This request will utilize the remaining voter authorization for the sales tax backed bond issues.

Budget Impact

The annual debt service cost is included in the City's Adopted Budget.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY'S NOT TO EXCEED (1) \$27,000,000 OF SALES AND USE TAX REFUNDING AND CAPITAL IMPROVEMENT BONDS, SERIES 2005A, AND (2) \$65,000,000 OF SALES AND USE TAX CAPITAL IMPROVEMENT BONDS, SERIES 2005B, FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING SALES AND USE TAX CAPITAL IMPROVEMENT BONDS, SERIES 2004, AND FINANCING A PORTION OF THE COST OF IMPROVEMENTS TO THE CITY'S WASTEWATER TREATMENT, SEWERAGE AND RELATED FACILITIES; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE PURSUANT TO WHICH THE SERIES 2005 BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE SERIES 2005 BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2005 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT PROVIDING FOR THE DEFEASANCE AND REDEMPTION OF THE SERIES 2004 BONDS; AND PRESCRIBING OTHER MATTERS RELATING THERETO

WHEREAS, the City Council of the City of Fayetteville, Arkansas (the "City") has determined that there is a great need for a source of revenue to finance the costs of acquisition, construction, reconstruction, extension, improving and equipping of wastewater treatment plants, sewerage and related facilities (the "Project"); and

WHEREAS, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas ("Amendment 62") and Arkansas Code Annotated (1998 Repl. & 2005 Supp.) Sections 14-164-301 *et seq.* (as from time to time amended, the "Local Government Bond Act"), to issue and sell its capital improvement bonds to finance the costs of various capital improvements such as those comprising the Project, which capital improvement bonds may be secured by and payable from the receipts of the special city-wide sales and use tax authorized by the Local Government Bond Act; and

WHEREAS, pursuant to the provisions of Ordinance No. 4327 of the City, adopted and approved on August 7, 2001 (the "Election Ordinance"), there was submitted to the qualified electors of the City the question of the issuance of not to exceed \$125,000,000 in aggregate principal amount of capital improvement bonds pursuant to Amendment 62 and the Local

Government Bond Act to finance all or a portion of the Project improvements described in the Election Ordinance, said bonds to be secured by a pledge of and lien upon all of the receipts of a special city-wide sales and use tax levied at the rate of three-quarters of one percent (0.75%) pursuant to the Local Government Bond Act (the "Sales and Use Tax"); and

WHEREAS, at a special election held November 6, 2001, a majority of the qualified electors of the City voting on the question approved the issuance of said capital improvement bonds (and the corresponding levy of the Sales and Use Tax and the pledge of Sales and Use Tax receipts to the payment of the capital improvement bonds); and

WHEREAS, pursuant to such authority, the City has previously issued (1) its \$25,000,000 Sales and Use Tax Capital Improvement Bonds, Series 2002 (the "Series 2002 Bonds"), and (2) its \$35,000,000 Sales and Use Tax Capital Improvement Bonds, Series 2004 (the "Series 2004 Bonds"), in order to provide for the funding of initial portions of the Project; and

WHEREAS, the Series 2002 Bonds have been paid in full from Sales and Use Tax Receipts and the Series 2004 Bonds are presently outstanding in the aggregate principal amount of \$34,250,000; and

WHEREAS, as authorized under the provisions of Amendment 62 and the Local Government Bond Act and as approved by the qualified electors of the City, the City has now determined to issue and sell (1) its Sales and Use Tax Refunding and Capital Improvement Bonds, Series 2005A, in principal amount not to exceed \$27,000,000 (the "Series 2005A Bonds"), and (2) its Sales and Use Tax Capital Improvement Bonds, Series 2005B, in principal amount not to exceed \$65,000,000 (the "Series 2005B Bonds," and together with the Series 2005A Bonds, the "Series 2005 Bonds") in order to defease all of the outstanding Series 2004 Bonds and to provide additional funding for portions of the Project; and

WHEREAS, the Series 2005A Bonds and the Series 2005B Bonds will be issued and secured by the Sales and Use Tax receipts on a parity basis; and

WHEREAS, the City has made arrangements for the sale of the Series 2005 Bonds to Stephens Inc., Fayetteville, Arkansas (the "Underwriter"), pursuant to the terms of a Bond Purchase Agreement between the City and the Underwriter (the "Bond Purchase Agreement") in substantially the form presented to and before this meeting;

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

Section 1: Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas and the Local Government Bond Act, there is hereby authorized the issuance of bonds of the City to be designated as (1) "Sales and Use Tax Refunding and Capital Improvement Bonds, Series 2005A" (the "Series 2005A Bonds"), and (2) "Sales and Use Tax Capital Improvement Bonds, Series 2005B" (the "Series 2005B Bonds"). The Series 2005A Bonds shall be issued in the original

aggregate principal amount of not to exceed Twenty-Seven Million Dollars (\$27,000,000), shall mature not later than December 1, 2011, and shall bear interest at the rates specified in the Bond Purchase Agreement. The Series 2005B Bonds shall be issued in the original aggregate principal amount of not to exceed Sixty-Five Million Dollars (\$65,000,000), shall mature not later than December 1, 2019, and shall bear interest at the rates specified in the Bond Purchase Agreement. The true interest cost of the Series 2005 Bonds to the City, including the interest rates borne by the Series 2005 Bonds and the costs of issuance and any bond insurance premium funded with proceeds of the Series 2005 Bonds, will not exceed 4.00% per annum, and no Series 2005 Bond will bear a coupon interest rate in excess of 4.00% per annum. The proceeds of the Series 2005 Bonds will be utilized (i) to defease the Series 2004 Bonds, (ii) to finance a portion of the cost of the acquisition, construction, reconstruction, extension, improving and equipping of the Project, (iii) to establish a debt service reserve for the Series 2005 Bonds or to purchase a surety bond for reserve purposes, (iv) to pay premiums for bond insurance, if deemed economically beneficial, and (v) to pay printing, underwriting, legal and other expenses incidental to the issuance of the Series 2005 Bonds. The Series 2005 Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall be subject to redemption prior to maturity, and shall contain such other terms, covenants and conditions, all as set forth in that certain Trust Indenture dated as of November 1, 2005 (the "Indenture"), by and between the City and Simmons First Trust Company, N.A., as trustee (the "Trustee"), to be entered into by the City and the Trustee in substantially the form submitted to this meeting.

The Mayor is hereby authorized and directed to execute and deliver the Series 2005A Bonds and the Series 2005B Bonds, each series to be in substantially the form thereof contained in the Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2005A Bonds and the Series 2005B Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Series 2005A Bonds and the Series 2005B Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Series 2005A Bonds and the Series 2005B Bonds in substantially the form thereof contained in the Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Series 2005A Bonds and the Series 2005B Bonds, their execution to constitute conclusive evidence of such approval.

Section 2: In order to pay the principal of and interest on the Series 2005 Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged all of the receipts of the Sales and Use Tax levied by the Election Ordinance. As permitted under the Indenture, such pledge is made on a parity basis as to the Series 2005A Bonds and the Series 2005B Bonds. The levy and collection of the Sales and Use Tax shall continue until such time as the Series 2005 Bonds are no longer outstanding or sufficient funds are on deposit with the Trustee under the Indenture to redeem the Series 2005 Bonds in full. The City covenants and agrees that all receipts from the Sales and Use Tax will be accounted for separately as special funds on the books of the City, and receipts of said Sales and Use Tax will be deposited and will be used solely as provided in the Indenture.

Section 3: To prescribe the terms and conditions upon which the Series 2005 Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge the Indenture, and the City Clerk is hereby authorized and directed to execute and acknowledge the Indenture and to affix the seal of the City thereto, and the Mayor and the City Clerk are hereby authorized and directed to cause the Indenture to be accepted, executed and acknowledged by the Trustee. The Indenture is hereby approved in substantially the form submitted to this meeting, including, without limitation, the provisions thereof pertaining to the pledge of Sales and Use Tax receipts and the terms of the Series 2005 Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4: There is hereby authorized and approved a Preliminary Official Statement of the City, including the cover page and appendices attached thereto, relating to the Series 2005 Bonds. The Preliminary Official Statement is hereby "deemed final" by the City within the meaning of U.S. Securities and Exchange Commission Rule 15c2-12. The distribution of the Preliminary Official Statement is hereby approved. The Preliminary Official Statement, as amended to conform to the terms of the Bond Purchase Agreement, including Exhibit A thereto, and with such other changes and amendments as are mutually agreed to by the City and the Underwriter, is herein referred to as the "Official Statement," and the Mayor is hereby authorized to execute the Official Statement for and on behalf of the City. The Official Statement is hereby approved in substantially the form of the Preliminary Official Statement submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Official Statement in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes as shall be approved by such persons, the Mayor's execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Preliminary Official Statement is on file with the City Clerk and is available for inspection by any interested person.)

Section 5: In order to prescribe the terms and conditions upon which the Series 2005 Bonds are to be sold to the Underwriter, the Mayor is hereby authorized and directed to execute a Bond Purchase Agreement on behalf of the City, to be dated as of the date of its execution (the "Bond Purchase Agreement"), by and between the City and the Underwriter, and the Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Underwriter and Bond Counsel in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Bond Purchase Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6: In order to provide for continuing disclosure of certain financial and operating information with respect to the Sales and Use Tax and the City in compliance with the provisions of Rule 15c2-12 of the U. S. Securities and Exchange Commission, the Mayor is hereby authorized and directed to execute a Continuing Disclosure Agreement to be dated as of the date of its execution (the "Continuing Disclosure Agreement"), by and between the City and the Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Trustee. The Continuing Disclosure Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Continuing Disclosure Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Continuing Disclosure Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Continuing Disclosure Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 7: In order to provide for the defeasance and redemption of the Series 2004 Bonds, the Mayor is hereby authorized and directed to execute an Escrow Deposit Agreement to be dated as of the date of its execution (the "Escrow Agreement"), by and between the City and Simmons First Trust Company, N.A., as escrow trustee (the "Escrow Trustee"), and the Mayor is hereby authorized and directed to cause the Escrow Agreement to be executed by the Escrow Trustee. The Escrow Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Underwriter, the Escrow Trustee and Bond Counsel in order to complete the Escrow Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Escrow Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Escrow Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 8: In order to secure lower interest rates on the Series 2005A Bonds and the Series 2005B Bonds, the Underwriter has proposed that the City consider the purchase of a policy or policies of bond insurance with a portion of the proceeds of the Series 2005 Bonds, which policy or policies would guarantee the payment of the principal of and interest on the Series 2005 Bonds when due. If deemed economically advantageous by the Mayor, upon the advice of the Underwriter, the Mayor is hereby authorized to execute an insurance commitment and to do any and all things necessary to accomplish the delivery of a bond insurance policy or policies with respect to the Series 2005 Bonds.

In order to that the maximum amount of proceeds of the Series 2005 Bonds be available to pay costs of the Project, the Underwriter has proposed that the City consider the purchase of a surety bond or bonds with a portion of the proceeds of the Series 2005 Bonds, which surety bond or bonds would satisfy the funding requirements of the debt service reserve. If deemed economically advantageous by the Mayor, upon the advice of the Underwriter, the Mayor is hereby authorized to execute a commitment and to do any and all things necessary to accomplish the delivery of a surety bond or bonds with respect to the debt service reserve for the Series 2005 Bonds.

Section 9: The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, sale, execution and delivery of the Series 2005 Bonds and to effect the execution and delivery of the Indenture, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement, the Escrow Agreement and a Tax Regulatory Agreement relating to the tax exemption of interest on the Series 2005 Bonds, and to perform all of the obligations of the City under and pursuant thereto. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 10: Kutak Rock LLP, Little Rock, Arkansas, is hereby appointed to act as Bond Counsel on behalf of the City in connection with the issuance and sale of the Series 2005 Bonds.

Section 11: The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

Section 12: Upon the issuance and delivery of the Series 2005 Bonds, Ordinance No. 4718, adopted and approved by the City Council on July 5, 2005, will be deemed to be repealed. All other ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

PASSED and APPROVED this 4th day of October, 2005.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

City of Fayetteville

Presentation
for

Financing
Wastewater System
Improvements

Stephens Inc.
Investment Bankers



Objectives



- Provide flexibility in construction contract procurement.
- Maximize the funds available for project construction.
- Minimize the term of the financing in order to structure a cost effective approach to fund capital projects.

Assumptions



- 2005 $\frac{3}{4}\%$ Sales Tax Collections: \$11,400,000
- Annual Sales Tax Growth Rate: 4.50%
- Net Interest Rate: 3.75%
- Construction Fund Investment Rate: 3.50%
- Construction Period: 36 months

Stephens Inc.
Investment Bankers

Structure



- Two Series of Bonds

- Series A \$26,235,000 Refunding and Capital Improvement Bonds
- Series B \$65,000,000 Capital Improvement Bonds

- Scheduled Maturity

- Series A December 1, 2010
- Series B December 1, 2018

- Projected Payoff May 1, 2014

Stephens Inc.
Investment Bankers

Results



- Allows flexibility in contract procurement process.
- Provides an additional \$6.7 million in project funds as compared to a revolving loan financing (\$2.2 million in bond proceeds and \$4.5 million in construction fund investment earnings).
- Debt is projected to payoff in the first half of 2014 approximately 120 days later than the projected revolving loan fund payoff.

Stephens Inc.
Investment Bankers

Results



- Cost / Benefit

Cost – Extend debt for approximately 120 days for approximately \$5,404,000 in Sales Tax Collections in 2014.

Benefits – Additional project funds of approximately \$6,700,000.

Stephens Inc.
Investment Bankers

Added at
Agenda Session

9/27/05

C.2.

ALDERMAN AGENDA REQUEST FORM

FOR: COUNCIL MEETING OF October 4, 2005

FROM: Alderman Don Marr

ORDINANCE OR RESOLUTION TITLE AND SUBJECT: An Ordinance waiving the requirements of formal competitive bidding and approving a cost share in the amount of \$25,000.00 with the U. S. Environmental Protection Agency (EPA) and Audubon Arkansas to fund the collection of Water Quality Data along College Branch in the City of Fayetteville to assist staff with storm water ordinance revisions in compliance with federal MS4 storm water regulations.

APPROVED FOR AGENDA:


Don Marr, Alderman

9-27-05
Date


David J. Whitaker
Assistant City Attorney (as to form only)

9/27/05
Date



The City of Fayetteville, Arkansas

City Council Meeting Date:

City Council Agenda Memo

To: Mayor and City Council

From: Don Marr, Ward 2 City Councilor

Assisted By: Melissa Terry, Audubon Society and Stephen Davis, City of Fayetteville

Date: September 27, 2005

Subject: Urban Water Quality Data Collection Funding

Recommendation:

Allocation of \$25,000 as cost share towards \$86,720 for water quality monitoring on College Branch, an urban tributary stream of Town Branch and the West Fork of the White River.

Background:

The Environmental Protection Agency has declared urban storm water run-off as one of the biggest contributors of non-point source (NPS) pollution in streams and rivers of the United States. This request comes forward from a grant awarded by the Environmental Protection Agency to Audubon Arkansas and Washington County for the purpose of stream restoration at the section of College Branch that runs through the U of A campus. This stream originates on the U of A campus and then flows into the City under 6th street, through the Town Branch neighborhood and confluences with Town Branch just south of 15th Street.

The purpose of the funds requested is to measure NPS pollution by collecting water quality data at 6th street and 15th, testing for chemicals, bacteria and sediments within the sampled section. This data can provide the City with valuable urban stream data that can assist staff with storm water ordinance revisions and compliance with federal MS4 storm water regulations. Additionally, the data collected at these two sites will provide information regarding water quality as it leaves the U of A campus and as it flows through a residential neighborhood. All of data collected can provide elected leaders and staff with scientifically-verified information from which future NPS pollution prevention practices, policies and procedures can be measured.

Additionally, flow and velocity data collected from these two sites will help staff (particularly Parks staff) understand the rates of urban stream bank erosion and provide these staff members with information relevant to erosion prevention planning within City parks and other urban streams.

Budget Impact:

The City funds for this Cost-Share are budgeted in Project #02097 Drainage Study/Phase II Stormwater Management.

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING A COST SHARE IN THE AMOUNT OF \$25,000.00 WITH THE U. S. ENVIRONMENTAL PROTECTION AGENCY (EPA) AND AUDUBON ARKANSAS TO FUND THE COLLECTION OF WATER QUALITY DATA ALONG COLLEGE BRANCH IN THE CITY OF FAYETTEVILLE TO ASSIST STAFF WITH STORM WATER ORDINANCE REVISIONS IN COMPLIANCE WITH FEDERAL MS4 STORM WATER REGULATIONS.

WHEREAS, cost-sharing with the U. S. Environmental Protection Agency (EPA) and Audubon Arkansas to fund the collection of Water Quality Data will avoid the added cost and unnecessary duplication of effort which would arise from the formal competitive bidding process, and;

WHEREAS, access to such Water Quality Data will greatly assist staff with storm water ordinance revisions necessitated by federal MS4 storm water regulations.

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 determines an exceptional situation exists in which competitive bidding is deemed not feasible or practical and therefore waives the requirements of formal competitive bidding, and approves a cost share in the amount of \$25,000.00 with the U. S. Environmental Protection Agency (EPA) and Audubon Arkansas to fund the collection of Water Quality Data along College Branch in the City of Fayetteville to assist staff with storm water ordinance revisions in compliance with federal MS4 storm water regulations.

PASSED and APPROVED this 4th day of October, 2005.

APPROVED

By: _____

DAN COODY, Mayor

ATTEST:

By: _____

SONDRA SMITH, City Clerk

WATER QUALITY SAMPLING OF THE COLLEGE BRANCH - A

INTRODUCTION

Water quality monitoring of the College Branch tributary to Town Branch creek will be conducted by the Arkansas Water Resource Center – Water Quality Lab. Monitoring will consist of grab water samples taken during base-flow conditions at four sites, stream bottom sediment samples taken near the lowest site and a data collection sonde at the lowest site.

SCOPE

A data sonde measuring turbidity, conductivity and temperature will be installed at the Sixth street intersection with College Branch. The sonde will be enclosed in a permanent enclosure. It will be set up to collect and store results every hour. The sonde will be installed, maintained, and calibrated by AWRC-WQL personnel. It will be calibrated once per month.

Grab water samples will be collected at four sites on College Branch every two weeks during base-flow conditions. These samples will be collected by others and delivered to the WQL for analysis. The analyses performed will be alkalinity, fluoride, chloride, nitrate, phosphate, sulfate, ammonia, total suspended solids, suspended solids concentration, turbidity, total coliform and e coli. The sampling sites will be at the college branch junction with: Maple, Leroy Pond Road, the parking lot below Carlson Terrace, and Sixth Street. Once per quarter a blank and a duplicate sample will be collected at one of the sites and analyzed for all parameters. These results will be used to assure field quality control. The sampling point will be alternated so that each of the four points will have a duplicate and blank analysis associated with it.

Benthic sediment samples will be collected 4 times per year near the Sixth Street sampling point. Sediment samples will be collected by others and delivered to the WQL for analysis. Analyses will consist of total aluminum, total cadmium, total sodium, total vanadium, total zinc, total nitrogen, and total phosphorus.

DELIVERABLES

Deliverables will consist of an annual report detailing measurement and analytical results. The report for the first year will detail the relationships between the continuous sonde data and grab sample data. These relationships will be used to estimate annual loadings for TSS and sediment (SSC). Base-flow concentrations of nutrients, sediment and bacteria will be evaluated both temporally (every 2 weeks) and spatially (four sites) for variation and sources. Sediment sample results will be evaluated for concentration of toxic materials with season variation (quarterly samples). This report will be provided at

the end of the first year. A second and third annual report will be provided that details the measurement results from the sonde. Any relationships established during the first year will be continued and the results reported. All data collected will be provided with the report and quality assurance/ quality control results from the field and the lab will be provided with the data.

BUDGET - University of Arkansas - College Branch

Proposed to (Sponsor):

UA Lead Investigator:

Proposed Project Period:

Washington County
Marc Nelson
7/1/05-6/30/08

Proposed Project Period:		YEAR 1		YEAR 2		CUMULATIVE	
		Grant	UA	Grant	UA	Grant	UA
I. PERSONNEL COSTS							
A. SALARIES & WAGES							
PI acad or cal year salary		5,000		3,000		11,000	0
PI summer salary						0	0
Co-PI:						0	0
Co-PI:						0	0
Co-PI:						0	0
Nclassified: Cash 2000		2,000		2,000		6,000	0
						0	0
GRA(s)	cost basis:	0		0		0	0
Hourly non-student(s)	cost basis:	0		0		0	0
Undergraduate(s)	cost basis:	0		0		0	0
Sub-total S&W		7,000	0	5,000	0	17,000	\$0

B. FRINGE BENEFITS

UA RATE
24.536%
17.434%
27.134%
24.536%
29.410%

GRA	3.594%	0	0	0	0	0	0	0	0	0
Hourly non-student	8.399%	0	0	0	0	0	0	0	0	0
Hourly undergraduate	0.393%	0	0	0	0	0	0	0	0	0
Sub-total FB		1,718	0	1,227	0	1,227	0	1,227	\$4,171	\$0
II. TRAVEL		8,718	0	6,227	0	6,227	0	6,227	\$21,171	\$0
A. Domestic Travel										\$0
B. Foreign Travel									\$0	\$0
III. EQUIPMENT (capitalized at \$2500 threshold)		5,000							5,000	\$0
IV. GRA TUITION (Per University Policy)									\$0	\$0
V. SUBCONTRACT(S)									\$0	\$0
VI. OTHER DIRECT COSTS									\$0	\$0
A. Materials and Supplies: batteries,tubing,dist.		250	250					250	750	0
B. Publication of Research									0	0
C. Communication Costs									0	0
D. Other: Sample analyses		13,500	0					0	13,500	0
VIII. TOTAL DIRECT COSTS		27,468	0	6,477	0	6,477	0	6,477	40,421	0
Modified Total Direct Costs (MTDC)		22,468	0	6,477	0	6,477	0	6,477	35,421	0
F & A COST (MTDC x Rate)	Rate:	4,718	2,090	1,360	602	1,360	602	1,360	\$7,438	3,294
TOTAL PROJECT COST		32,186	2,090	7,837	602	7,837	602	7,837	47,859	3,294

Total Other Direct Costs

Modified Total Direct Costs (MTDC)

WATER QUALITY SAMPLING OF THE COLLEGE BRANCH - A

INTRODUCTION

Water quality monitoring of the College Branch tributary to Town Branch creek will be conducted by the Arkansas Water Resource Center – Water Quality Lab. Monitoring will consist of grab water samples taken during base-flow conditions at four sites, stream bottom sediment samples taken near the lowest site and a data collection sonde at the lowest site.

SCOPE

A data sonde measuring turbidity, conductivity and temperature will be installed at the Sixth street intersection with College Branch. The sonde will be enclosed in a permanent enclosure. It will be set up to collect and store results every hour. The sonde will be installed, maintained, and calibrated by AWRC-WQL personnel. It will be calibrated once per month.

Grab water samples will be collected at four sites on College Branch every two weeks during base-flow conditions. These samples will be collected by others and delivered to the WQL for analysis. The analyses performed will be alkalinity, fluoride, chloride, nitrate, phosphate, sulfate, ammonia, total suspended solids, suspended solids concentration, turbidity, total coliform and e coli. The sampling sites will be at the college branch junction with: Maple, Leroy Pond Road, the parking lot below Carlson Terrace, and Sixth Street. Once per quarter a blank and a duplicate sample will be collected at one of the sites and analyzed for all parameters. These results will be used to assure field quality control. The sampling point will be alternated so that each of the four points will have a duplicate and blank analysis associated with it.

Benthic sediment samples will be collected 4 times per year near the Sixth Street sampling point. Sediment samples will be collected by others and delivered to the WQL for analysis. Analyses will consist of total aluminum, total cadmium, total sodium, total vanadium, total zinc, total nitrogen, and total phosphorus.

DELIVERABLES

Deliverables will consist of an annual report detailing measurement and analytical results. The report for the first year will detail the relationships between the continuous sonde data and grab sample data. These relationships will be used to estimate annual loadings for TSS and sediment (SSC). Base-flow concentrations of nutrients, sediment and bacteria will be evaluated both temporally (every 2 weeks) and spatially (four sites) for variation and sources. Sediment sample results will be evaluated for concentration of toxic materials with season variation (quarterly samples). This report will be provided at

the end of the first year. A second and third annual report will be provided that details the measurement results from the sonde. Any relationships established during the first year will be continued and the results reported. All data collected will be provided with the report and quality assurance/ quality control results from the field and the lab will be provided with the data.

GRA	3.594%	0	0	0	0	0	0	0	0	0
Hourly non-student	8.399%	0	0	0	0	0	0	0	0	0
Hourly undergraduate	0.393%	0	0	0	0	0	0	0	0	0
Sub-total FB		1,718	0	1,227	0	1,227	0	1,227	\$4,171	\$0
II. TRAVEL	Total Salaries and Benefits	8,718	0	6,227	0	6,227	0	6,227	\$21,171	\$0
A. Domestic Travel										\$0
B. Foreign Travel									\$0	\$0
III. EQUIPMENT (capitalized at \$2500 threshold)		5,000							5,000	\$0
IV. GRA TUITION (Per University Policy)										\$0
V. SUBCONTRACT(S)										\$0
VI. OTHER DIRECT COSTS										\$0
A. Materials and Supplies: batteries,tubing,dist.		250		250				250	750	0
B. Publication of Research									0	0
C. Communication Costs									0	0
D. Other: Sample analyses		13,500		0				0	13,500	0
VIII. TOTAL DIRECT COSTS	Total Other Direct Costs	13,750	0	250	0	250	0	250	\$14,250	\$0
Modified Total Direct Costs (MTDC)		27,468	0	6,477	0	6,477	0	6,477	40,421	0
F & A COST (MTDC x Rate)	Rate:	4,718	2,090	1,360	602	1,360	602	1,360	\$7,438	3,294
TOTAL PROJECT COST		32,186	2,090	7,837	602	7,837	602	7,837	47,859	3,294

WATER QUALITY SAMPLING OF THE COLLEGE BRANCH - B

INTRODUCTION

A water quality monitoring station was established on the College Branch tributary to Town Branch creek at the 6th Street Bridge. The site consists of a sonde measuring conductivity and turbidity and grab samples collected every two weeks for analysis of TSS. This proposal is to add additional parameters at this site and add an additional site at College Branch and 15th Street.

SCOPE

Grab water samples will be collected at four sites on College Branch every two weeks during base-flow conditions. These samples will be collected by others and delivered to the WQL for analysis. The analyses performed will be alkalinity, fluoride, chloride, nitrate, phosphate, sulfate, ammonia, turbidity, total coliform and e coli. The sampling sites will be at the College Branch junction with: Maple, Leroy Pond Road, the parking lot below Carlson Terrace, and Sixth Street. Once per quarter a blank and a duplicate sample will be collected at one of the sites and analyzed for all parameters. These results will be used to assure field quality control. The sampling point will be alternated so that each of the four points will have a duplicate and blank analysis associated with it.

A data sonde measuring turbidity, conductivity and temperature will be installed at the 15th street intersection with College Branch. The sonde will be enclosed in a permanent enclosure. It will be set up to collect and store measurements every hour. The sonde will be installed, maintained, and calibrated by AWRC-WQL personnel. It will be calibrated once per month. It will operate in conjunction with USGS gauging equipment at the same location.

Grab water samples will be collected near the same site on College Branch at 15th Street every two weeks during base-flow conditions. All samples will be collected and analyzed during the first year of the project. These samples will be collected AWRC personnel and delivered to the WQL for analysis. The analyses performed will be alkalinity, fluoride, chloride, nitrate, phosphate, sulfate, ammonia, total suspended solids, suspended solids concentration, turbidity, total coliform and e coli. Once per quarter a blank and a duplicate sample will be collected at the site and analyzed for all parameters. These results will be used to assure field quality control.

DELIVERABLES

Deliverables will consist of an annual report detailing measurement and analytical results. The report for the first year will detail the relationships between the continuous sonde data and grab sample data. These relationships will be used to estimate annual loadings

for TSS and sediment (SSC). This report will be provided at the end of the first year. A second and third annual report will be provided that details the measurement results from the sonde. Any relationships established during the first year will be continued and the results reported. All data collected will be provided with the report and quality assurance/quality control results from the field and the lab will be provided with the data.

BUDGET - University of Arkansas - College Branch

Proposed to (Sponsor):

UA Lead Investigator:

Proposed Project Period:

Washington County, Melissa Terry (contact)

Marc Nelson

11/1/05-10/30/08

	#	PERSON-MONTHS			YEAR 1		YEAR 2		YEAR 3		CUMULATIVE		
		CAL	AY	SMR	Grant	UA	Request	UA	Grant	UA	Request	UA	
													Request
I. PERSONNEL COSTS													
A. SALARIES & WAGES													
PI acad or cal year salary		1			2,000		1,000		1,000		4,000	0	0
PI summer salary											0	0	0
Co-PI;											0	0	0
Co-PI;											0	0	0
Co-PI;											0	0	0
Nclassified: Cash 2000		1.75			3,600		1,000		1,000		5,600	0	0
GRA(s)					0		0		0		0	0	0
Hourly non-student(s)					0		0		0		0	0	0
Undergraduate(s)					0		0		0		0	0	0
Sub-total S&W					5,600		2,000		2,000		\$9,600	\$0	\$0
B. FRINGE BENEFITS													
PI, academic year					491		245		245		\$0	0	0
PI, summer					0		0		0		\$981	0	0
Co-PI 1					0		0		0		0	0	0
Co-PI 2					0		0		0		0	0	0
Co-PI 3					0		0		0		0	0	0
non-classified personnel					883		245		245		1,472	0	0

Classified	29.410%	0	0	0	0	0
GRA	3.594%	0	0	0	0	0
Hourly non-student	8.399%	0	0	0	0	0
Hourly undergraduate	0.393%	0	0	0	0	0
Sub-total FB		1,374	491	491	2,453	\$0
Total Salaries and Benefits		6,974	2,491	2,491	\$11,955	\$0
II. TRAVEL						
A. Domestic Travel		200	200	200	0	\$0
B. Foreign Travel					\$0	\$0
III. EQUIPMENT (capitalized at \$2500 threshold)		5,000			5,000	\$0
IV. GRA TUITION (Per University Policy)						\$0
V. SUBCONTRACT(S)		1,000	1,000	1,000	\$3,000	\$0
VI. OTHER DIRECT COSTS						
A. Materials and Supplies: batteries,tubing,dist.		250	250	250	\$750	0
B. Publication of Research					0	0
C. Communication Costs					0	0
D. Other: Sample analyses		12,200	0	0	\$12,200	0
Total Other Direct Costs		12,450	250	250	\$12,950	\$0
VIII. TOTAL DIRECT COSTS		25,624	3,941	3,941	\$33,505	0
Modified Total Direct Costs (MTDC)		19,624	2,941	2,941	\$25,505	0
F & A COST (MTDC x Rate)	Rate:	4,121	618	618	5,356	5,101
TOTAL PROJECT COST		29,745	2,090	4,559	602	5,101



Capital Strength. Triple-A Performance.

VIA COURIER

November 8, 2005

Ord
4768

MBIA Insurance Corporation
113 King Street, Armonk, NY 10504
Tel 914-273-4545
www.mbia.com

C-3

RECEIVED

NOV 09 2005

CITY OF FAYETTEVILLE
MAYOR'S OFFICE

Steve Davis
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

RE: \$27,000,000 City of Fayetteville, Arkansas, Sales and Use Tax Refunding and Capital Improvement Bonds, Series 2005A

\$1,350,000 Debt Service Reserve Fund for the \$27,000,000 City of Fayetteville, Arkansas, Sales and Use Tax Refunding and Capital Improvement Bonds, Series 2005A

\$45,000,000 City of Fayetteville, Arkansas, Sales and Use Tax Capital Improvement Bonds, Series 2005B

\$2,250,000 Debt Service Reserve Fund for the \$27,000,000 City of Fayetteville, Arkansas, Sales and Use Tax Capital Improvement Bonds, Series 2005B

Dear Mr. Davis:

Enclosed please find the following documents for the referenced issues:

original
returned

1. Two revised Commitments for the Financial Guaranty Insurance Policy (the "Policy") and two revised Commitments for the Debt Service Reserve Fund Surety Bond (the "Surety Bond"). Please execute each document and return one of the original Commitments for the Policy and the Surety Bond to our offices in the enclosed self-addressed stamped envelope. The second set of original Commitments should be retained for your files;
2. Disclosure language and a form of the Financial Guaranty Insurance Policy (the "Policy") for inclusion in the Official Statement;
3. A form of our Statement of Insurance for printing on the Obligations; and
4. A form of our "Payments Under the Policy/Other Required Provisions" for inclusion in your authorizing document. In the event the authorizing document is completed prior to choosing MBIA as the insurer, please have the Issuer and Paying Agent sign the attached "Schedule A".

Please note that all of the conditions to the Commitment must be met prior to the Policy being released by MBIA. All materials and questions regarding the conditions should be directed to the attention of Karen Wagner, whose direct dial telephone number is (914) 765-3213.



November 8, 2005
Steve Davis
City of Fayetteville
Page Two

In addition, under no circumstances should any changes be made to Items 2, 3 and 4, nor should any other versions of these materials be used on any financing unless you have direct confirmation from MBIA as to the acceptability of such changes. Confirmation regarding items 2 and 3 may come only from our Documentation and Closing Department or our Legal Department and may be written or verbal. Confirmation regarding item 4 should come from Karen Wagner. Since the responsibility for this information remains with us, please send us drafts prior to the printing of any of these documents for our approval.

The following payments will be due at the closing of the issue. The premium payments in the amount of .224% of total debt service and 1.6% of total surety bond amount, for the Policy and Surety Bond, respectively, should be wired to MBIA's account number 910-2-721728 at JP Morgan Chase Bank, New York, New York on the day of closing. Chase's ABA number is 021000021. MBIA's claims paying ability is rated triple A by Fitch IBCA, Inc., Moody's Investors Service and the Standard and Poor's Rating Group. Inquiries related to ratings on transactions, fees and billing matters should be addressed to the appropriate rating agency.

We would like to thank you for sending a copy of the final debt service schedule for this issue. We would also appreciate receiving three copies of the final Official Statement and three executed unbound copies of the closing transcripts within 60 days of the closing.

Thank you for your cooperation concerning these matters. If you have any questions, please contact our offices.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra R. Lisanti".

Sandra R. Lisanti
Associate
Documentation and Closing Dept.
Phone: (914) 765-3651
Fax: (914) 765-3161/3162
Sandra.Lisanti@mbia.com



**REVISED AS OF NOVEMBER 8, 2005
COMMITMENT TO ISSUE A
FINANCIAL GUARANTY INSURANCE POLICY**

Application No.: 2005-009784-001

Sale Date: November 3, 2005

Program Type: Negotiated DP

Re: \$27,000,000 City of Fayetteville, Arkansas, Sales and Use Tax Refunding and Capital Improvement Bonds, Series 2005A
(the "Obligations")

This commitment to issue a financial guaranty insurance policy (the "Commitment") dated November 8, 2005, constitutes an agreement between CITY OF FAYETTEVILLE (the "Applicant") and MBIA Insurance Corporation (the "Insurer"), a stock insurance company incorporated under the laws of the State of New York.

Based on an approved application dated October 21, 2005, the Insurer agrees, upon satisfaction of the conditions herein, to issue on the earlier of (i) 120 days of said approval date or (ii) on the date of delivery of and payment for the Obligations, a financial guaranty insurance policy (the "Policy") for the Obligations, insuring the payment of principal of and interest on the Obligations when due. The issuance of the Policy shall be subject to the following terms and conditions:

1. Payment by the Applicant, or by the Trustee on behalf of the Applicant, on the date of delivery of and payment for the Obligations, of a nonrefundable premium in the amount of \$67,000 [.224% (premium rate) of \$29,697,586.94 (total debt service), premium rounded to the nearest thousand]. The premium set out in this paragraph shall be the total premium required to be paid on the Policy issued pursuant to this Commitment.

2. The Obligations shall have received the unqualified opinion of bond counsel with respect to the tax-exempt status of interest on the Obligations.

3. There shall have been no material adverse change in the Obligations or the Resolution, Bond Ordinance, Trust Indenture or other official document authorizing the issuance of the Obligations or in the final official statement or other similar document, including the financial statements included therein.

4. There shall have been no material adverse change in any information submitted to the Insurer as a part of the application or subsequently submitted to be a part of the application to the Insurer.

5. No event shall have occurred which would allow any underwriter or any other purchaser of the Obligations not to be required to purchase the Obligations at closing.

6. A Statement of Insurance satisfactory to the Insurer shall be printed on the Obligations.

7. Prior to the delivery of and payment for the Obligations, none of the information or documents submitted as a part of the application to the Insurer shall be determined to contain any untrue or misleading statement of a material fact or fail to state a material fact required to be stated therein or necessary in order to make the statements contained therein not misleading.

8. No material adverse change affecting any security for the Obligations shall have occurred prior to the delivery of and payment for the Obligations.

9. The Insurer's "Payments Under the Policy/Other Required Provisions" (see attached) shall be included in the authorizing document.

10. The Applicant agrees not to use the Insurer's name in any public document including, without limitation, a press release or presentation, announcement or forum without the Insurer's prior consent; provided however, such prohibition on the use of the Insurer's name shall not relate to the use of the Insurer's standard approved form of disclosure in public documents issued in connection with the current Obligations to be issued in accordance with the terms of the Commitment; and provided further such prohibition shall not apply to the use of the Insurer's name in order to comply with public notice, public meeting or public reporting requirements.

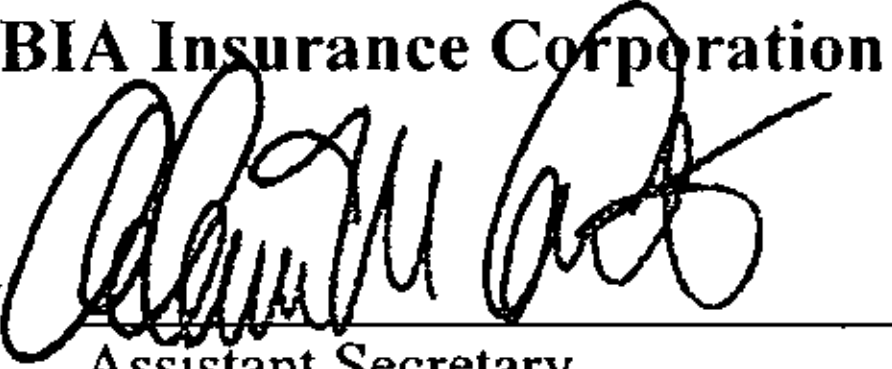
11. This Commitment may be signed in counterpart by the parties hereto.

12. Compliance with the Insurer's following conditions (see attached).

- a. General Document Provisions;
- b. List of Permissible Investments for Indentured Funds; and
- c. Standard Conditions for Refunding.

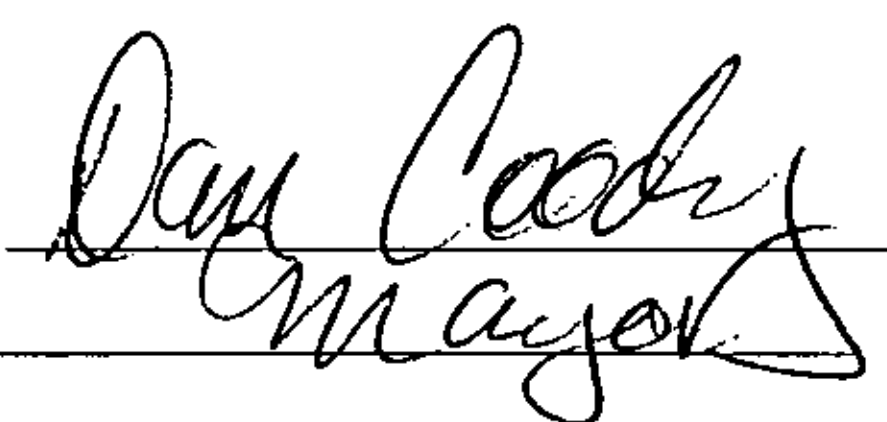
Dated this 8th day of November, 2005.

MBIA Insurance Corporation

By: 

Assistant Secretary

CITY OF FAYETTEVILLE

By: 

Title: Mayor

GENERAL DOCUMENT PROVISIONS

- A. Notice to the Insurer The basic legal documents must provide that any notices required to be given by any party should also be given to the Insurer, Attn: Insured Portfolio Management.
- B. Amendments. In the basic legal document, there are usually two methods of amendment. The first, which typically does not require the consent of the bondholders, is for amendments which will cure ambiguities, correct formal defects or add to the security of the financing. The second, in which bondholder consent is a prerequisite, covers the more substantive types of amendments. For all financings, the Insurer must be given notice of any amendments that are of the first type and the Insurer's consent must be required for all amendments of the second type. All documents must contain a provision which requires copies of any amendments to such documents which are consented to by the Insurer to be sent to Standard & Poor's.
- C. Supplemental Legal Document. If the basic legal document provides for a supplemental legal document to be issued for reasons other than (1) a refunding to obtain savings; or (2) the issuance of additional bonds pursuant to an additional bonds test, there must be a requirement that the Insurer's consent also be obtained prior to the issuance of any additional bonds and/or execution of such supplemental legal document.
- D. Events of Default and Remedies. All documents normally contain provisions which define the events of default and which prescribe the remedies that may be exercised upon the occurrence of an event of default. At a minimum, events of default will be defined as follows:
1. the issuer/obligor fails to pay principal when due;
 2. the issuer/obligor fails to pay interest when due;
 3. the issuer/obligor fails to observe any other covenant or condition of the document and such failure continues for 30 days and
 4. the issuer/obligor declares bankruptcy.

The Insurer, acting alone, shall have the right to direct all remedies in the event of a default. The Insurer shall be recognized as the registered owner of each bond which it insures for the purposes of exercising all rights and privileges available to bondholders. For bonds which it insures, the Insurer shall have the right to institute any suit, action, or proceeding at law or in equity under the same terms as a bondholder in accordance with applicable provisions of the governing documents. Other than the usual redemption provisions, any acceleration of principal payments must be subject to the Insurer's prior written consent.

- E. Defeasance requires the deposit of:
1. Cash
 2. U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series -- "SLGs")
 3. Direct obligations of the Treasury which have been stripped by the Treasury itself, CATS, TIGRS and similar securities
 4. Resolution Funding Corp. (REFCORP) Only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form are acceptable.
 5. Pre-refunded municipal bonds rated "Aaa" by Moody's and "AAA" by S&P. If however, the issue is only rated by S&P (i.e., there is no Moody's rating), then the pre-refunded bonds must have been pre-refunded with cash, direct U.S. or U.S. guaranteed obligations, or AAA rated pre-refunded municipals to satisfy this condition.

6. Obligations issued by the following agencies which are backed by the full faith and credit of the U.S.
 - a. U.S. Export-Import Bank (Eximbank)
Direct obligations or fully guaranteed certificates of beneficial ownership
 - b. Farmers Home Administration (FmHA)
Certificates of beneficial ownership
 - c. Federal Financing Bank
 - d. General Services Administration
Participation certificates
 - e. U.S. Maritime Administration
Guaranteed Title XI financing
 - f. U.S. Department of Housing and Urban Development (HUD)
Project Notes
Local Authority Bonds
New Communities Debentures - U.S. government guaranteed debentures
U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds

The Insurer shall be provided with an opinion of counsel acceptable to the Insurer that the Obligations have been legally defeased and that the escrow agreement establishing such defeasance operates to legally defease the Obligations within the meaning of the Indenture and the Supplemental Indenture relating to the Obligations. In addition, the Insurer will be entitled to receive (i) 15 business days notice of any advance refunding of the Obligations and (ii) an accountant's report with respect to the sufficiency of the amounts deposited in escrow to defease the Obligations.

F. Agents:

1. In transactions where there is an agent/enhancer (other than the Insurer), the trustee, tender agent (if any), and paying agent (if any) must be commercial banks with trust powers.
2. The remarketing agent must have trust powers if they are responsible for holding moneys or receiving bonds. As an alternative, the documents may provide that if the remarketing agent is removed, resigns or is unable to perform its duties, the trustee must assume the responsibilities of remarketing agent until a substitute acceptable to the Insurer is appointed.

LIST OF PERMISSIBLE INVESTMENTS FOR INDENTURED FUNDS

- A. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.
- B. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):
 - 1. U.S. Export-Import Bank (Eximbank)
Direct obligations or fully guaranteed certificates of beneficial ownership
 - 2. Farmers Home Administration (FmHA)
Certificates of beneficial ownership
 - 3. Federal Financing Bank
 - 4. Federal Housing Administration Debentures (FHA)
 - 5. General Services Administration
Participation certificates
 - 6. Government National Mortgage Association (GNMA or "Ginnie Mae")
GNMA - guaranteed mortgage-backed bonds
GNMA - guaranteed pass-through obligations
(not acceptable for certain cash-flow sensitive issues.)
 - 7. U.S. Maritime Administration
Guaranteed Title XI financing
 - 8. U.S. Department of Housing and Urban Development (HUD)
Project Notes
Local Authority Bonds
New Communities Debentures - U.S. government guaranteed debentures
U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds
- C. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):
 - 1. Federal Home Loan Bank System
Senior debt obligations
 - 2. Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac")
Participation Certificates
Senior debt obligations
 - 3. Federal National Mortgage Association (FNMA or "Fannie Mae")
Mortgage-backed securities and senior debt obligations
 - 4. Student Loan Marketing Association (SLMA or "Sallie Mae")
Senior debt obligations

5. Resolution Funding Corp. (REFCORP) obligations

6. Farm Credit System

Consolidated systemwide bonds and notes

- D. Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAm-G; AAA-m; or AA-m and if rated by Moody's rated Aaa, Aa1 or Aa2.
- E. Certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.
- F. Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF.
- G. Investment Agreements, including GIC's, Forward Purchase Agreements and Reserve Fund Put Agreements acceptable to MBIA (Investment Agreement criteria is available upon request).
- H. Commercial paper rated, at the time of purchase, "Prime - 1" by Moody's and "A-1" or better by S&P.
- I. Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies.
- J. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime - 1" or "A3" or better by Moody's and "A-1" or "A" or better by S&P.
- K. Repurchase Agreements for 30 days or less must follow the following criteria. Repurchase Agreements which exceed 30 days must be acceptable to MBIA (criteria available upon request)

Repurchase agreements provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to a municipal entity (buyer/lender), and the transfer of cash from a municipal entity to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the municipal entity in exchange for the securities at a specified date.

1. Repos must be between the municipal entity and a dealer bank or securities firm

- a. Primary dealers on the Federal Reserve reporting dealer list which are rated A or better by Standard & Poor's Corporation and Moody's Investor Services, or
- b. Banks rated "A" or above by Standard & Poor's Corporation and Moody's Investor Services.

2. The written repo contract must include the following:
 - a. Securities which are acceptable for transfer are:
 - (1) Direct U.S. governments, or
 - (2) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC)
 - b. The term of the repo may be up to 30 days
 - c. The collateral must be delivered to the municipal entity, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).
 - d. Valuation of Collateral
 - (1) The securities must be valued weekly, marked-to-market at current market price plus accrued interest
 - (a) The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.
3. Legal opinion which must be delivered to the municipal entity:
 - a. Repo meets guidelines under state law for legal investment of public funds.

Additional Notes

- (i) There is no list of permitted investments for non-indentured funds. Your own credit judgment and the relevant circumstances (e.g., amount of investment and timing of investment) should dictate what is permissible.
- (ii) Any state administered pool investment fund in which the issuer is statutorily permitted or required to invest will be deemed a permitted investment.
- (iii) DSRF investments should be valued at fair market value and marked to market at least once per year. DSRF investments may not have maturities extending beyond 5 years, except for Investment Agreements approved by the Insurer.

STANDARD CONDITIONS FOR REFUNDINGS

- A. Receipt by the Insurer of the final debt service schedule on the issue within three business days from the sale date.
- B. Receipt, satisfactory review and subsequent oral approval by the Insurer at least ten days in advance of closing of draft copies of:
 - 1. a verification by an independent CPA firm of the sufficiency of the escrow to timely retire the refunded bonds;
 - 2. the escrow securities purchase contracts of SLG subscription forms or open market confirmations; and,
 - 3. the escrow agreement

Final and signed copies of all the above documents to be sent via overnight mail from closing.

An independent CPA firm is defined as a licensed CPA firm acting at arms length of the transaction on behalf of the bondholders. It may not be the underwriter, bond counsel or financial adviser for the refunding issue. The firm must carry errors and omissions insurance. The Insurer reserves the right to review the provider of the verification on a deal by deal basis.

- C. Receipt by the Insurer at least five business days prior to closing of a draft opinion from Bond Counsel (or Special Tax Counsel) to the effect that the refunding bonds are being issued in compliance with state law and that the interest on the refunding bonds is tax-exempt.
 - D. Receipt by the Insurer at least five business days prior to closing of a draft opinion from Bond Counsel stating that the refunded bonds have been legally defeased. (This condition is only applicable in those situations where the refunding issue is legally defeasing the refunded issue.)
- Final executed copies of items C and D to be sent via overnight mail.

- E. If the escrow agreement allows for the substitution of securities in the escrow account, then it should be provided in the escrow agreement that no such substitution may occur unless there has first been delivered to the escrow agent/trustee, (1) a CPA verification that the escrow investments, as substituted, are sufficient to pay debt service, as it becomes due, on the refunded bonds and (2) an opinion of nationally recognized bond counsel to the effect that the substitution is permitted under the documents and the substitution has no adverse effect on the tax-exempt nature of the refunding bonds. See 2 above for the definition of an independent CPA.
- F. Escrow investments must be limited to:
 - 1. Cash
 - 2. U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series -- "SLGS").
 - 3. Direct obligations of the Treasury which have been stripped by the Treasury itself, CATS, TIGRS and similar securities.
 - 4. Resolution Funding Corp. (REFCORP) Only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form are acceptable.
 - 5. Pre-refunded municipal bonds rated "Aaa" by Moody's and "AAA" by S&P. If however, the issue is only rated by S&P (i.e., there is no Moody's rating), then the pre-refunded bonds must have been pre-refunded with cash, direct U.S. or U.S. guaranteed obligations, or AAA rated pre-refunded municipals to satisfy this condition.

6. Obligations issued by the following agencies which are backed by the full faith and credit of the U.S.:

- a. U.S. Export-Import Bank (Eximbank)
Direct obligations or fully guaranteed certificates of beneficial ownership
- b. Farmers Home Administration (FmHA)
Certificates of beneficial ownership
- c. Federal Financing Bank
- d. General Services Administration
Participation certificates
- e. U.S. Maritime Administration
Guaranteed Title XI financing
- f. U.S. Department of Housing and Urban Development (HUD)
Project Notes
Local Authority Bonds
New Communities Debentures - U.S. government guaranteed debentures
U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds

G. If a forward supply contract is being executed in conjunction with the refunding (or subsequent to the closing of the refunding transaction), the following conditions must also be met:

- 1. The Insurer must review and approve the forward supply contract at least five business days prior to closing (or after closing, at least five business days prior to execution if not contemplated at the time of closing).
- 2. The forward supply contract must provide by its terms that the securities delivered under the forward supply are sufficient (when taken with other funds remaining in the escrow) as to amount and timeliness to retire the refunded bonds.
- 3. The Insurer requires an opinion from a nationally recognized bankruptcy counsel that the securities in escrow and payments to owners of refunded bonds will not constitute assets of the forward supply contract supplier and will not be subject to automatic stay in the event of bankruptcy and/or insolvency of the supplier.
- 4. The supplier of the securities delivered under the forward supply contract must affirm in the contract that it has no rights to or interest in the monies or securities held in the escrow.
- 5. The escrow agent must be acceptable to the Insurer. The Insurer reserves the right to replace the escrow agent for cause.
- 6. See 6 above for investments permitted under the forward supply contract. Investments must be non-callable.
- 7. The supplier should have no right to substitute the original escrow securities. The supplier may substitute securities previously delivered by the supplier under the forward supply contract only if:

- a. The substituted securities mature on a date that is later than the previously delivered securities would have matured; and
 - b. The substituted securities mature prior to the date needed to pay principal and/or interest on the bonds.
8. Two days before each delivery date for the forward supply securities, the escrow agent must notify the Insurer in writing of the securities to be delivered, the maturity amount of the securities and the maturity date.
9. The forward supply contract cannot be amended or modified without the Insurer's written consent.



**REVISED AS OF NOVEMBER 8, 2005
COMMITMENT TO ISSUE A
DEBT SERVICE RESERVE SURETY BOND**

Application No.: 2005-009784-003
Sale Date: November 3, 2005
Program Type: Negotiated DP

RE: \$1,350,000 Debt Service Reserve Fund for the \$27,000,000 City of Fayetteville, Arkansas, Sales and Use Tax Refunding and Capital Improvement Bonds, Series 2005A (the "Obligations")

This commitment to issue a debt service reserve surety bond (the "Commitment") constitutes an agreement between CITY OF FAYETTEVILLE (the "Applicant"), and MBIA Insurance Corporation (the "Insurer"), a stock insurance company incorporated under the laws of the State of New York.

Based on an approved application dated October 21, 2005, the Insurer agrees, upon satisfaction of the conditions herein, to issue on the earlier of (i) 120 days of said approval date or (ii) on the date of delivery of and payment for the Obligations, a debt service reserve surety bond (the "Surety Bond"), for the Obligations, guaranteeing the payment to the issuer of up to \$1,350,000 on the Obligations. The issuance of the Surety Bond shall be subject to the following terms and conditions:

1. Payment by the Applicant, or by the Trustee on behalf of the Applicant, on the date of delivery of and payment for the Obligations, of a nonrefundable premium in the amount of \$22,000 [1.6% (premium rate) of \$1,350,000 (total surety bond amount), premium rounded to the nearest thousand]. The premium set out in this paragraph shall be the total premium required to be paid on the Policy issued pursuant to this Commitment.
2. The Obligations shall have received the unqualified opinion of bond counsel with respect to the tax-exempt status of interest on the Obligations.
3. There shall have been no material adverse change in the Obligations or the Resolution, Bond Ordinance, Trust Indenture or other official document authorizing the issuance of the Obligations or in the final official statement or other similar document, including the financial statements included therein.
4. There shall have been no material adverse change in any information submitted to the Insurer as a part of the Application or subsequently submitted to be a part of the Application to the Insurer.
5. No event shall have occurred which would allow any underwriter or any other purchaser of the Obligations not to be required to purchase the Obligations at closing.
6. Prior to the delivery of and payment for the Obligations, none of the information or documents submitted as a part of the Application to the Insurer shall be determined to contain any untrue or misleading statement of a material fact or fail to state a material fact required to be stated therein or necessary in order to make the statements contained therein not misleading.
7. No material adverse change affecting any security for the Obligations shall have occurred prior to the delivery of and payment for the Obligations.



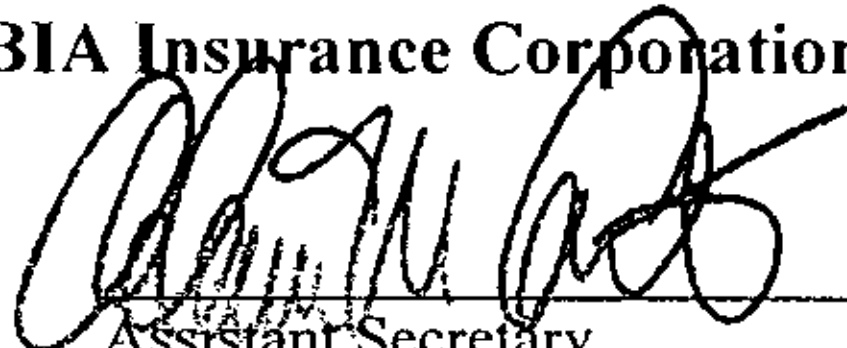
8. This Commitment may be signed in counterpart by the parties hereto.

9. Compliance with the Insurer's Term Sheet for Debt Service Reserve Fund Program (see Attachment A).

Dated this 8th day of November, 2005.

MBIA Insurance Corporation

By


Assistant Secretary

CITY OF FAYETTEVILLE

By:

Title:


Mayor

(Attachment A)

TERM SHEET FOR DEBT SERVICE RESERVE FUND PROGRAM

Introduction

The Insurer can, under certain circumstances, issue a debt service reserve fund surety bond (the "Surety Bond"), to be used as a replacement for a cash funded reserve, in any amount up to the full amount of the debt service reserve fund requirement.

The Insurer requires that the issuer and/or the underlying obligor of the bonds enter into a Financial Guaranty Agreement with the Insurer providing for, among other things, the reimbursement to the Insurer of amounts drawn under the Surety Bond. A sample draft of such an agreement is attached.

The Insurer will undertake its standard credit analysis of the issuer and/or obligor which may result in requests for modifications of the structure or certain provisions of the bond documents. These changes would be in addition to the specific changes required in all financings where a Surety Bond will be issued (see Required Terms below).

The Surety Bond may be structured to provide debt service reserve fund replacement for the current issue of bonds and any other debt issued on a parity therewith. However, in all cases, the Surety Bond will expire on the final maturity date of the current issue.

The program criteria are subject to change by the Insurer.

General Terms

Provision should be made in the bond documents for the creation of a debt service reserve fund and there should be a requirement to maintain that fund at a certain level. It should also be provided that this requirement may be satisfied by cash or a qualified surety bond or a combination of these two (Note: A "qualified surety bond" means a surety bond issued by an insurance company rated in the highest rating category by Standard & Poor's and Moody's and, if rated by A.M. Best & Company, must also be rated in the highest rating category by A.M. Best & Company).

In those instances where the issuance of parity debt will cause the debt service reserve fund requirement to increase, the Insurer requires that at the time of issuance of such parity debt, either cash or a qualified surety bond be provided so that the increased requirement will be satisfied.

In any event where the debt service reserve fund contains both an the Insurer Surety Bond and cash, the Insurer requires that the cash be drawn down completely before any demand is made on the Surety Bond. In any event where the debt service reserve fund contains a surety bond from another entity and an INSURER Surety Bond, the documents should provide for a pro-rata draw on each of the surety bonds.

With regard to replenishment, any available monies, as defined in the Indenture or Resolution, should be used first to reimburse the Insurer, thereby reinstating the Surety Bond, and second to replenish the cash in the debt service reserve fund.

The rate covenant should be expanded so that, in addition to all other coverage requirements, there are sufficient monies available to pay all amounts owed to the Insurer under the terms of the Financial Guaranty Agreement.

If the documents provide for the issuance of additional bonds that do not share a common reserve fund with the current issue, the Insurer can issue a surety bond that is, by its terms,

available only as a reserve for the current issue. In such cases, the Insurer would require a covenant that any revenues available for debt service must be distributed between the current issue and any additional bonds on a pro rata basis without regard to the existence of a funded debt service reserve or a surety bond.

The bond documents should require the Trustee to deliver a Demand For Payment (see attached form) at least three days prior to the date on which funds are required.

Required Terms

With respect to any security interest in collateral granted to the bondholders, the Insurer should be granted that same interest subject only to that of the bondholders. This would apply to existing security, if any, as well as any to be granted in the future.

The Insurer should receive an opinion from counsel to the issuer/obligor that the Financial Guaranty Agreement is a legal, valid and binding obligation of the issuer/obligor and is enforceable against the issuer/obligor in accordance with its terms.

In general terms, the "flow of funds" would be structured as follows:

All gross revenues should be paid in the following order with the priority indicated:

- (1) expenses of operation and maintenance;
- (2) debt service on the bonds;
- (3) reimbursement of amounts advanced by the Insurer under the Surety Bond;
- (4) reimbursement of cash amounts, if any, drawn from the reserve fund;
- (5) replenishment of Renewal and Replacement Fund;
- (6) payment to the Insurer of interest on amounts advanced under the Surety Bond;
- (7) all other lawful uses, including the debt service payment on any subordinate bonds.

Provision must be made for the Insurer to be paid all amounts owed to it under the terms of the Financial Guaranty Agreement or any other documents before the bond documents may be terminated.

It will be the responsibility of the trustee/paying agent to maintain adequate records, verified with the Insurer, as to the amount available to be drawn at any given time under the Surety Bond and as to the amounts paid and owing to the Insurer under the terms of the Financial Guaranty Agreement.

There may be no optional redemption of bonds or distribution of funds to the issuer and/or the underlying obligor unless all amounts owed to the Insurer under the terms of the Financial Guaranty Agreement or any other documents have been paid in full.

8/12/93



**REVISED AS OF NOVEMBER 8, 2005
COMMITMENT TO ISSUE A
FINANCIAL GUARANTY INSURANCE POLICY**

Application No.: 2005-009784-002

Sale Date: November 3, 2005

Program Type: Negotiated DP

Re: \$45,000,000 City of Fayetteville, Arkansas, Sales and Use Tax Capital Improvement Bonds, Series 2005B

(the "Obligations")

This commitment to issue a financial guaranty insurance policy (the "Commitment") dated November 8, 2005, constitutes an agreement between CITY OF FAYETTEVILLE (the "Applicant") and MBIA Insurance Corporation (the "Insurer"), a stock insurance company incorporated under the laws of the State of New York.

Based on an approved application dated October 21, 2005, the Insurer agrees, upon satisfaction of the conditions herein, to issue on the earlier of (i) 120 days of said approval date or (ii) on the date of delivery of and payment for the Obligations, a financial guaranty insurance policy (the "Policy") for the Obligations, insuring the payment of principal of and interest on the Obligations when due. The issuance of the Policy shall be subject to the following terms and conditions:

1. Payment by the Applicant, or by the Trustee on behalf of the Applicant, on the date of delivery of and payment for the Obligations, of a nonrefundable premium in the amount of \$130,000 [.224% (premium rate) of \$58,156,168.17 (total debt service), premium rounded to the nearest thousand]. The premium set out in this paragraph shall be the total premium required to be paid on the Policy issued pursuant to this Commitment.

2. The Obligations shall have received the unqualified opinion of bond counsel with respect to the tax-exempt status of interest on the Obligations.

3. There shall have been no material adverse change in the Obligations or the Resolution, Bond Ordinance, Trust Indenture or other official document authorizing the issuance of the Obligations or in the final official statement or other similar document, including the financial statements included therein.

4. There shall have been no material adverse change in any information submitted to the Insurer as a part of the application or subsequently submitted to be a part of the application to the Insurer.

5. No event shall have occurred which would allow any underwriter or any other purchaser of the Obligations not to be required to purchase the Obligations at closing.

6. A Statement of Insurance satisfactory to the Insurer shall be printed on the Obligations.

7. Prior to the delivery of and payment for the Obligations, none of the information or documents submitted as a part of the application to the Insurer shall be determined to contain any untrue or misleading statement of a material fact or fail to state a material fact required to be stated therein or necessary in order to make the statements contained therein not misleading.

8. No material adverse change affecting any security for the Obligations shall have occurred prior to the delivery of and payment for the Obligations.

9. The Insurer's "Payments Under the Policy/Other Required Provisions" (see attached) shall be included in the authorizing document.

10. The Applicant agrees not to use the Insurer's name in any public document including, without limitation, a press release or presentation, announcement or forum without the Insurer's prior consent; provided however, such prohibition on the use of the Insurer's name shall not relate to the use of the Insurer's standard approved form of disclosure in public documents issued in connection with the current Obligations to be issued in accordance with the terms of the Commitment; and provided further such prohibition shall not apply to the use of the Insurer's name in order to comply with public notice, public meeting or public reporting requirements.

11. This Commitment may be signed in counterpart by the parties hereto.

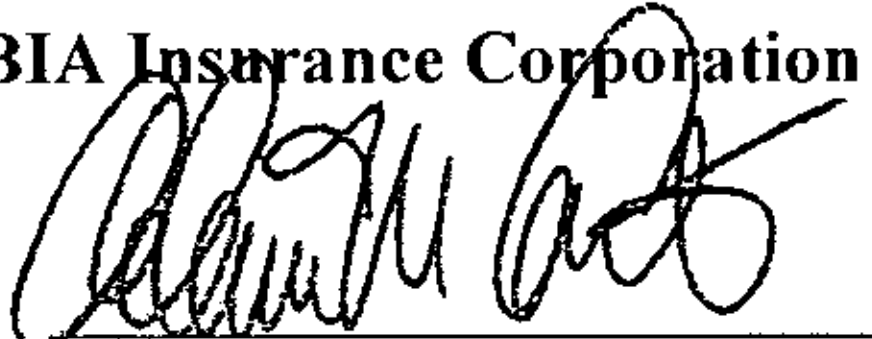
12. Compliance with the Insurer's following conditions (see attached).

- a. General Document Provisions; and
- b. List of Permissible Investments for Indentured Funds.

Dated this 8th day of November, 2005.

MBIA Insurance Corporation

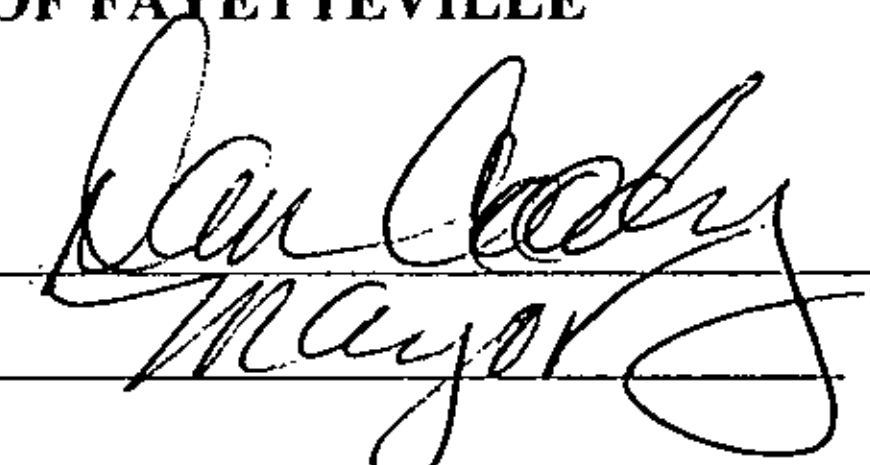
By


Assistant Secretary

CITY OF FAYETTEVILLE

By:

Title:


Mayor

GENERAL DOCUMENT PROVISIONS

- E. Notice to the Insurer The basic legal documents must provide that any notices required to be given by any party should also be given to the Insurer, Attn: Insured Portfolio Management.
- F. Amendments. In the basic legal document, there are usually two methods of amendment. The first, which typically does not require the consent of the bondholders, is for amendments which will cure ambiguities, correct formal defects or add to the security of the financing. The second, in which bondholder consent is a prerequisite, covers the more substantive types of amendments. For all financings, the Insurer must be given notice of any amendments that are of the first type and the Insurer's consent must be required for all amendments of the second type. All documents must contain a provision which requires copies of any amendments to such documents which are consented to by the Insurer to be sent to Standard & Poor's.
- G. Supplemental Legal Document. If the basic legal document provides for a supplemental legal document to be issued for reasons other than (1) a refunding to obtain savings; or (2) the issuance of additional bonds pursuant to an additional bonds test, there must be a requirement that the Insurer's consent also be obtained prior to the issuance of any additional bonds and/or execution of such supplemental legal document.
- H. Events of Default and Remedies. All documents normally contain provisions which define the events of default and which prescribe the remedies that may be exercised upon the occurrence of an event of default. At a minimum, events of default will be defined as follows:
5. the issuer/obligor fails to pay principal when due;
 6. the issuer/obligor fails to pay interest when due;
 7. the issuer/obligor fails to observe any other covenant or condition of the document and such failure continues for 30 days and
 8. the issuer/obligor declares bankruptcy.

The Insurer, acting alone, shall have the right to direct all remedies in the event of a default. The Insurer shall be recognized as the registered owner of each bond which it insures for the purposes of exercising all rights and privileges available to bondholders. For bonds which it insures, the Insurer shall have the right to institute any suit, action, or proceeding at law or in equity under the same terms as a bondholder in accordance with applicable provisions of the governing documents. Other than the usual redemption provisions, any acceleration of principal payments must be subject to the Insurer's prior written consent.

- E. Defeasance requires the deposit of:
7. Cash
 8. U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series -- "SLGs")
 9. Direct obligations of the Treasury which have been stripped by the Treasury itself, CATS, TIGRS and similar securities
 10. Resolution Funding Corp. (REFCORP) Only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form are acceptable.
 11. Pre-refunded municipal bonds rated "Aaa" by Moody's and "AAA" by S&P. If however, the issue is only rated by S&P (i.e., there is no Moody's rating), then the pre-refunded bonds must have been pre-refunded with cash, direct U.S. or U.S. guaranteed obligations, or AAA rated pre-refunded municipals to satisfy this condition.

12. Obligations issued by the following agencies which are backed by the full faith and credit of the U.S.

g. U.S. Export-Import Bank (Eximbank)

Direct obligations or fully guaranteed certificates of beneficial ownership

h. Farmers Home Administration (FmHA)

Certificates of beneficial ownership

i. Federal Financing Bank

j. General Services Administration

Participation certificates

k. U.S. Maritime Administration

Guaranteed Title XI financing

l. U.S. Department of Housing and Urban Development (HUD)

Project Notes

Local Authority Bonds

New Communities Debentures - U.S. government guaranteed debentures

U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds

The Insurer shall be provided with an opinion of counsel acceptable to the Insurer that the Obligations have been legally defeased and that the escrow agreement establishing such defeasance operates to legally defease the Obligations within the meaning of the Indenture and the Supplemental Indenture relating to the Obligations. In addition, the Insurer will be entitled to receive (i) 15 business days notice of any advance refunding of the Obligations and (ii) an accountant's report with respect to the sufficiency of the amounts deposited in escrow to defease the Obligations.

F. Agents:

1. In transactions where there is an agent/enhancer (other than the Insurer), the trustee, tender agent (if any), and paying agent (if any) must be commercial banks with trust powers.
2. The remarketing agent must have trust powers if they are responsible for holding moneys or receiving bonds. As an alternative, the documents may provide that if the remarketing agent is removed, resigns or is unable to perform its duties, the trustee must assume the responsibilities of remarketing agent until a substitute acceptable to the Insurer is appointed.

LIST OF PERMISSIBLE INVESTMENTS FOR INDENTURED FUNDS

- A. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.
- B. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):
 - 1. U.S. Export-Import Bank (Eximbank)
Direct obligations or fully guaranteed certificates of beneficial ownership
 - 2. Farmers Home Administration (FmHA)
Certificates of beneficial ownership
 - 3. Federal Financing Bank
 - 4. Federal Housing Administration Debentures (FHA)
 - 5. General Services Administration
Participation certificates
 - 6. Government National Mortgage Association (GNMA or "Ginnie Mae")
GNMA - guaranteed mortgage-backed bonds
GNMA - guaranteed pass-through obligations
(not acceptable for certain cash-flow sensitive issues.)
 - 7. U.S. Maritime Administration
Guaranteed Title XI financing
 - 8. U.S. Department of Housing and Urban Development (HUD)
Project Notes
Local Authority Bonds
New Communities Debentures - U.S. government guaranteed debentures
U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds
- C. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):
 - 1. Federal Home Loan Bank System
Senior debt obligations
 - 2. Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac")
Participation Certificates
Senior debt obligations
 - 3. Federal National Mortgage Association (FNMA or "Fannie Mae")
Mortgage-backed securities and senior debt obligations
 - 4. Student Loan Marketing Association (SLMA or "Sallie Mae")
Senior debt obligations

5. Resolution Funding Corp. (REFCORP) obligations

6. Farm Credit System

Consolidated systemwide bonds and notes

- D. Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAm-G; AAA-m; or AA-m and if rated by Moody's rated Aaa, Aa1 or Aa2.
- E. Certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.
- F. Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF.
- G. Investment Agreements, including GIC's, Forward Purchase Agreements and Reserve Fund Put Agreements acceptable to MBIA (Investment Agreement criteria is available upon request).
- H. Commercial paper rated, at the time of purchase, "Prime - 1" by Moody's and "A-1" or better by S&P.
- I. Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies.
- J. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime - 1" or "A3" or better by Moody's and "A-1" or "A" or better by S&P.
- L. Repurchase Agreements for 30 days or less must follow the following criteria. Repurchase Agreements which exceed 30 days must be acceptable to MBIA (criteria available upon request)

Repurchase agreements provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to a municipal entity (buyer/lender), and the transfer of cash from a municipal entity to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the municipal entity in exchange for the securities at a specified date.

1. Repos must be between the municipal entity and a dealer bank or securities firm

- a. Primary dealers on the Federal Reserve reporting dealer list which are rated A or better by Standard & Poor's Corporation and Moody's Investor Services, or
- b. Banks rated "A" or above by Standard & Poor's Corporation and Moody's Investor Services.

2. The written repo contract must include the following:
 - a. Securities which are acceptable for transfer are:
 - (1) Direct U.S. governments, or
 - (2) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC)
 - b. The term of the repo may be up to 30 days
 - c. The collateral must be delivered to the municipal entity, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).
 - d. Valuation of Collateral
 - (1) The securities must be valued weekly, marked-to-market at current market price plus accrued interest
 - (a) The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.
3. Legal opinion which must be delivered to the municipal entity:
 - a. Repo meets guidelines under state law for legal investment of public funds.

Additional Notes

- (i) There is no list of permitted investments for non-indentured funds. Your own credit judgment and the relevant circumstances (e.g., amount of investment and timing of investment) should dictate what is permissible.
- (ii) Any state administered pool investment fund in which the issuer is statutorily permitted or required to invest will be deemed a permitted investment.
- (iii) DSRF investments should be valued at fair market value and marked to market at least once per year. DSRF investments may not have maturities extending beyond 5 years, except for Investment Agreements approved by the Insurer.



**REVISED AS OF NOVEMBER 8, 2005
COMMITMENT TO ISSUE A
DEBT SERVICE RESERVE SURETY BOND**

Application No.: 2005-009784-004

Sale Date: November 3, 2005

Program Type: Negotiated DP

RE: \$2,250,000 Debt Service Reserve Fund for the \$27,000,000 City of Fayetteville, Arkansas, Sales and Use Tax Capital Improvement Bonds, Series 2005B (the "Obligations")

This commitment to issue a debt service reserve surety bond (the "Commitment") constitutes an agreement between CITY OF FAYETTEVILLE (the "Applicant"), and MBIA Insurance Corporation (the "Insurer"), a stock insurance company incorporated under the laws of the State of New York.

Based on an approved application dated October 21, 2005, the Insurer agrees, upon satisfaction of the conditions herein, to issue on the earlier of (i) 120 days of said approval date or (ii) on the date of delivery of and payment for the Obligations, a debt service reserve surety bond (the "Surety Bond"), for the Obligations, guaranteeing the payment to the issuer of up to \$1,350,000 on the Obligations. The issuance of the Surety Bond shall be subject to the following terms and conditions:

1. Payment by the Applicant, or by the Trustee on behalf of the Applicant, on the date of delivery of and payment for the Obligations, of a nonrefundable premium in the amount of \$36,000 [1.6% (premium rate) of \$2,250,000 (total surety bond amount), premium rounded to the nearest thousand]. The premium set out in this paragraph shall be the total premium required to be paid on the Policy issued pursuant to this Commitment.

2. The Obligations shall have received the unqualified opinion of bond counsel with respect to the tax-exempt status of interest on the Obligations.

3. There shall have been no material adverse change in the Obligations or the Resolution, Bond Ordinance, Trust Indenture or other official document authorizing the issuance of the Obligations or in the final official statement or other similar document, including the financial statements included therein.

4. There shall have been no material adverse change in any information submitted to the Insurer as a part of the Application or subsequently submitted to be a part of the Application to the Insurer.

5. No event shall have occurred which would allow any underwriter or any other purchaser of the Obligations not to be required to purchase the Obligations at closing.

6. Prior to the delivery of and payment for the Obligations, none of the information or documents submitted as a part of the Application to the Insurer shall be determined to contain any untrue or misleading statement of a material fact or fail to state a material fact required to be stated therein or necessary in order to make the statements contained therein not misleading.

7. No material adverse change affecting any security for the Obligations shall have occurred prior to the delivery of and payment for the Obligations.



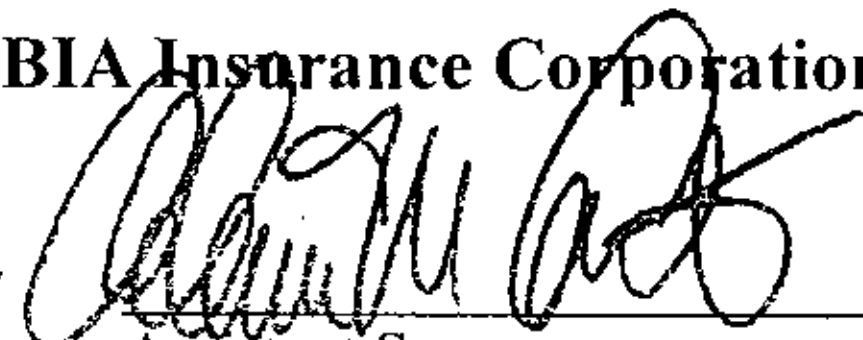
8. This Commitment may be signed in counterpart by the parties hereto.

9. Compliance with the Insurer's Term Sheet for Debt Service Reserve Fund Program (see Attachment A).

Dated this 8th day of November, 2005.

MBIA Insurance Corporation

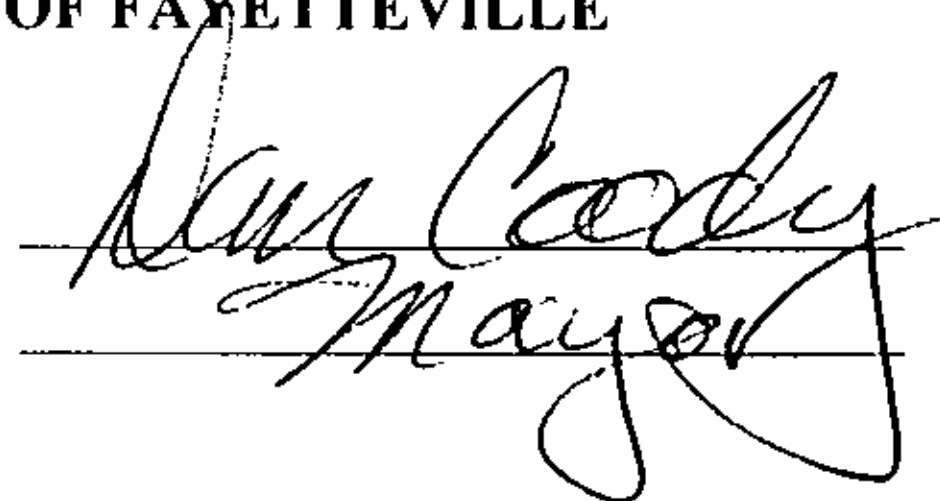
By


Assistant Secretary

CITY OF FAYETTEVILLE

By:

Title:


Mayor

(Attachment A)

TERM SHEET FOR DEBT SERVICE RESERVE FUND PROGRAM

Introduction

The Insurer can, under certain circumstances, issue a debt service reserve fund surety bond (the "Surety Bond"), to be used as a replacement for a cash funded reserve, in any amount up to the full amount of the debt service reserve fund requirement.

The Insurer requires that the issuer and/or the underlying obligor of the bonds enter into a Financial Guaranty Agreement with the Insurer providing for, among other things, the reimbursement to the Insurer of amounts drawn under the Surety Bond. A sample draft of such an agreement is attached.

The Insurer will undertake its standard credit analysis of the issuer and/or obligor which may result in requests for modifications of the structure or certain provisions of the bond documents. These changes would be in addition to the specific changes required in all financings where a Surety Bond will be issued (see Required Terms below).

The Surety Bond may be structured to provide debt service reserve fund replacement for the current issue of bonds and any other debt issued on a parity therewith. However, in all cases, the Surety Bond will expire on the final maturity date of the current issue.

The program criteria are subject to change by the Insurer.

General Terms

Provision should be made in the bond documents for the creation of a debt service reserve fund and there should be a requirement to maintain that fund at a certain level. It should also be provided that this requirement may be satisfied by cash or a qualified surety bond or a combination of these two (Note: A "qualified surety bond" means a surety bond issued by an insurance company rated in the highest rating category by Standard & Poor's and Moody's and, if rated by A.M. Best & Company, must also be rated in the highest rating category by A.M. Best & Company).

In those instances where the issuance of parity debt will cause the debt service reserve fund requirement to increase, the Insurer requires that at the time of issuance of such parity debt, either cash or a qualified surety bond be provided so that the increased requirement will be satisfied.

In any event where the debt service reserve fund contains both an the Insurer Surety Bond and cash, the Insurer requires that the cash be drawn down completely before any demand is made on the Surety Bond. In any event where the debt service reserve fund contains a surety bond from another entity and an INSURER Surety Bond, the documents should provide for a pro-rata draw on each of the surety bonds.

With regard to replenishment, any available monies, as defined in the Indenture or Resolution, should be used first to reimburse the Insurer, thereby reinstating the Surety Bond, and second to replenish the cash in the debt service reserve fund.

The rate covenant should be expanded so that, in addition to all other coverage requirements, there are sufficient monies available to pay all amounts owed to the Insurer under the terms of the Financial Guaranty Agreement.

If the documents provide for the issuance of additional bonds that do not share a common reserve fund with the current issue, the Insurer can issue a surety bond that is, by its terms,

available only as a reserve for the current issue. In such cases, the Insurer would require a covenant that any revenues available for debt service must be distributed between the current issue and any additional bonds on a pro rata basis without regard to the existence of a funded debt service reserve or a surety bond.

The bond documents should require the Trustee to deliver a Demand For Payment (see attached form) at least three days prior to the date on which funds are required.

Required Terms

With respect to any security interest in collateral granted to the bondholders, the Insurer should be granted that same interest subject only to that of the bondholders. This would apply to existing security, if any, as well as any to be granted in the future.

The Insurer should receive an opinion from counsel to the issuer/obligor that the Financial Guaranty Agreement is a legal, valid and binding obligation of the issuer/obligor and is enforceable against the issuer/obligor in accordance with its terms.

In general terms, the "flow of funds" would be structured as follows:

All gross revenues should be paid in the following order with the priority indicated:

- (1) expenses of operation and maintenance;
- (2) debt service on the bonds;
- (3) reimbursement of amounts advanced by the Insurer under the Surety Bond;
- (4) reimbursement of cash amounts, if any, drawn from the reserve fund;
- (5) replenishment of Renewal and Replacement Fund;
- (6) payment to the Insurer of interest on amounts advanced under the Surety Bond;
- (7) all other lawful uses, including the debt service payment on any subordinate bonds.

Provision must be made for the Insurer to be paid all amounts owed to it under the terms of the Financial Guaranty Agreement or any other documents before the bond documents may be terminated.

It will be the responsibility of the trustee/paying agent to maintain adequate records, verified with the Insurer, as to the amount available to be drawn at any given time under the Surety Bond and as to the amounts paid and owing to the Insurer under the terms of the Financial Guaranty Agreement.

There may be no optional redemption of bonds or distribution of funds to the issuer and/or the underlying obligor unless all amounts owed to the Insurer under the terms of the Financial Guaranty Agreement or any other documents have been paid in full.

8/12/93

\$
NAME OF ISSUER
SERIES DESCRIPTION

CERTIFICATE RE: MBIA INSURANCE POLICY
SCHEDULE 'A'

This Certificate of MBIA Insurance Policy (the "Certificate") is furnished by the City of _____, as issuer (the "Issuer") of its \$_____ General Obligation Bonds, dated _____ (the "Bonds"), and _____, as paying agent under the Bonds (the "Paying Agent"). This Certificate is furnished for use by MBIA Insurance Corporation ("MBIA") in connection with its issuance of a municipal bond insurance policy No. _____ (the "Policy"), which Policy shall guarantee the payment of the principal and interest on the Bonds when due.

The Issuer and the Paying Agent hereby certifies as follows:

1. The parties acknowledge receipt and review of MBIA's "Payments Under the Policy" provisions with respect to the Policy, all as more particularly set forth in Schedule A attached hereto and made a part hereof.
2. The parties hereby agree, during the term of the Policy and to the best of their abilities, to abide by the terms, obligations, and provisions required by MBIA as set forth in Schedule A hereto.

IN WITNESS WHEREOF, we have executed this Certificate as of the ____ day of _____.

_____,
, as Issuer

as Paying Agent

By: _____

Director of Finance

By: _____

Authorized Officer

MBIA

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3/4"

FINANCIAL GUARANTY AGREEMENT

FINANCIAL GUARANTY AGREEMENT made as of [CLOSING DATE], by and between [ISSUER] (the "Issuer") and MBIA Insurance Corporation (the "Insurer"), organized under the laws of the state of New York.

WITNESSETH:

WHEREAS, the Issuer has or will issue the Obligations; and

WHEREAS, pursuant to the terms of the Document the Issuer agrees to make certain payments on the Obligations; and

WHEREAS, the Insurer will issue its Surety Bond, substantially in the form set forth in Annex A to this Agreement, guaranteeing certain payments by the Issuer subject to the terms and limitations of the Surety Bond; and

WHEREAS, to induce the Insurer to issue the Surety Bond, the Issuer has agreed to pay the premium for the Surety Bond and to reimburse the Insurer for all payments made by the Insurer under the Surety Bond, all as more fully set forth in this Agreement; and

WHEREAS, the Issuer understands that the Insurer expressly requires the delivery of this Agreement as part of the consideration for the execution by the Insurer of the Surety Bond; and

NOW, THEREFORE, in consideration of the premises and of the agreements herein contained and of the execution of the Surety Bond, the Issuer and the Insurer agree as follows:

ARTICLE I DEFINITIONS; SURETY BOND

Section 1.01. Definitions. The terms which are capitalized herein shall have the meanings specified in Annex B hereto.

Section 1.02. Surety Bond.

(a) The Insurer will issue the Surety Bond in accordance with and subject to the terms and conditions of the Commitment.

(b) The maximum liability of the Insurer under the Surety Bond and the coverage and term thereof shall be subject to and limited by the terms and conditions of the Surety Bond.

Section 1.03. Premium. In consideration of the Insurer agreeing to issue the Surety Bond hereunder, the Issuer hereby agrees to pay or cause to be paid the Premium set forth in Annex B hereto. The Premium on the Surety Bond is not refundable for any reason.

Section 1.04. Certain Other Expenses. The Issuer will pay all reasonable fees and disbursements of the Insurer's special counsel related to any modification of this Agreement or the Surety Bond.

ARTICLE II REIMBURSEMENT AND INDEMNIFICATION OBLIGATIONS OF ISSUER AND SECURITY THEREFOR

Section 2.01. Reimbursement for Payments Under the Surety Bond and Expenses; Indemnification.

(a) The Issuer will reimburse the Insurer, within the Reimbursement Period, without demand or notice by the Insurer to the Issuer or any other person, to the extent of each Surety Bond Payment with interest on each Surety Bond Payment from and including the date made to the date of the reimbursement at the lesser of the Reimbursement Rate or the maximum rate of interest permitted by then applicable law.

(b) The Issuer also agrees to reimburse the Insurer immediately and unconditionally upon demand, to the extent permitted by state law, for all reasonable expenses incurred by the Insurer in connection with the Surety Bond and the enforcement by the Insurer of the Issuer's obligations under this Agreement, the Document, and any other document executed in connection with the issuance of the Obligations, together with interest on all such expenses from and including the date incurred to the date of payment at the rate set forth in subsection (a) of this Section 2.01.

(c) The Issuer agrees to indemnify the Insurer, to the extent permitted by state law, against any and all liability, claims, loss, costs, damages, fees of attorneys and other expenses which the Insurer may sustain or incur by reason of or in consequence of (i) the failure of the Issuer to perform or comply with the covenants or conditions of this Agreement or (ii) reliance by the Insurer upon representations made by the Issuer or (iii) a default by the Issuer under the terms of the Document or any other documents executed in connection with the issuance of the Obligations.

(d) The Issuer agrees that all amounts owing to the Insurer pursuant to Section 1.03 hereof and this Section 2.01 must be paid in full prior to any optional redemption or refunding of the Obligations.

(e) All payments made to the Insurer under this Agreement shall be paid in lawful currency of the United States in immediately available funds at the Insurer's office at 113 King Street, Armonk, New York 10504, Attention: Accounting and Insured Portfolio Management Departments, or at such other place as shall be designated by the Insurer.

Section 2.02: Allocation of Payments. The Insurer and the Issuer hereby agree that each payment received by the Insurer from or on behalf of the Issuer as a reimbursement to the Insurer as required by Section 2.01 hereof shall be applied by the Insurer first, toward payment of any unpaid premium; second, toward repayment of the aggregate Surety Bond Payments made by the Insurer and not yet repaid, payment of which will reinstate all or a portion of the Surety Bond Coverage to the extent of such repayment (but not to exceed the Surety Bond Limit); and third, upon full reinstatement of the Surety Bond Coverage to the Surety Bond Limit, toward other amounts, including, without limitation, any interest payable with respect to any Surety Bond Payments then due to the Insurer.

Section 2.03. Security for Payments; Instruments of Further Assurance. To the extent, but only to the extent, that the Document, or any related indenture, trust agreement, ordinance, resolution, mortgage, security agreement or similar instrument, if any, pledges to the Owners or any trustee therefor, or grants a security interest or lien in or on any collateral, property, revenue or other payments ("Collateral and Revenues") in order to secure the Obligations or provide a source of payment for the Obligations, the Issuer hereby grants to the Insurer a security interest in or lien on, as the case may be, and pledges to the Insurer all such Collateral and Revenues as security for payment of all amounts due hereunder and under the Document or any other document executed in connection with the issuance of the Obligations, which security interest, lien and/or pledge created or granted under this Section 2.03 shall be subordinate only to the interests of the Owners and any trustee therefor in such Collateral and Revenues, except as otherwise provided. The Issuer agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all financing statements, if applicable, and all other further instruments as may be required by law or as shall reasonably be requested by the Insurer for the perfection of the security interest, if any, granted under this Section 2.03 and for the preservation and protection of all rights of the Insurer under this Section 2.03.

Section 2.04. Unconditional Obligation. The obligations hereunder are absolute and unconditional and will be paid or performed strictly in accordance with this Agreement, subject to the limitations of the Document, irrespective of:

(a) any lack of validity or enforceability of, or any amendment or other modification of, or waiver with respect to the Obligations, the Document or any other document executed in connection with the issuance of the Obligations; or

(b) any exchange, release or nonperfection of any security interest in property securing the Obligations or this Agreement or any obligations hereunder; or

(c) any circumstances that might otherwise constitute a defense available to, or discharge of, the Issuer with respect to the Obligations, the Document or any other document executed in connection with the issuance of the Obligations; or

(d) whether or not such obligations are contingent or matured, disputed or undisputed, liquidated or unliquidated.

Section 2.05. Insurer's Rights. The Issuer shall repay the Insurer to the extent of payments made and expenses incurred by the Insurer in connection with the Obligations and this Agreement. The obligation of the Issuer to repay such amounts shall be subordinate only to the rights of the Owners to receive regularly scheduled principal and interest on the Obligations.

Section 2.06. On-Going Information Obligations of Issuer.

(a) Quarterly Reports. The Issuer will provide to the Insurer within 45 days of the close of each quarter interim financial statements covering all fund balances under the Document, a statement of operations (income statement), balance sheet and changes in fund balances. These statements need not be audited by an independent certified public accountant, but if any audited statements are produced, they must be provided to the Insurer;

(b) Annual Reports. The Issuer will provide to the Insurer annual financial statements audited by an independent certified public accountant within 90 days of the end of each fiscal year;

(c) Access to Facilities, Books and Records. The Issuer will grant the Insurer reasonable access to the project financed by the Obligations and will make available to the Insurer, at reasonable times and upon reasonable notice all books and records relative to the project financed by the Obligations; and

(d) Compliance Certificate. On an annual basis the Issuer will provide to the Insurer a certificate confirming compliance with all covenants and obligations hereunder and under the Revenue Agreement, the Document or any other document executed in connection with the issuance of the Obligations.

ARTICLE III AMENDMENTS TO DOCUMENT

So long as this Agreement is in effect, the Issuer agrees that it will not agree to amend the Document or any other document executed in connection with the issuance of the Obligations, without the prior written consent of the Insurer.

ARTICLE IV EVENTS OF DEFAULT; REMEDIES

Section 4.01. Events of Default. The following events shall constitute Events of Default hereunder:

(a) The Issuer shall fail to pay to the Insurer when due any amount payable under Sections 1.03; or

(b) The Issuer shall fail to pay to the Insurer any amount payable under Sections 1.04 and 2.01 hereof and such failure shall have continued for a period in excess of the Reimbursement Period; or

(c) Any material representation or warranty made by the Issuer under the Document or hereunder or any statement in the application for the Surety Bond or any report, certificate, financial statement, document or other instrument provided in connection with the Commitment, the Surety Bond, the Obligations, or herewith shall have been materially false at the time when made; or

(d) Except as otherwise provided in this Section 4.01, the Issuer shall fail to perform any of its other obligations under the Document, or any other document executed in connection with the issuance of the Obligations, or hereunder, provided that such failure continues for more than 30 days after receipt by the Issuer of written notice of such failure to perform; or

(e) The Issuer shall (i) voluntarily commence any proceeding or file any petition seeking relief under the United States Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency or similar law, (ii) consent to the institution of, or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for such party or for a substantial part of its property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due or (vii) take action for the purpose of effecting any of the foregoing; or

(f) An involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of the Issuer, or of a substantial part of its property, under the United States Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency or similar law or (ii) the appointment of a receiver, trustee, custodian, sequestrator or similar official for the Issuer or for a substantial part of its property; and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall continue unstayed and in effect for 30 days.

Section 4.02. Remedies. If an Event of Default shall occur and be continuing, then the Insurer may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due under this Agreement or to enforce performance of any obligation of the Issuer to the Insurer under the Document or any related instrument, and any obligation, agreement or covenant of the Issuer under this Agreement; provided, however, that the Insurer may not take any action to direct or require acceleration or other early redemption of the Obligations or adversely affect the rights of the Owners. In addition, if an Event of Default shall occur due to the failure to pay to the Insurer the amounts due under Section 1.03 hereof, the Insurer shall have the right to cancel the Surety Bond in accordance with its terms. All rights and remedies of the Insurer under this Section 4.02 are cumulative and the exercise of any one remedy does not preclude the exercise of one or more of the other available remedies.

ARTICLE V SETTLEMENT

The Insurer shall have the exclusive right to decide and determine whether any claim, liability, suit or judgment made or brought against the Insurer, the Issuer or any other party on the Surety Bond shall or shall not be paid, compromised, resisted, defended, tried or appealed, and the Insurer's decision thereon, if made in good faith, shall be final and binding upon the Insurer, the Issuer and any other party on the Surety Bond. An itemized statement of payments made by the Insurer, certified by an officer of the Insurer, or the voucher or vouchers for such payments, shall be prima facie evidence of the liability of the Issuer, and if the Issuer fails to immediately reimburse the Insurer upon the receipt of such statement of payments, interest shall be computed on such amount from the date of any payment made by the Insurer at the rate set forth in subsection (a) of Section 2.01 hereof.

ARTICLE VI MISCELLANEOUS

Section 6.01. Interest Computations. All computations of interest due hereunder shall be made on the basis of the actual number of days elapsed over a year of 360 days.

Section 6.02. Exercise of Rights. No failure or delay on the part of the Insurer to exercise any right, power or privilege under this Agreement and no course of dealing between the Insurer and the Issuer or any other party shall operate as a waiver of any such right, power or privilege, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which the Insurer would otherwise have pursuant to law or equity. No notice to or demand on any party in any case shall entitle such party to any other or further notice or demand in similar or other circumstances, or constitute a waiver of the right of the other party to any other or further action in any circumstances without notice or demand.

Section 6.03. Amendment and Waiver. Any provision of this Agreement may be amended, waived, supplemented, discharged or terminated only with the prior written consent of the Issuer and the Insurer. The Issuer hereby agrees that upon the written request of the Paying Agent, the Insurer may make or consent to issue any substitute for the Surety Bond to cure any ambiguity or formal defect or omission in the Surety Bond which does not materially change the terms of the Surety Bond nor adversely affect the rights of the Owners, and this Agreement shall apply to such substituted surety bond. The Insurer agrees to deliver to the Issuer and to the company or companies, if any, rating the Obligations, a copy of such substituted surety bond.

Section 6.04. Successors and Assigns; Descriptive Headings.

(a) This Agreement shall bind, and the benefits thereof shall inure to, the Issuer and the Insurer and their respective successors and assigns; provided, that the Issuer may not transfer or assign any or all of its rights and obligations hereunder without the prior written consent of the Insurer.

(b) The descriptive headings of the various provisions of this Agreement are inserted for convenience of reference only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

Section 6.05. Other Sureties. If the Insurer shall procure any other surety to reinsure the Surety Bond, this Agreement shall inure to the benefit of such other surety, its successors and assigns, so as to give to it a direct right of action against the Issuer to enforce this Agreement, and "the Insurer," wherever used herein, shall be deemed to include such reinsuring surety, as its respective interests may appear.

Section 6.06. Signature on Bond. The Issuer's liability shall not be affected by its failure to sign the Surety Bond nor by any claim that other indemnity or security was to have been obtained nor by the release of any indemnity, nor the return or exchange of any collateral that may have been obtained.

Section 6.07. Waiver. The Issuer waives any defense that this Agreement was executed subsequent to the date of the Surety Bond, admitting and covenanting that such Surety Bond was executed pursuant to the Issuer's request and in reliance on the Issuer's promise to execute this Agreement.

Section 6.08. Notices, Requests, Demands. Except as otherwise expressly provided herein, all written notices, requests, demands or other communications to or upon the respective parties hereto shall be deemed to have been given or made when actually received, or in the case of telex or telecopier notice sent over a telex or a telecopier machine owned or operated by a party hereto, when sent, addressed as specified below or at such other address as any of the parties may hereafter specify in writing to the others:

If to the Issuer:

[ISSUER]
[STREET ADDRESS]
[CITY, STATE ZIP]
Attention: [PERSON AT ISSUER]

If to the Paying Agent:

[PAYING AGENT]
Attention: Corporate Trust Officer

If to the Insurer:

MBIA Insurance Corporation
113 King Street
Armonk, New York 10504
Attention: Insured Portfolio
Management Group

Section 6.09. Survival of Representations and Warranties. All representations, warranties and obligations contained herein shall survive the execution and delivery of this Agreement and the Surety Bond.

Section 6.10. Governing Law. This Agreement and the rights and obligations of the parties under this Agreement shall be governed by and construed and interpreted in accordance with the laws of the State.

Section 6.11. Counterparts. This Agreement may be executed in any number of copies and by the different parties hereto on the same or separate counterparts, each of which shall be deemed to be an original instrument. Complete counterparts of this Agreement shall be lodged with the Issuer and the Insurer.

Section 6.12. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 6.13. Survival of Obligations. Notwithstanding anything to the contrary contained in this Agreement, the obligation of the Issuer to pay all amounts due hereunder and the rights of the Insurer to pursue all remedies shall survive the expiration, termination or substitution of the Surety Bond and this Agreement.

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

[ISSUER]

By: _____

Title: _____

MBIA Insurance Corporation

President

Attest:

Assistant Secretary

ANNEX A
DEBT SERVICE RESERVE
SURETY BOND
MBIA Insurance Corporation
Armonk, New York 10504

Surety Bond No. [POLICY NO.]

MBIA Insurance Corporation (the "Insurer"), in consideration of the payment of the premium and subject to the terms of this Surety Bond, hereby unconditionally and irrevocably guarantees the full and complete payments that are to be applied to payment of principal of and interest on the Obligations (as hereinafter defined) and that are required to be made by or on behalf of [NAME OF ISSUER] (the "Issuer") under the [TITLE OF THE DOCUMENT] (the "Document") to [NAME OF PAYING AGENT], (the "Paying Agent"), as such payments are due but shall not be so paid, in connection with the issuance by the Issuer of [TITLE OF THE OBLIGATIONS] (the "Obligations"), provided, that the amount available hereunder for payment pursuant to any one Demand for Payment (as hereinafter defined) shall not exceed [a: FIXED COVERAGE [Dollar Amount of Coverage] or the debt service reserve fund requirement for the Obligations, whichever is less (the "Surety Bond Limit"); provided, further, that the amount available at any particular time to be paid to the Paying Agent under the terms hereof (the "Surety Bond Coverage") shall be reduced and may be reinstated from time to time as set forth herein.] or [b: VARIABLE COVERAGE the annual amount set forth for the applicable bond year on Exhibit A attached hereto (the "Surety Bond Limit"); provided, further, that the amount available at any particular time to be paid to the Paying Agent under the terms hereof (the "Surety Bond Coverage") shall be reduced and may be reinstated from time to time as set forth herein.]

1. As used herein, the term "Owner" shall mean the registered owner of any Obligation as indicated in the books maintained by the applicable paying agent, the Issuer or any designee of the Issuer for such purpose. The term "Owner" shall not include the Issuer or any person or entity whose obligation or obligations by agreement constitute the underlying security or source of payment for the Obligations.

2. Upon the later of: (i) three (3) days after receipt by the Insurer of a demand for payment in the form attached hereto as Attachment 1 (the "Demand for Payment"), duly executed by the Paying Agent; or (ii) the payment date of the Obligations as specified in the Demand for Payment presented by the Paying Agent to the Insurer, the Insurer will make a deposit of funds in an account with U.S. Bank Trust National Association, in New York, New York, or its successor, sufficient for the payment to the Paying Agent, of amounts that are then due to the Paying Agent (as specified in the Demand for Payment) subject to the Surety Bond Coverage.

3. Demand for Payment hereunder may be made by prepaid telecopy, telex, TWX or telegram of the executed Demand for Payment c/o the Insurer. If a Demand for Payment made hereunder does not, in any instance, conform to the terms and conditions of this Surety Bond, the Insurer shall give notice to the Paying Agent, as promptly as reasonably practicable, that such Demand for Payment was not effected in accordance with the terms and conditions of this Surety Bond and briefly state the reason(s) therefor. Upon being notified that such Demand for Payment was not effected in accordance with this Surety Bond, the Paying Agent may attempt to correct any such nonconforming Demand for Payment if, and to the extent that, the Paying Agent is entitled and able to do so.

4. The amount payable by the Insurer under this Surety Bond pursuant to a particular Demand for Payment shall be limited to the Surety Bond Coverage. The Surety Bond Coverage shall be reduced automatically to the extent of each payment made by the Insurer hereunder and will be reinstated to the extent of each reimbursement of the Insurer pursuant to the provisions of Article II of the Financial Guaranty Agreement dated the date hereof between the Insurer and the [ISSUER OR OBLIGOR] (the "Financial Guaranty Agreement"); provided, [ANNUAL PREMIUM OPTION: that no premium is due and unpaid on this Surety Bond and] that in no event shall such reinstatement exceed the Surety Bond Limit. The Insurer will notify the Paying Agent, in writing within five (5) days of such reimbursement, that the Surety Bond Coverage has been reinstated to the extent of such reimbursement pursuant to the Financial Guaranty Agreement and such reinstatement shall be effective as of the date the Insurer gives such notice. The notice to the Paying Agent will be substantially in the form attached hereto as Attachment 2.

5. Any service of process on the Insurer or notice to the Insurer may be made to the Insurer at its offices located at 113 King Street, Armonk, New York 10504 and such service of process shall be valid and binding.

6. The term of this Surety Bond shall expire [ANNUAL PREMIUM OPTION: ,unless cancelled pursuant to paragraph 9 hereof,] on the earlier of (i) [MATURITY DATE] (the maturity date of the Obligations being currently issued), or (ii) the date on which the Issuer has made all payments required to be made on the Obligations pursuant to the Document.

7. The premium payable on this Surety Bond is not refundable for any reason, including the payment prior to maturity of the Obligations.

8. [OPTIONAL FIRST SENTENCE: This Surety Bond shall be governed by and interpreted under the laws of the State of (STATE)]. Any suit hereunder in connection with any payment may be brought only by the Paying Agent within [1 or 3 years] after (i) a Demand for Payment, with respect to such payment, is made pursuant to the terms of this Surety Bond and the Insurer has failed to make such payment, or (ii) payment would otherwise have been due hereunder but for the failure on the part of the Paying Agent to deliver to the Insurer a Demand for Payment pursuant to the terms of this Surety Bond, whichever is earlier.

[NOS. 9 and 11 are OPTIONAL]

9. Subject to the terms of the Document, the Issuer shall have the right, upon 30 days prior written notice to the Insurer and the Paying Agent, to terminate this Surety Bond. In the event of a failure by the Issuer to pay the premium due on this Surety Bond pursuant to the terms of the Financial Guaranty Agreement, the Insurer shall have the right upon [No. of days] days prior written notice to the Issuer and the Paying Agent to cancel this Surety Bond. No Demand for Payment shall be made subsequent to such notice of cancellation unless payments are due but shall not have been so paid in connection with the Obligations.

10. There shall be no acceleration payment due under this Policy unless such acceleration is at the sole option of the Insurer.

11. This policy is not covered by the Property/Casualty Insurance Security Fund specified in Article 76 of the New York Insurance Law.

In witness whereof, the Insurer has caused this Surety Bond to be executed in facsimile on its behalf by its duly authorized officers, this [DATE] day of [MONTH, YEAR].

MBIA INSURANCE CORPORATION

President

Assistant Secretary

EXHIBIT A

Surety Bond No. [POLICY NO.]

<u>Bond Year</u>	<u>Maximum Annual Debt Service</u>
20 to 20	\$
20 to 20	\$
20 to 20	\$

Attachment 1
Surety Bond No. [POLICY NO.]

DEMAND FOR PAYMENT

_____, 20__

MBIA Insurance Corporation
113 King Street
Armonk, New York 10504

Attention: President

Reference is made to the Surety Bond No. [POLICY NO.] (the "Surety Bond") issued by the MBIA Insurance Corporation (the "Insurer"). The terms which are capitalized herein and not otherwise defined have the meanings specified in the Surety Bond unless the context otherwise requires.

The Paying Agent hereby certifies that:

- (a) In accordance with the provisions of the Document (attached hereto as Exhibit A), payment is due to the Owners of the Obligations on _____ (the "Due Date") in an amount equal to \$_____ (the "Amount Due").
- (b) The [Debt Service Reserve Fund Requirement] for the Obligations is \$_____.
- (c) The amounts legally available to the Paying Agent on the Due Date will be \$_____ less than the Amount Due (the "Deficiency").
- (d) The Paying Agent has not heretofore made demand under the Surety Bond for the Amount Due or any portion thereof.

The Paying Agent hereby requests that payment of the Deficiency (subject to the Surety Bond Coverage) be made by the Insurer under the Surety Bond and directs that payment under the Surety Bond be made to the following account by bank wire transfer of federal or other immediately available funds in accordance with the terms of the Surety Bond: _____

[Paying Agent's Account]

[PAYING AGENT]

By _____

Its _____

Attachment 2
Surety Bond No. [POLICY NO.]

NOTICE OF REINSTATEMENT

_____, 20__

[Paying Agent]

[Address]

Reference is made to the Surety Bond No. [POLICY NO.] (the "Surety Bond") issued by the MBIA Insurance Corporation (the "Insurer"). The terms which are capitalized herein and not otherwise defined have the meanings specified in the Surety Bond unless the context otherwise requires.

The Insurer hereby delivers notice that it is in receipt of payment from the Obligor pursuant to Article II of the Financial Guaranty Agreement and as of the date hereof the Surety Bond Coverage is \$ _____.

MBIA Insurance Corporation

President

Attest:

Assistant Secretary

ANNEX B

DEFINITIONS

For all purposes of this Agreement and the Surety Bond, except as otherwise expressly provided herein or unless the context otherwise requires, all capitalized terms shall have the meaning as set out below, which shall be equally applicable to both the singular and plural forms of such terms.

"Agreement" means this Financial Guaranty Agreement.

"Closing Date" means [CLOSING DATE], 20__.

"Commitment" means the commitment to issue Municipal Bond Guaranty Insurance in the form attached hereto as Annex C.

"Debt Service Payments" means those payments required to be made by or on behalf of the Issuer which will be applied to payment of principal of and interest on the Obligations.

"Demand for Payment" means the certificate submitted to the Insurer for payment under the Surety Bond substantially in the form attached to the Surety Bond as Attachment I.

"Document" means [DOCUMENT].

"Event of Default" shall mean those events of default set forth in Section 4.01 of the Agreement.

"Insurer" has the same meaning as set forth in the first paragraph of this Agreement.

"Issuer" means [ISSUER].

"Obligations" means [LEGAL TITLE OF ISSUE].

"Owners" means the registered owner of any Obligation as indicated in the books maintained by the Paying Agent, the Issuer or any designee of the Issuer for such purpose.

"Paying Agent" means [PAYING AGENT].

"Premium" means [PREMIUM} payable to the Insurer on or prior to the Closing Date.

"Reimbursement Period" means, with respect to a particular Surety Bond Payment, the period commencing on the date of such Surety Bond Payment and ending on the earlier of the date of cancellation of the Surety Bond due to nonpayment of Premium when due or on the expiration of x following such Surety Bond Payment.

"Reimbursement Rate" means Citibank's prime rate plus three (3) percent per annum, as of the date of such Surety Bond Payment, said "prime rate" being the rate of interest announced from time to time by Citibank, N.A., New York, New York, as its prime rate. The rate of interest shall be calculated on the basis of the actual number of days elapsed over a 360-day year.

"State" means [STATE].

"Surety Bond" means that surety bond attached hereto as Annex A and issued by the Insurer guaranteeing, subject to the terms and limitations thereof, Debt Service Payments required to be made by the Issuer under the Document.

"Surety Bond Coverage" means the amount available at any particular time to be paid under the terms of the Surety Bond, which amount shall never exceed the Surety Bond Limit.

"Surety Bond Limit" means [SURETY BOND LIMIT].

"Surety Bond Payment" means an amount equal to the Debt Service Payment required to be made by the Issuer pursuant to the Document less (i) that portion of the Debt Service Payment paid by or on behalf of the Issuer, and (ii) other funds legally available for payment to the Owners, all as certified in a Demand for Payment.

ANNEX C
COMMITMENT
[To be provided.]

STANDARD FORM FOR MBIA DISCLOSURE FOR OFFICIAL STATEMENTS

[June 30, 2005]

[The section entitled "The MBIA Insurance Corporation Insurance Policy" is for use in public finance transactions]

The MBIA Insurance Corporation Insurance Policy

The following information has been furnished by MBIA Insurance Corporation ("MBIA") for use in this Official Statement. Reference is made to Appendix ____ for a specimen of MBIA's policy [(the "Policy")].

MBIA does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding the Policy and MBIA set forth under the heading ["_____"]. Additionally, MBIA makes no representation regarding the [Bonds/Securities] or the advisability of investing in the [Bonds/Securities].

The MBIA Policy unconditionally and irrevocably guarantees the full and complete payment required to be made by or on behalf of the [Issuer] to the Paying Agent or its successor of an amount equal to (i) the principal of (either at the stated maturity or by an advancement of maturity pursuant to a mandatory sinking fund payment) and interest on, the [Bonds/Securities] as such payments shall become due but shall not be so paid (except that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments guaranteed by the MBIA Policy shall be made in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration, unless MBIA elects in its sole discretion, to pay in whole or in part any principal due by reason of such acceleration); and (ii) the reimbursement of any such payment which is subsequently recovered from any Owner of the [Bonds/Securities] pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes an avoidable preference to such Owner within the meaning of any applicable bankruptcy law (a "Preference").

MBIA's Policy does not insure against loss of any prepayment premium which may at any time be payable with respect to any [Bonds/Securities]. MBIA's Policy does not, under any circumstance, insure against loss relating to: (i) optional or mandatory redemptions (other than mandatory sinking fund redemptions); (ii) any payments to be made on an accelerated basis; (iii) payments of the purchase price of [Bonds/Securities] upon tender by an owner thereof; or (iv) any Preference relating to (i) through (iii) above. MBIA's Policy also does not insure against nonpayment of principal of or interest on the [Bonds/Securities] resulting from the insolvency, negligence or any other act or omission of the Paying Agent or any other paying agent for the [Bonds/Securities].

Upon receipt of telephonic or telegraphic notice, such notice subsequently confirmed in writing by registered or certified mail, or upon receipt of written notice by registered or certified mail, by MBIA from the Paying Agent or any owner of a [Bond/Security] the payment of an insured amount for which is then due, that such required payment has not been made, MBIA on the due date of such payment or within one business day after receipt of notice of such nonpayment, whichever is later, will make a deposit of funds, in an account with U.S. Bank Trust National Association, in New York, New York, or its successor, sufficient for the payment of any such insured amounts which are then due. Upon presentment and surrender of such [Bonds/Securities] or presentment of such other proof of ownership of

the [Bonds/Securities], together with any appropriate instruments of assignment to evidence the assignment of the insured amounts due on the [Bonds/Securities] as are paid by MBIA, and appropriate instruments to effect the appointment of MBIA as agent for such owners of the [Bonds/Securities] in any legal proceeding related to payment of insured amounts on the [Bonds/Securities], such instruments being in a form satisfactory to U.S. Bank Trust National Association, U.S. Bank Trust National Association shall disburse to such owners or the Paying Agent payment of the insured amounts due on such [Bonds/Securities], less any amount held by the Paying Agent for the payment of such insured amounts and legally available therefor.

MBIA Insurance Corporation

MBIA Insurance Corporation ("MBIA") is the principal operating subsidiary of MBIA Inc., a New York Stock Exchange listed company (the "Company"). The Company is not obligated to pay the debts of or claims against MBIA. MBIA is domiciled in the State of New York and licensed to do business in and subject to regulation under the laws of all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands of the United States and the Territory of Guam. MBIA has three branches, one in the Republic of France, one in the Republic of Singapore and one in the Kingdom of Spain.

The principal executive offices of MBIA are located at 113 King Street, Armonk, New York 10504 and the main telephone number at that address is (914) 273-4545.

Regulation

As a financial guaranty insurance company licensed to do business in the State of New York, MBIA is subject to the New York Insurance Law which, among other things, prescribes minimum capital requirements and contingency reserves against liabilities for MBIA, limits the classes and concentrations of investments that are made by MBIA and requires the approval of policy rates and forms that are employed by MBIA. State law also regulates the amount of both the aggregate and individual risks that may be insured by MBIA, the payment of dividends by MBIA, changes in control with respect to MBIA and transactions among MBIA and its affiliates.

The Policy is not covered by the Property/Casualty Insurance Security Fund specified in Article 76 of the New York Insurance Law.

Financial Strength Ratings of MBIA

Moody's Investors Service, Inc. rates the financial strength of MBIA "Aaa."

Standard & Poor's, a division of The McGraw-Hill Companies, Inc. rates the financial strength of MBIA "AAA."

Fitch Ratings rates the financial strength of MBIA "AAA."

Each rating of MBIA should be evaluated independently. The ratings reflect the respective rating agency's current assessment of the creditworthiness of MBIA and its ability to pay claims on its policies of insurance. Any further explanation as to the significance of the above ratings may be obtained only from the applicable rating agency.

The above ratings are not recommendations to buy, sell or hold the [Bonds/Securities], and such ratings may be subject to revision or withdrawal at any time by the rating agencies. Any downward revision

or withdrawal of any of the above ratings may have an adverse effect on the market price of the [Bonds/Securities]. MBIA does not guaranty the market price of the [Bonds/Securities] nor does it guaranty that the ratings on the [Bonds/Securities] will not be revised or withdrawn.

MBIA Financial Information

As of December 31, 2004, MBIA had admitted assets of \$10.4 billion (unaudited), total liabilities of \$7.0 billion (unaudited), and total capital and surplus of \$3.4 billion (unaudited) determined in accordance with statutory accounting practices prescribed or permitted by insurance regulatory authorities. As of June 30, 2005 MBIA had admitted assets of \$10.7 billion (unaudited), total liabilities of \$7.0 billion (unaudited), and total capital and surplus of \$3.7 billion (unaudited) determined in accordance with statutory accounting practices prescribed or permitted by insurance regulatory authorities.

For further information concerning MBIA, see the consolidated financial statements of MBIA and its subsidiaries as of December 31, 2004 and December 31, 2003 and for each of the three years in the period ended December 31, 2004, prepared in accordance with generally accepted accounting principles, included in the Annual Report on Form 10-K of the Company for the year ended December 31, 2004 and the consolidated financial statements of MBIA and its subsidiaries as of June 30, 2005 and for the six month periods ended June 30, 2005 and June 30, 2004 included in the Quarterly Report on Form 10-Q of the Company for the period ended June 30, 2005, which are hereby incorporated by reference into this Official Statement and shall be deemed to be a part hereof.

Copies of the statutory financial statements filed by MBIA with the State of New York Insurance Department are available over the Internet at the Company's web site at <http://www.mbia.com> and at no cost, upon request to MBIA at its principal executive offices.

Incorporation of Certain Documents by Reference

The following documents filed by the Company with the Securities and Exchange Commission (the "SEC") are incorporated by reference into this Official Statement:

- (1) The Company's Annual Report on Form 10-K for the year ended December 31, 2004; and
- (2) The Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2005.

Any documents, including any financial statements of MBIA and its subsidiaries that are included therein or attached as exhibits thereto, filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of the Company's most recent Quarterly Report on Form 10-Q or Annual Report on Form 10-K, and prior to the termination of the offering of the [Bonds/Securities] offered hereby shall be deemed to be incorporated by reference in this Official Statement and to be a part hereof from the respective dates of filing such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein, or contained in this Official Statement, shall be deemed to be modified or superseded for purposes of this Official Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Official Statement.

The Company files annual, quarterly and special reports, information statements and other information with the SEC under File No. 1-9583. Copies of the Company's SEC filings (including (1) the Company's Annual Report on Form 10-K for the year ended December 31, 2004, and (2) the Company's

Quarterly Reports on Form 10-Q for the quarters ended March 31, 2005 and June 30, 2005) are available (i) over the Internet at the SEC's web site at <http://www.sec.gov>; (ii) at the SEC's public reference room in Washington D.C.; (iii) over the Internet at the Company's web site at <http://www.mbia.com>; and (iv) at no cost, upon request to MBIA at its principal executive offices.

STD

DEBT SERVICE RESERVE FUND SURETY BOND

Application has been made to the MBIA Insurance Corporation (the "Insurer") for a commitment to issue a surety bond (the "Debt Service Reserve Fund Surety Bond"). The Debt Service Reserve Fund Surety Bond will provide that upon notice from the Paying Agent to the Insurer to the effect that insufficient amounts are on deposit in the Debt Service Fund to pay the principal of (at maturity or pursuant to mandatory redemption requirements) and interest on the 2000 Obligations, the Insurer will promptly deposit with the Paying Agent an amount sufficient to pay the principal of and interest on the 2000 Obligations or the available amount of the Debt Service Reserve Fund Surety Bond, whichever is less. Upon the later of: (i) three (3) days after receipt by the Insurer of a Demand for Payment in the form attached to the Debt Service Reserve Fund Surety Bond, duly executed by the Paying Agent; or (ii) the payment date of the Obligations as specified in the Demand for Payment presented by the Paying Agent to the Insurer, the Insurer will make a deposit of funds in an account with U.S. Bank Trust National Association, in New York, New York, or its successor, sufficient for the payment to the Paying Agent, of amounts which are then due to the Paying Agent (as specified in the Demand for Payment) subject to the Surety Bond Coverage.

The available amount of the Debt Service Reserve Fund Surety Bond is the initial face amount of the Debt Service Reserve Fund Surety Bond less the amount of any previous deposits by the Insurer with the Paying Agent which have not been reimbursed by the City. The City and the Insurer have entered into a Financial Guaranty Agreement dated [] (the "Agreement"). Pursuant to the Agreement, the City is required to reimburse the Insurer, within one year of any deposit, the amount of such deposit made by the Insurer with the Paying Agent under the Debt Service Reserve Fund Surety Bond. Such reimbursement shall be made only after all required deposits to the Operation and Maintenance Fund and the Debt Service Fund have been made.

Under the terms of the Agreement, the Paying Agent is required to reimburse the Insurer, with interest, until the face amount of the Debt Service Reserve Fund Surety Bond is reinstated before any deposit is made to the General Fund. No optional redemption of Obligations may be made until the Insurer's Debt Service Reserve Fund Surety Bond is reinstated. The Debt Service Reserve Fund Surety Bond will be held by the Paying Agent in the Debt Service Reserve Fund and is provided as an alternative to the City depositing funds equal to the Debt Service Requirement for outstanding Obligations. The Debt Service Reserve Fund Surety Bond will be issued in the face amount equal to Maximum Annual Debt Service for the Obligations and the premium therefor will be fully paid by the City at the time of delivery of the Obligations.

FINANCIAL GUARANTY INSURANCE POLICY

MBIA Insurance Corporation
Armonk, New York 10504

Policy No. [NUMBER]

MBIA Insurance Corporation (the "Insurer"), in consideration of the payment of the premium and subject to the terms of this policy, hereby unconditionally and irrevocably guarantees to any owner, as hereinafter defined, of the following described obligations, the full and complete payment required to be made by or on behalf of the Issuer to [PAYING AGENT/TRUSTEE] or its successor (the "Paying Agent") of an amount equal to (i) the principal of (either at the stated maturity or by any advancement of maturity pursuant to a mandatory sinking fund payment) and interest on, the Obligations (as that term is defined below) as such payments shall become due but shall not be so paid (except that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments guaranteed hereby shall be made in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration, unless the Insurer elects, in its sole discretion, to pay in whole or in part any principal due by reason of such acceleration); and (ii) the reimbursement of any such payment which is subsequently recovered from any owner pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes an avoidable preference to such owner within the meaning of any applicable bankruptcy law. The amounts referred to in clauses (i) and (ii) of the preceding sentence shall be referred to herein collectively as the "Insured Amounts." "Obligations" shall mean:

[PAR]
[LEGAL NAME OF ISSUE]

Upon receipt of telephonic or telegraphic notice, such notice subsequently confirmed in writing by registered or certified mail, or upon receipt of written notice by registered or certified mail, by the Insurer from the Paying Agent or any owner of an Obligation the payment of an Insured Amount for which is then due, that such required payment has not been made, the Insurer on the due date of such payment or within one business day after receipt of notice of such nonpayment, whichever is later, will make a deposit of funds, in an account with U.S. Bank Trust National Association, in New York, New York, or its successor, sufficient for the payment of any such Insured Amounts which are then due. Upon presentment and surrender of such Obligations or presentment of such other proof of ownership of the Obligations, together with any appropriate instruments of assignment to evidence the assignment of the Insured Amounts due on the Obligations as are paid by the Insurer, and appropriate instruments to effect the appointment of the Insurer as agent for such owners of the Obligations in any legal proceeding related to payment of Insured Amounts on the Obligations, such instruments being in a form satisfactory to U.S. Bank Trust National Association, U.S. Bank Trust National Association shall disburse to such owners, or the Paying Agent payment of the Insured Amounts due on such Obligations, less any amount held by the Paying Agent for the payment of such Insured Amounts and legally available therefor. This policy does not insure against loss of any prepayment premium which may at any time be payable with respect to any Obligation.

As used herein, the term "owner" shall mean the registered owner of any Obligation as indicated in the books maintained by the Paying Agent, the Issuer, or any designee of the Issuer for such purpose. The term owner shall not include the Issuer or any party whose agreement with the Issuer constitutes the underlying security for the Obligations.

Any service of process on the Insurer may be made to the Insurer at its offices located at 113 King Street, Armonk, New York 10504 and such service of process shall be valid and binding.

This policy is non-cancellable for any reason. The premium on this policy is not refundable for any reason including the payment prior to maturity of the Obligations.

IN WITNESS WHEREOF, the Insurer has caused this policy to be executed in facsimile on its behalf by its duly authorized officers, this [DAY] day of [MONTH, YEAR].

MBIA Insurance Corporation

President

Assistant Secretary

STATEMENT OF INSURANCE

MBIA Insurance Corporation (the "Insurer") has issued a policy containing the following provisions, such policy being on file at [INSERT NAME OF TRUSTEE OR PAYING AGENT, INCLUDING CITY, STATE].

The Insurer, in consideration of the payment of the premium and subject to the terms of this policy, hereby unconditionally and irrevocably guarantees to any owner, as hereinafter defined, of the following described obligations, the full and complete payment required to be made by or on behalf of the Issuer to [INSERT NAME OF TRUSTEE OR PAYING AGENT] or its successor (the "Paying Agent") of an amount equal to (i) the principal of (either at the stated maturity or by any advancement of maturity pursuant to a mandatory sinking fund payment) and interest on, the Obligations (as that term is defined below) as such payments shall become due but shall not be so paid (except that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments guaranteed hereby shall be made in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration, unless the Insurer elects in its sole discretion, to pay in whole or in part any principal due by reason of such acceleration); and (ii) the reimbursement of any such payment which is subsequently recovered from any owner pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes an avoidable preference to such owner within the meaning of any applicable bankruptcy law. The amounts referred to in clauses (i) and (ii) of the preceding sentence shall be referred to herein collectively as the "Insured Amounts." "Obligations" shall mean: [INSERT LEGAL TITLE OF BONDS, CENTERED AS FOLLOWS:]

[\$ PAR AMOUNT]

[ISSUER]

[DESCRIPTION OF BONDS]

Upon receipt of telephonic or telegraphic notice, such notice subsequently confirmed in writing by registered or certified mail, or upon receipt of written notice by registered or certified mail, by the Insurer from the Paying Agent or any owner of an Obligation the payment of an Insured Amount for which is then due, that such required payment has not been made, the Insurer on the due date of such payment or within one business day after receipt of notice of such nonpayment, whichever is later, will make a deposit of funds, in an account with U.S. Bank Trust National Association, in New York, New York, or its successor, sufficient for the payment of any such Insured Amounts which are then due. Upon presentment and surrender of such Obligations or presentment of such other proof of ownership of the Obligations, together with any appropriate instruments of assignment to evidence the assignment of the Insured Amounts due on the Obligations as are paid by the Insurer, and appropriate instruments to effect the appointment of the Insurer as agent for such owners of the Obligations in any legal proceeding related to payment of Insured Amounts on the Obligations, such instruments being in a form satisfactory to U.S. Bank Trust National Association, U.S. Bank Trust National Association shall disburse to such owners or the Paying Agent payment of the Insured Amounts due on such Obligations, less any amount held by the Paying Agent for the payment of such Insured Amounts and legally available therefor. This policy does not insure against loss of any prepayment premium which may at any time be payable with respect to any Obligation.

As used herein, the term "owner" shall mean the registered owner of any Obligation as indicated in the books maintained by the Paying Agent, the Issuer, or any designee of the Issuer for such purpose. The term owner shall not include the Issuer or any party whose agreement with the Issuer constitutes the underlying security for the Obligations.

Any service of process on the Insurer may be made to the Insurer at its offices located at 113 King Street, Armonk, New York 10504 and such service of process shall be valid and binding.

This policy is non-cancellable for any reason. The premium on this policy is not refundable for any reason including the payment prior to maturity of the Obligations.

MBIA INSURANCE CORPORATION

PAYMENTS UNDER THE POLICY/OTHER REQUIRED PROVISIONS

A. In the event that, on the second Business Day, and again on the Business Day, prior to the payment date on the Obligations, the Paying Agent/Trustee has not received sufficient moneys to pay all principal of and interest on the Obligations due on the second following or following, as the case may be, Business Day, the Paying Agent/Trustee shall immediately notify the Insurer or its designee on the same Business Day by telephone or telegraph, confirmed in writing by registered or certified mail, of the amount of the deficiency.

B. If the deficiency is made up in whole or in part prior to or on the payment date, the Paying Agent/Trustee shall so notify the Insurer or its designee.

C. In addition, if the Paying Agent/Trustee has notice that any Bondholder has been required to disgorge payments of principal or interest on the Obligations to a trustee in bankruptcy or creditors or others pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes an avoidable preference to such Bondholder within the meaning of any applicable bankruptcy laws, then the Paying Agent/Trustee shall notify the Insurer or its designee of such fact by telephone or telegraphic notice, confirmed in writing by registered or certified mail.

D. The Paying Agent/Trustee is hereby irrevocably designated, appointed, directed and authorized to act as attorney-in-fact for Holders of the Obligations as follows:

1. If and to the extent there is a deficiency in amounts required to pay interest on the Obligations, the Paying Agent/Trustee shall (a) execute and deliver to U.S. Bank Trust National Association, or its successors under the Policy (the "Insurance Paying Agent/Trustee"), in form satisfactory to the Insurance Paying Agent/Trustee, an instrument appointing the Insurer as agent for such Holders in any legal proceeding related to the payment of such interest and an assignment to the Insurer of the claims for interest to which such deficiency relates and which are paid by the Insurer, (b) receive as designee of the respective Holders (and not as Paying Agent/Trustee) in accordance with the tenor of the Policy payment from the Insurance Paying Agent/Trustee with respect to the claims for interest so assigned, and (c) disburse the same to such respective Holders; and

2. If and to the extent of a deficiency in amounts required to pay principal of the Obligations, the Paying Agent/Trustee shall (a) execute and deliver to the Insurance Paying Agent/Trustee in form satisfactory to the Insurance Paying Agent/Trustee an instrument appointing the Insurer as agent for such Holder in any legal proceeding relating to the payment of such principal and an assignment to the Insurer of any of the Obligation surrendered to the Insurance Paying Agent/Trustee of so much of the principal amount thereof as has not previously been paid or for which moneys are not held by the Paying Agent/Trustee and available for such payment (but such assignment shall be delivered only if payment from the Insurance Paying Agent/Trustee is received), (b) receive as designee of the respective Holders (and not as Paying Agent/Trustee) in accordance with the tenor of the Policy payment therefor from the Insurance Paying Agent/Trustee, and (c) disburse the same to such Holders.

E. Payments with respect to claims for interest on and principal of Obligations disbursed by the Paying Agent/Trustee from proceeds of the Policy shall not be considered to discharge the obligation of the Issuer with respect to such Obligations, and the Insurer shall become the owner of such unpaid Obligation and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of this subsection or otherwise.

F. Irrespective of whether any such assignment is executed and delivered, the Issuer and the Paying Agent/Trustee hereby agree for the benefit of the Insurer that:

1. They recognize that to the extent the Insurer makes payments, directly or indirectly (as by paying through the Paying Agent/Trustee), on account of principal of or interest on the Obligations, the Insurer will be subrogated to the rights of such Holders to receive the amount of such principal and interest from the Issuer, with interest thereon as provided and solely from the sources stated in this Indenture and the Obligations; and

2. They will accordingly pay to the Insurer the amount of such principal and interest (including principal and interest recovered under subparagraph (ii) of the first paragraph of the Policy, which principal and interest shall be deemed past due and not to have been paid), with interest thereon as provided in this Indenture and the Obligation, but only from the sources and in the manner provided herein for the payment of principal of and interest on the Obligations to Holders, and will otherwise treat the Insurer as the owner of such rights to the amount of such principal and interest.

G. In connection with the issuance of additional Obligations, the Issuer shall deliver to the Insurer a copy of the disclosure document, if any, circulated with respect to such additional Obligations.

H. Copies of any amendments made to the documents executed in connection with the issuance of the Obligations which are consented to by the Insurer shall be sent to Standard & Poor's Corporation.

I. The Insurer shall receive notice of the resignation or removal of the Paying Agent/Trustee and the appointment of a successor thereto.

J. The Insurer shall receive copies of all notices required to be delivered to Bondholders and, on an annual basis, copies of the Issuer's audited financial statements and Annual Budget.

Notices: Any notice that is required to be given to a holder of the Obligation or to the Paying Agent/Trustee pursuant to the Indenture shall also be provided to the Insurer. All notices required to be given to the Insurer under the Indenture shall be in writing and shall be sent by registered or certified mail addressed to MBIA Insurance Corporation, 113 King Street, Armonk, New York 10504 Attention: Surveillance.

K. The Issuer/Obligor agrees to reimburse the Insurer immediately and unconditionally upon demand, to the extent permitted by law, for all reasonable expenses, including attorneys' fees and expenses, incurred by the Insurer in connection with (i) the enforcement by the Insurer of the Issuer's/Obligor's obligations, or the preservation or defense of any rights of the Insurer, under this Resolution/Indenture and any other document executed in connection with the issuance of the Obligations, and (ii) any consent, amendment, waiver or other action with respect to the Resolution/Indenture or any

related document, whether or not granted or approved, together with interest on all such expenses from and including the date incurred to the date of payment at Citibank's Prime Rate plus 3% or the maximum interest rate permitted by law, whichever is less. In addition, the Insurer reserves the right to charge a fee in connection with its review of any such consent, amendment or waiver, whether or not granted or approved.

L. The Issuer/Obligor agrees not to use the Insurer's name in any public document including, without limitation, a press release or presentation, announcement or forum without the Insurer's prior consent; provided however, such prohibition on the use of the Insurer's name shall not relate to the use of the Insurer's standard approved form of disclosure in public documents issued in connection with the current Obligations to be issued in accordance with the terms of the Commitment; and provided further such prohibition shall not apply to the use of the Insurer's name in order to comply with public notice, public meeting or public reporting requirements.

M. The Issuer /Obligor shall not enter into any agreement nor shall it consent to or participate in any arrangement pursuant to which Bonds are tendered or purchased for any purpose other than the redemption and cancellation or legal defeasance of such Bonds without the prior written consent of MBIA.

Revised 4/04

Associated
Time & Parking
Controls.
C. 6.

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING THE PURCHASE OF PARKING REVENUE COLLECTION EQUIPMENT FROM ASSOCIATED TIME AND PARKING CONTROLS, INC. IN THE AMOUNT OF \$46,805.10; APPROVING A 10% CONTINGENCY IN THE AMOUNT OF \$4,408.50; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$51,213.60.

WHEREAS, the City of Fayetteville has placed Associated Time and Parking Controls, Inc.'s Revenue Collection Equipment in the Municipal Parking Deck, and other downtown parking lots; and,

WHEREAS, the existing Revenue Collection Equipment is integrated with a server located in the City Administration Building; and,

WHEREAS, any new Revenue Collection Equipment needs to be compatible with the existing equipment and server.

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 finds that such circumstances constitute an exceptional situation where competitive bidding is not feasible or practical, and waives the requirements of formal competitive bidding for as long as the Parking Management Division uses Associated Time and Parking Controls, Inc. Revenue Collection Equipment, and approves the purchase of Parking Revenue Collection Equipment from Associated Time and Parking Controls, Inc. in the amount of \$46,805.10.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a 10% contingency in the amount of \$4,408.50

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of \$51,213.60.

PASSED and APPROVED this 4th day of October, 2005.

ATTEST

By:

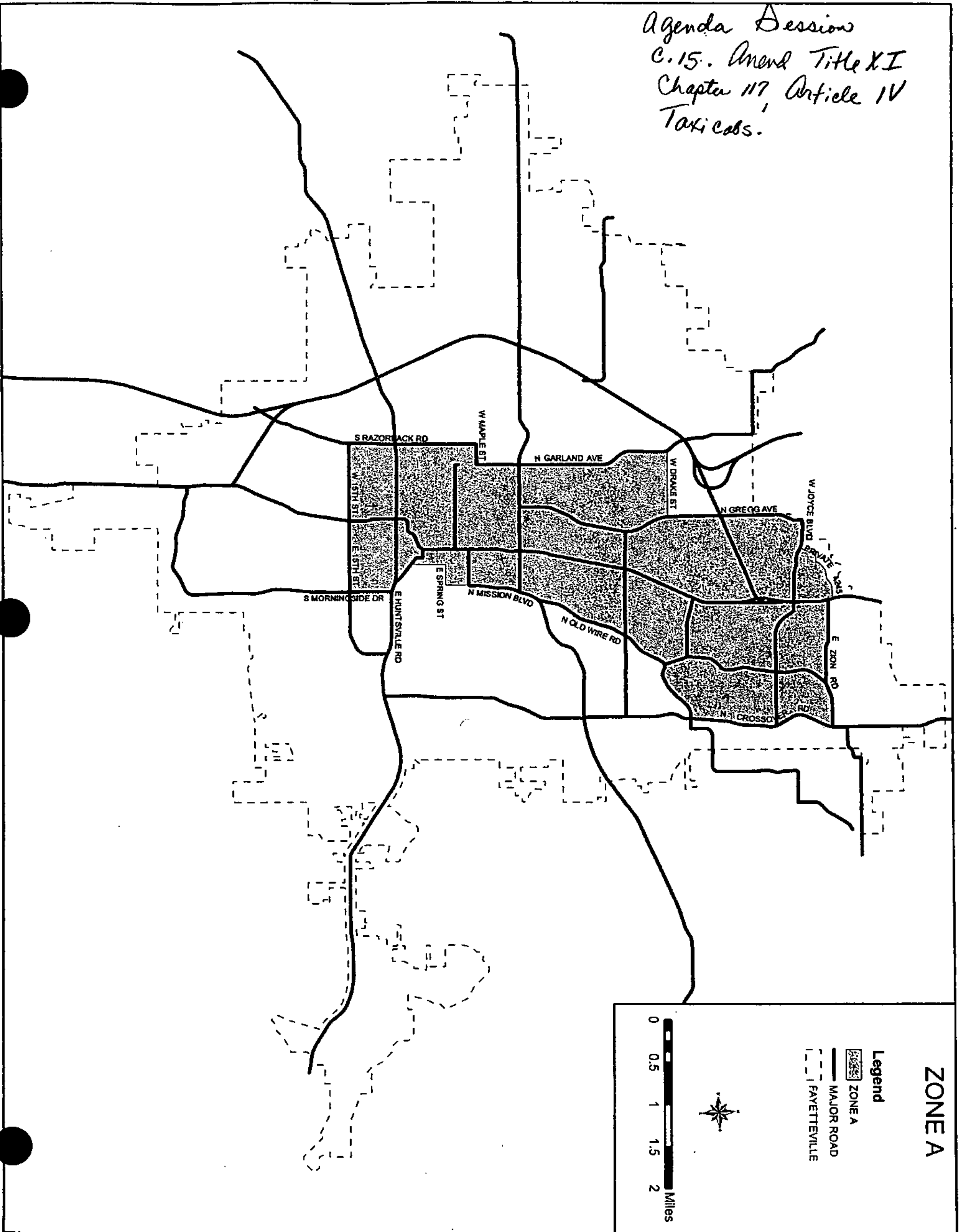
SONDRA SMITH, City Clerk

APPROVED

By:

DAN COODY, Mayor

Agenda Session
C.15. Amend Title XI
Chapter 117, Article IV
Taxis.



Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 - Robert Reynolds
Ward 1 Position 2 - Brenda Thiel
Ward 2 Position 1 - Kyle B. Cook
Ward 2 Position 2 - Don Marr
Ward 3 Position 1 - Robert K. Rhoads
Ward 3 Position 2 - Robert Ferrell
Ward 4 Position 1 - Shirley Lucas
Ward 4 Position 2 - Lioneld Jordan

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
October 4, 2005**

A meeting of the Fayetteville City Council will be held on October 4, 2005 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Call to Order
Roll Call
Pledge of Allegiance**

Rebecca Garner, Garrison Financial Corporation Report on the City's Investment Portfolio. *Agenda Session Only.*

A. CONSENT:

1. **Approval of the September 6, 2005 City Council meeting minutes.**
2. **Arkansas Parks & Tourism Grant – Botanical Gardens:** A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in the amount of \$250,000.00 for the construction of Phase 1A of the Botanical Gardens.

B. UNFINISHED BUSINESS:

1. **ANX 05-1488 (Collins/Kinghorn, 533/534):** An ordinance annexing that property described in annexation petition ANX 05-1488 for property located at 6102 and 6110 Lake Sequoyah Drive, containing 17.33 acres. *This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.*

2. **Planning Commission Appeal: Collins/Kinghorn Rezoning:** An ordinance rezoning that property described in rezoning petition RZN 05-1489 for approximately 17.64 acres located at 6102 and 6110 Lake Sequoyah Drive from R-A, Residential Agricultural, to RSF-4, Residential Single Family, 4 units per acre. *This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.*
3. **C-PZD 05-1670 (Pratt Place Inn, 481):** An ordinance establishing a Commercial Planned Zoning District titled C-PZD 05-1670, Pratt Place Inn, located at the west end of Markham Road, containing approximately 72 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.*
4. **R-PZD 05-1636 (Wellspring):** An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1636, Wellspring, located at Ruppel Road and Highway 16, containing approximately 152 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.*

C. NEW BUSINESS:

1. **Fayetteville Municipal Property Owners' Improvement District #9 – Biella:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 9 – Biella.
2. **Fayetteville Municipal Property Owners' Improvement District #10 – Wellspring:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 10 – Wellspring.
3. **Southwestern Bell Telephone Service Agreement:** An ordinance waiving the requirements of formal competitive bidding and approving a five-year renewal of the service agreement with Southwestern Bell Telephone, L.P. in the amount of \$69,000.00 to provide Plexar Custom Telecommunications Service.
4. **Fayetteville Depot, LLC Lease Agreement:** A resolution approving a lease agreement with Fayetteville Depot, LLC for property located at the northwest corner of Dickson Street and West Avenue to provide parking enforcement and revenue collection services for a proposed parking lot.
5. **Associated Time & Parking Controls, Inc.:** An ordinance waiving the requirements of formal competitive bidding and approving the purchase of Parking Revenue Collection Equipment from Associated Time and Parking Controls, Inc. in the amount of \$46,805.10; approving a 10% contingency in the amount of \$4,408.50; and approving a budget adjustment in the amount of \$51,213.60.
6. **Parking Management Division Position:** A resolution authorizing the addition of one (1) full-time position in the Parking Management Division; and approving a budget adjustment in the amount of \$3,282.00.

7. **RZN-05-1687 (Hopmann):** An ordinance rezoning that property described in rezoning petition RZN 05-1687 for approximately 0.18 acres located at 935 North College Avenue from R-O Residential-Office to C-1, Neighborhood Commercial.
8. **RZN-05-1688 (JDM Investments):** An ordinance rezoning that property described in rezoning petition RZN 05-1688 for approximately 6.34 acres located at 2806 Crossover, north boundary of Candle Wood Subdivision from R-A Residential-Agricultural to RSF-4, Residential Single Family, 4 units per acre.
9. **RZN-05-1711 (Mathias):** An ordinance rezoning that property described in rezoning petition RZN 05-1711 for approximately 1.25 acres located at Highway 62 West from R-A, Residential-Agricultural to C-1, Neighborhood Commercial.
10. **VAC 05-1632 (East Square Development):** An ordinance approving VAC 05-1632 submitted by Bob Kohler for an alley located on the City Block between East Avenue and College Avenue and Center Street and Mountain Street, as indicated on the attached map and legal description.
11. **VAC 05-1686 (Schultz):** An ordinance approving VAC 05-1686 submitted by N. Arthur Scott for property located at 1921 South Vale Avenue, vacating a portion of the right of way as indicated on the attached map and legal description.
12. **VAC 05-1689 (JDM Investments):** An ordinance approving VAC 05-1689 submitted by Roger Trotter for property located between 2716 and 2728 North Candlewood Drive, vacating a right of way as indicated on the attached map and legal description.
13. **R-PZD 05-1543 (Vantage Center):** An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1543, Vantage Center, located at the end of Shepard Lane adjacent to Frontage Road, containing approximately 4.7 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan.
14. **Amend Title XI: Chapter 117, Article IV: Taxicabs:** An ordinance amending Title XI: Chapter 117, Article IV: Taxicabs, of the Code of Fayetteville to provide a Rate Structure and Zone Map for the City of Fayetteville Taxi Coupon Program.
15. **2005 Millage Levy:** An ordinance levying a tax on the Real and Personal Property within the City of Fayetteville, Arkansas, for the year 2005 fixing the rate thereof at 2.0 mils for General Fund – Operations, 0.4 mils for the Firemen's Pension and Relief Fund, 0.4 mils for the Policemen's Pension and Relief Fund and 1.0 mil for the Fayetteville City Library; and certifying the same to the County Clerk of Washington County, Arkansas.

D. INFORMATIONAL:

Council Tour: September 19, 2005 – 4:30 PM

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

Agenda
Session
Only
9/27/05

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Coody and Fayetteville City Council

FROM: Stephen Davis, FIS Director



DATE: September 23, 2005

SUBJECT: Investment Presentation – September 27

Staff is attaching a copy of the investment presentation and supplemental materials for your review prior to the Agenda Session where the presentation will be made.

From: Marsha Farthing
To: Smith, Sondra
Date: 8/30/05 2:39PM
Subject: Agenda item

Sondra,

I have asked Rebecca Garner from Garrison Financial Corporation, formerly GarnerAsset Management Company, to give a short, informational report on the City's investment portfolio at the Sept. 27th agenda session. Can you reserve a spot for us? Let me know if you need anything more.

Marsha

CC: Davis, Steve

Investment Presentation

City of Fayetteville
Finance and Internal Services
and
Garrison Asset Management

September 27, 2005

Legal Information

□ State Law

- Arkansas Code annotated 14-58-309 (Act 1341 of 1999) and further defined in Section 23-47-401 (Investment Powers and Limitations)

□ City Law

- Investment Policy City of Fayetteville Resolution 169-99

RESOLUTION NO. ¹⁶⁹⁻⁹⁹~~168-99~~

MICROFILMED

A RESOLUTION APPROVING A NEW INVESTMENT POLICY
TO REPLACE POLICY ACCT-2 (EFFECTIVE JULY 2, 1996) IN
THE CITY OF FAYETTEVILLE POLICY AND PROCEDURES,
AS PERMITTED BY STATE OF ARKANSAS ACT 1341 OF 1999.

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

Section 1. That the City Council hereby approves a new investment policy to replace
Policy Acct-2 (effective July 2, 1996) in the City of Fayetteville Policy and Procedures, as permitted
by State of Arkansas Act 1341 of 1999. A copy of the policy amendment is attached hereto marked
Exhibit "A" and made a part hereof.

PASSED AND APPROVED this 21st day of December, 1999.



APPROVED:

By: Fred Hanna

Fred Hanna, Mayor

ATTEST:

By: Heather Woodruff

Heather Woodruff, City Clerk



CITY OF FAYETTEVILLE, ARKANSAS

INVESTMENT POLICY

I. Purpose:

The purpose of this policy is to provide guidelines for investment of City of Fayetteville operating funds to preserve the safety of principal, to maintain adequate cash flow, and to maximize interest earnings.

II. Scope:

This policy applies to the investment of City of Fayetteville operating funds not needed for immediate expenditures. This policy does not govern the investment of employee retirement or pension funds or proceeds of bond issues.

III. Standards/Objectives:

Investments will be made within the constraints of applicable State laws and this policy, taking into consideration liquidity needs of the City.

Investment decisions will be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

Investment of the funds of the City of Fayetteville shall be directed to the primary objective of safety of principal; the secondary objective shall be maintaining adequate cash flow; and the final objective shall be maximizing investment yield.

Except for cash in certain restricted and special funds, the City may consolidate moneys from individual funds to maximize interest earnings. Investment income will be allocated to the various funds based on each fund's participation.

IV. Delegation of Authority/Responsibility:

Management of the investment of City funds regulated by this policy shall be the responsibility of the Mayor and the Administrative Services Director. The Mayor and the Administrative Services Director may delegate authority for investment transactions. The Mayor and the Administrative Services Director may, by proper procurement procedures, contract for the services of an asset manager, an investment advisor, or other expert advisor(s) to invest all or a portion of City funds regulated by this policy. Selection of an independent asset manager or investment advisor will be limited to those candidates who have an office within the City of Fayetteville.

The Mayor and the Administrative Services Director and their designees are authorized to: open and close accounts with financial institutions in the name of the City; make wire transfers of funds for the City; make deposits of funds for the City; execute collateral, depository and investment agreements for the City; and take any other such actions needed to carry out their responsibilities for the depositing and investing of the City's funds as authorized by State Statutes and this policy.

The Mayor, the Administrative Services Director, and other City employees assigned to manage the investment portfolio, acting within the intent and scope of this Investment Policy, shall be relieved of personal responsibility for an individual security's credit risk or market risk. Officers and employees involved in the investment process shall refrain from personal business activities that conflict with proper execution of the investment program or impair their ability to make impartial investment decisions.

The Mayor and the Administrative Services Director shall establish operating procedures to implement this investment policy.

V. Authorized Investments:

- A. The City will invest only in book entry securities.
- B. The City may, without limitation, invest in the following instruments, provided, however, that at no time shall assets of the City be invested in any instrument or security not authorized for investment by Arkansas Code Annotated §§ 14-58-309 (Act 1341 of 1999), and further defined in Section 23-47-401 (Investment Powers and Limitations), copy attached or by the Local Government Joint Investment Trust Act, Arkansas Code Annotated §§ 19-8-301 et seq., (Local Government Trusts) as they may from time to time be amended:
 - 1. Direct obligations of the United States Government;
 - 2. Obligations of agencies and instrumentalities created by act of the United States Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment by the United States Government;
 - 3. Obligations the principal and interest of which are fully guaranteed by the United States Government or an agency or an instrumentality created by an act of the United States Congress and authorized thereby to issue such guarantee.
 - 4. Obligations the principal and interest of which are fully secured, insured, or covered by commitments or agreements to purchase by the United States Government or an agency or instrumentality created by an act of the United States Congress and authorized thereby to issue such commitments or agreements.
 - 5. General obligations of the states of the United States and of the political

subdivisions, municipalities, commonwealths, territories or insular possessions thereof (general obligation bonds);

6. Obligations issued by the Arkansas State Board of Education under authority of the State Constitution or applicable statutes;
 7. Prerefunded municipal bonds, the principal and interest of which are fully secured by the principal and interest of a direct obligation of the United States Government;
 8. Certificates of deposit with banks authorized by State law to receive deposits of public funds, that have branches or main offices within the Fayetteville City limits, with which the City has both a depository agreement and a collateral agreement.
 9. Repurchase agreements that are fully collateralized by direct obligations of the United States Government, provided that any such repurchase agreement shall provide for the taking of delivery of such collateral directly or through an authorized custodian;
 10. Securities of, or other interest in, any open-end type investment company or investment trust registered under the Investment Company Act of 1940, and which is defined as a "money market fund" under 17 CFR § 270.2a-7, provided that the portfolio of such investment company or investment trust is limited principally to United States Government obligations and to repurchase agreements fully collateralized by United States Government obligations; and, provided further that any such investment company or investment trust shall take delivery of such collateral either directly or through an authorized custodian.
 11. Local Government Trusts.
- C. The City may invest no more than twenty percent (20%) of the pooled investments in the following investment types and in accord with certain limitations described in Section VII Investing Parameters:
1. Corporate debt obligations (including commercial paper) of any corporation, with the following credit ratings: investment of City funds in Corporate Bonds will be limited to those rated as Single A minus or better by both Moody's Investor Service and Standard and Poor's; investment of City funds in Commercial Paper will be rated A-1/P-1,
 2. Securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company

or investment trust is limited to United States Government obligations and to repurchase agreements collateralized by the same type of collateral used to collateralize other City deposits, and provided further that any such investment company or investment trust shall take the delivery of such collateral either directly or through an authorized custodian;

D. Other Provisions

1. The Administrative Services Director may establish an account with the Federal Reserve Bank to purchase U.S. Government Securities directly from the U.S. Treasury.
2. Any Arkansas state legislative action that provides for additional investment vehicles or further restricts investment vehicles will be incorporated into the City's investment policy and will supersede any previous language.
3. The City will be allowed to hold to maturity any investments existing at the time of enactment of this policy. Reinvestment of such funds will be in accordance with this policy.
4. The Mayor and the Administrative Services Director may set additional limitations on the parameters for various types and concentration of investments. Operating procedures will define requirements to implement this policy.

VI. Investments Not Authorized:

The following investment vehicles, authorized by Act 1341 of 1999, are not considered suitable investments for City of Fayetteville funds:

- A. Warrants of political subdivisions of the State of Arkansas and municipalities thereof having maturities not exceeding one (1) year.
- B. The sale of federal funds with a maturity of not more than one (1) business day.
- C. Industrial development bonds for corporate obligors issued through any state of the United States or any political subdivision thereof.
- D. Revenue bond issues of any state of the United States or any municipality or any political subdivision thereof.
- E. Securities or other interests issued, assumed or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the European Bank for Reconstruction and Development, the Asian Development Bank, or the African Development Bank.

- F. Uninsured demand, savings, or time deposits or accounts of any depository institution chartered by the United States, any state of the United States, or the District of Columbia.

VII. Investing Parameters:

A. Diversification

The City investments regulated by this policy shall be diversified by:

- limiting investments to avoid over concentration in securities from a specific issuer to five percent (5%) of the cost basis of the city's portfolio at the time of purchase, a limit of fifteen percent (15%) of the cost basis of the City's portfolio will apply to each business sector as defined by any recognized rating agency (excluding U.S. Treasury securities and collateralized certificates of deposit),
- investing in securities with varying maturities, and
- continuously investing a portion of the portfolio in readily available funds to ensure that appropriate liquidity is maintained.

B. Maximum Maturities

The City will attempt to match investment maturities with cash flow requirements and will utilize investments in readily available funds, when needed, to meet ongoing obligations. The City anticipates a range of maturities of ninety (90) days to five (5) years. The City will invest in securities maturing more than five (5) years from the date of purchase only when the funds are easily defined to be used after five (5) years.

VIII. Allowed Institutions:

Security transactions on behalf of the City by an asset manager, or the City itself, will be conducted only with financial institutions and broker/dealers who have offices within Washington County unless otherwise authorized in writing by the Mayor and Director of Administrative Services.

A list of authorized financial institutions and broker/dealers to be used by an asset manager, an investment advisor, or the City itself, will be maintained by the City and provided to such asset manager or investment advisor on a mutually agreed upon basis. Security broker/dealers on the list will meet or exceed the capital adequacy standards set by the Federal Reserve Bank of New York and may include dealers designated as primary dealers by the Federal Reserve Bank of New York or regional dealers that qualify under Securities and Exchange Commission (SEC) Rule 15C3-1 (Uniform Net Capital Rule).

IX. Safekeeping/Collateralization:

- A. Investment of City funds, including cash held for investment, managed under contract of services by an asset manager, investment advisor, or other expert advisor(s) will be placed with a third party custodian approved by the City. All trades, where applicable, will be executed by Delivery vs. Payment (DVP) to ensure that securities are deposited in an eligible financial institution prior to the release of funds.
- B. The custodian will make reports as requested by the City or advisor(s) and will be accountable for the assets held by the custodian for the City's account. The custodian will be required to maintain an office in Washington County, Arkansas.
- C. Collateralization will be maintained as required by State law and procedures established by the City. Demand deposits, time deposits, repurchase agreements, and any other investments requiring collateralization shall be collateralized at a level of 102 percent of the market value of principal and accrued interest, less the amount insured by the FDIC.

City of Fayetteville, Arkansas
Notes to the Financial Statements
December 31, 2004

obligations of the U.S. Treasury, U.S. agencies or instrumentalities or the state of Arkansas. At December 31, 2004, none of the City's bank balances were exposed to custodial credit risk.

Investments

The City's investment policies are to comply with the provisions of State Statutes. Permissible investments include direct obligations of the U.S. Government, obligations of agencies of the U.S. Government, collateralized certificates of deposit, obligations issued by the Arkansas State Board of Education, prerefunded municipal bonds, certificate of deposits with banks authorized by State law to receive deposits of public funds, repurchase agreements, money market funds and corporate debt obligations. Pension fund assets held in trust may also invest in corporate equity securities.

At December 31, 2004, the City had the following investments and maturities:

Type	Fair Value	Maturities in Years			
		Less than 1 Year	1-5 Years	6-10 Years	More than 10 Years
U.S. Treasury obligations	\$ 16,797,312	\$ 9,178,768	\$ 814,673	\$ 6,172,856	\$ 631,015
U.S. agencies obligations	\$ 56,312,913	\$ 688,024	\$ 3,043,636	\$ 51,960,178	\$ 621,075
Corporate bonds	\$ 4,127,931	\$ 325,864	\$ 1,164,395	\$ 1,843,567	\$ 794,105
Other	\$ 140,000	\$ 100,000	\$ 40,000	\$	\$
		<u>\$ 10,292,656</u>	<u>\$ 5,062,704</u>	<u>\$ 59,976,601</u>	<u>\$ 2,046,195</u>
Money market mutual funds	\$ 57,426,035				
Corporate stocks	\$ 11,868,960				
	<u>\$ 146,673,151</u>				

City of Fayetteville, Arkansas
Notes to the Financial Statements
December 31, 2004

Interest Rate Risk – As a means of limiting its exposure to fair value losses arising from rising interest rates, the City's investment policy is to attempt to match investment maturities with cash flow requirements. Money market mutual funds are used to meet the short term cash flow needs of the City. Other investments are allowed within a range of maturities of ninety days to ten years and over. Most of the City's investments have maturities over five years to maximize interest earnings.

The pension trust investment policies address interest rate risk by managing asset allocation. The Policemen's Pension fund allows for 0% to 25% in cash and cash equivalents, 25% to 65% in fixed income and 35% to 50% in equities. The Firemen's Pension fund allows 5% to 25% in cash and cash equivalents, 15% to 75% in fixed income and 25% to 50% in equities.

Credit Risk – Credit risk is the risk that the issuer or other counterparty to an investment will not fulfill its obligations. It is the City's policy to invest no more than twenty percent in corporate debt and securities of a management type investment company or investment trust. The corporate bonds must be rated as Single A minus or better by both Moody's Investor Service and Standard and Poor's. Investment in Commercial Paper will be rated A-1/P-1. Investment in management type investment companies or investment trusts is limited to companies with portfolios limited to United States Government obligations and repurchase agreements with approved collateralization. The City's investments in corporate bonds ranged between A- and A+ and the government agencies were ranked AAA by Standard & Poor's at December 31, 2004.

The pension trust funds investment policies require a weighted average rating of the equity portfolio to a Standard and Poor's rating of B+ or better. The fixed income securities must carry a rating of investment grade or better by Moody's or by Standard & Poor's. The pension trust corporate bonds at year end held a S & P ranking between A- and AAA.

Custodial Credit Risk – Custodial credit risk is the risk that in the event of the failure of the counterparty, the City will not be able to recover the value of its investment or collateral securities that are in the possession of an outside party. While the City's investment policy doesn't directly address custodial credit risk all investments held by the City or by an agent of the City in the City's name are insured or collateralized or limited to Treasury Fund Money Markets. The majority of the City's investments are invested by an asset manager and are held by Charles Schwab in the City's name. All funds held by Schwab are insured. In addition, the City's investment policy requires that security broker/dealers will meet or exceed the capital adequacy standards set by the Federal Reserve Bank of New York.

City of Fayetteville, Arkansas
Notes to the Financial Statements
December 31, 2004

INVESTMENT DISCLOSURE
2004 AUDITED
FINANCIAL STATEMENTS

Concentration of Credit Risk – The City's investment policy limits investment in any one issuer to 5% of the cost basis of the City's portfolio and limits concentration in any one business sector to 15% of the cost basis of the City's portfolio excluding U.S. Treasury securities and collateralized certificates of deposits. The pension trust funds limit investment in any one corporate issuer to 5% and investment in any one equity issuer to 2.5% of the total portfolio at cost. The City's portfolio had no investments that exceeded these parameters at December 31, 2004.

Foreign Currency Risk – This risk relates to adverse affects on the fair value of an investment from changes in exchange rates. The City's investment policy doesn't directly address foreign currency risk. The City's investment manager only buys U.S. dollar pay securities. The City had no investments that were denominated in foreign currency at December 31, 2004.

B. Capital Assets
Primary government

Capital asset activity for the year ended December 31, 2004 was as follows:

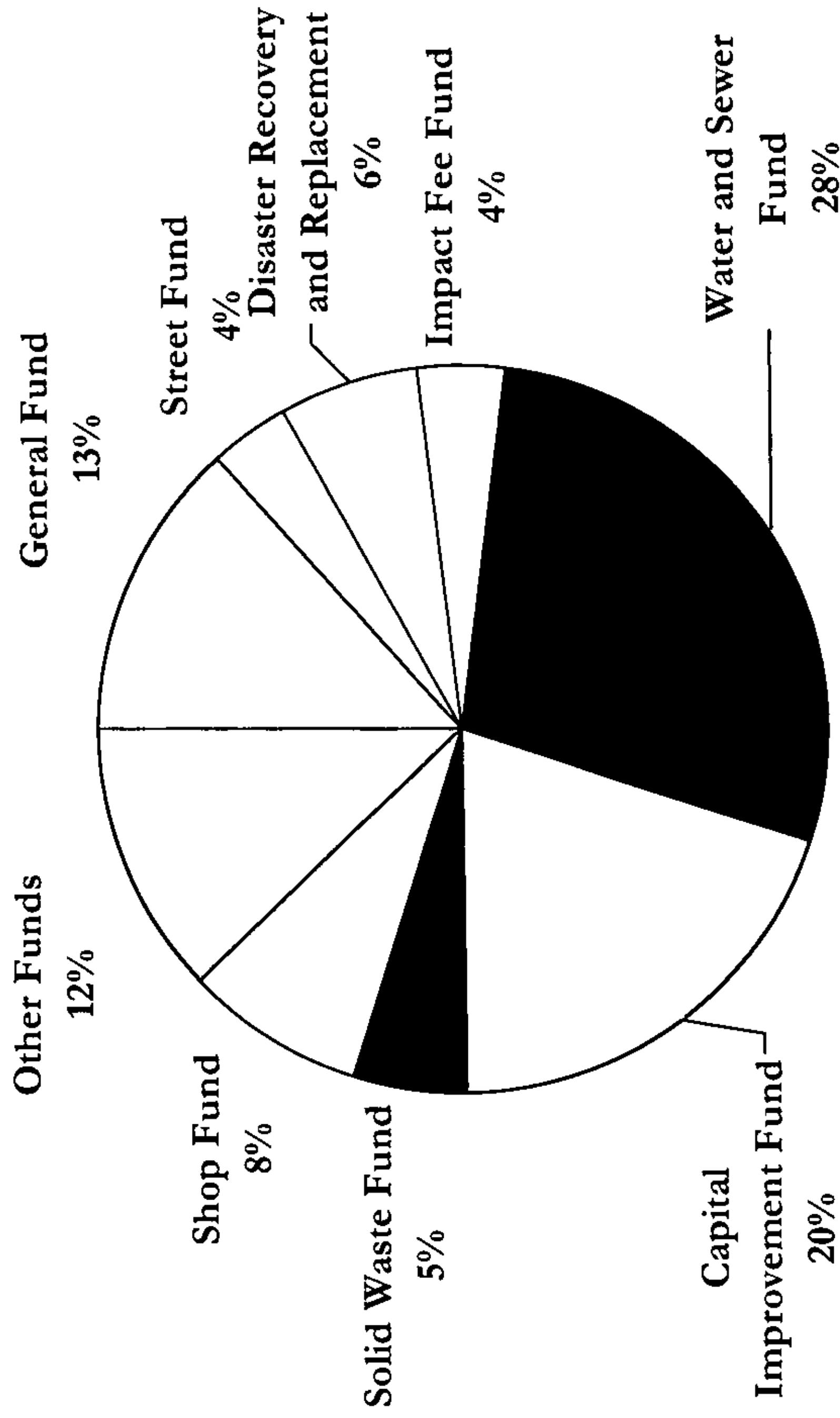
	Beginning Balance	Increases/transfers	Decreases/transfers	Ending Balance
Governmental activities				
Capital assets not depreciated:				
Land	\$ 10,469,299	\$ 486,223	\$ (82,838)	\$ 10,872,684
Construction in progress	<u>18,445,243</u>	<u>10,432,339</u>	<u>(14,561,885)</u>	<u>14,315,697</u>
Total	<u>28,914,542</u>	<u>10,918,562</u>	<u>(14,644,723)</u>	<u>25,188,381</u>
Capital assets, being depreciated				
Buildings	19,494,963	20,829,894	(22,313,802)	18,011,055
Improvements other than buildings	26,407,975	7,288,607	(927,388)	32,769,194
Machinery, equipment, and vehicles	<u>27,708,849</u>	<u>4,827,940</u>	<u>(1,852,704)</u>	<u>30,684,085</u>
Total	<u>73,611,787</u>	<u>32,946,441</u>	<u>(25,093,894)</u>	<u>81,464,334</u>
Less accumulated depreciation for:				
Buildings	(9,392,088)	(693,291)	1,273,406	(8,811,973)
Improvements other than buildings	(8,813,220)	(1,110,320)	562,248	(9,372,584)
Machinery, equipment, and vehicles	<u>(17,979,396)</u>	<u>(2,976,639)</u>	<u>1,794,970</u>	<u>(19,149,773)</u>
Total	<u>(36,184,704)</u>	<u>(4,780,250)</u>	<u>3,630,624</u>	<u>(37,334,330)</u>
Total depreciable assets, net	<u>37,427,084</u>	<u>28,166,191</u>	<u>(21,463,270)</u>	<u>44,130,004</u>
Governmental capital assets, net	<u>\$ 66,341,625</u>	<u>\$ 39,084,753</u>	<u>\$ (36,107,993)</u>	<u>\$ 69,318,385</u>

City of Fayetteville

□ City of Fayetteville Cash Flow Projections

□ Pooled Investments

Allocation of Funds



□ June 30, 2005 Total: \$68,500,000

Objectives of the Fund

- 1. Legality
- 2. Principal Protection
- 3. Liquidity
- 4. Income (Yield)

City of Fayetteville – Income March 31, 2000 – June 30, 2005

Actual Income Received, After Fees	\$14,700,863
Estimated Income Under Old Law*	\$7,242,928
Additional Income Received With New Law	\$7,457,935
Income Received as a Percentage of Estimated Old Law Scenario* Income	203%

*Portfolio Equally Split Between 3 Month, 6 Month, and 1 Year T-Bills

City of Fayetteville – Total Return March 31, 2000 – June 30, 2005

City of Fayetteville, Annualized Total Return After Fees	5.11%
Estimated Annualized Total Return, Old Law Scenario*	3.21%

*Portfolio Equally Split Between 3 Month, 6 Month, and 1 Year T-Bills

Market and Risk Factors Are Changing

Spread Relationships Tightening

10 Year – 2 Year US Treasury Yield Spreads,
Basis Points

<u>12/31/02</u>	<u>12/31/03</u>	<u>12/31/04</u>	<u>03/31/05</u>	<u>06/30/05</u>
222	243	115	71	28

Garrison Asset Management
COMPARATIVE INCOME SUMMARY
City of Fayetteville, Arkansas

Quarter Ended	Base Value	Income	
		City of Fayetteville Income, After Fees	Equal Split Between 3M, 6M, 1Y TBills
6/30/2000	10,700,000	74,318	162,613
9/30/2000	29,100,000	283,911	442,466
12/31/2000	35,700,000	783,884	553,796
3/31/2001	41,200,000	368,843	590,533
6/30/2001	42,000,000	799,914	445,130
9/30/2001	48,800,000	663,587	442,616
12/31/2001	54,900,000	798,154	345,184
3/31/2002	63,200,000	79,608	302,307
6/30/2002	70,000,000	1,510,572	375,725
9/30/2002	77,200,000	738,837	362,068
12/31/2002	78,000,000	729,881	310,570
3/31/2003	79,600,000	590,786	255,649
6/30/2003	80,400,000	1,072,223	232,624
9/30/2003	81,100,000	219,375	190,991
12/31/2003	78,100,000	1,086,166	207,551
3/31/2004	72,900,000	844,559	197,377
6/30/2004	74,200,000	803,346	193,291
9/30/2004	74,100,000	798,590	310,417
12/31/2004	72,300,000	912,086	350,414
3/31/2005	70,400,000	653,658	438,181
6/30/2005	69,600,000	888,566	533,426
Total		\$14,700,863	\$7,242,928
City of Fayetteville Excess Income		\$7,457,935	

Garrison Asset Management
 PERFORMANCE HISTORY
 NET OF FEES
 City of Fayetteville Arkansas
 From 03-31-00 to 06-30-05

Percent Return Cumulative TWR
 Per Period Basis = 100

Time Period	Account	Account
3/31/2000 to 3/31/2000	100	
6/30/2000 to 6/30/2000	0.93	100.93
9/30/2000 to 9/30/2000	1.88	102.82
12/31/2000 to 12/31/2000	2.52	105.41
3/31/2001 to 3/31/2001	1.99	107.51
6/30/2001 to 6/30/2001	1.28	108.89
9/30/2001 to 9/30/2001	2.48	111.58
12/31/2001 to 12/31/2001	0.28	111.9
3/31/2002 to 3/31/2002	0.06	111.96
6/30/2002 to 6/30/2002	2.09	114.3
9/30/2002 to 9/30/2002	0.98	115.42
12/31/2002 to 12/31/2002	2.1	117.84
3/31/2003 to 3/31/2003	0.95	118.96
6/30/2003 to 6/30/2003	0.88	120
9/30/2003 to 9/30/2003	0.63	120.76
12/31/2003 to 12/31/2003	0.46	121.32
3/31/2004 to 3/31/2004	1.76	123.46
6/30/2004 to 6/30/2004	-0.96	122.28
9/30/2004 to 9/30/2004	2.75	125.64
12/31/2004 to 12/31/2004	0.94	126.82
3/31/2005 to 3/31/2005	0.3	127.21
6/30/2005 to 6/30/2005	2.11	129.9

Date to Date	Account
3/31/2000 to 6/30/2005 Annualized	29.9 5.11

Inception to Date	Account
3/31/2000 to 6/30/2005 Annualized	29.9 5.11

for explanation.

Equity C15

HISTORICAL YIELD CURVE

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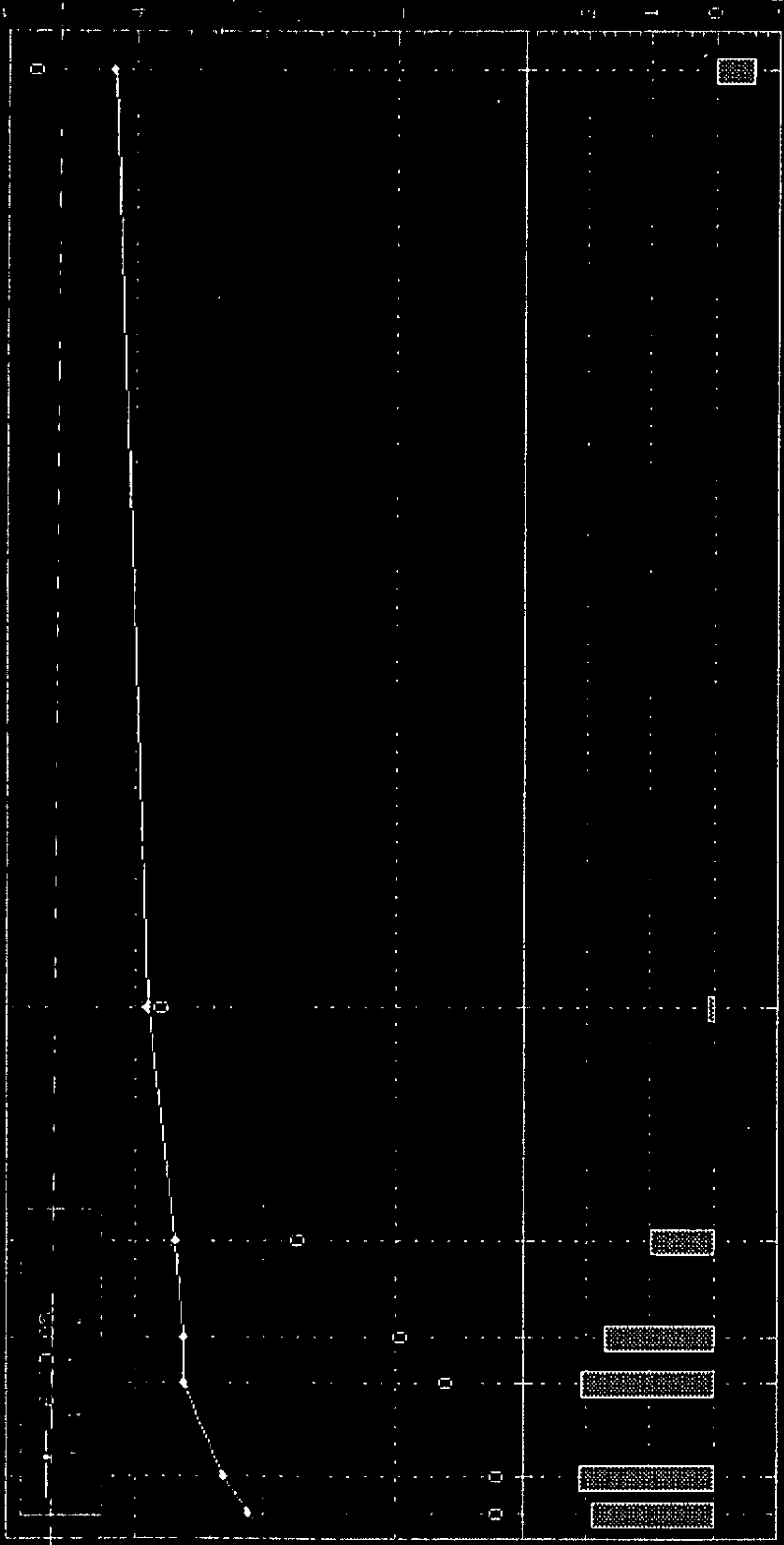
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Europe 44 20 7330 7500
Germany 49 69 920410
Hong Kong 852 2277 6000
Japan 81 3 3201 8900
Singapore 65 6212 1000 U.S. 1 312 318 3000
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Garrison Asset Management
HISTORICAL RATES

City of Fayetteville, Arkansas

Time Period	Quarter Ended	Yield 3 Month T-Bills	Yield 6 Month T-Bills	Yield 1 Year T-Bills
3/31/2000	6/30/2000	5.871%	6.146%	6.220%
6/30/2000	9/30/2000	5.855%	6.221%	6.170%
9/30/2000	12/31/2000	6.210%	6.275%	6.130%
12/31/2000	3/31/2001	5.895%	5.705%	5.600%
3/31/2001	6/30/2001	4.286%	4.132%	4.300%
6/30/2001	9/30/2001	3.656%	3.648%	3.580%
9/30/2001	12/31/2001	2.371%	2.354%	2.820%
12/31/2001	3/31/2002	1.725%	1.795%	2.220%
3/31/2002	6/30/2002	1.777%	2.094%	2.570%
6/30/2002	9/30/2002	1.685%	1.743%	2.200%
9/30/2002	12/31/2002	1.552%	1.506%	1.720%
12/31/2002	to 3/31/2003	1.195%	1.209%	1.450%
3/31/2003	to 6/30/2003	1.113%	1.119%	1.240%
6/30/2003	to 9/30/2003	0.851%	0.965%	1.010%
9/30/2003	to 12/31/2003	0.943%	1.006%	1.240%
12/31/2003	to 3/31/2004	0.922%	1.017%	1.310%
3/31/2004	to 6/30/2004	0.943%	0.993%	1.190%
6/30/2004	to 9/30/2004	1.266%	1.641%	2.120%
9/30/2004	to 12/31/2004	1.705%	1.991%	2.120%
12/31/2004	to 3/31/2005	2.217%	2.582%	2.670%
3/31/2005	to 6/30/2005	2.772%	3.125%	3.300%

1

2

City of Fayetteville
Staff Review Form
City Council Agenda Items
Contracts

4-Oct-05

City Council Meeting Date

David Wright/Connie Edmonston *CE*

Submitted By

Parks and Recreation

Division

Operations

Department

Action Required:

Resolution approving Parks and Recreation and the Botanical Garden Society of the Ozarks to submit an Outdoor Recreation Grant to the Arkansas Department of Parks and Tourism, in the amount of \$250,000.

n/a

Cost of this request

n/a

Account Number

n/a

Project Number

n/a

Category/Project Budget

n/a

Funds Used to Date

n/a

Remaining Balance

n/a

Program Category / Project Name

n/a

Program / Project Category Name

n/a

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

[Signature] 9-15-05
Department Director Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

[Signature] 9/15/05
City Attorney

[Signature] 9-16-05
Finance and Internal Service Director Date

Received in City Clerk's Office



[Signature] 9/16/05
Mayor Date

Received in Mayor's Office



Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Dan Coody and City Council
Thru: Gary Dumas, Operations Director
Connie Edmonston, Parks and Recreation Director *CE*
From: David Wright, Recreation Superintendent *DW*
Date: September 14, 2005
Subject: Resolution to apply for Arkansas Outdoor Grant Program

RECOMMENDATION

Parks and Recreation Staff requests City Council's approval of this resolution authorizing Parks and Recreation and the Botanical Garden Society of the Ozarks (BGSO) to apply for \$250,000 from the Arkansas Parks and Tourism Outdoor Recreation Grant Program for the new Botanical Gardens site at Lake Fayetteville.

BACKGROUND

On August 16, City Council passed Resolution Number 164-05, authorizing Parks and Recreation, in conjunction with BGSO to apply for a grant from Arkansas Department of Parks and Tourism. If awarded, BGSO will utilize these funds for Phase IA of their project, which will include a studio workshop with offices, meeting/lecture space, an arrival plaza, the Great Lawn, themed gardens and a green house. This grant was completed and successfully submitted to the State on August 22, 2005.

DISCUSSION

On August 29, 2005, the State completed the preliminary review of our Grant Application. The State's response indicated our City Resolution was not adequate. Our resolution authorized Parks and Recreation and BGSO to apply and receive the grant. However, the state needs verification that City Council authorizes the "grantor and the grantee to enter into a binding agreement which obligates both parties to policies and procedures contained in the Land and Water Conservation Fund Grants Manual." Parks and Recreation consulted the City Attorney's office and decided based on the State's request, to re-word the resolution to suit their needs. Because of the new wording in the resolution, it must be approved by City Council.

As we informed you last month, receiving state/federal dollars for the project will not affect the current relationship with the Department of Parks and Tourism. The BGSO leased land is already committed in the Land and Water Conservation Fund and is being maintained following the policies and procedures stated in the Land and Water Conservation Fund Grants Manual.

BUDGET IMPACT

This project will have no immediate impact on the City of Fayetteville's budget. The State/Federal funds will be routed through the City of Fayetteville to the BGSO.

City Council Meeting of October 4

A.2.
Arkansas Parks & Tourism Grant
Botanical Gardens
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Agenda Item Number

Attachments:

Memo to Council dated July 27, 2005
Resolution Passed August 16, 2005
Proposed Resolution
Public Meeting Minutes June 6, 2005
PRAB Meeting Minutes June 6, 2005
Phase 1A Conceptual Plan
BGSO/City of Fayetteville Agreement
Conditions of Arkansas Outdoor Recreation Grant
Email from Gordon Wilbourn to Stephen Davis – July 13, 2005
Parks and Tourism response so City of Fayetteville

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AN ARKANSAS PARKS AND TOURISM OUTDOOR RECREATION GRANT IN THE AMOUNT OF \$250,000.00 FOR THE CONSTRUCTION OF PHASE 1A OF THE BOTANICAL GARDENS.

WHEREAS, the City of Fayetteville, Arkansas seeks to improve 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 City Council of the City of Fayetteville, Arkansas understands the grantee and grantor will enter into a binding agreement which obligates both parties to the 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 reasonable 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. The City Council of the City of Fayetteville, Arkansas 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 OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor in conjunction with the Botanical Garden Society of the Ozarks to make application to the Arkansas Department of Parks and Tourism for assistance in the amount of \$250,000.00, to develop recreation facilities for the City, to wit: the construction of Phase 1A of the Botanical Gardens. Therefore, such application shall be submitted as expediently as possible.

PASSED and APPROVED this _____ day of September, 2005.

APPROVED:

By _____
DAN COODY, Mayor

ATTEST:

By _____
SONDRA SMITH, City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

A.2.
Arkansas Parks & Tourism Grant
Botanical Gardens
Page 5 of 20

To: Mayor Coody and City Council
Thru: Gary Dumas, Director of Operations
Connie Edmonston, Parks and Recreation Director
FROM: David Wright, Recreation Superintendent
DATE: July 27, 2005
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 estate 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 \$40,000 for construction of Braden Park. In 2002, the City of Fayetteville was awarded \$100,000 for construction of the skate park. This year's grant deadline is August 28, 2005. A resolution from the City of Fayetteville is required to apply for the grant.

Current Status

On, June 6th, a public meeting was held 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. It was determined after obtaining public input that a grant for the Botanical Garden Society of the Ozarks should be submitted. Immediately following the meeting, Parks and Recreation Advisory Board endorsed the decision from the public meeting, recommending to City Council that the Parks and Recreation Division work with the Botanical Gardens to complete the grant application.

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 plans for the Botanical Gardens are completed and the facilities are completely ADA accessible. The grant also asks the application to specify how the funding meets the needs of the community. Based on the recommendation from the Parks and Recreation Master Plan, our division has tried to provide a wider diversity of recreation programming. The Botanical Garden provides the wishes of program diversity for the Citizens of Fayetteville.

Only municipalities can apply for the grant. However, municipalities can work with other agencies to submit grants. The two organizations must have a lease/working agreement, something the City of Fayetteville and BGSO has had since 1997. If awarded the grant, BGSO will be completely responsible for the bidding, development and payment of a contractor(s) for Phase 1A of the site. Phase 1A will include a studio workshop with offices, meeting space and

rooms for lectures, an arrival plaza, the Great Lawn, themed gardens, green house and public parking. The BGSO will be responsible for submitting the payment receipts and invoices to the State of Arkansas and the City. Once the State pays the city, the money will be receipted as grant revenue and reimbursed to BGSO.

This grant contains twelve (12) obligations covering everything from compliance of the Americans for Disabilities Act to property retained in perpetuity for outdoor recreation use. The land and the project our department would like to apply for grant funds each meet these obligations, provided we are not violating any agreement with our outstanding water and sewer bonds. Lake Fayetteville is owned by the Water and Sewer Fund. If at any time the City should default on bond payments, this property could be lost. All of the Lake Fayetteville property is currently contained within an Arkansas Parks and Tourism Park Boundary. In 1994 the City was awarded grant funding for the pavilion at Veterans Memorial Park. This park boundary establishes the land to remain for outdoor recreation use for perpetuity.

Section 6(f)(3) of the LWCF Act states *"No property acquired or developed with assistance under this section shall, without the approval of the Secretary of the United States Department of the Interior, be converted to other than public outdoor recreation use. The Secretary shall approve such conversion only if he/she finds it to be in accordance with the then existing Statewide Comprehensive Outdoor Recreation Plan (SCORP) and only upon such conditions as he/she deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonable equivalent usefulness and location."* If this property must ever be used for anything other than recreational use, it is possible to convert the park boundary. The City is currently going through the process with the property across Highway 265.

Recommendation

After discussing this scenario with Assistant City Attorney David Whitaker, Parks and Recreation requests City Council approval of a resolution to authorize the City, in conjunction with the Botanical Gardens Society of the Ozarks, to apply for up to \$250,000 from the Arkansas Parks and Tourism Outdoor Recreation Grant Program for the new Botanical Gardens site at Lake Fayetteville.

ATTACHMENTS

Public Meeting Minutes June 6, 2005
PRAB Meeting Minutes June 6, 2005
Phase 1A Conceptual Plan
BGSO/City of Fayetteville Agreement
Conditions of Arkansas Outdoor Recreation Grant
Email from Gordon Wilbourn to Stephen Davis – July 13, 2005

RESOLUTION NO. 164-05

A RESOLUTION AUTHORIZING THE FAYETTEVILLE PARKS AND RECREATION DIVISION IN CONJUNCTION WITH THE BOTANICAL GARDEN SOCIETY OF THE OZARKS TO APPLY FOR AN ARKANSAS PARKS AND TOURISM OUTDOOR RECREATION GRANT IN THE AMOUNT OF TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) FOR THE CONSTRUCTION OF PHASE 1A OF THE BOTANICAL GARDENS.

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 in conjunction with the Botanical Garden Society of the Ozarks to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) for the construction of Phase 1A of the Botanical Gardens.

PASSED and APPROVED this 16th day of August, 2005.



ATTEST:

By: *Sondra Smith*
SONDRA SMITH, City Clerk

APPROVED:

By: *Dan Coody*
DAN COODY, Mayor



PARKS AND RECREATION ADVISORY BOARD

Meeting Minutes June 6, 2005

Opening:

The regular meeting of the Parks and Recreation Advisory Board was called to order at 5:30 p.m. on June 6, 2005 in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas by Mike Hill.

Present:

Parks and Recreation Advisory Board members Hill, Bailey, Langsner, Davidson, Harrison, Pawlik-Holmes and Park Staff Hatfield, Edmonston, Wright, Jumper, Mihalevich, Dutton, Whillock and Audience.

Arkansas Parks and Tourism Outdoor Recreation Grant Program

Board member Monroe Harrison reported on the public meeting held at 5:00 P.M. prior to this PRAB meeting. All speakers were in favor of the grant application to be prepared in conjunction with The Botanical Gardens of the Ozarks.

PRAB Motion:

Harrison recommended approval and moved to approve the application of the grant. The motion was seconded by Langsner.

The motion was approved 5-0-0 with Hill, Bailey, Langsner, Davidson, and Harrison voting 'yes' and Pawlik-Holmes, Mauritsen and Marley absent for the vote.

Arkansas Parks and Tourism Outdoor Grants Program

Public Meeting Minutes June 6, 2005

The public meeting to gain citizen recommendations on possible park projects to use grant money convened at 5:00 P.M.

There were 12 citizens and one Parks Board Member present as well as the City of Fayetteville Parks Staff which included David Wright, Connie Edmonston and Cheryl Whillock. Monroe Harrison represented the Parks Board membership.

Connie Edmonston, Director Parks and Recreation, explained the grant request process and this grant in particular. She emphasized the August 26 grant deadline and the amount of information that will be gathered for the grant request. The purpose of the meeting was to allow the public to give project requests for the grant application.

Scott Starr, Director of Operations for the Botanical Garden Society of the Ozarks, presented the possibility of a combined effort between the City's Parks Department and the BGSO to utilize the grant in the completion of the Botanical Gardens of the Ozarks. He expressed the intent to build a high quality facility where all citizens of all ages, abilities and nationalities will have the chance to enjoy the benefits of a horticultural experience. Having visited with seniors, educators, and Hispanic community representatives, he found all were interested in assisting in the creation of such a facility.

To meet these goals of public use and enjoyment the structure needs to be finished and the paving completed. The Garden will be connected to the existing trail system and preservation of our natural resources through the reuse of rainwater runoff are more objectives. Several gardens consisting of high-end horticulture, children's garden, and sensory gardens to appeal to the special needs/handicap person will be installed.

Mina Marsh, a teacher and interpretive naturalist, Gail Pianalto, a board member of the BGSO and Dalinda Galaviz of the NWA Hispanic Advisory Council spoke supporting the cooperative effort between the City of Fayetteville and The Botanical Garden Society of the Ozarks toward applying for the grant.

There were no other comments so Connie Edmonston closed the meeting by thanking the attendees and presenters for participating in the decision making process.

Minutes submitted by Parks and Recreation Secretary, Cheryl Whillock

Phase 1A Conceptual Plan

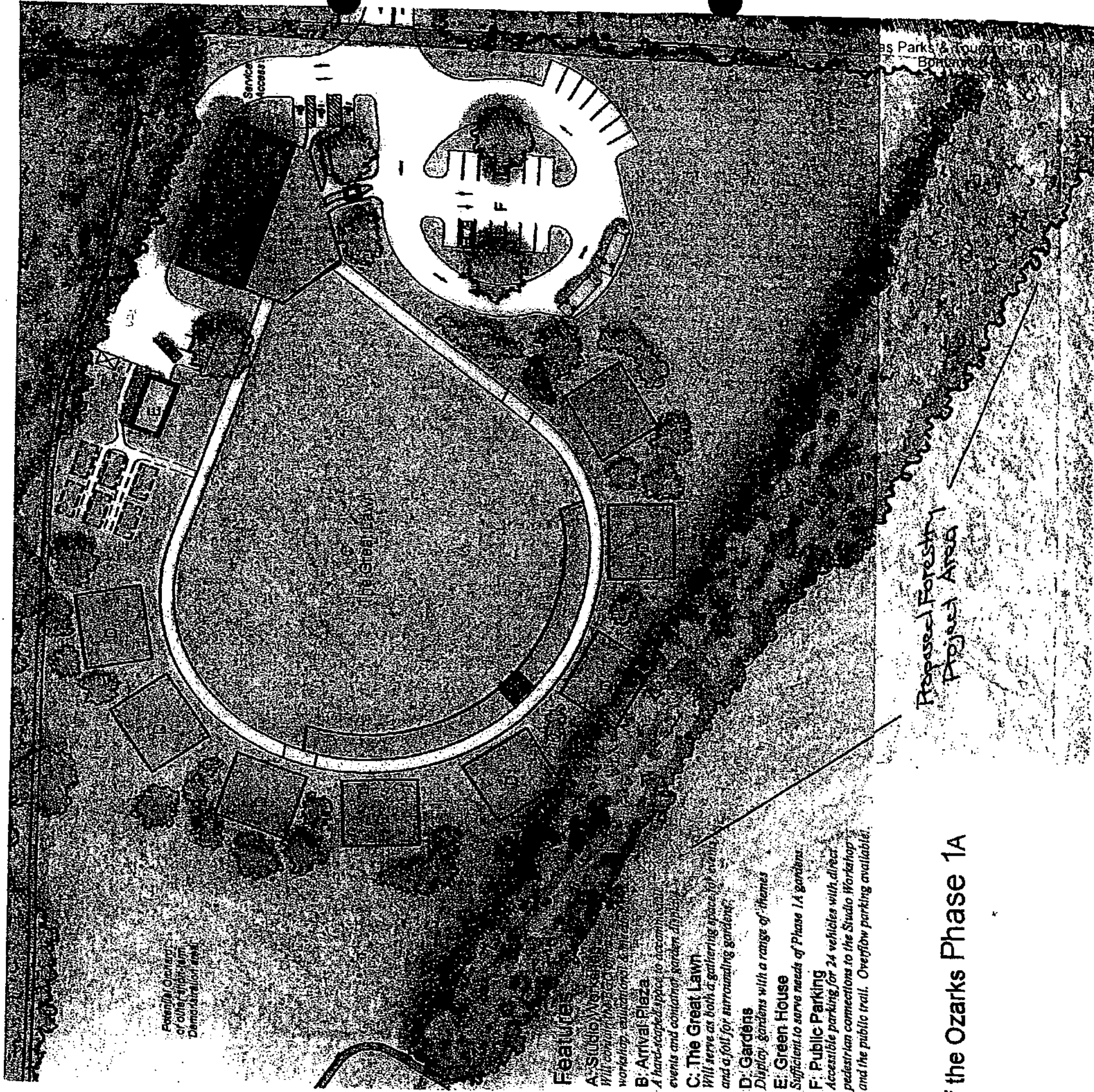
This preliminary development stage is designed to establish a BGO presence on the site and allow us to begin offering site-based programs to the public. It will be a multi-purpose facility which will provide office space, as well as a venue for lectures, functions, events, and rest rooms until and during implementation of the overall master plan.

This development does not preclude the overall master plan, but is a meaningful first step to that end, which is more readily understandable by the community than the daunting task of funding the entire master plan from inception.

- Improves BGO Visibility
Establishes our presence on the site, in the community, and in the region
- Provides a Program Venue
Enables BGO to offer a complete range of programs to the NWA community including educational, event, and recreational opportunities.
- Relates to Community Needs
Attracts visitors and relates directly to their interests and needs.
- Enhances Funding Feasibility
Provides a relatively inexpensive first phase which is adaptable to many funding options.
- Provides Flexible Phasing
Requires minimal infrastructure that can endure as long as needed without interfering with future development.
- Allows for Economical Operation
Possible to maintain with minimal staff.



Botanical Garden of the Ozarks Phase 1A



Features

- A: Studio Workshop
Will contain the main workshop, educational and event space.
- B: Arrival Plaza
A hard-scape space to accommodate events and occasional garden displays.
- C: The Great Lawn
Will serve as both a gathering space for events and a foil for surrounding gardens.
- D: Gardens
Display gardens with a range of themes.
- E: Green House
Sufficient to serve needs of Phase 1A gardens.
- F: Public Parking
Accessible parking for 24 vehicles with direct pedestrian connections to the Studio Workshop and the public trail. Overflow parking available.

RESOLUTION NO. ~~130-03~~

A RESOLUTION APPROVING A LAND LEASE AGREEMENT
WITH THE BOTANICAL GARDEN SOCIETY OF THE OZARKS
FOR THE PURPOSE OF OPERATING A BOTANICAL GARDEN
AT LAKE FAYETTEVILLE PARK.

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 a Land Lease Agreement with the Botanical Garden Society of
the Ozarks for the purpose of operating a botanical garden at Lake Fayetteville
Park. A copy of the Lease Agreement marked Exhibit "A" is attached hereto and
made a part hereof.

PASSED and APPROVED this 2nd day of September 2003.

APPROVED:

By: 

DAN COODY, Mayor

ATTEST:

By: 

SONDRA SMITH, City Clerk

LAND LEASE AGREEMENT

THIS AGREEMENT made this 2nd day of September 2003 by and between the City of Fayetteville, a Municipal Corporation of the State of Arkansas, hereinafter referred to as "the City", and the Botanical Garden Society of the Ozarks, Inc., an Arkansas Non-Profit Corporation, hereinafter referred to as "BGSO".

WITNESSETH:

WHEREAS, the parties desire to enter into an agreement regarding the operation and functioning of the Botanical Garden Society of the Ozarks which will serve the Northwest Arkansas community, and which will be built on land owned by the City of Fayetteville.

WHEREAS, the BGSO's purpose is the establishment and operation of a botanical garden where diverse collections of plants will be displayed, utilized, and preserved for educational, environmental, recreational and scientific purposes, thereby promoting public awareness of the vital and unlimited roles that plants perform.

NOW, THEREFORE, in consideration of the mutual covenants of the parties hereto the parties covenant and agree as follows:

The City hereby designates for the establishment, construction, maintenance, and operation thereon of a botanical garden as aforesaid for the collection and display of plant materials and for such other purposes as are incident to the development and maintenance of a botanical garden and for no other purpose whatsoever, contiguous tracts of land in the City, described as follows:

A part of the Northwest Quarter (NW 1/4) of the Northeast Quarter (NE 1/4), a part of the Southwest Quarter (SW 1/4) of the Northeast Quarter (NE 1/4), a part of the Southeast Quarter (SE 1/4) of the Northwest Quarter (NW 1/4), all in Section 24, Township 17 North, Range 30 West, Washington County, Arkansas, being all of that portion in said Section 24 as described in a Warranty Deed Recorded in Book 402 at Page 313 of the records of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, less and except that portion of said parcel lying North of Lake Fayetteville waters and within the waters of Lake Fayetteville, said waters being more particularly described as that portion of said parcel lying below an elevation of 1238 feet above mean sea level, said elevation being the top of the Lake Fayetteville spillway.

The Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of Section 24, Township 17 North, Range 30 West, as described in a Warranty Deed Recorded in Book 400 at Page 328 of the records of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas and a part of the fractional Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) of Section 19, Township 17 North, Range 29 West, Washington County, Arkansas, being particularly described as follows: Beginning at a point which is North 88° 22' 40" West 108.90 feet from the Southeast corner of NW 1/4 of the NW 1/4 of said Section 19, thence North 02° 21' 13" East 1048.50 feet; thence 88° 22' 40" West 1242.78 feet; thence South 02° 31' 34" West 1048.55 feet to the South line of said 40 acre tract; thence along said South line South 88° 22' 40" East 1242.78 feet to the Point of Beginning, less and except that portion of said parcel lying North of Lake Fayetteville waters and within the waters of Lake Fayetteville, said waters being more particularly described as that portion of said parcel lying below an elevation of 1238 feet above mean sea level, said elevation being the top of the Lake Fayetteville spillway.

1.0. MAINTENANCE, PROMOTION, AND OPERATION OF THE GARDEN. The parties agree that the Society shall operate, maintain, and promote the Botanical Garden of the Ozarks for and on behalf of the City on the property wholly owned by the City and identified above and incorporated by reference herein as set forth in this agreement.

2.0. LEASE TERM. The lease term shall commence on the date of this agreement and shall expire at midnight local time in the City of Fayetteville, Arkansas, on the date which is 25 years from and after the date of this agreement, subject to such being sooner terminated as provided in this agreement. This lease term shall be renewed for three (3) additional 25 year renewal terms upon the mutual agreement of the parties. This lease term may be renewed upon approval of the City of Fayetteville, Arkansas. Each renewal term will not be unreasonably denied by the City as long as the BGSO continues to operate a botanical garden on the City property identified with this lease.

2.1. REVIEW AND EVALUATION. The parties acknowledge that the Botanical Garden of the Ozarks is in its formative stages and that its development will be ongoing and changeable. IT IS FURTHER recognized that the roles, functions, and responsibilities of the respective parties will develop, grow, and/or change as well. For these reasons, the parties shall review and evaluate this agreement on a yearly basis to insure its appropriateness and applicability. The BGSO shall present an annual progress review to the Parks and Recreation Staff, Advisory Board and the City Council.

2.2. The Mayor or his designated representative and the BGSO shall meet as requested by any party to review the terms of this lease, to suggest and negotiate changes which may be appropriate.

3.0. TITLE TO BUILDINGS AND GROUNDS. The BGSO acknowledges without reservation that the City owns and shall hold title to the grounds and any future buildings constructed on the premises.

4.0. OPERATING POLICIES AND RESPONSIBILITIES. The BGSO shall provide to the Mayor or his designated representative its general operating policies for the Garden in written form. These operating policies shall ensure nondiscriminatory opportunities for all citizens. The Society agrees that its policies and operations shall be designed to preserve and maintain the integrity of all buildings, grounds and improvements existing on the premises, and shall consider the policies of Parks and Recreation regarding cultural and recreational facilities.

5.0. RULES AND REGULATIONS OF BGSO. The BGSO may establish and enforce any reasonable rules and regulations regarding behavior of visitors to assure the well being of the plants and gardens, as well as the safety, comfort and quality of experience for visitors to the premises and shall provide copies of these rules and regulations to the Mayor or his designated representative. To the extent permitted by law, either the City or the BGSO may exclude objectionable uses, or abusive or offensive person(s) from all premises subject to this agreement.

6.0. OPERATION AND SUPERVISION OF THE BOTANICAL GARDENS OF THE OZARKS. The BGSO shall exercise sole operational and supervisory authority over all grounds, buildings and personnel of the Garden and over all such matters, including but not limited to, safety, insurance, planning, plant acquisitions, displays and gardens, and the purchase, exchange, or acquisition of additional items to be added to the collections, except as otherwise provided in this agreement. The BGSO at its expense will be responsible for all maintenance and security associated with the operation of the Botanical Garden, including equipment, parking lots, and other improvements. The BGSO may not sublet any portion of the property without the express written consent of the City Council.

7.0 TRAILS: The BGSO specifically acknowledges the right of the public to access trails in the non-fee area without charge. BGSO must obtain the approval of the Parks and Recreation Staff on the routing and design of all public trails through this land lease area.

7.1 Construction of or enhancements to the primary public pedestrian and bicycle trails through the non-fee area to the west of the fee area (see attachment) must be approved by both the City of Fayetteville and the BGSO. Primary public trails located immediately adjacent to the fee area and all secondary trails related to BGSO programming will be designed, constructed, and maintained by the BGSO. (See attached maps identifying these areas)

7.2 Any enhancements or construction of any trails by the City within the non-fee area will be maintained by the City of Fayetteville.

7.3 The BGSO will construct and maintain a parking lot near the Visitor Education Center that allows free public parking with direct access to the primary public trails seven days a week.

7.4 The Society will be responsible for all educational, research and informational programs conducted on the premises and all printed material.

7.5 The parties agree that all employees and volunteers shall be employees or volunteers of the BGSO and shall not be considered to be City employees or volunteers for any purpose whatsoever. The BGSO shall have the sole authority for engaging, terminating, fixing compensation, supervising and otherwise directing all personnel, including sub-contractors, in conformance with applicable laws governing employees and volunteers at the Botanical Garden.

8.0 CONSTRUCTION, ALTERATIONS, IMPROVEMENTS AND MAINTENANCE.

8.1 The Final Master Plan must be approved by the City Council, and shall serve as the development guide to present and future construction, expansion, and improvements to the premises. The parties agree that the BGSO will submit to the Fayetteville Parks and Recreation Staff for review all plans for construction, future alterations, and improvements to be located on the premises including, but not limited to, gardens, greenhouses, entrances and parking, and for all other alterations to any facilities and grounds at the Garden which undertakings shall be subject to applicable City procedures, zoning ordinances, and design review.

8.2 Any major changes to the Master Plan shall be submitted to the Fayetteville Parks and Recreation Advisory Board for approval.

9.0 **HOURS OF OPERATION.** The BGSO shall establish the hours of operation for the Botanical Garden and shall consider the public interest in establishing such hours. The public parking lot will be open during daylight hours.

10.0 **SIGNS.** Lessee may place such signs as it may deem proper on the premises, so long as said signs are in compliance with Lessor's sign ordinances.

11.0 PROGRAM ACCESSIBILITY AND PROGRESS.

11.1 As consideration for this lease, BGSO will offer free general admission to the Garden each Saturday morning from 9:00am to 12:00pm. This waived fee provision only applies to general admissions and not to specialty areas, buildings or events that require a separate entry fee. In addition to the above stated consideration, BGSO will recognize the importance of its botanical educational role by making garden access arrangements with the Fayetteville School District for students and teachers.

11.2 Groups using any of the facilities of the Garden shall abide by all regulations as established by the City and the BGSO.

B. Generated revenue from admission, gift shop, program and service fees, and miscellaneous rental income.

C. Gifts, grants, bequests and devises from private donors, expended in conformance with the terms of their receipt.

D. Earned income from investments.

E. Bond funds as may be authorized.

18.0 FINANCIAL REPORTS. In accordance with the BGSO's Bylaws, the City shall receive a copy of the financial audit of the Garden's financial books and records every year. The report will be provided within ninety (90) days of each completed audit. In addition, the BGSO shall timely provide to the City the yearly operating budget of the BGSO.

19.0 RENT, FEES, CONCESSIONS AND TAXES. The BGSO shall have the right to set admission fees to the Garden as well as fees for optional services such as programs, space rental, etc. Fees shall be reasonable and in line with similar services available in the tourism market place.

19.1 The BGSO shall pay promptly all taxes and license fees of whatever nature applicable under municipal, state, and federal law. In addition, the parties agree that the BGSO shall indemnify and save the City harmless from and against any liens or similar liabilities claimed or changes against the BGSO pursuant to the BGSO's operation of the Garden.

20.0 REMEDIES FOR BREACH OR VIOLATIONS OR DISPUTES.

20.1 Termination of Agreement. The parties agree that if either party materially breaches or fails to perform its obligations under this agreement, the other party may give notice in writing of intent to terminate. If the breaching or non-performing party fails to commence and effect cure in good faith to the satisfaction of the other party within ninety (90) days of such notice or such longer period, if agreed in writing by the parties, the agreement shall be deemed terminated at the expiration of the ninety (90) days period or other agreed period. Any request of extension shall not be unreasonably withheld.

20.2. In the event the BGSO shall be adjudicated bankrupt or insolvent or take the benefit of any reorganization of composition proceedings or insolvency law, or make an assignment for the benefit of creditors, or if the BGSO's interest under this agreement shall be levied upon or attempted to be attached or sold under any process of law, or if a receiver shall be appointed for the BGSO, then and thereafter the City shall have the right and option to terminate this agreement irrespective of whether or not default exists hereunder, said determination to be effective immediately upon City's exercise of such option by giving written notice to the BGSO.

20.3 The parties agree that neither part shall be liable or responsible to the other for delays or impossibilities of performance caused by force majeure occurrences beyond the control of the parties including, but not limited to, civil disorder, fires, floods, or acts of God.

BOTANICAL GARDEN SOCIETY
OF THE OZARKS, INC.

By: Blair Johanson
Blair Johanson, President

CITY OF FAYETTEVILLE, ARKANSAS

By: Charles Daniel Coody
Charles Daniel Coody, Mayor

ATTEST:

By: _____
Name and title:

deadline. If the Form 424 is faxed, the entire application containing original signatures must be postmarked on or before the application deadline, August 26, 2005.

WHERE TO SEND THE APPLICATION

Outdoor Recreation Grants Program
Department of Parks and Tourism
Number One Capitol Mall
Little Rock, Arkansas 72201

HOW THE APPLICATION CAN BE PREPARED

- The application can be prepared locally. The Outdoor Recreation Grant Program staff will upon request, provide applicants with a sample copy of an application. This sample provides the applicant with the correct format of all elements of the application including forms, narratives, a detailed budget, maps, resolutions, required clearances, and acquisition information.
- The application can be prepared by consultants. (Grant preparation cannot be paid for with grant funds).
- The application can be prepared by the local areawide Planning or Economic Development Districts or the Regional Planning Commissions.

WHAT ARE OUR OBLIGATIONS?

We are jointly committed! Both the Department of Parks and Tourism's Outdoor Recreation Grants Program and the project sponsor are committed to long term program compliance. After the project is completed and all grant funds have been disbursed, our commitment to the requirements of the Arkansas Matching Grant Program continues. These ongoing commitments include:

1. Property acquired or developed under the program must be retained in perpetuity for outdoor recreation use and will be subject to inspection by the State at least once every five years. In addition each project will be inspected by the State during construction and before final reimbursement is made.
2. Once a public park project boundary has been identified by the Department of Parks and Tourism and the local project sponsor, all facilities constructed within that boundary, at any future time, must be in compliance with the rules and regulations of the Outdoor Recreation Grants Program *Project Management Guide*. This also applies to those facilities constructed in whole or in part with local funds.
3. No overhead utility lines are allowed within the project boundary. All existing utility lines located within the park boundaries must be placed underground.
4. A permanent sign stating that federal LWCF or state NCRGTF moneys were used to acquire and/or develop public outdoor recreation facilities must be maintained within the park in perpetuity. Guidelines for the size, placement and design of the signs will be presented to each applicant after grant approval. Upon project completion the applicant will be required to describe the location of the sign, and state that the sign location will not change.
5. All public recreation facilities constructed within a Matching Grant Program assisted park must be accessible to the handicapped. This also applies to those facilities constructed in whole or part with local funds.
6. Property acquired or developed with assistance from the fund must be open to entry and use by all persons regardless of race, color, religion, sex, or national origin. Discrimination on the basis of residence, including preferen-

2 ♦ AN OVERVIEW OF THE BASICS

2006 APPLICATION GUIDE

tial reservation or membership systems, is prohibited, except to the extent that reasonable differences in admission and other fees may be maintained on the basis of residence.

7. Property acquired or developed with assistance from the Matching Grant Program shall be operated and maintained in perpetuity. The property shall be maintained so as to appear attractive and inviting to the public. Sanitation and sanitary facilities shall be maintained in accordance with applicable health standards. Properties shall be kept safe for public use. Fire prevention, lifeguards, and the like should be provided for proper public safety. Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair throughout their functional lifetime to prevent undue deterioration and to encourage public use. Facilities that have reached an age that renders them obsolete or worn out may be removed with written permission of the Arkansas Department of Parks and Tourism's Outdoor Recreation Grants Program Director. Permission must be obtained prior to removal of the facilities.
8. The Arkansas ORGP staff will conduct periodic post completion inspections of the project area to ensure that program compliance continues after the project is completed. These inspections will be unannounced. Sponsors who fail to comply with long term commitment may jeopardize future eligibility for matching grant funds for new projects and/or be subject to legal actions by the State or Federal government to enforce program compliance.
9. The property shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility. Property which is not operated and maintained in good condition may jeopardize the awarding of future grant funds to that jurisdiction.
10. Participants may impose reasonable limits on the type and extent of use of areas and facilities acquired or developed with Matching Grant Program assistance when such a limitation is necessary for maintenance or preservation. Thus, limitations may be imposed on the type of users (i.e. hunters or four-

wheelers, etc.). All limitations must be in accord with the applicable grant agreement and amendments.

11. All recipients of Matching Grant Program moneys must comply with the Architectural Barriers Act of 1968, Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act, of 1990 Title II and Title III.
12. Properties (parks and recreation areas) acquired or developed with LWCF/ NCRGTF assistance are prohibited by Section 6(f)(3) of the LWCF Act of 1965, as amended, from conversion to other than public outdoor recreation use.
Section 6(f)(3) of the LWCF Act states that "No property acquired or developed with assistance under this section shall, without the approval of the Secretary, U. S. Department of the Interior, be converted to other than public outdoor recreation use. The Secretary shall approve such conversion only if he/she finds it to be in accordance with the then existing Statewide Comprehensive Outdoor Recreation Plan (SCORP) and only upon such conditions as he/she deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonable equivalent usefulness and location".

From: Steve Davis
To: Edmonston, Connie; Wright, David
Date: 7/27/05 1:31PM
Subject: Fwd: Arkansas Outdoor Recreation Grant Obligations and Provisions

Connie/David

I think this email clarifies the issue relating to the grant application. The agenda memo must contain a discussion of the potential impacts on the water & sewer system that come with accepting a grant with the conditions this grant contains.

Because I am out of town Thursday through Monday please route the grant agenda item through Marsha and Vicki.

Thanks
Stephen

>>> "Wilbourn, Gordon M." <Gordon.Wilbourn@KutakRock.com> 07/27/05 01:27PM >>>
Steve,

This email confirms our phone conversation earlier this afternoon.

I've taken a look at the attachments to your July 18th email with respect to the Arkansas Outdoor Recreation Grant Obligations program. Specifically, you asked me to consider the requirements of the program as they might relate to the City's covenants in connection with its outstanding water and sewer revenue bonds. The City's bonds are secured by system revenues and not by any mortgage lien on the real and personal property comprising the water and sewer system. The City has covenanted, however, to keep the system unencumbered by liens and other restrictions. As you described the currently proposed grant application, the property under consideration for recreation related improvements will not encompass any current portions of the system. Accordingly, I don't think there are any problems that would be caused initially by accepting a grant. You've put your finger on the possible future complications. If the City at some point in the future decided it wanted to construct system improvements within a "public park project boundary" (determined at the time the grant is made), it would have to jump through various bureaucratic hoops imposed by the U.S. Department of the Interior to get permission for such improvements.

So the short answer is that you would not be violating any present covenants by accepting a grant. You should, however, consider carefully the drawing of the accompanying "public park project boundary" and its implications on any future system improvements that might be needed.

Gordon M. Wilbourn
Kutak Rock LLP
425 West Capitol Avenue, Suite 1100
Little Rock, Arkansas 72201
501.975.3101 (phone)
501.975.3001 (fax)
gordon.wilbourn@kutakrock.com

#####



**DEPARTMENT OF
PARKS & TOURISM**

One Capitol Mall
Little Rock, AR 72201
Phone: 501-682-7777
FAX: 501-682-1364
History Commission
501-682-6900 (V/T)
Keep Arkansas
Beautiful Division
501-682-3507
Personnel Section
501-682-7742 (V/T)
State Parks Division
501-682-1191 (V/T)
Tourism Division
501-682-7777 (V/T)
INTERNET
arkansas.com
ArkansasStateParks.com

Mike Huckabee
GOVERNOR

Richard W. Davies
EXECUTIVE DIRECTOR

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RECREATION
& TRAVEL
COMMISSION**

Bill Barnes
CHAIRMAN
Jane Christenson
VICE-CHAIRMAN
Steve Arlison
Polly Wood Crews
Danny Ford
Jim Gaston
Debra Hoak
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DIVISION DIRECTORS

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DISABILITIES ACT
EMPLOYER

Arkansas

THE NATURAL STATE®

August 29, 2005

The Honorable Dan Coody
Mayor of Fayetteville
113 West Mountain
Fayetteville, Arkansas 72701

RE: FY 2005 Matching Grant Application

Dear Mayor Coody:

I have completed the preliminary review of your FY 2006 Matching Grant Application. The following items must be addressed or corrected before I can complete my review of the application:

1. The City Resolution authorizing the City to apply for a Land and Water Conservation Fund grant must be exactly as written in the FY 2006 50/50 Matching Grant Application Guide. Please re-submit a City Resolution that is exactly like the one in the guide.

I will complete my final review of your application when I receive the corrections or additions listed above. All information must be received prior to October 1, 2005, the deadline for response to deficiency letters.

My telephone number is (501) 682-6947 if you have any questions.

Sincerely,

Ian Hope, Project Officer
Outdoor Recreation Grants Program

A.2.
Arkansas Parks & Tourism Grant
Botanical Gardens
Page 19 of 20

RECEIVED
SEP 07 2005
CITY OF FAYETTEVILLE
MAYOR'S OFFICE

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

B.1.
ANX 05-1488 Collins/Kinghorn
Page 1 of 28

20-Sep-05
City Council Meeting Date

Jeremy Pate *X*
Submitted By

Planning
Division

Operations
Department

Action Required:

ANX 05-1488: (COLLINS/KINGHORN, 533/534): Submitted by Michelle Harrington for property located at 6102 and 6110 Lake Sequoyah Drive. The property is in the Planning Area and contains approximately 17.33 acres. The request is to annex the subject property into the City of Fayetteville.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

Budgeted Item ☐

Budget Adjustment Attached ☐

[Signature]
Department Director
9/2/05
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

[Signature]
City Attorney
9/2/05
Date

Original Contract Number: n/a

[Signature]
Finance and Internal Service Director
9/2/05
Date

Received in City Clerk's Office
ENTERED
9/2/05
+
[Signature]

[Signature]
Mayor
Date

Received in Mayor's Office
ENTERED
9-2-05
[Signature]

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations 

From: Jeremy C. Pate, Director of Current Planning 

Date: August 24, 2005

Subject: Annexation for Collins/Kinghorn (ANX 05-1488)

RECOMMENDATION

The Planning staff recommends approval of the subject annexation request submitted by Collins and Kinghorn for approximately 17.33 acres of property located north of Lake Sequoyah Drive. This action will incorporate the 17.33-acre tract of land contiguous with the city limits into the City of Fayetteville.

BACKGROUND

The subject property contains four parcels of property consisting of 17.33-acres. The majority of property is owned by the Collins with the remainder owned by the Kinghorns. The property is located west of Lake Sequoyah, north of Lake Sequoyah Drive. Property north and east of the subject property was annexed into the City of Fayetteville in the 1960s to incorporate Lake Sequoyah, a primary water source. Annexation of the property will not create an island of unincorporated property or create a peninsula of City property. Improvements to the existing infrastructure adjacent to this site and a study of water and sewer capacity will be required at the time of development.

The applicant requests annexation of the property into the City of Fayetteville. The applicant intends to develop the property for residential use within the City of Fayetteville and has requested a rezoning to RSF-4. Staff recommends the incorporation of this property into the City of Fayetteville. Although the proposed annexation is located on the fringes of the City's eastern limits, incorporation of this property will create an acceptable city boundary and ensure that development of the property is compliant with City regulations within an appropriate zoning district.

DISCUSSION

This item was heard at the regular Planning Commission meeting on May 23, 2005 at which time the Planning Commission tabled this item to allow staff and the applicant to further evaluate the timing and level of services available to this property.

This item was heard at the regular Planning Commission on August 22, 2005. The Planning Commission voted 6-0-0 to recommend this rezoning request to the City Council.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE ANNEXING THAT PROPERTY DESCRIBED
IN ANNEXATION PETITION ANX 05-1488 FOR PROPERTY
LOCATED AT 6102 AND 6110 LAKE SEQUOYAH DRIVE,
CONTAINING 17.33 ACRES.

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

Section 1: That the City Council hereby confirms the annexation to the City of Fayetteville, Arkansas, of that property described in Exhibit "A" attached hereto and made a part hereof.

Section 2: That the official map of the City of Fayetteville, Arkansas, is hereby amended to reflect the change provided in Section 1 above.

Section 3: That the official zoning map of the City of Fayetteville, Arkansas is hereby amended to assign the zoning designation of R-A, Residential Agricultural to the subject property.

Section 4: That the above-described property is hereby assigned to Ward No. One.

PASSED and APPROVED this _____ day of _____, 2005.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"
ANX 05-1488

A PART OF THE NORTHEAST QUARTER (NE1/4) OF THE SOUTHEAST QUARTER (SE1/4) OF SECTION SEVENTEEN (17), AND A PART OF THE NORTHWEST QUARTER (NW1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION SIXTEEN (16), TOWNSHIP SIXTEEN (16) NORTH, RANGE TWENTY-NINE (29) WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER (NE1/4) OF THE SOUTHEAST QUARTER (SE1/4) OF SAID SECTION 17; THENCE S02°35'30"W 520.81 FEET TO THE POINT OF BEGINNING; THENCE S87°30'11"E 128.12 FEET TO A POINT ON THE WEST RIGHT-OF-WAY OF ROUND MOUNTAIN ROAD; THENCE ALONG SAID RIGHT-OF-WAY AS FOLLOWS: S52°00'25"E 51.33 FEET; THENCE ALONG A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 82.93 FEET, A CHORD BEARING S33°48'45"E AND A ARC LENGTH OF 46.58 FEET; THENCE ALONG A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 20.39 FEET, A CHORD BEARING OF S06°56'40"W AND A ARC LENGTH OF 11.16 FEET; THENCE ALONG A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 940.28 FEET, A CHORD BEARING OF S17°42'54"W AND A ARC LENGTH OF 123.18 FEET; THENCE S12°35'24"W 105.74 FEET; THENCE S10°38'05"W 157.06 FEET; THENCE S11°06'27"W 194.04 FEET; THENCE A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 125.12 FEET, A CHORD BEARING OF S41°04'21"W AND A ARC LENGTH OF 140.38 FEET; THENCE N89°04'02"W 12.39 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 17; THENCE LEAVING SAID RIGHT-OF-WAY AND ALONG SAID EAST LINE OF SECTION 17 S02°35'30"W 30.76 FEET; THENCE LEAVING SAID EAST LINE OF SECTION 17 N87°02'55"W 333.17 FEET; THENCE N87°02'53"W 194.84 FEET; THENCE N87°02'53"W 330.33 FEET; THENCE N02°18'16"E 775.06 FEET; THENCE S87°38'58"E 532.56 FEET; THENCE S02°41'04"W 82.50 FEET; THENCE N78°27'28"E 340.08 FEET TO THE POINT OF BEGINNING, CONTAINING 17.33 ACRES, MORE OR LESS, SUBJECT TO THE RIGHT-OF-WAY OF LAKE SEQUOYAH DRIVE, AND ANY EASEMENTS THAT ARE RECORDED OR UNRECORDED.



PC Meeting of August 22, 2005

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Suzanne Morgan, Current Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: May-18, 2005- Updated August 18, 2005

ANX 05-1488: (COLLINS/KINGHORN, 533/534): Submitted by MICHELE, A HARRINGTON for property located at 6102/6110 LAKE SEQUOYAH DRIVE. The property is in the Planning Area and contains approximately 17.33 acres. The request is to annex the subject property into the City of Fayetteville.

Planner: SUZANNE MORGAN

RECOMMENDATION:

Staff recommends approval of the requested annexation of 17.33 acres into the City of Fayetteville based on the findings herein. Incorporation of this property into the City of Fayetteville will establish zoning regulations and ensure compliance with ordinance regulations at the time of development.

Should the Planning Commission vote to recommend approval of the annexation, staff recommends denial of the request to rezone the property to RSF-4.

PLANNING COMMISSION ACTION:	Required <u>YES</u>	
Date: <u>August 22, 2005</u>	☒ Approved	☐ Denied
	<i>Antles/Clark²</i>	6-0-0
CITY COUNCIL ACTION:	Required <u>YES</u>	
Date: <u>September 20, 2005 (1st reading if recommended)</u>	☐ Approved	☐ Denied

BACKGROUND:

Property description: The subject property contains four parcels of property consisting of 17.33-acres. The majority of property is owned by the Collins with the remainder owned by the Kinghorns. The property is located west of Lake Sequoyah, north of Lake Sequoyah Drive. Property north and east of the subject property was annexed into the City of Fayetteville in the 1960s to incorporate Lake Sequoyah, a primary water source.

Proposal: The applicant proposes annexation of 17.33 acres into the City of Fayetteville.

Public Comment: Staff has received no public comment concerning the requested annexation.

Recommendation: Staff recommends the incorporation of this property into the City of Fayetteville. Although the proposed annexation is located on the fringes of the City's eastern limits, incorporation of this property will create an acceptable city boundary and ensure that development of the property is compliant with City regulations within an appropriate zoning district.

SURROUNDING LAND USE AND ZONING

Direction	Land Use	Zoning
North	Woodland	R-A, Residential Agricultural
South	Single family farms	Planning Area
East	Lake Sequoyah Spur Lake Sequoyah	Planning Area R-A, Residential Agricultural
West	Vacant; Pasture	Planning Area

INFRASTRUCTURE:

Streets: Currently the site has access to Lake Sequoyah Drive. With development, road improvements are required for Lake Sequoyah Drive along the property to include: right-of-way dedication, pavement 14' from centerline, curb and gutter, storm drainage, and sidewalks.

Surrounding Master Street Plan Streets:
South: Lake Sequoyah Road, Local Street
East: Lake Sequoyah Spur, Local Street

Water: Public water is adjacent to the site. There is a 6" main along Lake Sequoyah Drive. Water service will need to be extended within the property at the time of development. Minimum size of new water mains is 8". Additional connections may be required to complete a looped system. This may include an off-site connection to be determined at a later date. No long range improvements to the water system are planned at this time for the areas around Lake Sequoyah. A study of the water supply shall be conducted prior to development.

Sewer: The site **does not** have access to sanitary sewer. There is a 6" sewer main along Lake Sequoyah Drive to the south. Minimum size of new sewer mains is 8". Sewer will need to be extended approximately 1000 feet to serve the property. A capacity analysis of the downstream sewer lines shall be conducted and a capacity analysis of the lift stations downstream of the site shall be conducted prior to development.

Fire: The subject property is located approximately 5.5 miles from Fire Station #5. Response time to the property is projected at 12 minutes. A new Fire Station #3 is

proposed at the Tyson complex on Huntsville. It is located 4.4 miles from the subject property with an 8 minute response time. At this time, no date of completion has been anticipated for the completion of this proposed fire station.

Police: It is the opinion of the Fayetteville Police Department that this annexation will not substantially alter the population density and thereby undesirably increase the load on police services or create and appreciable increase in traffic danger and congestion in the area.

LAND USE PLAN: General Plan 2020 identifies the portion of this property within the Planning Area as **Residential**.

FINDINGS:

**11.6 ANNEXATION GUIDING POLICIES
BOUNDARIES**

11.6.a Annex existing islands and peninsulas and do not annex areas that would create an island or peninsula.

Finding: Annexation of the property will not create a peninsula. In the 1960s, property was annexed into the City to create the peninsula with which this property adjoins. The incorporation of this property will not extend the city limits further west than the surrounding city properties to the north and south. At the time the applicant initially submitted a request for annexation, staff requested further investigation of the legal description of the property and ownership information of property to the east, as it appeared the annexation of the 17.33 acres would create an island of unincorporated property. Upon further investigation, it appears that this property is owned by the City of Fayetteville.

11.6.b Proposed annexation area must be adjacent, or contiguous, to city limits.

Finding: The proposed annexation area is adjacent to the City Limits to the north.

11.6.c Areas should either include or exclude entire subdivisions or neighborhoods, not divide.

Finding: This area is currently utilized for several single family homes and agriculturally related activities. The annexation of this property would neither include nor exclude subdivisions/neighborhoods. The applicant anticipates subdivision of this property for single family use.

11.6.d Boundaries for annexed areas should follow natural corridors.

Finding: Proposed boundaries follow property lines of the existing parcels, not natural corridors.

11.6.e Timing of services within annexation areas should be considered.

Finding: Annexation of the property as currently developed will not place an additional burden on the services within the area. Should this property remain in the Planning Area, the property could be developed with a minimum 10,000 sq ft lots and 75' of lot width with septic systems, city water, and streets constructed to city standards. Incorporation of the property into the City of Fayetteville will ensure that the property is zoned such that it is compatible with surrounding properties and development in accordance with all city regulations. Significant evaluation and potential improvements of water services are required to adequately service this property. Sewer is not currently available. Fire response time to the property is 12 minutes from Fire Station #5. This can be improved in the near future with a planned Fire Station #3 on Huntsville Road. Reduction of this response time to 8 minutes is anticipated with the construction of a new fire station on the former Tyson Complex; however, staff has no anticipated time frame for the completion of this project.

ENVIRONMENTALLY SENSITIVE AREAS

11.6. f Annex environmentally sensitive areas that could be impacted by development and utilize appropriate development regulations to protect those areas.

Finding: The property consists of cleared pasture land and wooded areas. No information has been presented to designate the subject property environmentally sensitive. However, the property is very near Lake Sequoyah, a primary water source for the City of Fayetteville and surrounding municipalities. Annexation of the property would allow for the extension of sanitary sewer. Development within the Planning Area would necessitate the utilization of a community septic system or individual septic systems on each lot. Incorporation of this property would also allow for the requirement of parks, open space and tree preservation.

EMERGENCY AND PUBLIC SERVICES

11.6.g Public services must be able to be provided efficiently in newly annexed areas.

Finding: Water and sewer service is of concern, with the Engineering Division requiring a study of the water at the time of development and extension of the nearest sewer services which are located 1,000 feet from the property. Response time to this location for emergency personnel is anticipated at 8-12 minutes. Additional fire hydrants and adequate access would need to be provided. Annexation of a the property and a low density zoning comparable to the surrounding properties may not necessitate significant improvements to public services in this area.

11.6.h Annexed areas should receive the same level of service of areas already in the city limits.

Finding: This property is located at the north eastern-most portion of the city limits. There is very little development in the surrounding area, and therefore does not at this time require a high level of service from fire, police or water services. Sewer is not available to this property. The considerable distance of this property from the denser population within the core of the City may result in a less efficient level of service to this property. The primary concern is an increased density may result in more service calls with a higher response time than desired. The annexation of property with a zoning of R-A, RSF-0.5 or RSF-1 will not result in significant increase of demand on emergency and public services.

11.6.i The ability to provide public services should be evaluated in terms of equipment, training of personnel, number of units and response time.

Finding: These factors were taken into consideration in the responses and recommendations included in this report.

INFRASTRUCTURE AND UTILITIES

11.6.j Areas currently served by utilities and other public services should be annexed.

Finding: Water, fire and police protection are currently provided in the surrounding areas. The subject property is not being served by city utilities at this time. The level of service for this property may be reduced in comparison to surrounding subdivisions located in closer proximity to the more densely populated areas of the City.

11.6.k Proposed annexation areas should not require the upgrading of utilities to meet the demands of development unless there is a threat to public safety.

Finding: Annexation and future development of this property will result in an increased demand on the existing infrastructure systems should the property be zoned and developed at a density greater than the low density residential similar to the surrounding development and comparable to R-A, RSF-0.5 and RSF-1 zoning district. No long range improvements to the water system are planned for the water system around Lake Sequoyah. Increased use of the existing services in the area may negatively impact the water supply in this area. Additionally, there is no immediately accessible sewer service in this area. Development of the property would require an extension of the existing sewer lines, the nearest being 1,000 feet from the property. Analysis of the downstream sewer lines and a capacity analysis of the lift stations downstream of the site would need to be conducted prior to development. The proposed annexation and subsequent

rezoning could result in 69 units, with a calculated 152-person population increase.

- 11.6.l Phased annexation should be initiated by the City within active annexation areas based on planned service extensions or availability of services.

Finding: The proposed annexation is not part of a phased annexation initiated by the City.

INTERGOVERNMENTAL RELATIONS

- 11.6.m Promote long-range planning with adjacent jurisdictions.

Finding: N/A

- 11.6.n Establish agreements to address regional concerns, such as water, stormwater and sewer.

Finding: N/A

ADMINISTRATION OF ANNEXATIONS

- 11.6.o Designate zoning districts for the property during the annexation process.

Finding: Annexations are automatically zoned R-A, Residential Agricultural. The property owners request annexation and rezoning of this property to RSF-4, Residential single family - 4 units/acre. Increased density on this property will increase the load on public infrastructure in this area.

- 11.6.p An annexation study should be completed on all annexation proposals.

Finding: Planning staff has asked the Engineering Division, Fire Department and Police Department to study this annexation request to determine if facilities and services are available to serve this property.

- 11.6.q Development proposals require a separate review from the annexation proposals.

Finding: Development of this property has not been proposed. At the time the applicant desires to develop the property, the applicant will be required to submit project plans for review and approval by the Planning Commission.

- 11.6.r Residents should be fully informed of annexation activities.

Finding: Adjoining neighbors have been notified of the annexation request. A legal ad and display have both been submitted with a local newspaper prior to the

Planning Commission meeting for which this item is scheduled.

11.6.w Encourage larger annexations to create acceptable boundaries.

Finding: This annexation consists of 17.33 acres owned by the Lanes. Extending the city boundary to the south will expand the existing peninsula, but will not extend the city limits further east or west than currently located. Annexation of property that would create an island of unincorporated property is not consistent with the Annexation Policy and may create future problems at the time of development by impeding access or extension of services west of Lake Sequoyah Spur to this property.

11.6.t Conduct a fiscal impact assessments on large annexations.

Finding: No fiscal impact assessment was conducted for this annexation of 17.33 acres.

From Fayetteville General Plan 2020 – 2002 Revision

11.6 Annexation Guiding Policies

Boundaries

- 11.6.a Annex existing islands and peninsulas and do not annex areas that would create an island or peninsula.
- 11.6.b Proposed annexation area must be adjacent, or contiguous, to city limits.
- 11.6.c Areas should either include or exclude entire subdivisions or neighborhoods, not divide.
- 11.6.d Boundaries for annexed areas should follow natural corridors.
- 11.6.e Timing of services within annexation areas should be considered.

Environmentally Sensitive Areas

- 11.6.f Annex environmentally sensitive areas that could be impacted by development and utilize appropriate development regulations to protect those areas.

Emergency and Public Services

- 11.6.g Public services must be able to be provided efficiently in newly annexed areas.
- 11.6.h Annexed areas should receive the same level of service of areas already in the city limits.
- 11.6.i The ability to provide public services should be evaluated in terms of equipment, training of personnel, number of units and response time.

Infrastructure and Utilities

- 11.6.j Areas currently served by utilities and other public services should be annexed.
- 11.6.k Proposed annexation areas should not require the upgrading of utilities to meet the demands of development unless there is a threat to public safety.
- 11.6.l Phased annexation should be initiated by the City within active annexation areas based on planned service extensions or availability of services.

Intergovernmental Relations

- 11.6.m Promote long-range planning with adjacent jurisdictions.
- 11.6.n Establish agreements to address regional concerns, such as water, stormwater and sewer.

Administration of Annexations

- 11.6.o Designate zoning districts for the property during the annexation process.
- 11.6.p An annexation study should be completed on all annexation proposals.
- 11.6.q Development proposals require a separate review from the annexation proposals.
- 11.6.r Residents should be fully informed of annexation activities.
- 11.6.w Encourage larger annexations to create acceptable boundaries.
- 11.6.t Conduct a fiscal impact assessments on large annexations.

Fayetteville Fire Department Service Delivery Impact: Zoning Review May 10, 2005										
Item	Subdivision	Annexation	Acres	Closest Fire Station	Distance from Fire Station	Response Time to Proposal area	Projected Response Time to Proposal Area at Maximum Build Out	Projected Calls for Service at Maximum Build Out per year	Projected Fire/Other Calls for Service at Maximum Build Out per year	Projected EMS Calls for Service at Maximum Build Out per year
ANX05-1488	Collins/Kinghorn	YES	17.33	*3				0	0	0
RZN05-1489	Collins/Kinghorn		17.33	*3	4.4 miles	8 minutes	8.5 minutes	16	6	10
RZN05-1489	Collins/Kinghorn		17.33	5	5.5 miles	12 minutes	12 minutes	16	6	10
ANX05-1490	Dixie Develop	YES	24.35	7				0	0	0
RZN05-1491	Dixie Develop		24.35	7	1.8 miles	5 minutes	5.5 minutes	22	9	13
ANX05-1495	Benton Develop	YES	10.66	7				0	0	0
RZN05-1502	Benton Develop		10.66	7	2.6 miles	6 minutes	6.5 minutes	10	4	6

* = Proposed Station 3

May 16, 2005

Jeremy Pate
Zoning and Development Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

This document is in response to the request for a determination of whether the proposed Annexation ANX 05-1488. The property is in the Planning Area and contains approximately 17.33 acres. The request is to annex the subject property into the City.

It is the opinion of the Fayetteville Police Department that this annexation will not substantially alter the population density and thereby undesirably increase the load on police services or create and appreciable increase in traffic danger and congestion in the area.

Individually, each of these annexations and rezoning do not necessarily substantially alter the population density, nor do they create and appreciable increase in traffic danger and congestion. The sum total presented over the years, however, has had a substantial impact on the demand for police services and has caused an appreciable increase in traffic congestion.

Sincerely,

Captain William Brown
Fayetteville Police Department

IN THE COUNTY COURT OF WASHINGTON COUNTY, ARKANSAS

**IN THE MATTER OF:
ANNEXATION OF CERTAIN LANDS TO THE
CITY OF FAYETTEVILLE, ARKANSAS**

Case No. CC 2005-8

DECREE OF ANNEXATION

Now on this 4th day of April, 2005, this cause comes on to be heard, the Petitioners, Petitioners, **BOBBY JOE COLLINS and BETTY F. COLLINS**, husband and wife, and **DOUGLAS W. KINGHORN and ANITA R. KINGHORN**, husband and wife, through their attorney, Michele A. Harrington of Harrington, Miller, Neihouse & Kieklak, P.A., of Springdale, Arkansas, announcing ready for a hearing of the cause and there being no protests or objections filed, whereupon, the matter is submitted to the Court upon the verified petition filed herein, and any oral and documentary evidence adduced, the Court being well and sufficiently advised of the facts and the law, doth hereby find, judge and decree as follows:

1. The Petition in this cause was filed on March 1, 2005, at which time this Court fixed Monday, April 4, 2005, at 10:45 a.m., as the date and time of hearing for said cause, and that a full thirty (30) days has passed since the filing of the Petition, and this Court has jurisdiction of the persons and subject matter of this cause of action, and venue is proper herein.

2. The Petition filed herein named Harrington, Miller, Neihouse & Kieklak, P.A. to act on behalf of Petitioners in filing and presenting the Petition to the Court and handling all matters connected with the Petition, as well the required notices, and this and any other hearings or annexation proceedings connected therewith.

3. Harrington, Miller, Neihouse & Kieklak, P.A. has given Notice of hearing on the Petition as required by law, and the proof of publication of said notice is now on file with the Clerk of this Court.

4. The Court is satisfied that the allegations of the Petition filed herein are sustained by the proof, and that a majority of the total number of real estate owners in the area affected by this Petition have signed said Petition, and that such majority owns more than one-half (1/2) of the acreage affected.

5. The land and territory sought to be annexed to the City of Fayetteville, Washington County, Arkansas, in this cause is described as follows:

A part of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE1/4) of Section Seventeen (17), and a part of the Northwest Quarter (NW1/4) of the Southwest Quarter (SW1/4) of Section Sixteen (16), Township Sixteen (16) North, Range Twenty-nine (29) West, Washington County, Arkansas, being more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of said Section 17; thence S 02°35'30"W 520.81 feet to the POINT OF BEGINNING; thence S 87°30'11"E 128.12 feet to a point on the West right-of-way of Round Mountain Road; thence along said right-of-way as follows: S 52°00'25"E 51.33 feet; thence along a curve to the right, said curve having a radius of 82.93 feet, a chord bearing S 33°48'45"E and a arc length of 46.58 feet; thence along a curve to the right, said curve having a radius of 20.39 feet, a chord bearing of S 06°56'40"W and a arc length of 11.16 feet; thence along a curve to the left, said curve having a radius of 940.28 feet, a chord bearing of S 17°42'54"W and a arc length of 123.18 feet; thence S 12°35'24"W 105.74 feet; thence S 10°38'05"W 157.06 feet; thence S 11°06'27"W 194.04 feet; thence a curve to the right, said curve having a radius of 125.12 feet, a chord bearing of S 41°04'21" W and a arc length of 140.38 feet; thence N 89°04'02" W 12.39 feet to a point on the East line of said Section 17; thence leaving said right-of-way and along said east line of Section 17 S 02°35'30" W 30.76 feet; thence leaving said East line of Section 17 N 87°02'55" W 333.17 feet; thence N 87°02'53" W 194.84 feet; thence N 87°02'53" W 330.33 feet; thence N 02°18'16" E 775.06 feet; thence S 87°38'58" E 532.56 feet; thence S 02°41'04" W 82.50 feet; thence N 78°27'28" E 340.08 feet to the POINT OF BEGINNING, containing 17.33 acres, more or less. Subject to the right-of-way of Lake Sequoyah Drive, and any easements that are recorded or unrecorded.

and, the same is accurately described in the Petition filed herein.

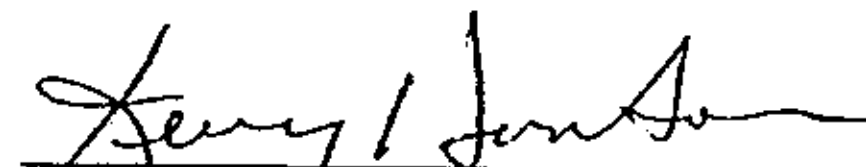
6. Attached to and made a part of said Petition is an accurate Vicinity Map of the above-described property that is sought to be annexed to the City of Fayetteville, Arkansas.

7. The above-described property owned by the Petitioners, **BOBBY JOE COLLINS and BETTY F. COLLINS, Husband and Wife**, and **DOUGLAS W. KINGHORN and ANITA R. KINGHORN, Husband and Wife**, is adjacent and contiguous to the present city boundary line for the City of Fayetteville, Washington County, Arkansas, and this territory should be annexed to and made a part of the City of Fayetteville, Arkansas.

8. The prayer of the Petition filed herein is right and proper and should be granted.

IT IS THEREFORE, CONSIDERED, ORDERED AND ADJUDGED that the aforesaid real estate situated in Washington County, Arkansas, is hereby annexed to and made a part of the City of Fayetteville, Arkansas, in accordance with Act No. 1 of the acts of the Legislature of 1875 of the State of Arkansas and all acts amendatory thereto, particularly including Act 142 of the Acts of Arkansas for the year 1963, as codified in Ark. Code Ann. §14-40-601, et seq.

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that the original papers in this cause be delivered to the Clerk of Washington County, Arkansas, with the same to be properly recorded upon the records of Washington County, Arkansas, and the Clerk, after properly recording and filing the original papers, is directed to prepare certified transcripts of the same; that one of the certified transcripts shall be delivered to the City of Fayetteville, Arkansas, one copy to the Secretary of State, and one copy to the Director of the Tax Division of the Arkansas Public Service Commission.


JERRY HUNTON, County Judge

IN THE COUNTY COURT OF WASHINGTON COUNTY, ARKANSAS

IN THE MATTER OF:
ANNEXING TO THE CITY OF FAYETTEVILLE,
ARKANSAS, CERTAIN LANDS CONTIGUOUS
TO SAID CITY OF FAYETTEVILLE, WASHINGTON
COUNTY, ARKANSAS

BOBBY JOE COLLINS and BETTY
F. COLLINS, Husband and Wife, and
DOUGLAS W. KINGHORN AND ANITA R.
KINGHORN, Husband and Wife

PETITIONERS

FILED
2005 MAR 1 AM
KAREN COMBS PRIC
CO. & PROBATE CLERK
WASHINGTON CO. ARK
Case No. GC 2005-
38

PETITION FOR ANNEXATION

Come now, BOBBY JOE COLLINS and BETTY F. COLLINS, Husband and Wife, and
DOUGLAS W. KINGHORN and ANITA R. KINGHORN, Husband and Wife, Petitioners, and
for their Petition for Annexation state as follows:

1. Petitioners, BOBBY JOE COLLINS and BETTY F. COLLINS, Husband and
Wife, are the sole record owners of the following described property situated in Washington
County, Arkansas, to-wit:

A part of the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of
Section Seventeen (17), and a part of the Northwest Quarter (NW1/4) of the
Southwest Quarter (SW1/4) of Section Sixteen (16), Township Sixteen (16) North,
Range Twenty-nine (29) West, Washington County, Arkansas, being more
particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter (NE1/4) of the
Southeast Quarter (SE1/4) of said Section 17; thence S02°35'30" W 520.81 feet to
the POINT OF BEGINNING; thence S87°30'11"E 128.12 feet to a point on the
West right-of-way of Round Mountain Road; thence along said right-of-way as
follows: S52°00'25"E 51.33 feet; thence along a curve to the right, said curve
having a radius of 82.93 feet, a chord bearing of S33°48'45"E and a arc length of
46.58 feet; thence along a curve to the right said curve having a radius of 20.39
feet, a chord bearing of S06°56'40"W and a arc length of 11.16 feet; thence along
a curve to the left, said curve having a radius of 940.28 feet, a chord bearing
S17°42'54"W and a arc length of 123.18 feet; thence S12°35'24"W 105.74 feet;

thence S10°38'05"W 157.06 feet; thence S11°06'27"W 194.04 feet; thence a curve to the right, said curve having a radius of 125.12 feet, a chord bearing S41°04'21"W and a arc length of 140.38 feet; thence N89°04'02"W 12.39 feet to a point on the East line of said Section 17; thence leaving said right-of-way and along said east line of Section 17 S02°35'30"W 30.76 feet thence leaving said East line of Section 17 N87°02'55"W 333.17 feet; thence N02°00'17"E 182.47 feet; thence N87°35'38"W 195.03 feet; thence S01°56'14"W 180.62 feet; thence N87°02'53"W 330.33 feet; thence N02°18'16"E 775.06 feet; thence S87°38'58"E 532.56 feet; thence S02°41'04"W 82.50 feet; thence N78°27'28"E 340.08 feet to the POINT OF BEGINNING, containing 16.52 acres, more or less. Subject to the right-of-way of Lake Sequoyah Drive, and any easements that are recorded or unrecorded.

2. Petitioners, DOUGLAS W. KINGHORN and ANITA R. KINGHORN, Husband and Wife, are the sole record owners of the following described property situated in Washington County, Arkansas, to-wit:

A part of the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of Section Seventeen (17), and a part of the Northwest Quarter (NW1/4) of the Southwest Quarter (SW1/4) of Section Sixteen (16), Township Sixteen (16) North, Range Twenty-nine (29) West, Washington County, Arkansas, being more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of said Section 17; thence S02°35'30"W 520.81 feet; thence S87°30'11"E 128.12 feet to a point on the West right-of-way of Round Mountain Road; thence along said right-of-way as follows: S52°00'25"E 51.33 feet; thence along a curve to the right, said curve having a radius of 82.93 feet, a chord bearing of S33°48'45"E and a arc length of 46.58 feet; thence along a curve to the right, said curve having a radius of 20.39 feet, a chord bearing of S06°56'40"W and a arc length of 11.16 feet; thence along a curve to the left, said curve having a radius of 940.28 feet, a chord bearing of S17°42'54"W and a arc length of 123.18 feet; thence S12°35'24"W 105.74 feet; thence S10°38'05"W 157.06 feet; thence S11°06'27"W 194.04 feet; thence a curve to the right, said curve having a radius of 125.12 feet, a chord bearing of S41°04'21"W and a arc length of 140.38 feet; thence N89°04'02"W 12.39 feet to a point on the East line of said Section 17; thence leaving said right-of-way and along said east line of Section 17 S02°35'30"W 30.76 feet; thence leaving said East line of Section 17 N87°02'55"W 333.17 feet to the POINT OF BEGINNING; thence N02°00'17"E 182.47 feet; thence N87°35'38"W 195.03 feet; thence S01°56'14"W 180.62 feet; thence S87°02'53"E 194.84 feet to the POINT OF BEGINNING, containing 0.81 acre, more or less. Subject to the right-of-way of Lake Sequoyah Drive, and any easements that are recorded or unrecorded.

3. The combined legal descriptions of BOBBY JOE COLLINS and BETTY F. COLLINS, Husband and Wife, and DOUGLAS W. KINGHORN and ANITA R. KINGHORN, Husband and Wife, as depicted on the Plat of Survey dated February 9, 2005, prepared by Presley, Brannan & Associates, Inc., a copy of which is attached hereto as Exhibit "A" and made a part hereof by reference, is as follows:

A part of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE1/4) of Section Seventeen (17), and a part of the Northwest Quarter (NW1/4) of the Southwest Quarter (SW1/4) of Section Sixteen (16), Township Sixteen (16) North, Range Twenty-nine (29) West, Washington County, Arkansas, being more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of said Section 17; thence S 02°35'30"W 520.81 feet to the POINT OF BEGINNING; thence S 87°30'11"E 128.12 feet to a point on the West right-of-way of Round Mountain Road; thence along said right-of-way as follows: S 52°00'25"E 51.33 feet; thence along a curve to the right, said curve having a radius of 82.93 feet, a chord bearing S 33°48'45"E and a arc length of 46.58 feet; thence along a curve to the right, said curve having a radius of 20.39 feet, a chord bearing of S 06°56'40"W and a arc length of 11.16 feet; thence along a curve to the left, said curve having a radius of 940.28 feet, a chord bearing of S 17°42'54"W and a arc length of 123.18 feet; thence S 12°35'24"W 105.74 feet; thence S 10°38'05"W 157.06 feet; thence S 11°06'27"W 194.04 feet; thence a curve to the right, said curve having a radius of 125.12 feet, a chord bearing of S 41°04'21" W and a arc length of 140.38 feet; thence N 89°04'02" W 12.39 feet to a point on the East line of said Section 17; thence leaving said right-of-way and along said east line of Section 17 S 02°35'30" W 30.76 feet; thence leaving said East line of Section 17 N 87°02'55" W 333.17 feet; thence N 87°02'53" W 194.84 feet; thence N 87°02'53" W 330.33 feet; thence N 02°18'16" E 775.06 feet; thence S 87°38'58" E 532.56 feet; thence S 02°41'04" W 82.50 feet; thence N 78°27'28" E 340.08 feet to the POINT OF BEGINNING, containing 17.33 acres, more or less. Subject to the right-of-way of Lake Sequoyah Drive, and any easements that are recorded or unrecorded.

4. All of the above-described property is adjacent and contiguous to the present city boundary line for the City of Fayetteville, Washington County, Arkansas.

5. A true and correct copy of the Vicinity Map of the above-described property is attached hereto as a part of Exhibit "A" and made a part hereof by reference.

6. The above-described property is suitable for annexation to the City of Fayetteville, Arkansas, and is necessary for the proper growth, prosperity and management of the above-described property and the City of Fayetteville, Arkansas.

7. Pursuant to Arkansas Code Annotated §14-40-601 et seq, this Court has jurisdiction over the subject matter herein, and Petitioners request that the above-described property be annexed to the City of Fayetteville, Arkansas.

8. Petitioners further state that the law firm of Harrington, Miller, Neihouse & Kieklak, P.A., Springdale, Arkansas, is authorized to act for and on behalf of the Petitioners in all matters connected with this Petition and subsequent hearings or annexation proceedings connected therewith.

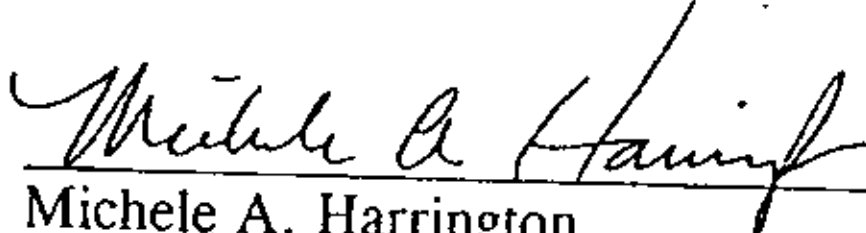
9. Petitioners request that this Court set a date for hearing this Petition, not less than thirty (30) days after the date of the filing of this Petition, pursuant to Arkansas law.

WHEREFORE, Petitioners pray that the above-described property be annexed to the City of Fayetteville, Washington County, Arkansas, pursuant to the provisions of Arkansas law, after a hearing thereon as required by law; and that this Court, by its Order, fix a time and place for said hearing not less than thirty (30) days from the filing of this Petition; and for all other proper relief to which Petitioners may be entitled.

BOBBY JOE COLLINS and BETTY F. COLLINS,
Husband and Wife, and DOUGLAS W. KINGHORN
and ANITA R. KINGHORN, Husband and Wife,
Petitioners

HARRINGTON, MILLER, NEIHOUSE & KIEKLAK
A Professional Association
113 East Emma Avenue
Post Office Box 687
Springdale, Arkansas 72765
(479) 751-6464
Attorneys for Petitioners

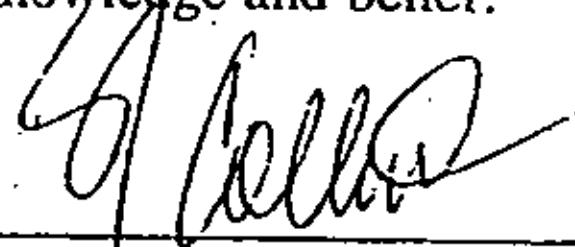
By:


Michele A. Harrington
Arkansas Bar No. 85217

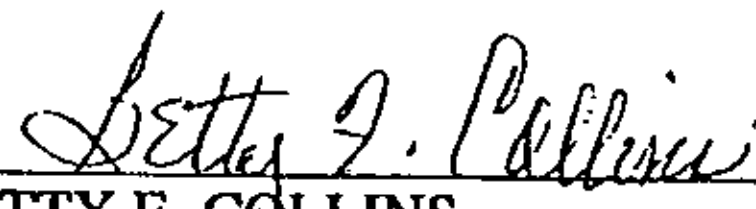
VERIFICATION

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

We, BOBBY JOE COLLINS and BETTY F. COLLINS, Husband and Wife, Petitioners herein, hereby state under oath that we have read the above and foregoing Petition for Annexation, and that the facts and allegations contained therein are true and correct to the best of our knowledge and belief.



BOBBY JOE COLLINS



BETTY F. COLLINS

SUBSCRIBED AND SWORN to before me, a Notary Public, this 25th day of February, 2005.

My Commission Expires:

9/23/14



Notary Public



VERIFICATION

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

I, DOUGLAS W. KINGHORN and ANITA R. KINGHORN, Husband and Wife, Petitioners herein, hereby state under oath that we have read the above and foregoing Petition for Annexation, and that the facts and allegations contained therein are true and correct to the best of our knowledge and belief.

Douglas W. Kinghorn
DOUGLAS W. KINGHORN

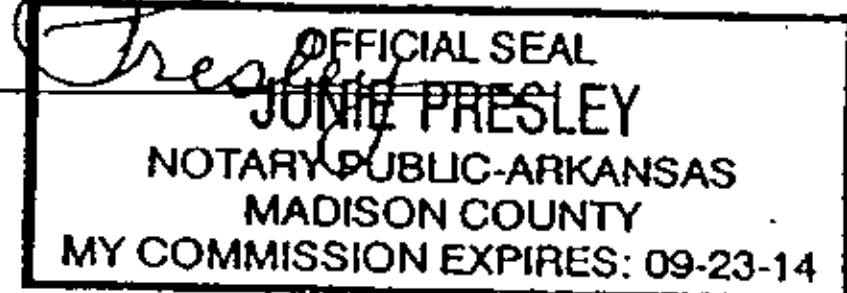
Anita R. Kinghorn
ANITA R. KINGHORN

SUBSCRIBED AND SWORN to before me, a Notary Public, this 25th day of February, 2005.

My Commission Expires:

9/23/14

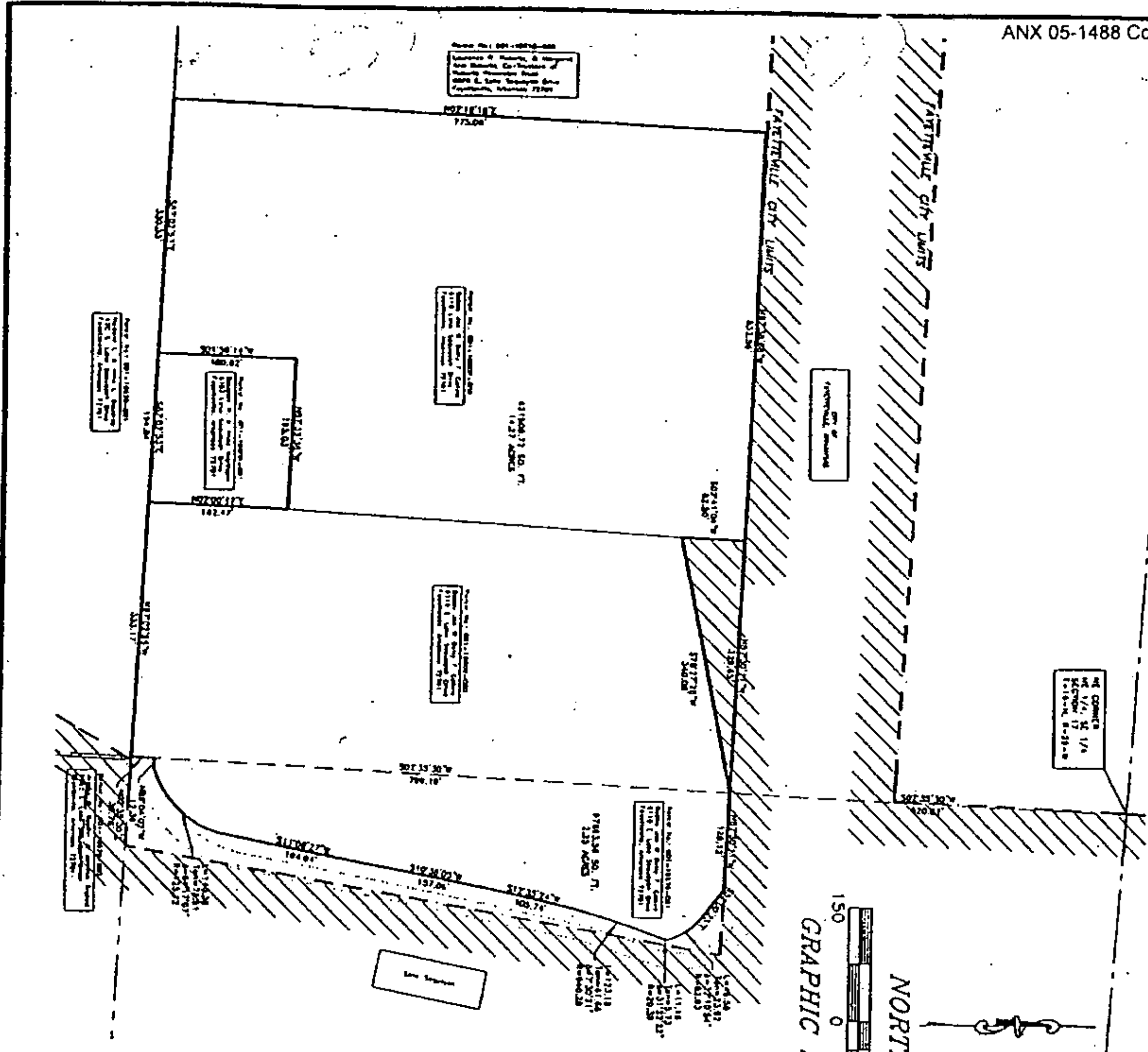
Junie Presley
Notary Public



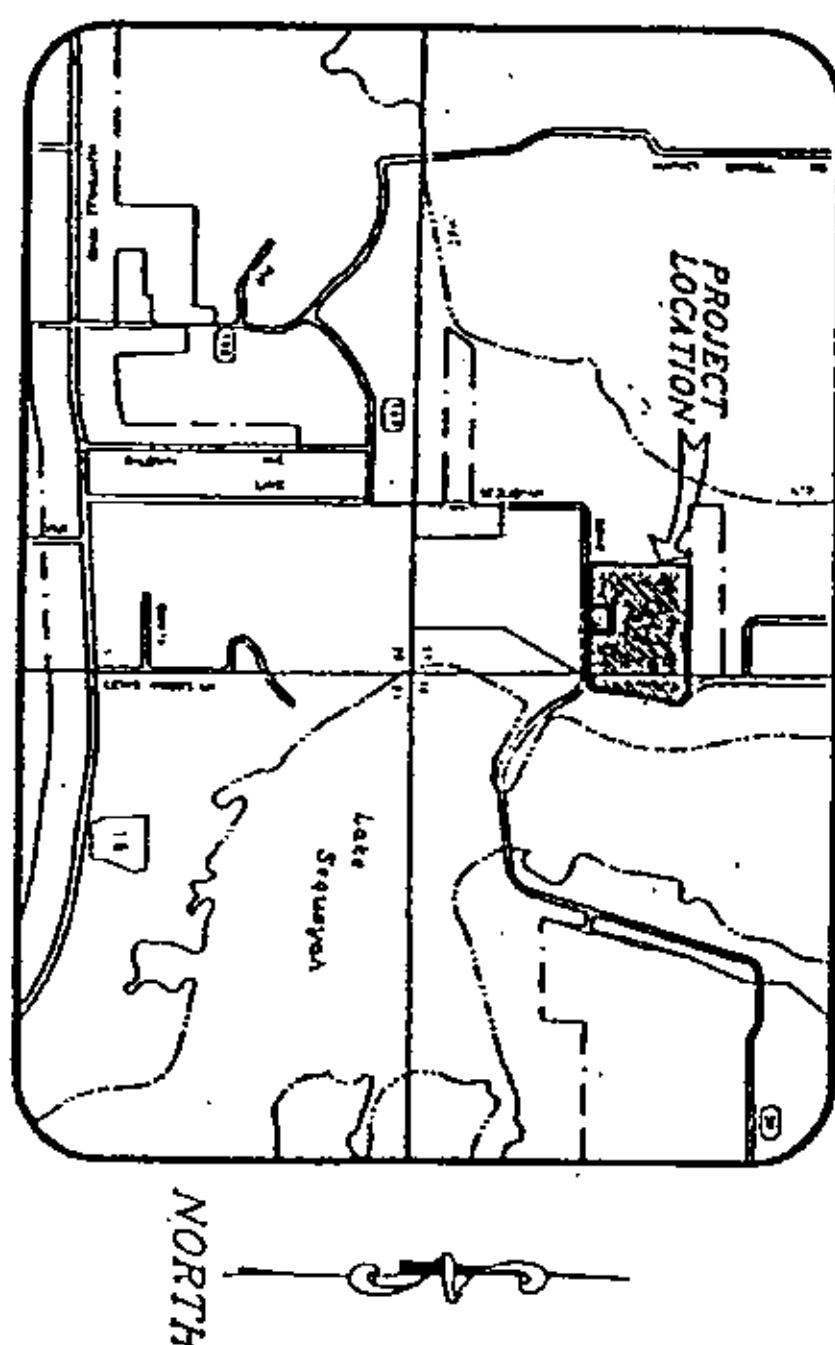
CERTIFICATE OF SERVICE

I, Michele A. Harrington, Attorney for Petitioners herein, hereby certify that I have served a true copy of the within and foregoing on the City Clerk for the City of Fayetteville, Arkansas, by placing a copy thereof in the U. S. Mail, postage prepaid, addressed to her mailing address in Fayetteville, Arkansas, this the 28th day of February, 2005.

Michele A. Harrington
Michele A. Harrington



NORTH
GRAPHIC SCALE
150 0 150



Collins & Kinghorn Combined Legal Description

A part of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of Section Seventeen (17), and a part of the Northwest Quarter (NW 1/4) of the Southwest Quarter (SW 1/4) of Section Sixteen (16), Township Sixteen (16) North, Range Twenty-nine (29) West, Washington County, Arkansas, being more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of said Section 17; thence S 02°33'30" W 520.81 feet to the POINT OF BEGINNING; thence along said right-of-way as follows:
S 52°00'25" E 31.33 feet; thence along a curve to the right, said curve having a radius of 82.83 feet, a chord bearing of S 33°48'45" E and a arc length of 46.58 feet; thence along a curve to the right, said curve having a radius of 20.39 feet, a chord bearing of S 08°56'40" W and a arc length of 11.16 feet; thence along a curve to the left, said curve having a radius of 940.28 feet, a chord bearing of S 17°42'34" W and a arc length of 123.18 feet; thence S 12°35'24" W 103.74 feet; thence S 10°38'05" W 157.06 feet; thence S 11°06'27" W 194.04 feet; thence a curve to the right, said curve having a radius of 123.12 feet, a chord bearing of S 41°04'21" W and a arc length of 140.38 feet; thence N 89°04'02" W 12.39 feet to a point on the East line of said Section 17; thence leaving said right-of-way and along said east line of section 17 S 02°33'30" W 30.76 feet; thence leaving said East line of Section 17 N 87°02'55" W 333.17 feet; thence N 87°02'55" W 194.84 feet; thence N 87°02'55" W 330.33 feet; thence N 02°18'16" E 775.06 feet; thence S 87°48'58" E 532.56 feet; thence S 02°41'04" W 82.50 feet; thence N 78°27'28" E 340.08 feet to the POINT OF BEGINNING, containing 17.33 acres, more or less. Subject to the right-of-way of Lake Sequoyia Drive, and any easements that are recorded or unrecorded.

PRISLEY, BRANNAN, & ASSOCIATES, Inc. CONSULTING ENGINEERS 2115 North Line P.O. Box 1170 Fayetteville, Arkansas 72701 Tel: (479) 784-0111		GENERAL ATTORNEY FOR JOE COLLINS WASHINGTON COUNTY, ARKANSAS	
Date: 05/14/88 Drawn by: JAC Checked by: JAC Title: Plat	Date: 05/14/88 Drawn by: JAC Checked by: JAC Title: Plat	Date: 05/14/88 Drawn by: JAC Checked by: JAC Title: Plat	Date: 05/14/88 Drawn by: JAC Checked by: JAC Title: Plat

Collins & Kinghorn Combined Legal Description

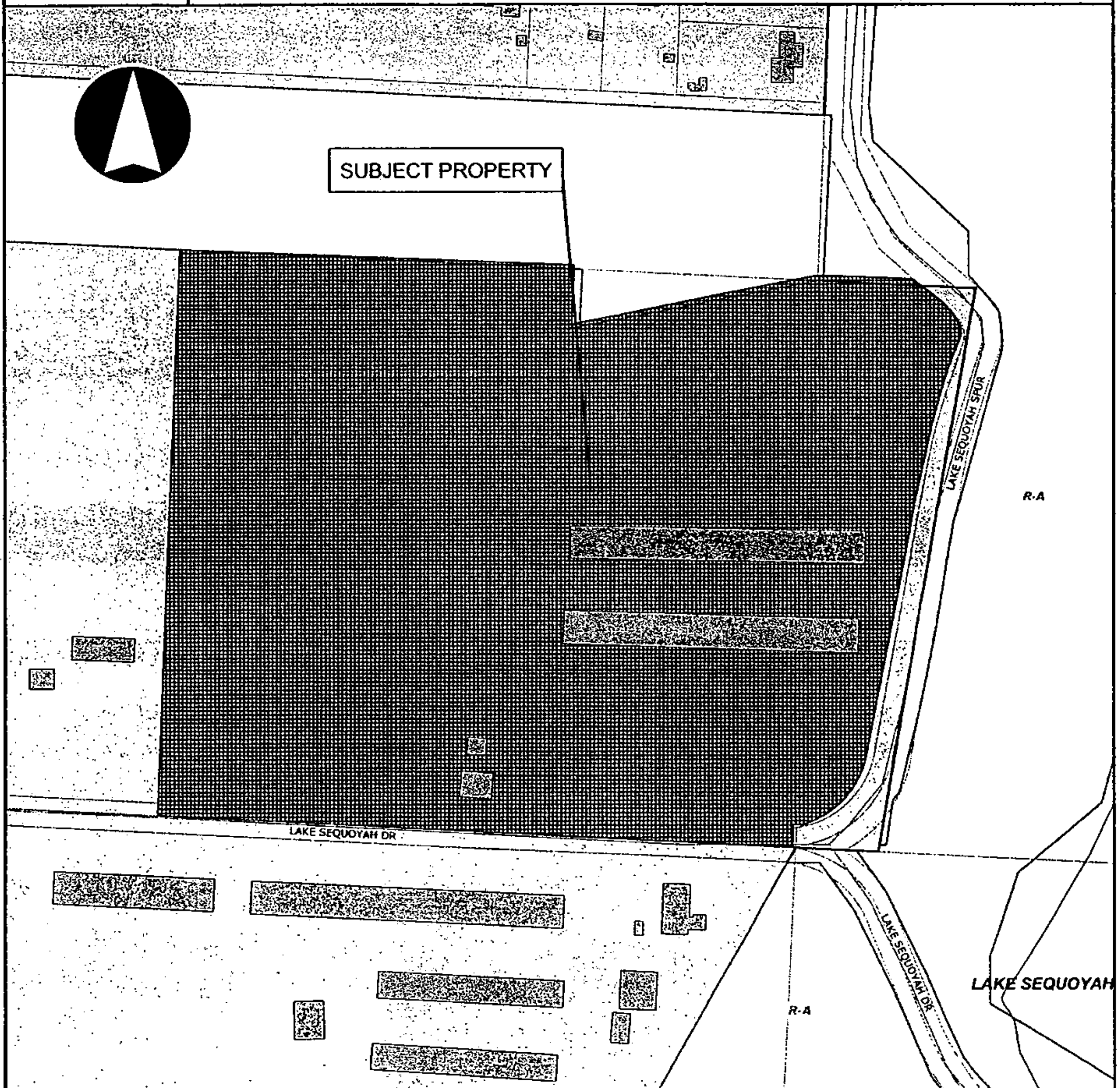
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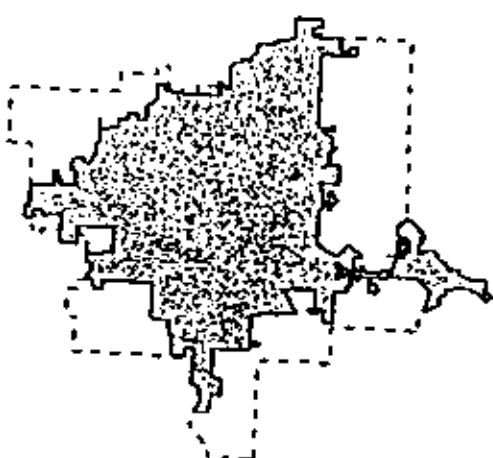
ANX05-1488

Close Up View

COLLINS/KINGHORN



Overview



Legend

ANX05-1488

Overlay District
Master Street Plan
Master Street Plan
Freeway/Expressway

Principal Arterial
Minor Arterial
Collector
Historic Collector

FLOODWAY
100 YEAR

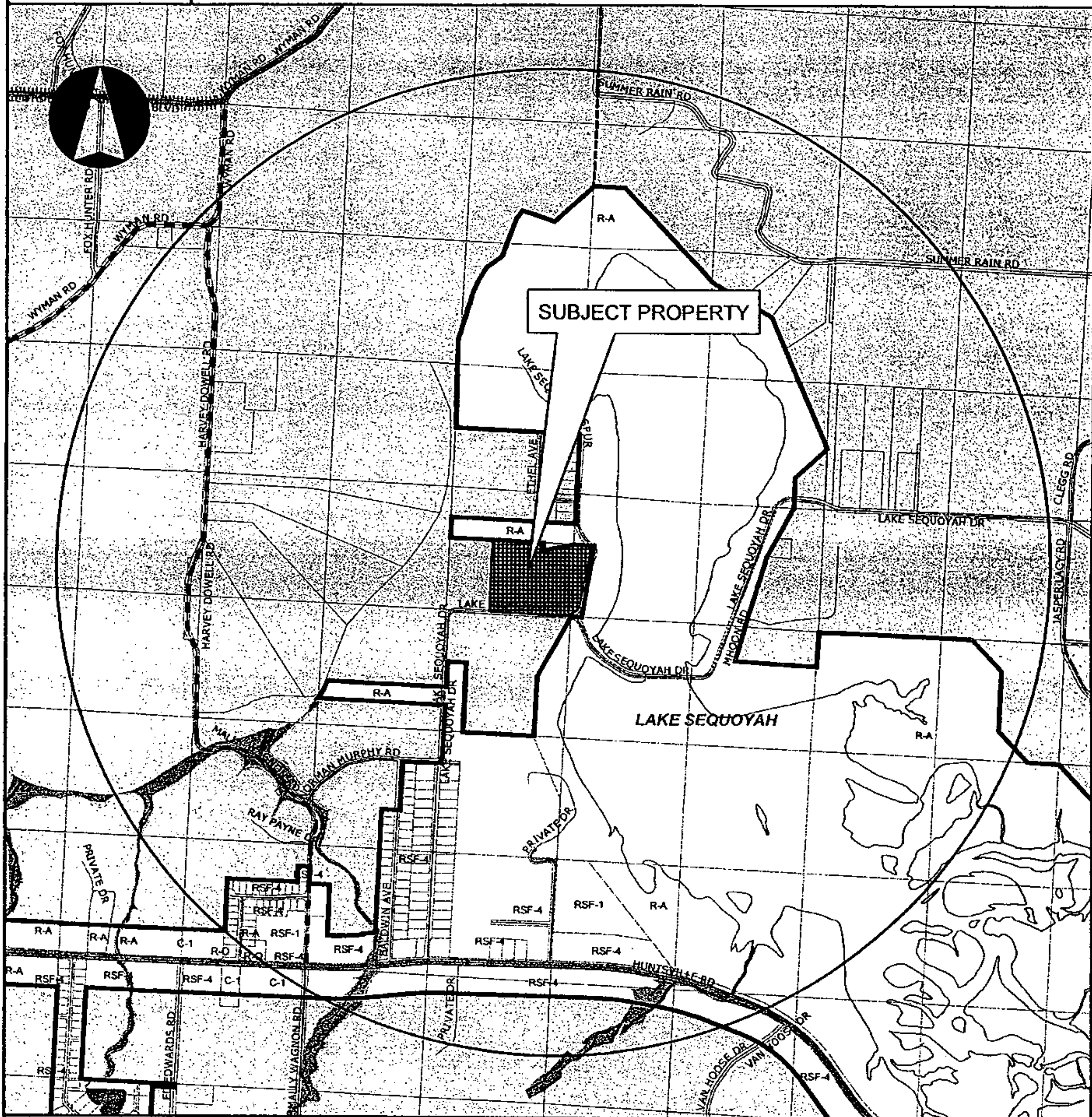
500 YEAR
LIMIT OF STUDY
BaseLine Profile
Fayetteville
Outside City

0 75 150 300 450 600 Feet

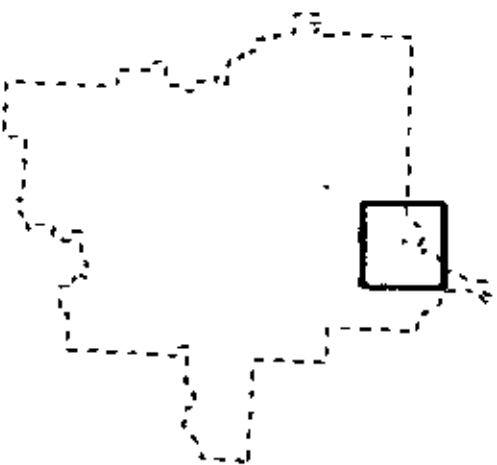
ANX05-1488

One Mile View

COLLINS/KINGHORN



Overview



Legend

Subject Property
ANX05-1488

Boundary

Planning Area
Overlay District
Outside City

Master Street Plan

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

0 0.125 0.25 0.5 0.75 1 Miles

PRESLEY, BRANNAN & ASSOCIATES, INC.

Consulting Engineers

Office (479) 756-8720

Charles Presley, P.E. & R.L.S.

Fax (479) 756-8714

Steve Brannan, P.E.

2143 Worth Lane

Springdale, Arkansas 72764

August 25, 2005

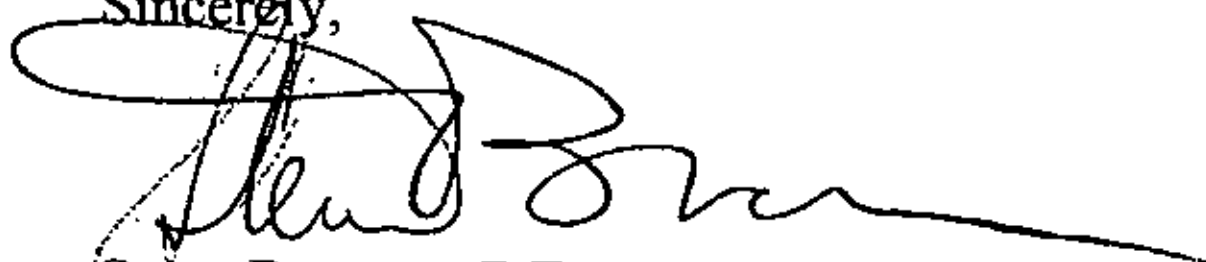
City of Fayetteville
125 W. Mountain Street
Fayetteville, AR 72701

RE: Notice of Appeal to City Council concerning Collins/Kinghorn Rezoning

Dear City Council Member:

This letter is to notify you of our desire to appeal the recent Planning Commission decision on 8/22/05 concerning the rezoning of the Collins and Kinghorn properties (RZN 05-1489) located at 6102/6110 Lake Sequoyah Drive. Mr. Collins and Mr. Kinghorn have no desire to proceed with the annexation (ANX 05-1488) of their properties if the rezoning appeal fails. If the rezoning is not feasible, please let us know so that we can withdraw our request for annexation and begin the development of this property within the county.

Sincerely,



Steve Brannan, P.E.

8/30/05 Spoke to Steve Brannan

Annexation will not be on the
City Council Agenda until the
September 20, 2005 City Council
meeting. Therefore this appeal
of the rezoning will be added
to Sept. 20, 2005.

Donda 8/30/05

RECEIVED

AUG 29 2005

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

PRESLEY, BRANNAN & ASSOCIATES, INC.

Consulting Engineers

Office (479) 756-8720

Charles Presley, P.E. & R.L.S.

Steve Brannan, P.E.

2143 Worth Lane

Springdale, Arkansas 72764

Fax (479) 756-8714

August 25, 2005

Ms. Suzanne Morgan
City of Fayetteville
125 W. Mountain Street
Fayetteville, AR 72701

RE: Notice of Appeal to City Council concerning Collins/Kinghorn Rezoning

Dear Ms. Morgan:

This letter is to notify you of our desire to appeal the recent Planning Commission decision on 8/22/05 concerning the rezoning of the Collins and Kinghorn properties (RZN 05-1489) located at 6102/6110 Lake Sequoyah Drive. Let me state once more that Mr. Collins and Mr. Kinghorn have no desire to proceed with the annexation (ANX 05-1488) of their properties if the rezoning appeal fails.

Sincerely,



Steve Brannan, P.E.

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

AUG 25 2005

RECEIVED

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations *(D)*

From: Jeremy C. Pate, Director of Current Planning *(JP)*

Date: August 24, 2005

Subject: Rezoning for Collins/Kinghorn (RZN 05-1489)

RECOMMENDATION

The Planning Commission voted to deny the subject rezoning request rezoning approximately 17.64 acres of property from R-A, Residential Agricultural, to RSF-4, Residential Single Family, 4 units per acre. Planning Staff originally recommended denial of the rezoning request, finding that the infrastructure currently in place is insufficient to serve a development of this density, and that four units per acre in this area is a density that is incompatible with surrounding land use.

BACKGROUND

The subject property contains four parcels of property consisting of 17.64-acres. The majority of property is owned by the Collins with the remainder owned by the Kinghorns. The property is located west of Lake Sequoyah, north of Lake Sequoyah Drive. Property requested for rezoning is 0.31 acres larger than the annexation request; this portion of property was previously annexed and zoned R-A, Residential Agricultural. Property north and east of the subject property was annexed into the City of Fayetteville in the 1960s to incorporate Lake Sequoyah, a primary water source.

At this time, the property is currently used for single family and agricultural use. The developer intends to develop this property for single family use at a maximum density of 4 units per acre. Correspondence from the applicant states that anticipated development will not exceed 56 residential lots, which is a total density of 3.17 units per acre. The request is to rezone the property RSF-4, Residential Single-family, 4 units per acre.

DISCUSSION

This item was heard at the regular Planning Commission meeting on May 23, 2005 at which time the Planning Commission tabled this item to allow staff and the applicant to further evaluate the timing and level of services available to this property.

This item was heard at the regular Planning Commission on August 22, 2005. The Planning Commission voted 5-1-0 to deny the rezoning request, with Commissioner Graves voting no. The applicant has submitted an appeal of the Planning Commission

decision to the City Clerk within the 10-day appeal period. (See applicant's appeal of Planning Commission decision.)

Staff recommended denial of the rezoning request to rezone the property RSF-4, and suggested that the applicant evaluate a more appropriate density of development that is compatible with the surrounding properties, such as R-A, RSF-0.5, or RSF-1. The lack of services in this area may impede residential development at 4 units per acre without significant off-site improvements.

The applicant has clearly indicated that should the rezoning of RSF-4 be denied, that the annexation request would be withdrawn and the property would be developed within the Planning Area, which would require City water, septic systems, and streets built to city standards.

At the August 22, 2005 Planning Commission meeting, Commissioner Anthes moved to forward the rezoning request with a recommendation of an RSF-0.5 zoning designation. This motion failed for lack of a second. Subsequently, the Planning Commission denied the requested zoning with a majority vote.

See attached agenda item ANX 05-1488 (Collins/Kinghorn) for supplementary information.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED
IN REZONING PETITION RZN 05-1489 FOR APPROXIMATELY
17.64 ACRES LOCATED AT 6102 AND 6110 LAKE SEQUOYAH
DRIVE FROM R-A, RESIDENTIAL AGRICULTURAL, TO RSF-4,
RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE.

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

Section 1: That the zone classification of the following described property is
hereby changed as follows:

From R-A, Residential Agricultural, to RSF-4, Residential Single Family,
4 units per acre, as shown on Exhibit "A" Attached hereto and made a part
hereof.

Section 2: That the official zoning map of the City of Fayetteville, Arkansas is
hereby amended to reflect the zoning change provided in Section 1 above.

PASSED and APPROVED this _____ day of _____, 2005.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"
RZN 05-1489

A PART OF THE NORTHEAST QUARTER (NE ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION SEVENTEEN (17), AND A PART OF THE NORTHWEST QUARTER (NW ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF SECTION SIXTEEN (16), TOWNSHIP SIXTEEN (16) NORTH, RANGE TWENTY-NINE (29) WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER (NE1/4) OF THE SOUTHEAST QUARTER (SE1/4) OF SAID SECTION 17; THENCE S02°35'30"W 520.81 FEET TO THE POINT OF BEGINNING; THENCE S87°30'11"E 128.12 FEET TO A POINT ON THE WEST RIGHT-OF-WAY OF ROUND MOUNTAIN ROAD; THENCE ALONG SAID RIGHT-OF-WAY AS FOLLOWS:
S52°00'25"E 51.33 FEET; THENCE ALONG A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 82.93 FEET, A CHORD BEARING OF S33°48'45"E AND A ARC LENGTH OF 46.58 FEET; THENCE ALONG A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 20.39 FEET, A CHORD BEARING OF S06°56'40"W AND A ARC LENGTH OF 11.16 FEET; THENCE ALONG A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 940.28 FEET, A CHORD BEARING OF S17°42'54"W AND A ARC LENGTH OF 123.18 FEET; THENCE S12°35'24"W 105.74 FEET; THENCE S10°38'05"W 157.06 FEET; THENCE S11°06'27"W 194.04 FEET; THENCE A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 125.12 FEET, A CHORD BEARING OF S41°04'21"W AND A ARC LENGTH OF 140.38 FEET; THENCE N89°04'02"W 12.39 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 17; THENCE LEAVING SAID RIGHT-OF-WAY AND ALONG SAID EAST LINE OF SECTION 17 S02°35'30"W 30.76 FEET; THENCE LEAVING SAID EAST LINE OF SECTION 17 N87°02'55"W 333.17 FEET; THENCE N87°02'53"W 194.84 FEET; THENCE N87°02'53"W 330.33 FEET; THENCE N02°18'16"E 775.06 FEET THENCE S87°38'58"E 532.56 FEET; THENCE S87°30'11"E 329.65 FEET TO THE POINT OF BEGINNING, CONTAINING 17.64 ACRES, MORE OR LESS. SUBJECT TO THE RIGHT-OF-WAY OF LAKE SEQUOYAH DRIVE, AND ANY EASEMENTS THAT ARE RECORDED OR UNRECORDED.

PRESLEY, BRANNAN & ASSOCIATES, INC.

Consulting Engineers

Office (479) 756-8720

Charles Presley, P.E. & R.L.S.
Steve Brannan, P.E.
2143 Worth Lane
Springdale, Arkansas 72764

Fax (479) 756-8714

August 25, 2005

Ms. Suzanne Morgan
City of Fayetteville
125 W. Mountain Street
Fayetteville, AR 72701

RE: Notice of Appeal to City Council concerning Collins/Kinghorn Rezoning

Dear Ms. Morgan:

This letter is to notify you of our desire to appeal the recent Planning Commission decision on 8/22/05 concerning the rezoning of the Collins and Kinghorn properties (RZN 05-1489) located at 6102/6110 Lake Sequoyah Drive. Let me state once more that Mr. Collins and Mr. Kinghorn have no desire to proceed with the annexation (ANX 05-1488) of their properties if the rezoning appeal fails.

Sincerely,



Steve Brannan, P.E.



PC Meeting of August 22, 2005

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Suzanne Morgan, Current Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: August 18, 2005

RZN 05-1489: (COLLINS/KINGHORN, 533/534): Submitted by MICHELE, A HARRINGTON for property located at 6102 AND 6110 LAKE SEQUOYAH DRIVE. The property is zoned R-A, RESIDENTIAL AGRICULTURAL, and contains approximately 17.64 acres. The request is to rezone the subject property to RSF-4, Residential Single-family, 4 units per acre.

Planner: SUZANNE MORGAN

RECOMMENDATION:

Staff recommends denial of the requested rezoning to RSF-4, based on the findings herein. Staff would encourage the evaluation of an alternate zoning designation that is more compatible with the surrounding properties and level of service available in this area.

PLANNING COMMISSION ACTION:		Required <u>YES</u>
	☐ Approved	☒ Denied
Date: <u>August 22, 2005</u>	<i>- Motion by Commissioner Arthes to recommend RSF-0.5 to the City Council. Motion failed for lack of a second.</i>	
	<i>- Motion by Commissioner Clark for denial. Motion seconded by Commissioner Allen. VOTE: 5-1-0 with Commissioner Graves Voting no.</i>	
CITY COUNCIL ACTION:		Required <u>YES</u>
	☐ Approved	☐ Denied
Date: <u>September 20, 2005 (1st reading if recommended)</u>		

BACKGROUND:

Property description: The subject property contains four parcels of property consisting of 17.64-acres. The majority of property is owned by the Collins with the remainder owned by the Kinghorns. The property is located west of Lake Sequoyah, north of Lake Sequoyah Drive. Property north and east of the subject property was annexed into the City of Fayetteville in the 1960s to incorporate Lake Sequoyah, a primary water source. At this time, the property is currently used for single family and agricultural use. If approval of the preceding ANX 05-1488 is granted, the property will be zoned R-A, Residential Agricultural. If it is not, this request may not be voted upon.

Proposal: The developer intends to develop this property for single family use at a maximum density of 4 units per acre. Correspondence from the applicant states that anticipated development will not exceed 56 residential lots, which is a total density of 3.17 units per acre. The request is to rezone the property RSF-4, Residential Single-family, 4 units per acre.

Recommendation: Staff recommends denial of the rezoning request to rezone the property RSF-4, and suggests that the applicant evaluate a more appropriate density of development that is compatible with the surrounding properties, such as R-A, RSF-0.5, or RSF-1. Additionally, staff finds that the lack of services in this area may impede residential development at 4 units per acre without significant off-site improvements.

SURROUNDING LAND USE AND ZONING:

Direction	Land Use	Zoning
North	Wooded area	R-A, Residential Agricultural
South	Single family farms	Planning Area
East	Lake Sequoyah Spur Lake Sequoyah	Planning Area R-A, Residential Agricultural
West	Vacant; Pasture	Planning Area

INFRASTRUCTURE:

Streets: Currently the site has access to Lake Sequoyah Drive. With development, anticipated road improvements are required for Lake Sequoyah Drive along the property to include: right-of-way dedication, pavement 14' from centerline, curb and gutter, storm drainage, and sidewalks.

Surrounding Master Street Plan Streets:

South: Lake Sequoyah Road, Local Street

East: Lake Sequoyah Spur, Local Street

Water: Public water is adjacent to the site. There is a 6" main along Lake Sequoyah Drive. Water service will need to be extended within the property at the time of development. Minimum size of new water mains is 8". Additional connections may be required to complete a looped system. This may include an off-site connection to be determined at a later date. No long range improvements to the water system are planned at this time for the areas around Lake Sequoyah. A study of the water supply to serve this property **shall** be conducted prior to development at the cost of the developer.

Sewer: The site **does not** have access to sanitary sewer. There is a 6" sewer main along Lake Sequoyah Drive to the south. Minimum size of new sewer mains is 8". Sewer will need to be extended approximately 1000 feet to serve the property if developed. A capacity analysis of the downstream sewer lines **shall** be conducted and a capacity analysis of the lift stations downstream of the site **shall** be conducted by the

developer prior to development.

Fire: The subject property is located approximately 5.5 miles from Fire Station #5. Response time to the property is projected at 12 minutes for a projected 16 calls per year at full build-out. A new Fire Station #3 is proposed at the Tyson complex on Huntsville Road. It is located 4.4 miles from the subject property with an anticipated 8 minute response time. The Fire Department has been responsible for serving the Lake Sequoyah area of the City since its annexation 35-45 years ago. At this time, no date of completion has been announced for the completion of this proposed fire station at the Tyson complex.

Police: It is the opinion of the Fayetteville Police Department that this rezoning will substantially alter the population density and will possibly create an undesirable increase on police services. This rezoning will increase our response time to calls for service because this property is on the very outer fringes of our current service area. The potential of creating 69 new homes will dramatically increase the traffic on a collector street, (Lake Sequoyah Drive) which will in turn place the traffic on an already congested arterial street (E. Huntsville Road).

LAND USE PLAN: The Future Land Use Plan designates this site as **Residential**.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The majority of property adjacent to the 17.64-acre subject property is located within the Planning Area and consists of large tracts of land developed for single family and agricultural uses. The Lewis Baldwin Addition, located approximately 0.4 miles away, is the nearest property within the City zoned RSF-4 and developed for single family use. Staff finds that the development of this property for residential use is appropriate and compatible with the future land use plan; however, development of 4 units per acre is not compatible with the surrounding properties.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed rezoning of the property is not justified or needed at this time. The property is currently developed and used for residential use. Should the annexation request for the 17.64 acres be approved, the property is zoned R-A by default. Within the Residential Agricultural zoning district, property can be subdivided into 2-acre minimum lots with 200' lot width on an improved public street. In addition, the R-A zoning district permits a variety of agrarian uses

which are compatible with surrounding properties. Other zoning districts with more compatible densities include R-A, RSF-0.5, and RSF-1.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The additional density will create an increase in the amount of traffic currently utilizing Lake Sequoyah Spur, Lake Sequoyah Drive and Huntsville Road. These streets are not built to City standards and may inadequately serve the traffic generated by single family development at the density proposed. The nearest arterial street is Huntsville Road, and although a state highway and designated a Principal Arterial, it is currently unimproved. The addition of the anticipated traffic on the surrounding streets may, therefore, result in an increased volume of traffic congestion and danger. An increase in traffic, coupled with inadequate roads may result in a decreased response time of emergency vehicles.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The proposed zoning will increase population density from that zoning currently in place. The 17.64 acre tract under an R-A zoning designation would allow for a maximum 8 single family residential dwelling units. With the proposed RSF-4 designation, a maximum 69 single family dwelling units would be permitted.

The potential increase in population in a location that is currently rural in nature will negatively impact the load on public services. The current water and sewer services are inadequate to serve a single family development of such density without significant improvements and studies to determine capacity and function. Off-site street improvements would also need to be evaluated by the developer to ensure a safe traffic situation. Emergency services will have a lengthy response time of 12 minutes with a projected 16 calls per year at full build-out with the current zoning request.

It is the opinion of the Fayetteville Police Department that this rezoning will substantially alter the population density and will possibly create an undesirable increase on police services. This rezoning will increase our response time to calls for service because this property is on the very outer fringes of our current service area. The potential of creating 69 new homes will dramatically increase the traffic on a collector street, (Lake Sequoyah Drive) which will in turn place the traffic on an already congested arterial street (E. Huntsville Road).

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:
- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
 - b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

161.03 District R-A, Residential-Agricultural

(A) *Purposes.* The regulations of the agricultural district are designed to protect agricultural land until an orderly transition to urban development has been accomplished; prevent wasteful scattering of development in rural areas; obtain economy of public funds in the providing of public improvements and services of orderly growth; conserve the tax base; provide opportunity for affordable housing, increase scenic attractiveness; and conserve open space.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 3	Public protection and utility facilities
Unit 6	Agriculture
Unit 7	Animal husbandry
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 37	Manufactured homes

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 4	Cultural and recreational facilities
Unit 20	Commercial recreation, large sites
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

Units per acre	One-half
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(D) *Bulk and area regulations.*

Lot width minimum	200 ft.
Lot Area Minimum:	
Residential:	2 acres
Nonresidential:	2 acres
Lot area per dwelling unit	2 acres

(E) *Setback requirements.*

Front	Side	Rear
35 ft.	20 ft.	35 ft.

(F) *Height requirements.* There shall be no maximum height limits in the A-1 District, provided, however, that any building which exceeds the height of 15 feet shall be setback from any boundary line of any residential district a distance of 1.0 foot for each foot of height in excess of 15 feet. Such setbacks shall be measured from the required setback lines.

(G) *Building area.* None.

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161.04 District Rsf-.5, Residential Single-Family – One Half Unit Per Acre

(A) *Purpose.* A district having single-family detached residences on lots with a minimum size of two acres and a maximum gross density of approximately one-half unit per acre.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

Units per acre	One-half (approximately)
----------------	--------------------------

(D) *Bulk and area regulations.*

Lot width minimum	200 ft.
Lot area minimum	2 acres
Land area per dwelling unit	2 acres

(E) *Setback requirements.*

Front	Side	Rear
35 ft.	20 ft.	35 ft.

(F) *Height regulations.*

Building height maximum	35 ft.
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(G) *Building area.* None.

(Code 1991, §160.043; Ord. No. 3792, §4, 5-17-94; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99)

161.05 District Rsf-1, Residential Single-Family – One Unit Per Acre

(A) *Purpose.* A district having single-family detached residences on lots with a minimum size of one unit per acre. The district is designed to permit and encourage the development of very low density detached dwellings in suitable environments, as well as to protect existing development of these types.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

Units per acre	1
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(D) *Bulk and area regulations.*

Lot width minimum	150 ft.
Lot area minimum	43,560 sq. ft. (1 acre)
Land area per dwelling unit	43,560 sq. ft. (1 acre)

(E) *Setback requirements.*

Front	Side	Rear
35 ft.	20 ft.	35 ft.

(F) *Height regulations.*

Maximum building height	35 ft.
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(G) *Building area.* None.

161.07 District Rsf-4, Residential Single-Family – Four Units Per Acre

(A) *Purpose.* The RSF-4 Residential District is designed to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwelling

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 9	Two-family dwellings
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

	Single-family dwellings	Two-family dwellings
Units per acre	4 or less	7 or less

(D) *Bulk and area regulations.*

	Single-family dwellings	Two-family dwellings
Lot minimum width	70 ft.	80 ft.
Lot area minimum	8,000 sq. ft.	12,000 sq. ft.
Land area per dwelling unit	8,000 sq. ft.	6,000 sq. ft.

(E) *Setback requirements.*

Front	Side	Rear
25 ft.	8 ft.	20 ft.

(F) *Height.* None.

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

May 16, 2005

Jeremy Pate
Zoning and Development Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

In reference to **RZN 05-1489 (COLLINS/KINGHORN, 533/534)**: submitted by MICHELLE A HARRINGTON for property located at 6102 / 6110 LAKE SEQUOYAH DRIVE. The property is zoned R-A, RESIDENTAIL-AGRICULTURAL and contains approximately 17.33 acres. The request is to rezone the subject property to RSF-4, Residential Single Family, 4 units per acres.

It is the opinion of the Fayetteville Police Department that this rezoning will substantially alter the population density and will possibly create an undesirable increase on police services. This rezoning will increase our response time to calls for service because this property is on the very outer fringes of our current service area. The potential of creating 69 new homes will dramatically increase the traffic on a collector street, (Lake Sequoyah Drive) which will in turn place the traffic on an already congested arterial street (E. Huntsville Road)

Individually, each of these annexations and rezoning do not necessarily substantially alter the population density, nor do they create and appreciable increase in traffic danger and congestion. The sum total presented over the years, however, has had a substantial impact on the demand for police services and has caused an appreciable increase in traffic congestion.

Sincerely,

Captain William Brown
Fayetteville Police Department

Fayetteville Fire Department Service Delivery Impact: Zoning Review May 10, 2005										
Item	Subdivision	Annexation	Acres	Closest Fire Station	Distance from Fire Station	Response Time to Proposal area	Projected Response Time to Proposal Area at Maximum Build Out	Projected Calls for Service at Maximum Build Out per year	Projected Fire/Other Calls for Service at Maximum Build Out per year	Projected EMS Calls for Service at Maximum Build Out per year
ANX05-1488	Collins/Kinghorn	YES	17.33	*3				0	0	0
RZN05-1489	Collins/Kinghorn		17.33	*3	4.4 miles	8 minutes	8.5 minutes	16	6	10
RZN05-1489	Collins/Kinghorn		17.33	5	5.5 miles	12 minutes	12 minutes	16	6	10
ANX05-1490	Dixie Develop	YES	24.35	7				0	0	0
RZN05-1491	Dixie Develop		24.35	7	1.8 miles	5 minutes	5.5 minutes	22	9	13
ANX05-1495	Benton Develop	YES	10.66	7				0	0	0
RZN05-1502	Benton Develop		10.66	7	2.6 miles	6 minutes	6.5 minutes	10	4	6

* = Proposed Station 3

Rezoning Application

5. A written description of this request addressing the following items:
- a. Current ownership information and any proposed or pending property sales.

**6102 Lake Sequoyah, Fayetteville, AR 72701
is owned by Douglas R. Kinghorn and
Anita W. Kinghorn, Husband and Wife**

**6110 E. Lake Sequoyah Road, Fayetteville, AR 72701
is owned by Bobby Joe Collins and Betty F. Collins,
Husband and Wife**

**There are no pending property sales. This property would be divided
into lots, which will be sold for residential construction.**

- b. Reason (need) for requesting the zoning change.

**The zoning change is requested to allow this property to be
subdivided into residential lots not to exceed 4 lots/acre. It is expected
that development will not exceed ~~X~~ lots. Traffic on Lake Sequoyah will
increase to some extent. However, developer will improve streets per
City standards.**

→ 56 (per applicant's representative)

- c. Statement of how the property will relate to surrounding properties in terms of
land use, traffic, appearance, and signage.

**The appearance of the houses to be built is expected to be compatible
with existing houses in the area. The only signage would be an entry
sign(s) with the subdivision name on it.**

- d. Availability of water and sewer (state size of lines). This information is available
from the City Engineering Division.

**During development, water and sewer will be constructed to serve the
property. In addition, a lift station will be built in the Northeast
Corner. It will pump to a manhole on Lake Sequoyah Drive. The
water line will be 8". The sewer line is not yet sized, but will be per
City standards.**

Rezoning Application

6. The Planning Commission is required to make specific findings with regard to this application. The applicant shall provide written statements addressing the following:

- a. The degree to which the proposed zoning is consistent with land use planning objectives, principals, and policies and with land use and zoning plans.

The City of Fayetteville owns Lake Sequoyah to the East and the property to the North of the subject parcel. The zoning will be slightly more dense than the surrounding properties.

- b. Whether the proposed zoning is justified and/or needed at the time of the request.

This land is being annexed and it is the City's preference to rezone at that time so that the city of Fayetteville is able to control residential expansion in Fayetteville.

- c. Whether the proposed zoning will create or appreciably increase traffic danger and congestion.

The land to be rezoned will increase traffic, but the street will be improved per City standards.

- d. Whether the proposed zoning will alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

According to the engineer, installation of proposed water and sewer lines will be adequate to support the number of lots proposed.

- e. Why it would be impractical to use the land for any of the uses permitted under its existing zoning classification.

The existing zoning is Agricultural (R-A). It is appropriate to rezone to residential before residential development would take place.

- f. **Note:** The legal descriptions for the rezoning are not identical to those for the annexation for the reason that a small wedge on the North side (Parcel #13066-011) is already in the Fayetteville City limits.

Collins & Kinghorn Combined Legal Description with out-parcel

A part of the Northeast Quarter (NE ¼) of the Southeast Quarter (SE ¼) of Section Seventeen (17), and a part of the Northwest Quarter (NW ¼) of the Southwest Quarter (SW ¼) of Section Sixteen (16), Township Sixteen (16) North, Range Twenty-nine (29) West, Washington County, Arkansas, being more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter (NE ¼) of the Southeast Quarter (SE ¼) of said Section 17; thence S 02°35'30" W 520.81 feet to the POINT OF BEGINNING; thence S 87°30'11" E 128.12 feet to a point on the West right-of-way of Round Mountain Road; thence along said right-of-way as follows: S 52°00'25" E 51.33 feet; thence along a curve to the right, said curve having a radius of 82.93 feet, a chord bearing of S 33°48'45" E and a arc length of 46.58 feet; thence along a curve to the right, said curve having a radius of 20.39 feet, a chord bearing of S 06°56'40" W and a arc length of 11.16 feet; thence along a curve to the left, said curve having a radius of 940.28 feet, a chord bearing of S 17°42'54" W and a arc length of 123.18 feet; thence S 12°35'24" W 105.74 feet; thence S 10°38'05" W 157.06 feet; thence S 11°06'27" W 194.04 feet; thence a curve to the right, said curve having a radius of 125.12 feet, a chord bearing of S 41°04'21" W and a arc length of 140.38 feet; thence N 89°04'02" W 12.39 feet to a point on the East line of said Section 17; thence leaving said right-of-way and along said east line of section 17 S 02°35'30" W 30.76 feet; thence leaving said East line of Section 17 N 87°02'55" W 333.17 feet; thence N 87°02'53" W 194.84 feet; thence N 87°02'53" W 330.33 feet; thence N 02°18'16" E 775.06 feet thence S 87°38'58" E 532.56 feet; thence S 87°30'11" E 329.65 feet to the POINT OF BEGINNING, containing 17.64 acres, more or less. Subject to the right-of-way of Lake Sequoyah Drive, and any easements that are recorded or unrecorded.

EXHIBIT "A"
 PROPERTY TO BE REZONED
 AS SUBMITTED BY THE APPLICANT

Michael A. Harns
 Applicant's Signature

1st submittal: Parcel closes

Submitted as: RZN05-1489

4/25/05 TS

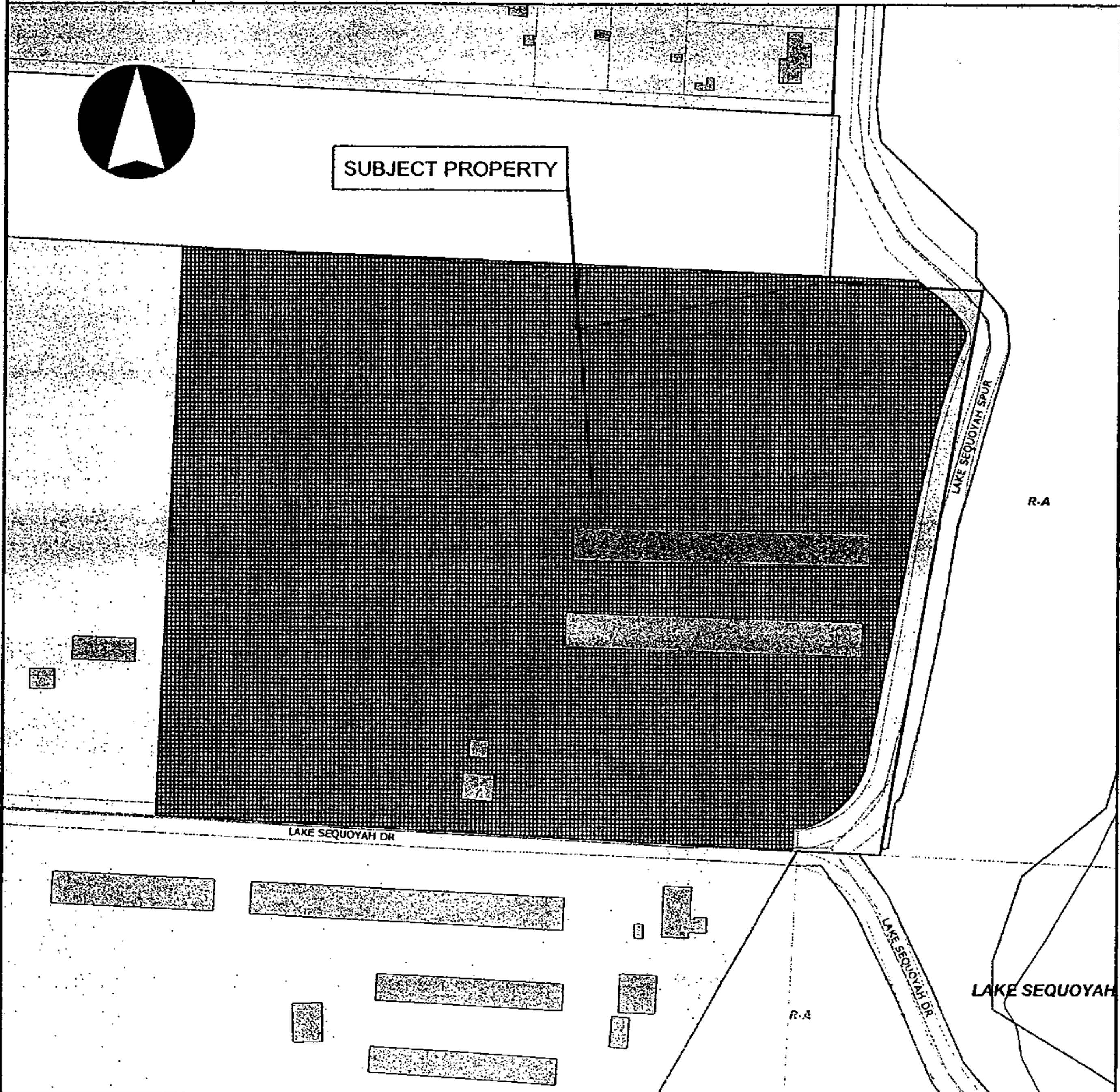
RZN05-1489

Close Up View

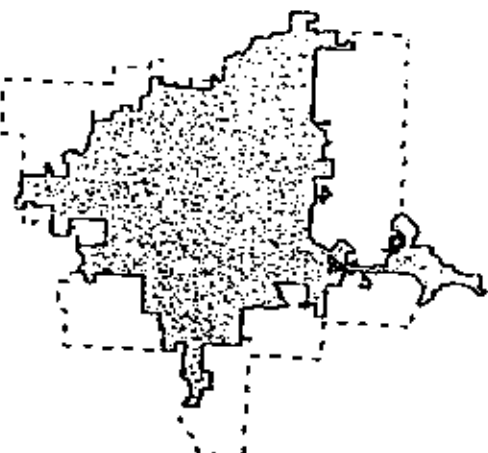
COLLINS/KINGHORN



SUBJECT PROPERTY



Overview



Legend

RZN05-1489

Overlay District

Master Street Plan

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

Historic Collector

FLOODWAY

100 YEAR

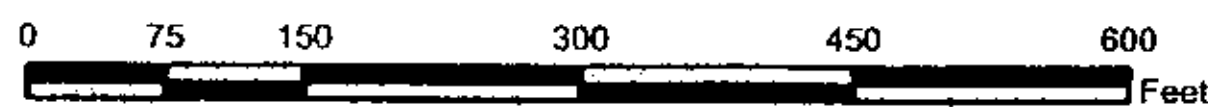
500 YEAR

LIMIT OF STUDY

BaseLine Profile

Fayetteville

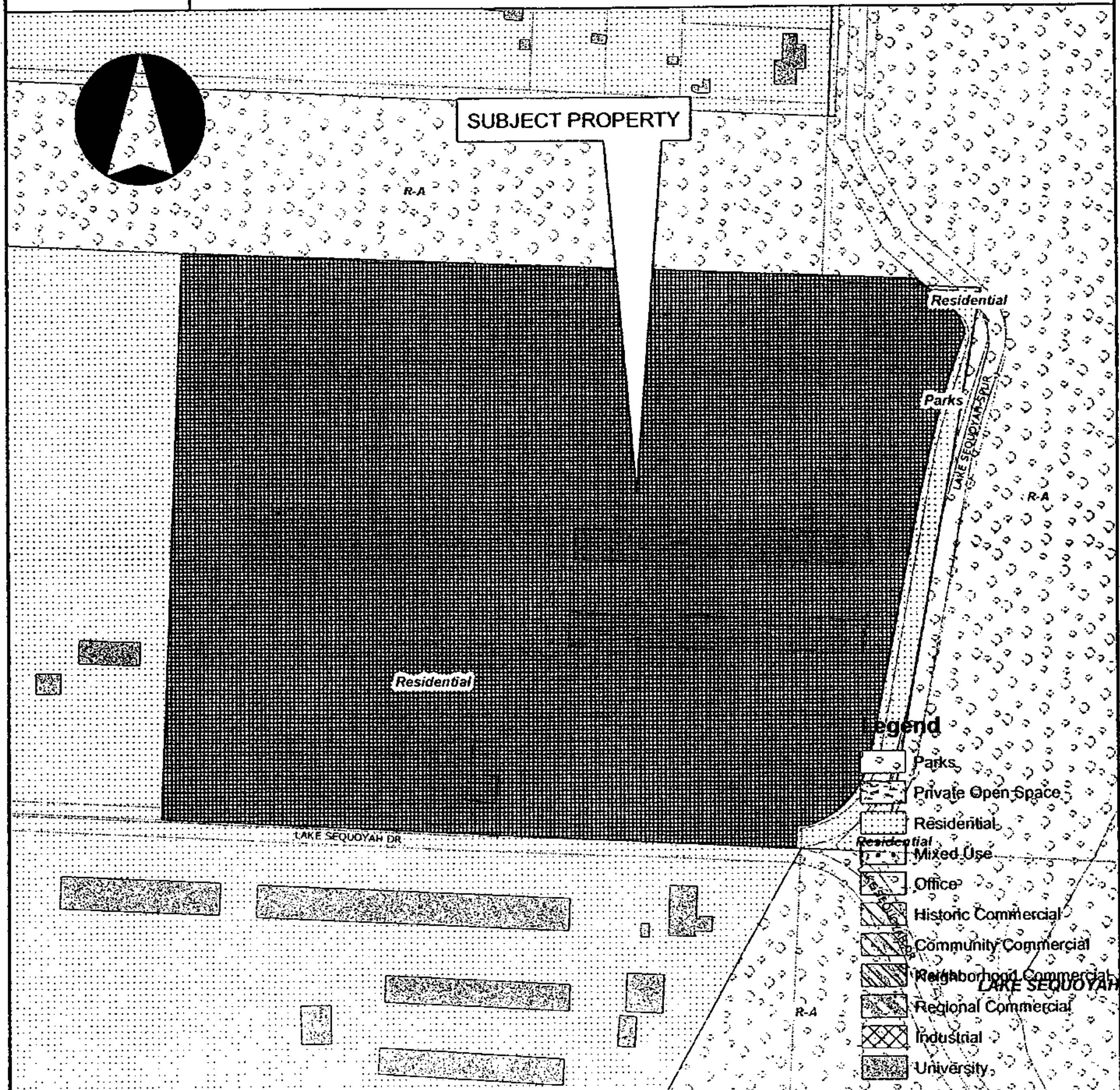
Outside City



RZN05-1489

Future Land Use

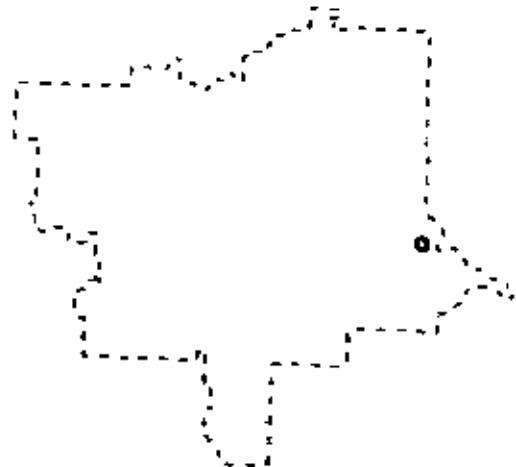
COLLINS/KINGHORN



Legend

- Parks
- Private Open Space
- Residential
- Mixed Use
- Office
- Historic Commercial
- Community Commercial
- Neighborhood Commercial
- Regional Commercial
- Industrial
- University

Overview



Legend

Subject Property

- RZN05-1489

Streets

- Existing
- Planned

Boundary

- Planning Area
- Overlay District
- Outside City

Master Street Plan

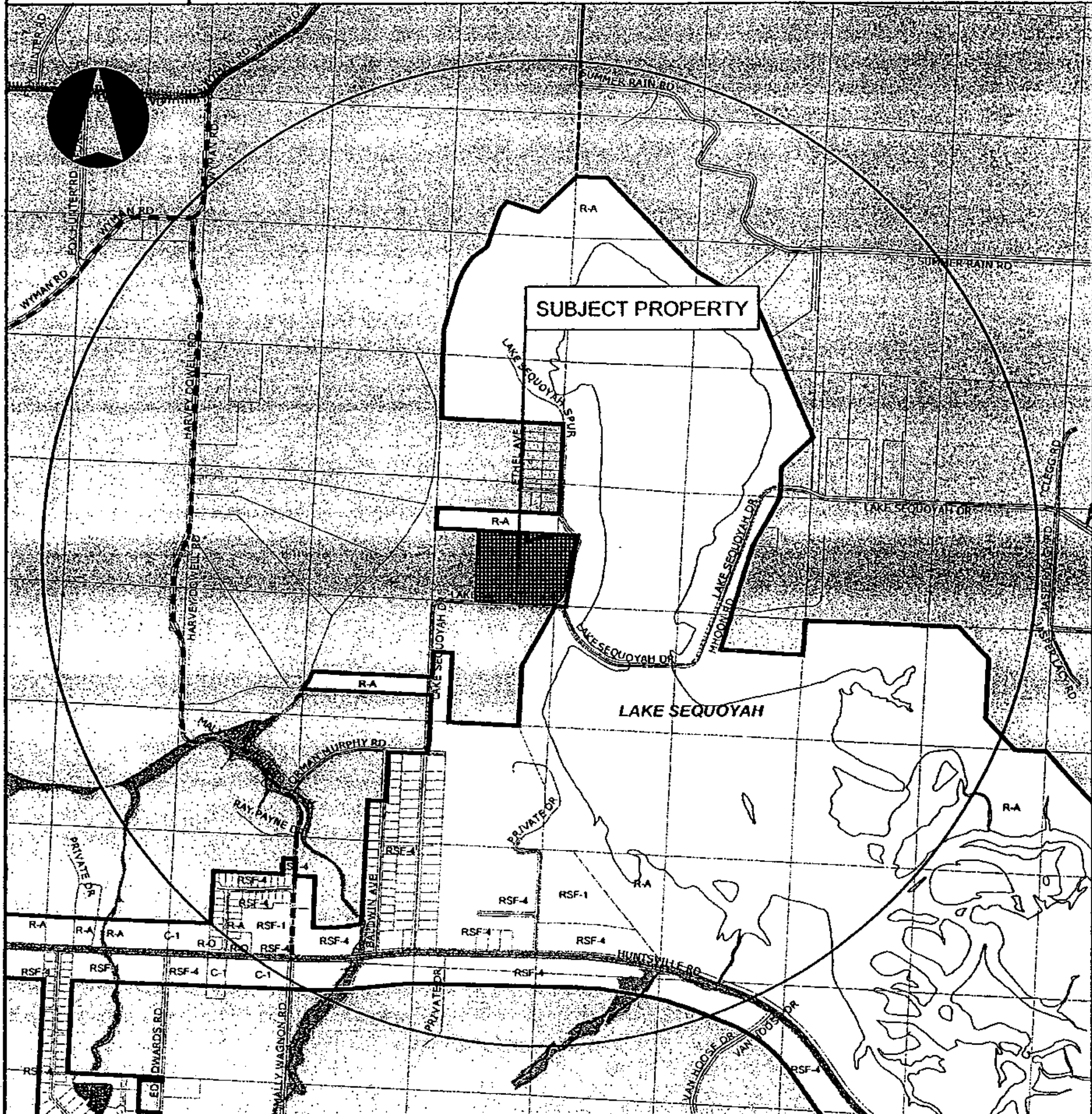
- Freeway/Expressway
- Principal Arterial
- Minor Arterial
- Collector
- Historic Collector

0 50 100 200 300 400
Feet

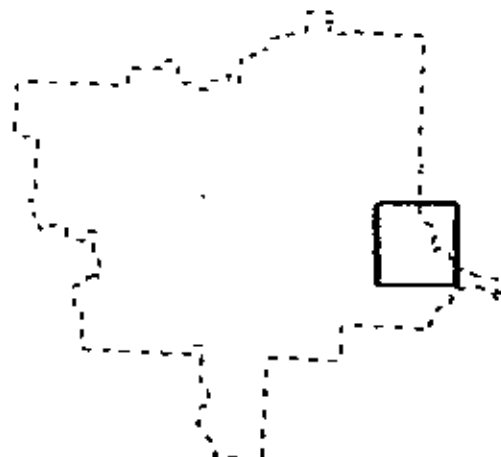
RZN05-1489

One Mile View

COLLINS/KINGHORN



Overview



Legend

Subject Property
RZN05-1489

Boundary

Planning Area
Overlay District
Outside City

Master Street Plan

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

0 0.125 0.25 0.5 0.75 1 Miles

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

B.3.
C-PZD 05-1670 Pratt Place Inn
Page 1 of 40

20-Sep-05
City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

C-PZD 05-1670: (Pratt Place Inn, 481): Submitted by Julian & Jane Archer for property located at the west end of Markham Road. The property is zoned RSF-4, Residential Single Family, 4 units per acre and R-A, Residential Agricultural, and contains approximately 72.1 acres. The request is to approve a Master Development Plan - Planned Zoning District for a commercial hotel/Inn, restaurant, cabins, agricultural and residential uses.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

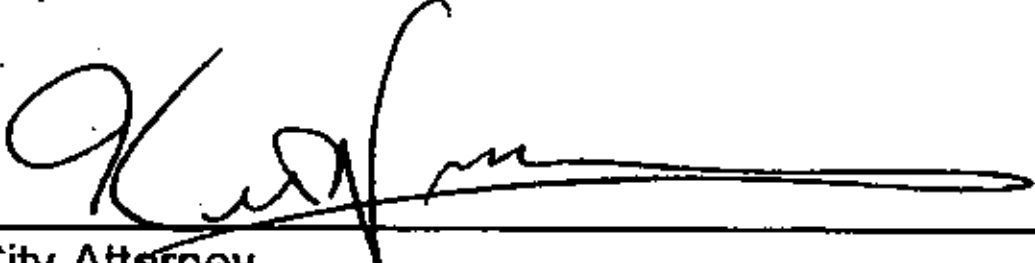

Department Director

9/2/05
Date

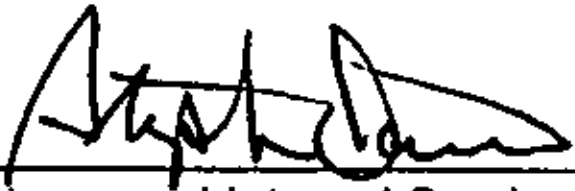
Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

Original Contract Number: n/a


City Attorney

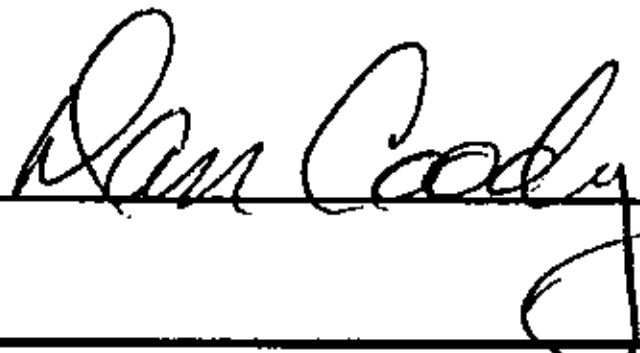
9/2/05


Finance and Internal Service Director

9-2-05
Date

Received in City Clerk's Office




Mayor

9/2/05
Date

Received in Mayor's Office



Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations 

From: Jeremy C. Pate, Director of Current Planning 

Date: August 31, 2005

Subject: Commercial Planned Zoning District for Pratt Place Inn (C-PZD 05-1670)

RECOMMENDATION

Planning Staff recommends approval of an ordinance creating a Commercial Planned Zoning District (C-PZD) for Pratt Place Inn, based on the Master Development Plan, development standards and statement of commitments submitted. This action will establish a unique zoning district for a mixed-use project on approximately 72 acres located at the west end of Markham Road. The proposal consists of a hotel/inn with seven rooms, a restaurant, up to four rustic log cabins, four single family dwelling units, the utilization of the existing barn for weddings and other social events, agricultural use and supporting infrastructure and improvements for the Inn use.

BACKGROUND

The property consists of a total of 72 acres located at the west end of Markham Road, fronting onto Markham, Sang, Cross and Halsell. It is currently zoned RSF-4 and R-A, and occupied by agricultural land, tree canopy, several cabins, single family homes and a large barn. Portions of the property were rezoned to R-A in 2002 to allow for agricultural uses, including horses, and included a Bill of Assurance.

The applicant requests a rezoning and Master Development Plan approval for a mixed-use project within a unique C-PZD zoning district. The site is intended to be kept in much its same state, but to allow for the existing historic home to be remodeled into an Inn and restaurant. Associated parking, a swimming pool, tennis court and other ancillary uses are proposed, as well. The existing barn has been utilized in the past to host social events, such as weddings and receptions. The rezoning would formally recognize this use as part of the Pratt Place Inn project. Existing, older cabins on the property are proposed to be removed, and up to four log cabins to replace them on the property. The remainder of the site is proposed to remain much as is, utilizing some of the land for agricultural timber, nut trees, grazing or a couple of single family homes. The project is divided into three (3) Planning Areas, each with its own permitted and conditional uses, setbacks, lot sizes, etc.

DISCUSSION

This item was not reviewed by the Planning Commission. The submittal was made directly to Planning Staff, evaluated and a recommendation made to the City Council. Depending upon the outcome of the City Council decision, the actual development would be required to be reviewed and approved by the Planning Commission as a large scale development.

The applicant did hold a neighborhood meeting and was instructed to notify adjoining property owners of the rezoning request at least 10 days prior to the public meeting.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING A COMMERCIAL PLANNED ZONING DISTRICT TITLED C-PZD 05-1670, PRATT PLACE INN, LOCATED AT THE WEST END OF MARKHAM ROAD, CONTAINING APPROXIMATELY 72 ACRES, MORE OR LESS; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FAYETTEVILLE; AND ADOPTING THE ASSOCIATED MASTER DEVELOPMENT PLAN.

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

Section 1: That the zone classification of the following described property is hereby changed as follows:

From RSF-4, Residential Single Family, 4 units per acre and R-A, Residential Agricultural, to C-PZD 05-1670 as shown in Exhibit "A" attached hereto and made a part hereof.

Section 2. That the change in zoning classification is based upon the approved master development plan, development standards, statement of commitments and conditions of approval as submitted, determined appropriate and approved by the City Council.

Section 3. That this ordinance shall take effect and be in full force at such time as all of the requirements of the master development plan have been met.

Section 4. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this _____ day of _____, 2005.

APPROVED:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"
C-PZD 05-1670

pg 1 of 2

INSERT LEGAL DESCRIPTION HERE, TO BE APPROVED BY GIS DIVISION

DRAFT

PZD05-1670

Close Up View

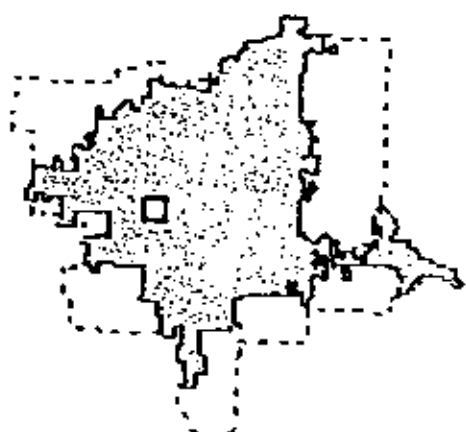
PRATT PLACE INN



SUBJECT PROPERTY



Overview



Legend

PZD05-1670

Overlay District

Master Street Plan

Master Street Plan

Freeway/Expressway

Planned Arterial

Minor Arterial

Collector

Major Collector

FLOODWAY

100 YEAR

500 YEAR

LIMIT OF STUDY

Easement Profile

Fayetteville

Outside City

0 150 300 600 900 1200
Feet



CC Meeting of September 20, 2005

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Mayor Coody
City Council
FROM: Jeremy Pate, Director of Current Planning
DATE: August 30, 2005

C-PZD 05-1670: Commercial Planned Zoning District (Pratt Place Inn): Submitted by JULIAN & JANE ARCHER for property located at 2231, 2230, 2148, 2115, 2255 MARKHAM ROAD, along MARKHAM ROAD AND SANG AVENUE. The property is zoned RSF-4, SINGLE FAMILY - 4 UNITS/ACRE and R-A, RESIDENTIAL AGRICULTURAL and contains approximately 72.1 acres. The request is to approve a Master Development Plan – Commercial Planned Zoning District for an historic inn, cabins, restaurant, reception/gathering space, agricultural use and associated parking.

Property Owner: Julian & Jane Archer

Planner: Jeremy Pate

Findings:

Property Description: The property consists of several parcels totaling 72.1 acres that is currently utilized for residential and agricultural purposes. The applicants requests a rezoning and Master Development Plan approval for the subject 72.1 acres. There is both dense tree canopy and open pasture land located on the site. Currently there are several structures on the property, including a barn, a 5,000 SF Victorian farmhouse that is on the Arkansas Register of Historic Places, single family homes at various addresses, fenced pastures, 1920s-30s camp cabins, timberland and trails. Access is rather limited, primarily from Markham Road, which connects east to Razorback Road.

Surrounding Land Use/Zoning:

Direction	Land Use	Zoning
North	Single family homes	RSF-4
South	Single family homes, open land	RSF-4
East	Single family homes	RSF-4
West	Undeveloped property	RSF-4

Proposal: The applicant requests a rezoning and Master Development Plan approval for a mixed-use project on the property. The project will include the redevelopment of an historic structure on the site into a 7-guest room Inn and 60-seat restaurant, kitchen, etc. A separate residence for the Innkeeper is proposed, and ancillary uses such as a tennis court, swimming

pool, valet parking, and overflow parking are also proposed. The existing barn is proposed to be utilized for both as storage for horses and barn dances, dinner parties, weddings, and other scheduled intermittent social events. No amplified music is to be permitted outside of any structure on the property. Several old camp cabins will be eventually removed, and a maximum of four authentic log cabins could replace them. These cabins would accommodate 2-4 adults each, and would be rented as a retreat/residence by the day, much the same as the Inn. Planning Area 2 is intended to remain for agricultural or open space use, without the potential for additional dwellings units. Planning Area 3, once a pasture, is proposed to be utilized for agricultural purposes, with the planting of a grove of trees so as to retain its former agricultural use. Neither is to be permitted for parking, either permanently or for temporary events, such as football games.

Process: The purpose of the subject request is for a rezoning approval in order to re-use the Victorian house as an Inn with dining facilities, along with associated activities. Staff is not supportive of rezoning the property to C-2, which would be the required zoning for a hotel and restaurant, wedding reception facility, and parking area. However, the applicant also has a desire to retain both the architectural integrity of the existing structure and the agricultural/natural setting of this property which happens to be in the middle of the city. In order to do so, the Planned Zoning District process was recommended. As recently approved by the City Council, an applicant has the option of presenting a Master Development Plan – Planned Zoning District to the City Council first. This action would effectively rezone the property based on the plans and information provided. However, it does not give development approval. The applicant is required to return through the large scale development process, in this case, in order for the Planning Commission to confirm that the development plans presented are compliant with the zoning and Master Development Plans approved by the City Council.

The following bulk and area regulations are proposed by the applicant, and are included in detail within the attached submittal:

ZONING CRITERIA: C-PZD 05-1670 (Pratt Place Inn)

(A) Proposed Uses.

Planning Area 1

Permitted Use	Conditional Use	Type of Use
Unit 1		City-wide uses by right
Unit 2		City-wide uses by conditional use
	Unit 4	Cultural & Recreational facilities
Unit 6		Agriculture
Unit 7		Animal husbandry
Unit 8		Single Family Dwellings
Unit 13		Eating Places
Unit 14		Hotel, motel & amusement facilities
	Unit 29*	Dance halls*

* Conditional use approval by the Planning Commission required; uses shall be limited to wedding receptions, scheduled private events, etc. that are related to the overall Pratt Place Inn project.

Planning Area 2 & 3

Permitted Use	Conditional Use	Type of Use
Unit 1		City-wide uses by right
	Unit 4	Cultural & Recreational facilities
Unit 6		Agriculture

(B) *Density/Intensity*

Planning Area	Density (dwelling units)	Intensity (square feet nonresidential)
1	Maximum 4 dwelling units Oak Cabin (existing) 2248 W. Markham Tower House (existing) 109 N. Sang Innkeeper House (proposed) 2230 W. Markham Archer Log House (existing) 2115 W. Markham <i>Inn, maximum 4 new rental cabins do not count toward density, as these are not to be utilized as residences</i>	Maximum 33,340 SF Inn: 18,900 SF (proposed) Barn: 6,300 SF (existing) Two-stall barn: 340 SF English Cottage (existing): 1,800 SF Max. 4 cabins: 6,000 SF (1500 SF each proposed, with removal of existing cabins)
2	No dwelling units permitted	Any structure size permitted to be determined by Conditional Use Permit, if requested (Planning Commission)
3	No dwelling units permitted	Any structure size permitted to be determined by Conditional Use Permit, if requested (Planning Commission)

(C) *Bulk and area regulations.*

Planning Area	Lot width minimum	Lot area minimum	Land area per dwelling unit
1	200 feet (frontage onto a public street)	1 acres	1 acre
2	N/A	3.57 acres	No dwellings permitted
3	N/A	4.18 acres	No dwellings permitted

(D) *Setback requirements.*

Planning Area	Front	Side	Rear
1	50 feet	10 feet	20 feet
2	50 feet	10 feet	20 feet
3	50 feet	10 feet	20 feet

(E) *Height.* Maximum height for all structures.

Planning Area	
1	60 feet
2	50 feet
3	50 feet

(F) *Building area.* In any Planning Area the area occupied by all buildings shall not exceed 25% of the total lot area.

(G) *Signage.* Signage on the property shall be allowed as follows:

Planning Area	Freestanding Signage	Wall Signage
1	2'x3' freestanding sign at Sang and Markham 3'x5' freestanding sign at the end of Markham	As permitted in Commercial zones for the Inn; no other signage permitted
2	None permitted	As permitted in Residential zones
3	2'x3' freestanding sign at Cross and Markham	As permitted in Residential zones

* No pylon/pole signs shall be permitted, only monument signs. Signage location shall be permitted in accordance with setbacks and other criteria in Ch. 174 Signs, unless noted herein.

Water & Sewer: Water is currently available, and will be extended on-site with adequate fire protection (hydrants) and water line size to be provided as required by code. It will be necessary for the development to connect to city sewer and cease use of the existing septic systems. Sewer line connections, extensions, etc. will be evaluated and required to meet city codes to serve the properties at the time of development.

Access: Access is provided from Markham and Sang Streets. These are residential streets with open ditches which provide access to the University Heights neighborhood west of the University of Arkansas campus. Markham is currently narrow and is failing in portions west of Cross Avenue. At the time of development, streets that the development will access will need to be reconstructed to provide a safe and adequate means of access, as determined by the Planning Commission. At minimum, a 20-foot wide pavement width will be required, with improvements to the failing pavement north of Cross Avenue. Access for ladder trucks to this property for the Fire Department is a stated concern, without improvements as mentioned above.

Interior to the project, private drives are proposed. Access to future cabins will need to meet with Fire Department approval in order to provide adequate fire protection and emergency access in time of need. The slope, width and construction of interior drives to access future structures shall be evaluated at the time of development to ensure proper access is achieved.

Adjacent Master Street Plan Streets: Markham Road, Sang Avenue (Residential Streets)

Street Improvements: Staff recommends the following:

- ◆ Markham Road accessing the subject property from Cross Avenue into the property will need to be improved to a minimum 20-foot standard, if not greater. Existing pavement will need to be evaluated and improved, if necessary. The Planning Commission shall determine the amount of improvement necessary in order to approve the proposed development with adequate and safe access.
- ◆ Drainage improvements associated with the widening will also need to be evaluated and required, as necessary, based on the City Engineer's recommendation and the Planning Commission's determination at the time of Large Scale Development.

Tree Preservation: Much of the site contains existing tree canopy, though there are areas of dense canopy and areas of open pasture land. The majority of the property is intended to be utilized in its existing state, without a great deal of disturbance. Typical agricultural activities,

including the use of pastureland for grazing of animals, pecan/nut orchards, and agricultural timberland are proposed to remain allowed. An overall survey of existing canopy has not been provided, though enough detail to meet the criteria of the Tree Preservation Ordinance is to be provided at the time of Large Scale Development review. There is anticipated tree removal with construction of the entry drives, parking lot and groves of nut trees for agricultural use. The project shall meet or exceed the minimum percent canopy (25%) required for a Planned Zoning District.

Parks: If additional residential dwelling units above that which currently exist are created, the project shall be evaluated for parkland dedication or fees-in-lieu, to meet the parkland dedication ordinance.

Public Comment: Staff advised the applicant to hold a public meeting with the University Heights Neighborhood Association, which has occurred. Several concerns were voiced, including additional traffic on substandard roads, drainage, noise potential and tree buffers. Many of these items are addressed in the conditions of approval.

Recommendation: Staff recommends approval of the Master Development Plan – Planned Zoning District for Pratt Place (C-PZD 05-1670), with the following conditions:

Conditions of Approval:

1. The Master Development Plan, Statement of Commitments and Architectural Standards submitted by the applicant shall be considered binding and tied to the zoning of the property. Conditions of approval as noted herein and other requirements placed upon the project with review of the Master Development Plan – Planned Zoning District by the City Council shall also be binding.
2. Pursuant to city ordinance, development of the property shall be approved by the Planning Commission through the large scale development review process. Should a subdivision of land be desired, all applicable ordinances and processes shall be followed in order to meet city ordinances.
3. A final legal description shall be approved by the GIS division prior to recordation of the ordinance, and shall accurately reflect the parcels requested for rezoning.
4. No amplified outdoor music shall be permitted at any point on the property. The property is surrounded by single family residences, and the potential for noise generation from the proposed development has been voiced as a concern.
5. Public water and sewer lines shall be extended as required by city ordinance at the time of development.
6. Street improvements at the time of development shall include the widening and repair or reconstruction of Markham Road to a minimum 20-foot width west of Cross Avenue into the subject property. Dedication of right-of-way to meet Master Street Plan

requirements, appropriate drainage, lighting, sidewalk and other surrounding or adjacent street improvements as determined by the Planning Commission to be appropriate in alleviating the impact of the increase in use and traffic generation shall be determined by the Planning Commission.

7. Access to future outlying cabins will need to meet with Fire Department approval prior to building permit in order to provide adequate fire protection and emergency access in time of need. The slope, width and construction of interior drives to access future structures shall be evaluated at the time of development to ensure proper access is achieved.
8. At no time shall the proposed Inn or rental cabins be utilized for semi- or permanent residences, without City Council approval. The existing cabins on the property shall be removed prior to the issuance of building permits for the proposed cabins.
9. A Tree Preservation Plan shall be prepared at the time of development. At all times a significant tree canopy and vegetative buffer (visual and physical) shall be maintained adjacent to surrounding properties in Planning Area 1, where the non-residential activities are to occur. Other tree removal for bona fide agricultural purposes is expected to occur. Trees that meet the significant tree status as determined by the Urban Forester shall remain, unless approved for removal by the Urban Forester.
10. Pursuant to the original Bill of Assurance rezoning a portion of the subject property for agricultural purposes, the following agricultural uses shall not be permitted within the Planning Areas: commercial chicken houses, hog farms or feed lots.
11. All development shall meet applicable building codes and other ordinances of the City of Fayetteville.
12. Zoning and development criteria shall be enforced as noted within the staff report "Zoning Criteria" sections A-G, as noted above. Said information shall be included with any submitted development plans.
13. Future non-residential development shall comply with the minimum standards for development in the Unified Development Code. Structures proposed shall be reviewed to ensure appropriate architectural compatibility with adjoining residential uses is maintained, including the incorporation of elements such as materials, roof pitches, porches, patios, etc.
14. Planning Areas 2 & 3 shall not be utilized for permanent or temporary parking, to discourage high volumes of traffic on surrounding substandard streets. Parking shall not be allowed on surrounding substandard public streets during events held on the property, unless and until the streets are improved to a sufficient level so as to allow for on-street parking, as determined by the Transportation Division.

15. Phasing: The PZD ordinance shall be valid if all permits are issued to begin construction of the proposed Inn within one year of the approval date of the associated Large Scale Development by the Planning Commission. The PZD ordinance shall be valid if all permits are issued to begin construction of the proposed Innkeeper house and cabins within three years of the same approval date.
16. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.

CITY COUNCIL ACTION:

yes Required

 Approved Denied

Date: Sept 20, 2005

Comments:

The "CONDITIONS OF APPROVAL", stated in this report, are accepted in total without exception by the entity requesting approval of this rezoning/master development plan item.

By _____

Date _____

Findings associated with C-PZD 05-1670

Sec. 166.06. Planned Zoning Districts (PZD).

(E) Approval or Rejection Criteria for Planned Zoning Districts

The following criteria shall be considered by the Planning Commission and City Council in the review of a planned zoning district application based on the proposed master development plan:

- (1) Whether the application is in compliance with the requirements of the UDC and the General Plan 2020;

FINDING: Staff finds the application to be in substantial compliance with the Master Development Plan Planned Zoning District criteria established by the City Council. In review of the General Plan 2020, the application provides for a mixture of residential, agricultural and commercial activities in the heart of the city, while conserving a great deal of open space to remain intact.

- (2) Whether the application is in compliance with all applicable statutory provisions;

FINDING: The application has been reviewed and found to be compliant with applicable statutory provisions.

- (3) Whether the general impact of the rezoning would adversely impact the provision of public facilities and services;

FINDING: The impact of the rezoning and subsequent development would require the provision of public facilities, at the cost of the developer. There are currently substandard water lines and existing septic systems on the site that would be abandoned and replaced with public mains and service lines that meet City of Fayetteville specifications. Fire and emergency response time is adequate, though improvements to existing street infrastructure will be necessary at the time of development, and is indicated in the conditions of approval.

- (4) Whether the rezoning is compatible with the surrounding land uses;

FINDING: The rezoning request, combined with the Master Development Plan, retains an agricultural and residential feeling, even with the addition of the Inn and restaurant. It is anticipated that traffic will increase a certain degree for the proposed uses, and street improvements accessing the property will need to be evaluated and determined at the time of development. The primary development proposed is interior to the site (approximately 1300 feet from the nearest residence) and is thus for the most part inaccessible both visually and in terms of other impacts. Staff is not supportive of a rezoning to a standard Commercial zoning district in this location; however, the definitive nature of the proposed Master Development Plan indicates that the rezoning will be compatible and indeed remain much the same, with a few exceptions, as the existing land use.

- (5) Whether the subject land is suitable for the intended use and is compatible with the natural environment;

FINDING: The subject property is intended to be utilized only in a limited area, with little disturbance to the remainder of the site. The property intended for the development contains existing development for the most part, and will be compatible for the uses proposed. The parking area is sited to be buffered from view and to remove as few trees as possible.

- (6) Whether the intended land use would create traffic congestion or burden the existing road network;

FINDING: Based on the Master Development Plan submitted, traffic counts will increase, especially with the use of a restaurant. Peak counts may increase with the use of facilities for weddings and other reserved events, however the amount of development proposed is relatively minimal. At the time of development, the existing streets will be evaluated by the engineer and requirements made by the Planning Commission as to the extent of improvements necessary for development approval.

- (7) Whether the planned development provides for unified development control under a unified plan;

FINDING: A plan has been submitted, recognize the zoning and development criteria required of a Master Development Plan submittal. Architectural elevations of the proposed inn and descriptions of the proposed cabins have been provided that indicate the rural setting is to be retained with development of the subject property.

- (8) Whether any other recognized zoning consideration would be violated in this PZD.

FINDING: Staff finds that in review of the requested rezoning, the Master Development Plan proposed does not violate recognized zoning considerations, as found below.

(J) Development standards, conditions and review guidelines

- (1) *Generally.* The Planning Commission shall consider a proposed PZD in light of the purpose and intent as set forth in Chapter 161 Zoning Regulations, and the development standards and review guidelines set forth herein. Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as to preserve and enhance the neighborhood. Proper planning shall involve a consideration of tree preservation, water conservation, preservation of natural site amenities, and the protection of watercourses from erosion and siltation. The Planning Commission shall determine that specific development features, including project density, building locations, common usable open space, the vehicular circulation system, parking areas, screening and landscaping, and perimeter treatment shall be combined in such a way as to further the health, safety, amenity and welfare of the community. To these ends, all

applications filed pursuant to this ordinance shall be reviewed in accordance with the same general review guidelines as those utilized for zoning and subdivision applications.

FINDING: The proposed Planned Zoning District has been reviewed in light of all applicable development and zoning ordinances. At this time, the Master Development Plan sets out the basic guidelines, development and zoning criteria, commitments offered by the applicant and those recommended by staff, and design standards to ensure the proposal will achieve a high level of compatibility with adjacent properties. Staff finds that the proposal herein does incorporate an acceptable level of compatibility. While commercial in nature, the proposed Inn and associated activities achieves an architectural appeal and further restricts the use of the subject property to much less density, traffic generation and other concerns that a single family residential subdivision at four units per acre would entail. The building location is optimal, sited interior to the site; tree preservation and conservation of natural amenities is addressed in the Statement of Commitments, and is a higher commitment than currently required with an agricultural zoning. Parking is to be achieved in a sensitive and buffered manner, and interior circulation will be provided that meets all applicable development codes. Staff finds that the proposed uses on the subject property do not adversely affect surrounding property and will have minimal impact.

- (2) *Screening and landscaping.* In order to enhance the integrity and attractiveness of the development, and when deemed necessary to protect adjacent properties, the Planning Commission shall require landscaping and screening as part of a PZD. The screening and landscaping shall be provided as set forth in §166.09 Buffer Strips and Screening. As part of the development plan, a detailed screening and landscaping plan shall be submitted to the Planning Commission. Landscape plans shall show the general location, type and quality (size and age) of plant material. Screening plans shall include typical details of fences, berms and plant material to be used.

FINDING: Screening is not required at this time; with development of the site, all applicable development criteria will be applied for appropriate landscaping, screening and buffering of parking areas and objectionable uses.

- (3) *Traffic circulation.* The following traffic circulation guidelines shall apply:

- (a) The adequacy of both the internal and external street systems shall be reviewed in light of the projected future traffic volumes.
- (b) The traffic circulation system shall be comprised of a hierarchal scheme of local collector and arterial streets, each designed to accommodate its proper function and in appropriate relationship with one another.
- (c) Design of the internal street circulation system must be sensitive to such considerations as safety, convenience, separation of vehicular and pedestrian traffic, general attractiveness, access to dwelling units and the proper relationship of different land uses.

- (d) Internal collector streets shall be coordinated with the existing external street system, providing for the efficient flow of traffic into and out of the planned zoning development.
- (e) Internal local streets shall be designed to discourage through traffic within the planned zoning development and to adjacent areas.
- (f) Design provisions for ingress and egress for any site along with service drives and interior circulation shall be that required by Chapter 166 Development of this code.

FINDING: Ingress and egress interior to the project shall be evaluated and required to be constructed with the large scale development of the property. Public streets shall be improved to an acceptable standard, as determined by the Planning Commission, and interior private drives shall be constructed to provide for safe and adequate access to all structures for emergency vehicles.

- (4) *Parking standards.* The off-street parking and loading standards found in Chapter 172 Parking and Loading shall apply to the specific gross usable or leasable floor areas of the respective use areas.

FINDING: Standard parking ratios for the proposed uses shall apply. All parking areas shall conform to City of Fayetteville standard specifications, unless approved otherwise.

- (5) *Perimeter treatment.* Notwithstanding any other provisions of a planned zoning district, all uses of land or structures shall meet the open space, buffer or green strip provisions of this chapter of this code.

FINDING: The development provides a great deal of open space to be retained for agricultural use and overflow use for various social events. As noted in the conditions of approval, staff has recommended a significant natural tree and vegetative buffer to be retained on the property to act as a buffer from adjacent properties.

- (6) *Sidewalks.* As required by §166.03.

FINDING: Sidewalks and other pedestrian connections will be evaluated at the time of development.

- (7) *Street Lights.* As required by §166.03.

FINDING: Street lights will be evaluated at the time of development.

- (8) *Water.* As required by §166.03.

FINDING: Public water will be provided to the project site, pursuant to city code.

(9) *Sewer*. As required by §166.03.

FINDING: Public sewer will be provided to the project site, pursuant to city code.

(10) *Streets and Drainage*. Streets within a residential PZD may be either public or private.

(a) *Public Streets*. Public streets shall be constructed according to the adopted standards of the City.

(b) *Private Streets*. Private streets within a residential PZD shall be permitted subject to the following conditions:

(i) Private streets shall be permitted for only a loop street, or street ending with a cul-de-sac. Any street connecting one or more public streets shall be constructed to existing City standards and shall be dedicated as a public street.

(ii) Private streets shall be designed and constructed to the same standards as public streets with the exceptions of width and cul-de-sacs as noted below.

(iii) All grading and drainage within a Planned Zoning District including site drainage and drainage for private streets shall comply with the City's Grading (Physical Alteration of Land) and Drainage (Storm water management) Ordinances. Open drainage systems may be approved by the City Engineer.

(iv) Maximum density served by a cul-de-sac shall be 40 units. Maximum density served by a loop street shall be 80 units.

(v) The plat of the planned development shall designate each private street as a "private street."

(vi) Maintenance of private streets shall be the responsibility of the developer or of a neighborhood property owners association (POA) and shall not be the responsibility of the City. The method for maintenance and a maintenance fund shall be established by the PZD covenants. The covenants shall expressly provide that the City is a third party beneficiary to the covenants and shall have the right to enforce the street maintenance requirements of the covenants irrespective of the vote of the other parties to the covenants.

(vii) The covenants shall provide that in the event the private streets are not maintained as required by the covenants, the City shall have the right (but shall not be required) to maintain said streets and to charge the cost thereof to the property owners within the PZD on a pro rata basis according to assessed valuation for ad valorem tax purposes and shall have a lien on the real property within the PZD for

such cost. The protective covenants shall grant the City the right to use all private streets for purposes of providing fire and police protection, sanitation service and any other of the municipal functions. The protective covenants shall provide that such covenants shall not be amended and shall not terminate without approval of the City Council.

- (viii) The width of private streets may vary according to the density served. The following standard shall be used:

Paving Width

(No On-Street Parking)

Dwelling Units	One-Way	Two-Way
1 - 20	14'	22'
21+	14'	24'

***Note:** If on-street parking is desired, 6 feet must be added to each side where parking is intended.

- (ix) All of the traffic laws prescribed by Title VII shall apply to traffic on private streets within a PZD.
- (x) There shall be no minimum building setback requirement from a private street.
- (xi) The developer shall erect at the entrance of each private street a rectangular sign, not exceeding 24 inches by 12 inches, designating the street a "private street" which shall be clearly visible to motor vehicular traffic.

FINDING: All public and private streets/drives shall conform to city standards. Improvements to existing streets shall be determined by the Planning Commission at the time of development. Public and Private streets shall not be gated, unless permitted by express approval from the City Council by resolution.

- (11) *Construction of nonresidential facilities.* Prior to issuance of more than eight building permits for any residential PZD, all approved nonresidential facilities shall be constructed. In the event the developer proposed to develop the PZD in phases, and the nonresidential facilities are not proposed in the initial phase, the developer shall enter into a contract with the City to guarantee completion of the nonresidential facilities.

FINDING: N/A

- (12) *Tree preservation.* All PZD developments shall comply with the requirements for tree preservation as set forth in Chapter 167 Tree Preservation and Protection. The location of trees shall be considered when planning the common open space, location of buildings, underground services, walks, paved areas, playgrounds, parking areas, and finished grade levels.

FINDING: A tree preservation plan shall be submitted at the time of development. It is anticipated that trees will be removed from this site with the continued agricultural uses proposed and currently in operation.

- (13) *Commercial design standards.* All PZD developments that contain office or commercial structures shall comply with the commercial design standards as set forth in §166.14 Site Development Standards and Construction and Appearance Design Standards for Commercial Structures.

FINDING: All commercial structures shall be evaluated as set forth in the code.

- (14) *View protection.* The Planning Commission shall have the right to establish special height and/or positioning restrictions where scenic views are involved and shall have the right to insure the perpetuation of those views through protective covenant restrictions.

FINDING: Staff finds no specific scenic views to be protected on the subject property.

(E) *Revocation.*

- (1) *Causes for revocation as enforcement action.* The Planning Commission may recommend to the City Council that any PZD approval be revoked and all building or occupancy permits be voided under the following circumstances:
- (a) *Building permit.* If no building permit has been issued within the time allowed.
 - (b) *Phased development schedule.* If the applicant does not adhere to the phased development schedule as stated in the approved development plan.
 - (c) *Open space and recreational facilities.* If the construction and provision of all common open spaces and public and recreational facilities which are shown on the final plan are proceeding at a substantially slower rate than other project components.

Planning staff shall report the status of each ongoing PZD at the first regular meeting of each quarter, so that the Planning Commission is able to compare the actual development accomplished with the approved development schedule. If the Planning Commission finds that the rate of construction of dwelling units or other commercial or industrial structures is substantially greater than the rate at which common open spaces and public recreational facilities have been constructed and provided, then the

Planning Commission may initiate revocation action or cease to approve any additional final plans if preceding phases have not been finalized. The city may also issue a stop work order, or discontinue issuance of building or occupancy permits, or revoke those previously issued.

(2) *Procedures.* Prior to a recommendation of revocation, notice by certified mail shall be sent to the landowner or authorized agent giving notice of the alleged default, setting a time to appear before the Planning Commission to show cause why steps should not be made to totally or partially revoke the PZD. The Planning Commission recommendation shall be forwarded to the City Council for disposition as in original approvals. In the event a PZD is revoked, the City Council shall take the appropriate action in the city clerk's office and the public zoning record duly noted.

(3) *Effect.* In the event of revocation, any completed portions of the development or those portions for which building permits have been issued shall be treated to be a whole and effective development. After causes for revocation or enforcement have been corrected, the City Council shall expunge such record as established above and shall authorize continued issuance of building permits.

(F) *Covenants, trusts and homeowner associations.*

(1) *Legal entities.* The developer shall create such legal entities as appropriate to undertake and be responsible for the ownership, operation, construction, and maintenance of private roads, parking areas, common usable open space, community facilities, recreation areas, building, lighting, security measure and similar common elements in a development. The city encourages the creation of homeowner associations, funded community trusts or other nonprofit organizations implemented by agreements, private improvement district, contracts and covenants. All legal instruments setting forth a plan or manner of permanent care and maintenance of such open space, recreation areas and communally-owned facilities shall be approved by the City Attorney as to legal form and effect, and by the Planning Commission as to the suitability for the proposed use of the open areas. The aforementioned legal instruments shall be provided to the Planning Commission together with the filing of the final plan, except that the Guarantee shall be filed with the preliminary plan or at least in a preliminary form.

(2) *Common areas.* If the common open space is deeded to a homeowner association, the developer shall file with the plat a declaration of covenants and restrictions in the Guarantee that will govern the association with the application for final plan approval. The provisions shall include, but not necessarily be limited to, the following:

(a) The homeowner's association must be legally established before building permits are granted.

(b) Membership and fees must be mandatory for each home buyer and successive buyer.

- (c) The open space restrictions must be permanent, rather than for a period of years.
- (d) The association must be responsible for the maintenance of recreational and other common facilities covered by the agreement and for all liability insurance, local taxes and other public assessments.
- (e) Homeowners must pay their pro rata share of the initial cost; the maintenance assessment levied by the association must be stipulated as a potential lien on the property.

FINDING: The applicant shall comply with the above requirements, as part of the Planned Zoning District ordinance.

Sec. 161.25 Planned Zoning District

- (A) Purpose. The intent of the Planned Zoning District is to permit and encourage comprehensively planned developments whose purpose is redevelopment, economic development, cultural enrichment or to provide a single-purpose or mixed-use planned development and to permit the combination of development and zoning review into a simultaneous process. The rezoning of property to the PZD may be deemed appropriate if the development proposed for the district can accomplish one or more of the following goals.
- (1) Flexibility. Providing for flexibility in the distribution of land uses, in the density of development and in other matters typically regulated in zoning districts.
 - (2) Compatibility. Providing for compatibility with the surrounding land uses.
 - (3) Harmony. Providing for an orderly and creative arrangement of land uses that are harmonious and beneficial to the community.
 - (4) Variety. Providing for a variety of housing types, employment opportunities or commercial or industrial services, or any combination thereof, to achieve variety and integration of economic and redevelopment opportunities.
 - (5) No negative impact. Does not have a negative effect upon the future development of the area;
 - (6) Coordination. Permit coordination and planning of the land surrounding the PZD and cooperation between the city and private developers in the urbanization of new lands and in the renewal of existing deteriorating areas.
 - (7) Open space. Provision of more usable and suitably located open space, recreation areas and other common facilities that would not otherwise be required under conventional land development regulations.

- (8) Natural features. Maximum enhancement and minimal disruption of existing natural features and amenities.
- (9) General Plan. Comprehensive and innovative planning and design of mixed use yet harmonious developments consistent with the guiding policies of the General Plan.
- (10) Special Features. Better utilization of sites characterized by special features of geographic location, topography, size or shape.

FINDING: The proposal utilizes a unique mixture of agricultural, residential and commercial uses, while retaining the natural setting currently in existence on this large-acre site in the heart of the city. There is a desirable distribution of land uses, with the highest impact uses concentrated to areas already impacted, thereby decreasing the amount of existing natural features disturbed. Staff finds the uses to be compatible to the area, with the commitments, development standards, conditions of approval and other criteria in place with the rezoning request.

(B) **Rezoning.** Property may be rezoned to the Planned Zoning District by the City Council in accordance with the requirements of this chapter and Chapter 166, Development. Each rezoning parcel shall be described as a separate district, with distinct boundaries and specific design and development standards. Each district shall be assigned a project number or label, along with the designation "PZD". The rezoning shall include the adoption of a specific master development plan and development standards.

FINDING: The subject described real property is proposed to be rezoned to C-PZD 05-1670, with three Unique Planning Areas. The development standards, statement of commitments and Master Development Plan approved shall be adopted with the rezoning.

D) *C-PZD, Commercial Planned Zoning District*

(1) *Purpose and intent.* The C-PZD is intended to accommodate mixed-use developments containing any combination, including multiple combinations of commercial, office or residential uses in a carefully planned configuration in such a manner as to protect and enhance the availability of each independent use. The C-PZD is also intended to accommodate single use commercial developments that are determined to be more appropriate for a PZD application than a general commercial rezone. The legislative purposes, intent and application of this district include, but are not limited to, the following:

- (a) To encourage the clustering of commercial and office activities within areas specifically designated to accommodate such uses and to discourage the proliferation of commercial uses along major thoroughfares and noncommercial areas.

- (b) To provide for orderly development in order to minimize adverse impact on surrounding areas and on the general flow of traffic.
- (c) To encourage orderly and systematic commercial, office or mixed use development design or a combination thereof, providing for the rational placement of activities, vehicular and pedestrian circulation, access and egress, loading, landscaping and buffering strips.
- (d) To encourage commercial development which is consistent with the city's General Plan.
- (e) To accommodate larger scale suburban developments of mixed-uses in a harmonious relationship.

FINDING: The proposed use is mixture of uses containing agricultural, residential and commercial uses. A general commercial rezone is not appropriate in this area; however, with proper measures in place, the proposed Inn will fit into the environment in a sensitive manner, not create traffic or noise problems, re-utilize an historic structure, create land use restrictions on the property that will ensure compatibility and minimize adverse impact on surrounding areas. Staff finds the Planned Zoning District process to be the only one in which this unique proposal could be supported.

(2) Permitted Uses.

Unit 1	City-wide uses by right
Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 12	Offices, studios and related services
Unit 13	Eating places
Unit 14	Hotel, motel and amusement facilities
Unit 15	Neighborhood shopping
Unit 16	Shopping goods
Unit 17	Trades and services
Unit 18	Gasoline service stations and drive-in restaurants
Unit 19	Commercial recreation, small sites
Unit 20	Commercial recreation, large sites
Unit 21	Warehousing and wholesale
Unit 24	Home occupations
Unit 25	Professional offices
Unit 26	Multi-family dwellings
Unit 29	Dance halls

FINDING: See Zoning Criteria Chart above for the uses permitted by right and by conditional use as proposed by the applicant.

(3) Conditions.

- (a) In no instance shall the commercial or office use area be less than fifty-one percent (51%) of the gross leasable floor area within the development.

- (b) Residential uses must be appropriate to the design of the project.
- (c) Warehousing and light industrial uses shall have a gross area per use that does not exceed five thousand (5,000) square feet and at least twenty percent (20%) of the floor area used for retail sales.

***Required Findings for Rezoning Request.**

RECOMMENDATION: Staff recommends approval of the rezoning request from R-A, Residential Agricultural and RSF-4, Residential Single Family, 4 units per acre, to C-PZD 05-1670, with the adoption of the associated Master Development Plan.

LAND USE PLAN: The General Plan 2020 Future Land Use Plan designates this site as a Residential Area. Rezoning this property to C-PZD 05-1670, with the associated Master Development Plan, is not specifically consistent with the land use plan for this area, however it does not greatly increase the usable space and actually decreases the density to be allowed on the property. The proposed plan, commitment and other conditions placed upon the project result in a compatible development with surrounding land uses in the general vicinity.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The proposed rezoning is to a great degree consistent with many of the principles and policies in place

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zoning is needed in order to develop anything other than agricultural or single family uses on the property.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The proposed zoning will likely increase peak traffic, due to the change in use from an existing house to a hotel/restaurant facility. Street improvements will need to occur as a result, and shall be installed with development of the project. Staff finds the proposal will not appreciable increase traffic danger and congestion.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and

sewer facilities.

Finding: **Population density will be decreasing with the requested rezoning, due to the fact that much of the property zoned RSF-4 is being restricted from development altogether.**

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:
- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
 - b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: **N/A**



Fayetteville Fire Department

303 W. Center St. Fayetteville AR. 72701

Date: August 31, 2005

To: Jeremy Pate

From: Captain Dale Riggins

Subject: Re-zoning review from the Fayetteville Fire Department.

PZD05-1670 (Pratt Place Inn)

These 72 acres are covered by Station 2 on North Garland.

The property is 1.4 miles from the station with an anticipated response time of 4 minutes. No calls for service are figured on this type of development and there should be no adverse affects on our call volume. Our only concern is the access of our ladder trucks to this property. With the road and trees it will be very hard to maneuver an aerial truck to this property without improvements. Another concern is the access to the future 'cabins' and their locations.

RPZD05-1636 (Well Spring)

These 152 acres are currently covered by Station 7 on Ruppel Road.

The property is 0.8 miles from the station with an anticipated response time of 1.5 minutes to the beginning of this subdivision and 2.5 minutes after the maximum build out is completed. We project this development to produce 235 calls for service per year at maximum build out (92 fire/other and 143 EMS). This accounts for the residential properties only. Typically, commercial properties do not greatly affect our call volume with-in a fire district. The service impact of this development will typically take eighteen months, after the development is started, to occur. Since this project is predicted to take 4-5 years to complete there should be no adverse effects on our call volume or response times to this subdivision. Since Ruppel Road is narrow and curvy, the widening of this road will greatly help getting our apparatus to the scene of this development along with any calls north of that area.

If you have any questions, please feel free to call or email me.

Dale Riggins
Captain
Fayetteville Fire Department

Previous Rezoning Actions

ORDINANCE NO. 4392

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN
REZONING PETITION RZN 02-9.00 FOR A PARCEL CONTAINING
APPROXIMATELY 18.80 ACRES LOCATED AT 2231 MARKHAM
ROAD, FAYETTEVILLE, ARKANSAS, AS SUBMITTED BY JULIAN
AND JANE ARCHER.

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

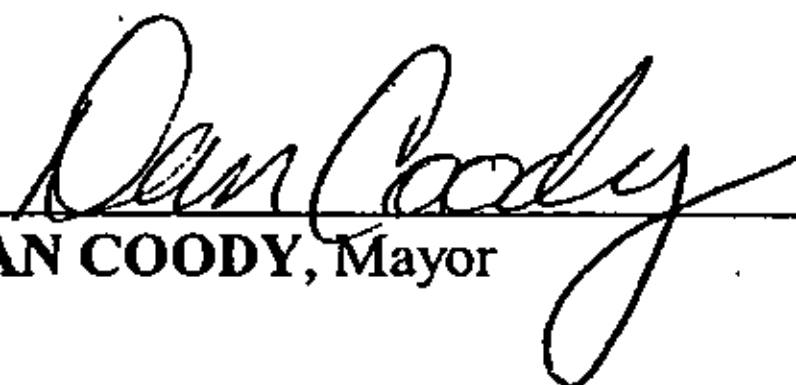
Section 1: That the zone classification of the following described property is
hereby changed as follows:

From R-1, Low Density Residential to A-1, Agricultural as shown in Exhibit A
attached hereto and made a part hereof.

Section 2. That the official zoning map of the City of Fayetteville, Arkansas, is
hereby amended to reflect the zoning change provided in Section 1 above.

PASSED and APPROVED this 21st day of May, 2002.

APPROVED:

By: 
DAN COODY, Mayor



By: 
Heather Woodruff, City Clerk



EXHIBIT "A"

A PORTION OF PARCEL 765-14548-000 DESCRIBED AS FOLLOWS TO-WIT: THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 16 NORTH, RANGE 30 WEST, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT THE NORTHWEST CORNER OF SAID 40 ACRE TRACT AND RUNNING, THENCE EAST 783.2 FEET; THENCE SOUTH 83 FEET; THENCE WEST 783.2 FEET; THENCE NORTH 831 FEET TO THE POINT OF BEGINNING, CONTAINING 14.94 ACRES, MORE OR LESS. ALSO, A PORTION OF PARCEL 765-14536-000 DESCRIBED AS A PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17 IN TOWNSHIP 16 NORTH OF RANGE 30 WEST, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT THE SOUTHWEST CORNER OF SAID 40 ACRE TRACT, AND RUNNING THENCE EAST 1020 FEET; THENCE NORTH 165 FEET; THENCE WEST 1020 FEET; THENCE SOUTH 165 FEET TO THE POINT OF BEGINNING, CONTAINING 3.86 ACRES, MORE OR LESS.

BILL OF ASSURANCE FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In order to attempt to obtain approval of a request for a zoning reclassification, the owner, developer, or buyer of this property, (hereinafter "Petitioner") Julian & Jane Archer, hereby voluntarily offers this Bill of Assurance and enters into this binding agreement and contract with the City of Fayetteville, Arkansas.

The Petitioner expressly grants to the City of Fayetteville the right to enforce any and all of the terms of this Bill of Assurance in the Chancery/ Circuit Court of Washington County and agrees that if Petitioner or Petitioner's heirs, assigns, or successors violate any term of this Bill of Assurance, substantial irreparable damage justifying injunctive relief has been done to the citizens and City of Fayetteville, Arkansas. The Petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will reasonable rely upon all of the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

Petitioner hereby voluntarily offers assurances that Petitioner and Petitioner's property shall be restricted as follows IF Petitioner's rezoning is approved by the Fayetteville City Council.

1. The use of Petitioner's property shall be limited to _____

2. Other restrictions including number and type of structures upon the property are limited to _____

3. Specific activities will not be allowed upon petitioner's property include commercial chicken houses, feed for hog lots, trailer park, cemetery, crematorium, mausoleum, hospital, convalescent home

4. (Any other terms or conditions) _____

5. Petitioner specifically agrees that all such restrictions and terms shall run with the land and bind all future owners unless and until specifically released by Resolution of the Fayetteville City Council. This Bill of Assurance shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning is effective and shall be noted on any Final Plat or Large Scale Development which includes some or all of Petitioner's property.

IN WITNESS WHEREOF and in agreement with all the terms and conditions stated above, Jane Archer as the owner, developer or buyer (Petitioner) voluntarily offer all such assurances and sign my name below.

① Mar. 26, '02
Date 2115 Markham
Fayetteville, AR 72701
② 402-29 St.
Address Des Moines, Ia. 50312

Jane Archer

Julian Archer

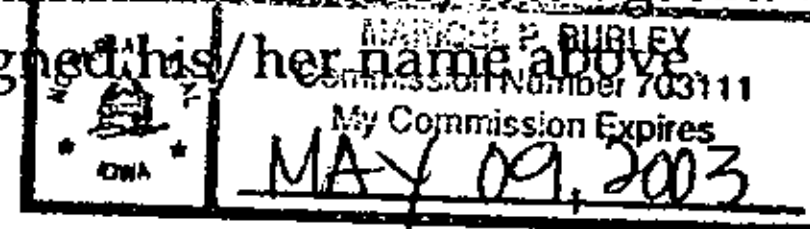
Printed Name

Jane Archer
Julian Archer
Signature

NOTARY OATH

STATE OF ARKANSAS }
COUNTY OF WASHINGTON }

And now on this the 26 day of MARCH, 2002 appeared before me, Julian P.W. ARCHER and JANE G. ARCHER and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.



NOTARY PUBLIC

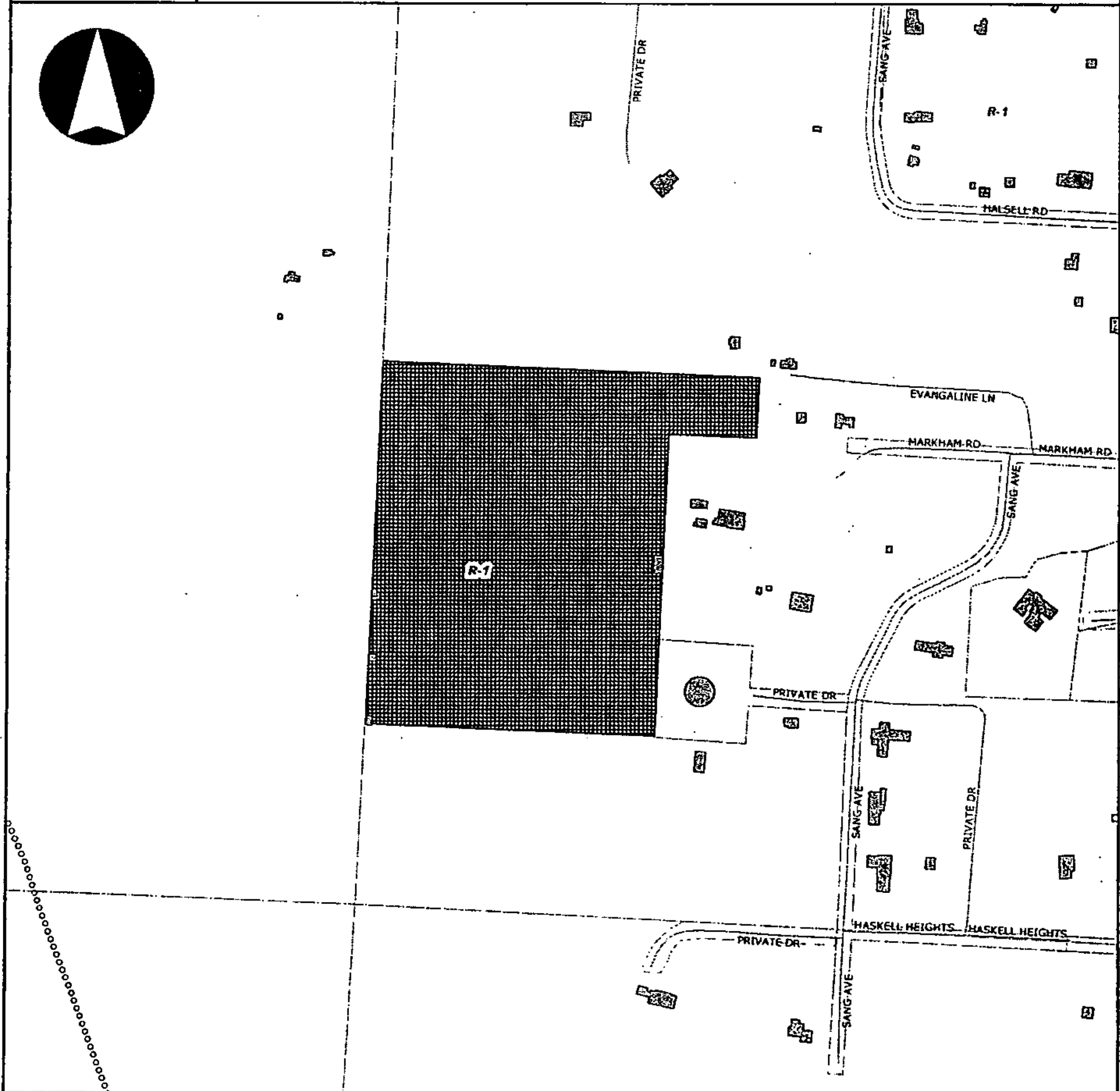
Maicel P. Burley

My Commission Expires:
MAY 09, 2003

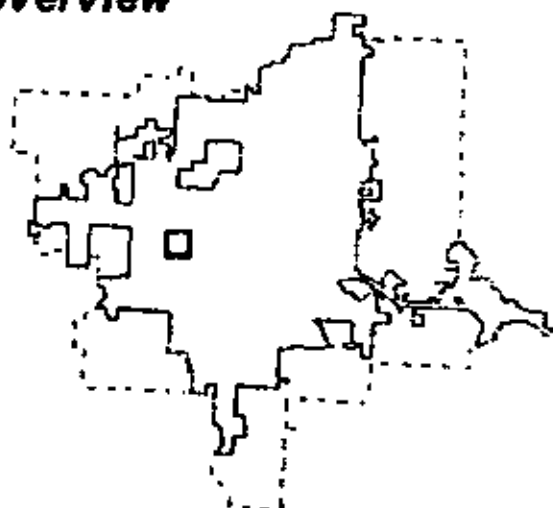
RZN02-09.00

Close Up View

ARCHER



Overview



Legend

Subject Property

RZN02-09.00

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

City Limits

Outside City

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

Historic Collector



*Planning Commission
April 22, 2002
RZN02-9 & RZN02-12 Archer
Page 8 & 9.13*

ORDINANCE NO. 4393

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED
IN REZONING PETITION RZN 02-12.00 FOR A PARCEL
CONTAINING APPROXIMATELY 4.10 ACRES LOCATED AT 2231
MARKHAM ROAD, FAYETTEVILLE, ARKANSAS, AS SUBMITTED BY
JULIAN AND JANE ARCHER.

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

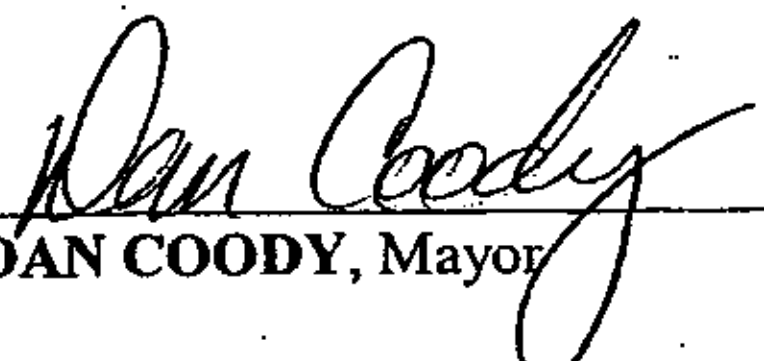
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above.

PASSED and APPROVED this 21st day of May, 2002.

APPROVED:

By: 
DAN COODY, Mayor



By: 
Heather Woodruff, City Clerk



EXHIBIT "A"

A PORTION OF PARCEL 765-14529-000 DESCRIBED AS FOLLOWS: PART OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17 IN TOWNSHIP 16 NORTH OF RANGE 30 WEST, DESCRIBED AS ONE ACRE IN THE NORTHWEST CORNER THEREOF, DESCRIBED AS BEGINNING AT THE NORTHWEST CORNER OF SAID 40 ACRE TRACT, AND RUNNING, THENCE EAST 208.67 FEET; THENCE SOUTH 208.67 FEET; THENCE WEST 208.67 FEET; THENCE NORTH 208.67 FEET TO THE POINT OF BEGINNING CONTAINING 1.0 ACRES, MORE OR LESS. ALSO, A PORTION OF PARCEL 765-14525-000 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17 TOWNSHIP 16 NORTH OF RANGE 30 WEST OF THE 5TH P.M., EXCEPT ONE ACRE OUT OF THE NORTHWEST CORNER THEREOF, CONTAINING 19 ACRES, MORE OR LESS. SUBJECT TO A 20 FOOT ROADWAY ACROSS THE NORTH SIDE THEREOF, AND A 20 FOOT ROADWAY EXTENDING FROM SAID MENTIONED ROADWAY IN A SOUTHERLY DIRECTION ACROSS SAID 19 ACRES. LESS AND EXCEPT THE FOLLOWING DESCRIBED TRACT, TO-WIT: PART OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 16 NORTH OF RANGE 30 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT: BEGINNING NORTH 1 DEGREE 02 MINUTES EAST 660 FEET FROM THE SOUTH WEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND RUNNING THENCE NORTH 89 DEGREES 22 MINUTES EAST 317 FEET TO POINT OF BEGINNING OF LAND TO BE EXCEPTED; THENCE NORTH 0 DEGREES 48 MINUTES EAST 339.3 FEET TO A ROAD; THENCE WITH EAST LINE OF ROAD NORTH 38 DEGREES 34 MINUTES EAST 113.9 FEET; THENCE NORTH 4 DEGREES 21 MINUTES EAST 222.4 FEET TO A FENCE ALONG SOUTH SIDE OF MARKHAM ROAD; THENCE SOUTH 89 DEGREES 43 MINUTES EAST 913 FEET TO A FENCE CORNER; THENCE SOUTH 0 DEGREES 40 MINUTES WEST 633.5 FEET TO A FENCE CORNER; THENCE SOUTH 89 DEGREES 22 MINUTES WEST 1002.1 FEET TO THE POINT OF BEGINNING, CONTAINING 14.4 ACRES, MORE OR LESS. ALSO LESS AND EXCEPT THE FOLLOWING DESCRIBED TRACT: A PART OF THE SOUTHEAST QUARTER (SE ¼) OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 17, TOWNSHIP 16 NORTH, RANGE 30 WEST, OF THE POINT WHICH IS NORTH 1 DEGREE 02 MINUTES EAST, 660.00 FEET, ALONG THE ¼ SECTION LINE AND 44.50 FEET, EAST OF THE SOUTHWEST CORNER OF SAID 40 ACRE TRACT, AND RUNNING THENCE EAST 272.50 FEET, THENCE NORTH 0 DEGREES 48 MINUTES EAST 339.32 FEET, THENCE SOUTH 58 DEGREES 40 MINUTES WEST 213.70 FEET, THENCE SOUTH 22 DEGREES 33 MINUTES WEST 247.04 FEET TO THE POINT OF BEGINNING.

BILL OF ASSURANCE FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In order to attempt to obtain approval of a request for a zoning reclassification, the owner, developer, or buyer of this property, (hereinafter "Petitioner") Julian & Jane Archer hereby voluntarily offers this Bill of Assurance and enters into this binding agreement and contract with the City of Fayetteville, Arkansas.

The Petitioner expressly grants to the City of Fayetteville the right to enforce any and all of the terms of this Bill of Assurance in the Chancery/Circuit Court of Washington County and agrees that if Petitioner or Petitioner's heirs, assigns, or successors violate any term of this Bill of Assurance, substantial irreparable damage justifying injunctive relief has been done to the citizens and City of Fayetteville, Arkansas. The Petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will reasonable rely upon all of the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

Petitioner hereby voluntarily offers assurances that Petitioner and Petitioner's property shall be restricted as follows IF Petitioner's rezoning is approved by the Fayetteville City Council.

1. The use of Petitioner's property shall be limited to Use Unit 1: City Wide Uses by Right, Use Unit 3: Public Protection & Utility Facilities, Use Unit 8: Limited to only single homes, no manufactured homes or trailers shall be allowed to be established on the property.
2. Other restrictions including number and type of structures upon the property are limited to Use Unit 7: Limited to only animal farms for show, breeding & training & farms with livestock & recreational use as a riding stable. No commercial concentrated animal feeding operations shall be established on the property.
3. Specific activities will not be allowed upon petitioner's property include Use Unit 6: Agriculture would not be allowed as part of this request.
4. (Any other terms or conditions) _____

5. Petitioner specifically agrees that all such restrictions and terms shall run with the land and bind all future owners unless and until specifically released by Resolution of the Fayetteville City Council. This Bill of Assurance shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning is effective and shall be noted on any Final Plat or Large Scale Development which includes some or all of Petitioner's property.

IN WITNESS WHEREOF and in agreement with all the terms and conditions stated above, I, _____ as the owner, developer or buyer (Petitioner) voluntarily offer all such assurances and sign my name below.

Julian Archer

Jane Archer
Printed Name

① Date April 29, '02
2115 Markham
Fayetteville, AR 72701
② 402-29th Street
Address
Des Moines, Ia. 50312

Julian Archer
Jane Archer
Signature

NOTARY OATH

STATE OF ARKANSAS)
COUNTY OF WASHINGTON)

And now on this the 29 day of April, 2002 appeared before me, Julian and Jane Archer and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.

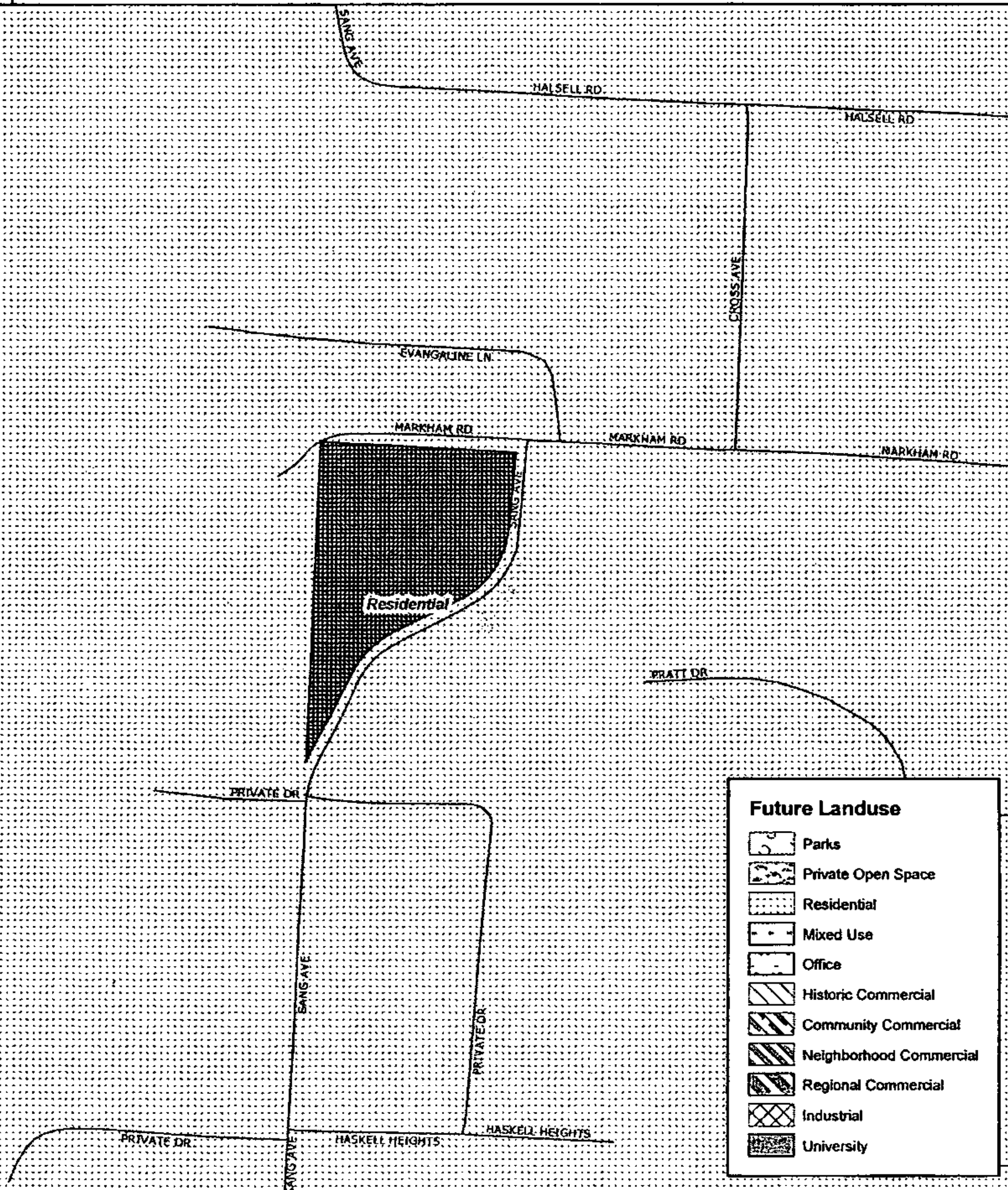


My Commission Expires:
MAY 01, 2003

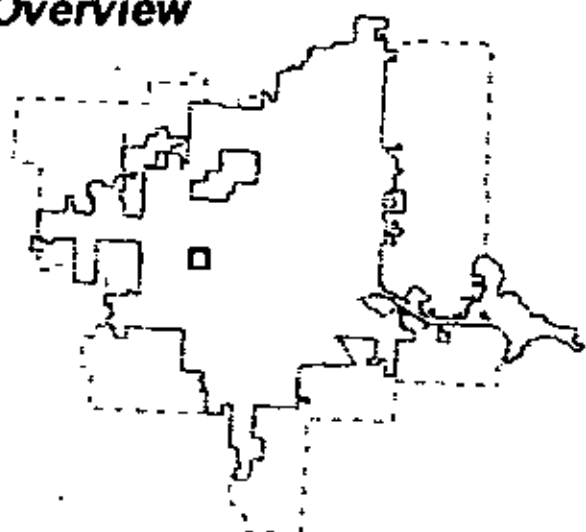
RZN02-12.00

Future Landuse

ARCHER



Overview



Legend

Subject Property

RZN02-12.00

Streets

Existing

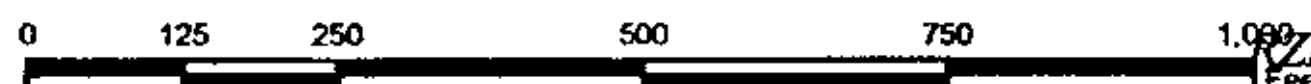
Planned

Boundary

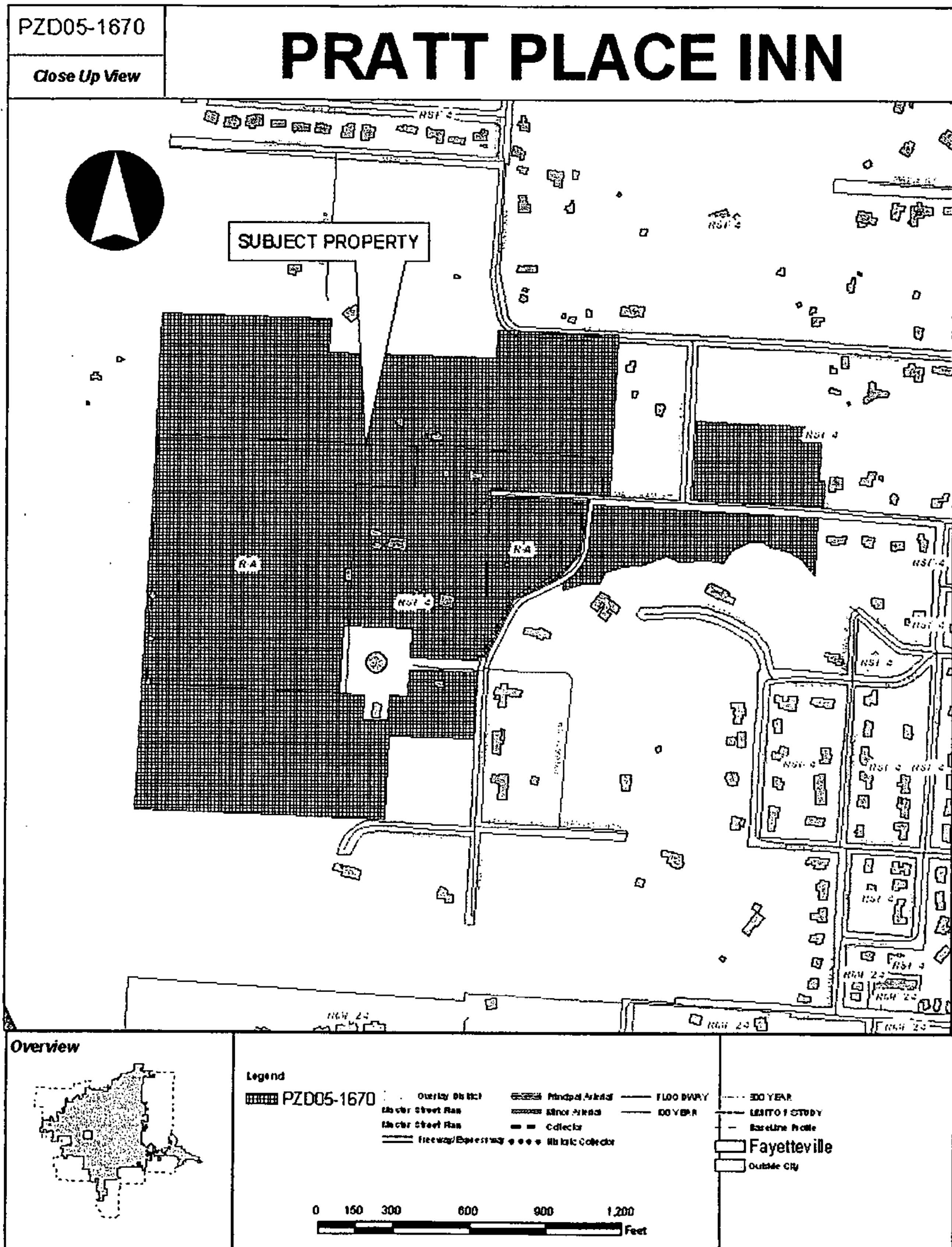
Planning Area

Overlay District

City Limits



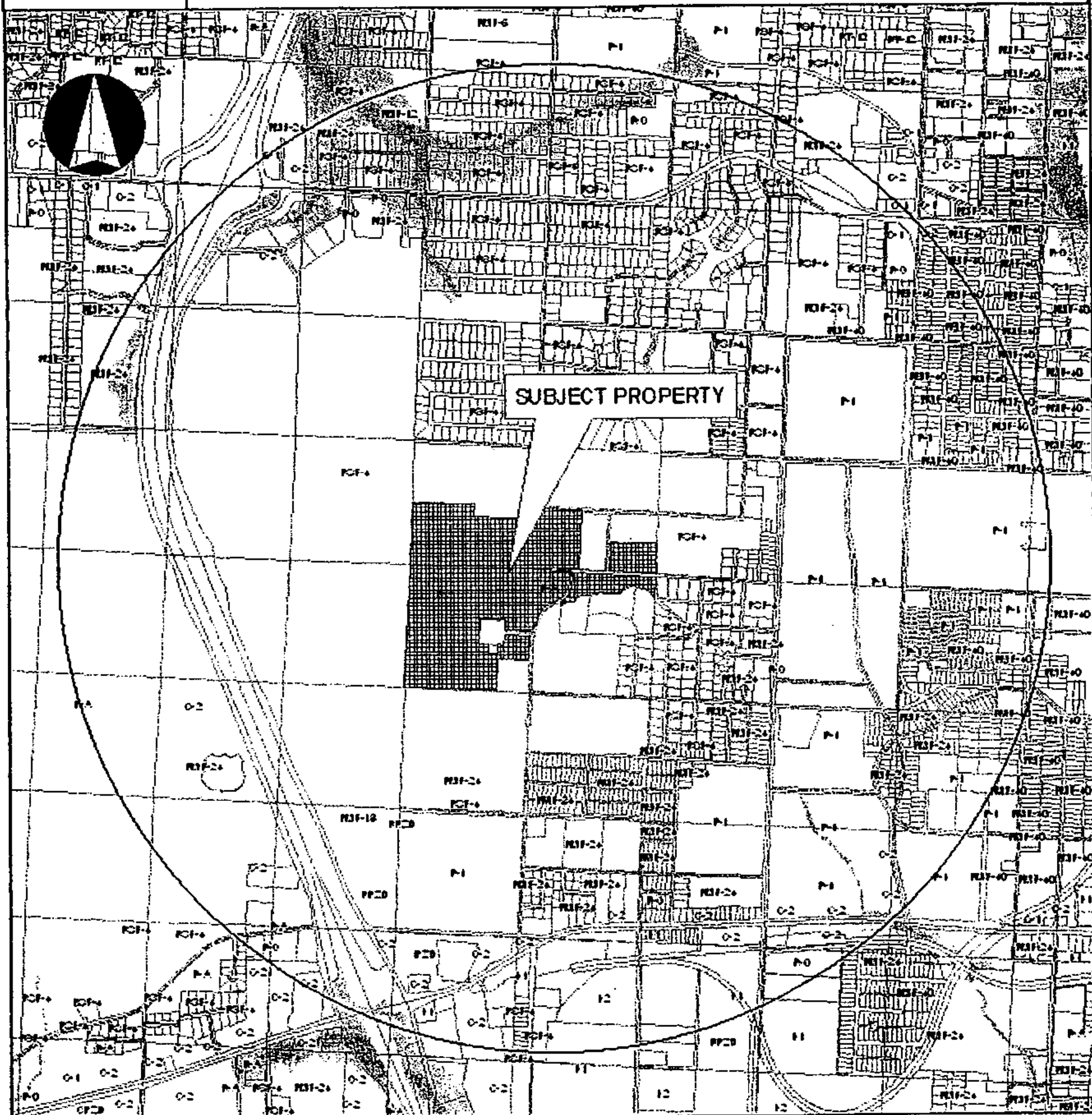
*Planning Commission
April 22, 2002
RZN02-9 & RZN02-12 Archer
Page 8 & 9.15*



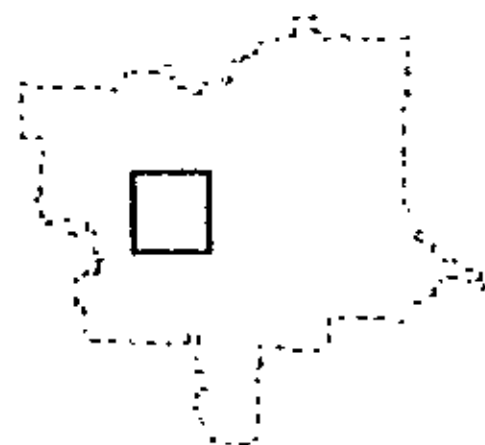
PZD05-1670

One Mile View

PRATT PLACE INN



Overview



Legend

Subject Property
PZD05-1670

Boundary

Planning Area
Overlay District
Outside City

Master Street Plan

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Neighborhood Collector

0.0 0.125 0.25

0.5

0.75

1

Miles

**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

20-Sep-05
City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

R-PZD 05-1636: (Wellspring, 400): Submitted by Critical Path Design for property located at Ruppel Road and Hwy 16. The property is zoned RSF-1, Residential Single Family, 1 unit per acre and R-A, Residential Agricultural, and contains approximately 152.2 acres. The request is to approve a Master Development Plan - Planned Zoning District for a mixed-use community of residential and commercial uses.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name
	\$ -	

Budgeted Item ☐

Budget Adjustment Attached ☐

[Signature] 9-2-05
Department Director Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

[Signature] 9-2-05
City Attorney Date

Original Contract Number: n/a

[Signature] 9-2-05
Finance and Internal Service Director Date

Received in City Clerk's Office
ENTERED
9/2/05

[Signature] 9/2/05
Mayor Date

Received in Mayor's Office
ENTERED
9/2/05

Comments:

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING A RESIDENTIAL PLANNED ZONING DISTRICT TITLED R-PZD 05-1636, WELLSPRING, LOCATED AT RUPPLE ROAD AND HWY 16, CONTAINING APPROXIMATELY 152 ACRES, MORE OR LESS; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FAYETTEVILLE; AND ADOPTING THE ASSOCIATED MASTER DEVELOPMENT PLAN.

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

Section 1: That the zone classification of the following described property is hereby changed as follows:

From RSF-1, Residential Single Family, 1 unit per acre and R-A, Residential Agricultural, to R-PZD 05-1636 as shown in Exhibit "A" attached hereto and made a part hereof.

Section 2. That the change in zoning classification is based upon the approved master development plan, development standards, statement of commitments and conditions of approval as submitted, determined appropriate and approved by the City Council.

Section 3. That this ordinance shall take effect and be in full force at such time as all of the requirements of the master development plan have been met.

Section 4. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this _____ day of _____, 2005.

APPROVED:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"
R-PZD 05-1636

SURVEY DESCRIPTION:

A PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 16 NORTH, RANGE 30 WEST, AND A PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 16 NORTH, RANGE 31 WEST, AND A PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 16 NORTH, RANGE 30 WEST, AND A PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 16 NORTH, RANGE 31 WEST, ALL IN WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT WHICH IS S87°42'05"E 617.60' AND N03°03'08"E 102.59' FROM THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7 AND RUNNING THENCE S87°03'27"E 93.41' TO A SET IRON PIN, THENCE N02°40'05"E 1716.06' TO A FOUND IRON PIN, THENCE N02°40'00"E 2143.06' TO A FOUND IRON PIN, THENCE N87°46'42"W 715.35' TO A FOUND IRON PIN, LOCATED AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 7, THENCE N02°27'56"E 46.74' TO A FOUND IRON PIN, LOCATED AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, THENCE N86°58'50"W 751.69' TO THE CENTERLINE OF RUPPLE ROAD, THENCE ALONG SAID CENTERLINE S20°20'50"W 44.46', S14°10'34"W 65.18', S09°16'42"W 44.03', S06°40'25"W 54.50', S05°18'51"W 54.60', S04°54'39"W 54.72', S04°57'12"W 59.85', S07°17'28"W 55.76', S13°38'10"W 52.31', S23°24'21"W 49.39', S32°18'04"W 47.75', S36°38'10"W 37.75', S40°31'21"W 59.19', S44°51'16"W 60.06', S46°48'24"W 67.32', S44°39'19"W 56.83', S39°09'37"W 55.03', S30°55'13"W 66.99', S24°56'32"W 57.82', S22°38'12"W 58.87', S22°23'40"W 54.61', S22°23'30"W 58.25', S23°21'56"W 55.44', S27°27'36"W 58.17', S31°39'13"W 58.36', S31°28'21"W 57.48', S21°21'38"W 54.39', S09°23'27"W 60.29', S02°47'11"W 51.61', S01°55'43"W 51.38', S02°08'41"W 57.15', S02°26'03"W 49.97', S02°30'26"W 51.03', S02°49'34"W 51.91', S02°57'05"W 54.52', S02°54'57"W 52.46', S02°50'56"W 55.16', S02°43'15"W 48.89', S02°33'25"W 54.35', S02°31'07"W 51.57', S02°25'23"W 56.41', S02°19'43"W 50.93', S02°27'09"W 38.77', S02°34'15"W 44.03', S03°12'55"W 52.16', S02°57'10"W 49.78', S02°33'54"W 51.59', S02°57'20"W 63.38', S03°10'04"W 52.97', S02°59'07"W 52.35', S02°31'09"W 51.19', S03°12'19"W 54.91', S02°13'15"W 33.15', S02°14'57"W 49.48', S02°42'49"W 48.61', S02°37'18"W 50.94', S02°42'26"W 49.47', S02°18'12"W 48.56', S02°45'16"W 52.85', S02°38'45"W 52.94', S02°54'55"W 41.80', S02°54'55"W 360.64', THENCE LEAVING SAID CENTERLINE S87°30'27"E 629.81' TO A CORNER POST, THENCE S03°09'47"W 7.60' TO A SET IRON PIN, THENCE S86°50'13"E 1088.84', THENCE S03°03'08"W 434.54', THENCE ALONG SAID RIGHT-OF-WAY S87°02'59"E 209.22' TO THE POINT OF BEGINNING, CONTAINING 152.23 ACRES MORE OR LESS. SUBJECT TO EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

City Council Meeting of September 20, 2005
Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning[✓]

Date: August 31, 2005

Subject: Residential Planned Zoning District for Wellspring (R-PZD 05-1636)

RECOMMENDATION

Planning Staff recommends approval of an ordinance creating a Residential Planned Zoning District (R-PZD) for Wellspring Community, based on the Master Development Plan, development standards and statement of commitments submitted. This action will establish a unique zoning district for a mixed-use project on approximately 152 acres located at Ruppel Road and Hwy 16. The proposal consists of a 1,037 dwelling units – single family, townhome and condominium – and approximately 254,000 square feet of office, commercial, retail, and restaurant space, along with 41 acres of greenspace.

BACKGROUND

The property consists of a total of 152 acres occupying land fronting for 0.7 miles on Ruppel Road and onto Wedington (Hwy 16). It is currently zoned RSF-1 and R-A, and occupied by agricultural land, tree canopy, and several remaining single family homes. It is surrounded by a mixture of uses, from agricultural land to multi-family, single family to mini-storage.

The applicant requests a rezoning and Master Development Plan approval for a mixed-use project within a unique R-PZD zoning district, meaning the principal use of the site (51% or greater) is residential. The site is divided into nine (9) Planning Areas, each with its own unique permitted and conditional uses, building setbacks, lot width and area, density, intensity of nonresidential space, maximum number of dwelling units, phasing for construction, etc. There are a total of 1,037 dwelling units proposed for the site, in different phases and Planning Areas. A maximum of 254,000 SF of nonresidential space is also proposed within the Master Development Plan. Approximately 42 acres (30% of the site) is to be provided for parks, community greenspace, trail systems and/or tree preservation and undisturbed areas. The development is centered around a pedestrian-friendly, traditional urban design approach utilizing a mixture of uses in the same area, while providing for a variety of home styles and types.

City Council Meeting of September 20, 2005
Agenda Item Number

DISCUSSION

This item was not reviewed by the Planning Commission. The submittal was made directly to Planning Staff, evaluated and a recommendation made to the City Council. Depending upon the outcome of the City Council decision, the actual development would be required to be reviewed and approved by the Planning Commission as a large scale development and/or preliminary and final plat.

The applicant did present the project at a Ward 4 meeting and was instructed to notify adjoining property owners of the rezoning request at least 10 days prior to the public meeting. Comments received from the public have been included in the staff report.

BUDGET IMPACT

None.



CC Meeting of September 20, 2005

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Mayor Coody
City Council
FROM: Jeremy Pate, Director of Current Planning
DATE: August 30, 2005

R-PZD 05-1636: Residential Planned Zoning District (Wellspring Community): Submitted by CRITICAL PATH DESIGN for property located at RUPPLE ROAD AND WEDINGTON DRIVE. The property is zoned RSF-1, SINGLE FAMILY - 1 UNITS/ACRE and R-A, RESIDENTIAL AGRICULTURAL and contains approximately 152.2 acres. The request is to approve a Master Development Plan – Residential Planned Zoning District for new mixed-use community containing residential, office, commercial and open space.

Property Owner: SBC Investments, LLC

Planner: Jeremy Pate

Findings:

Property Description: The property consists of several parcels totaling 152.2 acres that is currently undeveloped, with primarily agricultural pasture land. The property fronts approximately 0.7 miles of Ruppel Road between Wedington and Mt. Comfort and a small portion along Wedington. A 120-foot access easement has been provided to allow for a future street connection to Wedington. There are large groupings of high priority/significant trees located in areas on the site, but a majority of the property exists in pasture, with a few remaining single family homes located upon it. It is currently zoned RSF-1 and R-A; much of the property was part of the island annexation that occurred in 2004, allowing for development within the city limits. There is a fault line that runs east-west through the center of the property, and a creek that enters from the east and travels north to Hamestring. Bryce Davis Park is located directly adjacent to the east, as well as some single family subdivisions and multi-family development. To the north is undeveloped farmland. The Master Street Plan calls for Ruppel Road to intersect the northwest corner of the site in a new alignment, in order to align with Ruppel Road north of Mt. Comfort.

Surrounding Land Use/Zoning:

Direction	Land Use	Zoning
North	Largely agricultural	RSF-1, RSF-4, R-A
South	Commercial strip center, ministorage	C-2, R-A
East	Single family, multi-family homes	RSF-4, R-O, C-1
West	Developing subdivisions and s.f. homes	RSF-4, RSF-1

Proposal: The applicant requests a rezoning and Master Development Plan approval for a mixed-use project on the property. The proposal includes a maximum of 1,037 dwelling units and 254,400 square feet of non-residential space. A total of nine (9) separate planning areas are proposed, each of which has identified uses: Parkway townhomes, garden homes, clubhouse, retail promenade, professional/living plaza, commercial complex, courtyard condominiums, business thoroughfare, and community open space/parks/tree preservation areas.

The mixture of uses on the project varies dramatically, from that of solely single family detached to that of solely commercial. However, there are transitions between these that allow for a range of less dense townhomes, more dense condominiums, commercial/office/retail and residential mixed use, etc. Each Planning Area has its own specific density (maximum number of dwellings units allowed) and intensity (maximum square feet of non-residential space), depending upon the desired effect. For reasons of zoning, each Planning Area also has to have established bulk and area criteria, setbacks, height, etc. Otherwise each proposal would have to return to the City Council to address these zoning issues with every development. The information is provided both in a booklet form, which describes the intent of each Planning Area along with a conceptual drawing, and by way of the larger plat, which gives much of the same technical information, along with the actual Master Development Plan. The building, street, and parking arrangement indicated on the master plan will likely vary somewhat from that which is presented. In fact, there are several technical recommendations on connectivity and issues with the Master Street Plan requirements for Ruppel Road currently evident that will need to be addressed. However, these issues can be resolved with the development review of the project and additional City Council action, if needed. At this step in the process it is important to make the policy decision of whether the zoning is appropriate and compatible to this area, given the proposed Master Development Plan, statement of commitments, and development standards.

Process: The purpose of the subject request is for a rezoning approval in order to secure entitlement for the property with a concept of varied density, variety of uses and walk-ability while preserving community area, providing parkland and open space, and other infrastructure improvements to support the community. As recently approved by the City Council, an applicant has the option of presenting a Master Development Plan – Planned Zoning District to the City Council first. This action would effectively rezone the property based on the conceptual plans and information provided. However, it does not give development approval. The applicant is required to return through the preliminary plat and large scale development process (several times, in this case), in order for the Planning Commission to confirm that the development plans presented are compliant with the zoning and Master Development Plans approved by the City Council.

Bulk and area criteria, while usually provided within the staff report, have been provided in duplicate by the applicant. The project booklet provided gives the zoning criteria in detail, as do the Master Development Plans. Please reference this provided material for more information.

Water & Sewer: Water and sewer lines are currently available in the area, and will be designed and constructed in accordance with city specifications to serve the development. Sewer capacity

in this area remains an unresolved issue, though staff has been working on an interim solution until the Wastewater Treatment Plant is on-line, which will be 33-36 months from the initial construction date. Depending upon the City Council's decision, the developer will be required to contribute to the interim solution or simply wait until the treatment plant is online.

Access: Access to the site is provided from Ruppel Road and Wedington (Hwy 16). There is also a stub-out to the property from a subdivision to the northeast that will require connection. Based on information provided by the applicant, a 120-foot wide access easement has been obtained across adjacent property to the south in order to construct and dedicate a public street into the development, which will become a primary entrance into the Wellspring Community. There are also seven proposed entrances onto Ruppel Road, with traffic signalization proposed at one of these entrances. The traffic study indicates the proposed interior frontage road and intersections with Ruppel need to be re-evaluated, a statement with which staff agrees. Sight distance, curb cut proximity, stacking distance, and relationship to the pedestrian movement along Ruppel Road will all be examined in detail at the time of development. Staff is not currently ready to support all ingress/egress points as proposed.

Interior to the project, public and private streets are proposed. The applicant states in the submittal that all streets, whether public or private, will be constructed in accordance with the Unified Development Code. No public or private streets are allowed to be gated, by city ordinance.

Pedestrian circulation has also been addressed, with both sidewalks along streets and trails that connect the various planning areas. A trail is proposed to be constructed from Bryce Davis Park north along the existing creek to eventually connect to Hamstring Creek Trail. Both of these corridors are identified in the Fayetteville Alternative Trails and Transportation Plan as planned trails; the applicant should expect a recommendation for a trail corridor to be dedicated or easement provided in which this trail connection can be realized.

Adjacent Master Street Plan Streets: Ruppel Road (Minor Arterial, currently being considered for Principal Arterial status), Wedington Drive (Principal Arterial)

Street Improvements: The applicant commissioned a traffic study for this project, the executive summary of which is included in the last few pages of the project booklet. Based on the findings provided by the traffic engineer (see last pages of project booklet), staff will be making the following recommendations, at minimum, at the time of development:

- ♦ The developer shall be responsible for constructing Ruppel Road at half of its planned width, which currently includes two travel lanes and half of a boulevard. Six foot sidewalks, street lights and associated drainage is also required. Street improvement shall continue south to intersect with Wedington Drive, providing turn lanes and other improvements as required by the Planning Commission and coordinated with city staff.
- ♦ Signalization to include installation of two new traffic signals in accordance with City of Fayetteville standards (one at Wedington and Drive A, one at Ruppel and Drive D), and reconstruction as necessary of the existing traffic signal at Wedington Drive and Ruppel Road.

- Re-evaluation of the "frontage drive" and entries onto Ruppel Road to create more acceptable traffic operations.
- Coordination with city staff to determine the appropriate lane geometry that is consistent with the desired traffic movement along Ruppel Row.
- Re-evaluation of the alignment of Ruppel Road at the north end of the property, as the Master Street Plan currently calls for this street to begin turning west across the subject property in order to cross Hamestring Creek and be aligned with Ruppel Road north of Mt. Comfort Road.
- Other improvements as deemed necessary, based on traffic generation, phasing and other applicable criteria.

Tree Preservation: A majority of the site contains open pasture land, though there are several large groupings of high priority trees, including post oak, black oak, mockernut hickory, pignut hickory, black gum, eastern redbud, persimmon, sycamore, American elm, white ash, sweetgum and black cherry. Many of these groupings and significant trees are located within the proposed parkland and community greenspace areas, while others are located interspersed along the north portion of the property along the creek where single family homes are proposed. There are also groupings along the front commercial area. The applicant proposes to meet the expected minimum percent canopy requirements, which is 25% in property zoned PZD, as well as preserve canopy within the parkland and community greenspace areas. The intent is to allow flexibility in order to adjust the layout of individual buildings within the unique Planning Areas in an attempt to meet the minimum percent canopy requirements. Where this can not be achieved, the large area of tree preservation south of the dedicated parkland could potentially be used as credit toward any deficiencies. This is subject to review and approval by the Urban Forester, and must meet the criteria of §167 Tree Preservation and Protection ordinance. More detailed comments from the Urban Forester are included in the attached staff report.

Parks: Staff has met with the applicant regarding the possible extension of Bryce Davis Park, which is adjacent to the east, in order to provide public parkland for the proposed development and others in the surrounding community. The Parks and Recreation Board has also evaluated the proposal and voted to recommend a land dedication of 19 acres to meet parkland dedication requirements. Additionally, the creek that traverses the site draining to Hamestring Creek to the north is on the Fayetteville Alternative Trails and Transportation Master Plan. An easement or dedication of land will likely be expected in order to make this connection, at the time of development. The applicant has indicated approximately 30% of the overall project is to be retained in open greenspace, some of which is undisturbed areas, some parkland, some open community greenspace. The trail connection is anticipated, and will be linked with other pedestrian paths and sidewalks throughout the development. A planned 12.6-acre dedication has been indicated in the submittal. The applicant shall meet the parkland dedication ordinance, based on the number of units proposed, at the time of development.

Public Comment: Staff advised the applicant to present this project to Ward 4, in which the site is located. Most comments from that meeting received were positive. However, there are comments that are included in the staff report that question the proposal's handling of traffic, change in character of land from rural to developed, multi-family units, etc.

Recommendation: Staff recommends approval of the Master Development Plan – Planned Zoning District for Wellspring Community (R-PZD 05-1636), with the following conditions:

Conditions of Approval:

1. The Master Development Plan, Statement of Commitments and Architectural Standards submitted by the applicant shall be considered binding and tied to the zoning of the property. Conditions of approval as noted herein and other requirements placed upon the project with review of the Master Development Plan – Planned Zoning District by the City Council, including the statement of commitments and development standards presented in the project booklet, shall also be binding and enforceable by law.
2. Approval of this Master Development Plan – Planned Zoning District shall not be construed as development approval. Pursuant to city ordinance, all development of the property shall be approved by the Planning Commission through the large scale development and/or subdivision review process. Each Planning Area shall be evaluated based on the zoning and development criteria established with the Master Development Plan. Circulation, landscaping, tree preservation, design standards, connectivity, infrastructure improvements and other city policies and ordinances remain applicable with the development review process. The conceptual designs proposed are to be used as a template from which detailed plans are produced; however, it is expected that certain items will change, in accordance with the Planned Zoning District ordinance.
3. Due to the fact that the proposal is a Residential Planned Zoning District, in which a minimum of 51% of the use of the property is to be residential, many of the desired commercial uses are not allowed by right and are therefore indicated as conditional uses. It is anticipated that as the Planning Areas develop, these conditional uses will be highly desirable in order to allow the commercial areas to be successful. It is with this understanding of how the commercial, mixed use and residential Planning Areas will develop and relate that staff recommends approval of the proposed uses.
4. Public water and sewer lines shall be extended as required by city ordinance at the time of development. Detailed analysis of the existing water and sewer systems will be required to be submitted with the development submittal. As mentioned in the staff report, the developer shall contribute to the interim wastewater capacity solution in this basin as determined by the City Council in order to develop prior to the Wastewater Treatment Plant completion.
5. Street improvements at the time of development shall include those determined necessary by the Planning Commission, based upon the development proposed. Based on the traffic study provided that evaluates the proposed development and surrounding street infrastructure, the developer shall be responsible, at minimum, for the following:
 - ½ of a four-lane boulevard cross-section on Ruppel Road, to include a 28-foot street section and half a boulevard, to city specifications; right-of-way

- dedication to meet Master Street Plan requirements at the time of development, sidewalks and street lights
 - improvements to Ruppel shall extend south to the intersection with Wedington Drive
 - new traffic signals on Ruppel and Wedington, as recommended by the associated traffic study, along with the reconstruction of the existing Ruppel/Wedington traffic signal
6. Ruppel Road access: The traffic study indicates the proposed interior frontage road and intersections with Ruppel need to be re-evaluated, a statement with which staff agrees. Sight distance, curb cut proximity, stacking distance, and relationship to the pedestrian movement along Ruppel Road will all be examined in detail at the time of development. Staff is not currently ready to support all ingress/egress points as proposed.
 7. City Council determination of a Master Street Plan amendment to move Ruppel Road west of its planned location. *The current Master Street Plan indicates the alignment of Ruppel Road shifting east and bisecting a portion of the subject property. Recent concept designs prepared by staff for the transportation improvement/street bond program have indicated a different scenario (see attached), which is utilized with the Wellspring proposal. Staff recommends that further analysis take place for this important alignment and if needed, plans to be modified and brought back before the City Council for a final decision at the time of development.*
 8. A Tree Preservation Plan shall be prepared at the time of development for each Planning Area. All development proposals shall meet the Tree Preservation and Protection Ordinance.
 9. All development shall meet applicable building codes and other ordinances of the City of Fayetteville.
 10. Zoning and development criteria shall be enforced as approved by the City Council, and currently referenced in the Wellspring Community project booklet and on the submitted Master Development Plan plats. These approved plans, commitments and standards will be kept on file in the Planning Division, and referenced for subsequent development proposed on the property.
 11. Future development shall comply with at least the minimum design standards for development in the Unified Development Code, including but not limited to landscaping, parking, access, street design, stormwater detention, etc. Buildings proposed shall be reviewed to ensure appropriate architectural compatibility, compliance with commercial design standards, and/or conformance with the architectural standards and concepts provided with the subject submittal.
 12. Phasing: The anticipated build-out is 2009 for all three phases. In order to ensure the proposed Master Development Plan meets all of the goals and criteria set forth, a

phasing schedule is required. If certain permitting times are not met, the Planned Zoning District approval shall be voided, or extended as allowed by §166 of the UDC. The following development phasing shall be enforced:

- Phase I: All necessary permits to begin construction of the project, pursuant to the criteria established in §166, shall be obtained within 2 years of the date of the ordinance passing.
- Phase II: All necessary permits to begin construction of the project, pursuant to the criteria established in §166, shall be obtained within 3 years of the date of the ordinance passing.
- Phase III: All necessary permits to begin construction of the project, pursuant to the criteria established in §166, shall be obtained within 4 years of the date of the ordinance passing.

CITY COUNCIL ACTION:

yes Required

 Approved Denied

Date: Sept 20, 2005

Comments:

The "CONDITIONS OF APPROVAL", stated in this report, are accepted in total without exception by the entity requesting approval of this rezoning/master development plan item.

By _____

Date _____

Findings associated with R-PZD 05-1636

Sec. 166.06. Planned Zoning Districts (PZD).

(E) Approval or Rejection Criteria for Planned Zoning Districts

The following criteria shall be considered by the Planning Commission and City Council in the review of a planned zoning district application based on the proposed master development plan:

- (1) Whether the application is in compliance with the requirements of the UDC and the General Plan 2020;

FINDING: Staff finds the application to be in substantial compliance with the Master Development Plan Planned Zoning District criteria established by the City Council. In review of the General Plan 2020, the application provides for a mixture of residential, office, commercial and mixed uses while providing a great deal of both undisturbed area and usable open space. The proposal utilizes principles of traditional urban design to create compatible, livable and accessible neighborhoods; transitions and manages non-residential development within and adjoining residential neighborhoods to minimize nuisances; utilizes the policies of connectivity, both for vehicles and pedestrians; and sites new development in close proximity to public services and infrastructure.

- (2) Whether the application is in compliance with all applicable statutory provisions;

FINDING: The application has been reviewed and found to be compliant with applicable statutory provisions.

- (3) Whether the general impact of the rezoning would adversely impact the provision of public facilities and services;

FINDING: The impact of the rezoning and subsequent development would require the provision of public facilities, at the cost of the developer. Without improvements to existing infrastructure, the proposal would certainly adversely affect public facilities and services. However, as indicated in the submittal and the staff report, certain measures are to be taken to ensure adequate infrastructure improvements are made by the developer to ensure the level of service does not decline due to the proposed development. Examples of this include requirements to improve Ruppel Road, traffic signalization, expanding a public park and trail system, contribution for sewer improvements (long and short term), etc. Fire and police have responded accordingly.

- (4) Whether the rezoning is compatible with the surrounding land uses;

FINDING: The rezoning request, combined with the Master Development Plan, creates a mixture of commercial, office, retail/restaurant and residential uses. These types of uses surround the development in various stages, and attempts to transition to adjoining uses is obvious in the plans submitted. Staff finds the range of uses to be appropriate in this

rapidly growing Ruppel Road community. Current development ordinances, including Tree Preservation, Landscaping and design standards, enable more developments to be visually compatible than before.

- (5) Whether the subject land is suitable for the intended use and is compatible with the natural environment;

FINDING: The subject property is remnant farm land that has been mostly cleared. There are areas, especially along the on-site creek, that contain considerably-sized trees. Approximately 30% of the site is proposed to remain in greenspace, and the proposal attempts to respect the natural environment where possible.

- (6) Whether the intended land use would create traffic congestion or burden the existing road network;

FINDING: Based on the traffic study completed for this project, there would be considerable traffic increase generated by this development and therefore considerable improvements mandated. As noted by the Police and Fire Department, leaving Ruppel Road in situ is not an option. The developer will be expected to make significant improvements to Ruppel Road in order to alleviate and mitigate any burdens placed upon the street infrastructure. These include new traffic signals, construction of half of Ruppel Road (28-foot width, ½ boulevard, curb and gutter, storm drainage, sidewalks, streetlights, etc.), as well as other improvement to ensure safe and adequate vehicular and pedestrian movement. The applicant has indicated that these improvements are anticipated, and agrees to meet the requirements placed upon the project by the City of Fayetteville in order to develop this project.

- (7) Whether the planned development provides for unified development control under a unified plan;

FINDING: A plan and project booklet has been submitted, recognizing the zoning and development criteria required of a Master Development Plan submittal. Typical architectural elevations, materials and design standards are called out, in order to describe the appearance of the community once constructed.

- (8) Whether any other recognized zoning consideration would be violated in this PZD.

FINDING: Staff finds that in review of the requested rezoning, the Master Development Plan proposed does not violate recognized zoning considerations, as found below.

(J) Development standards, conditions and review guidelines

- (1) *Generally.* The Planning Commission shall consider a proposed PZD in light of the purpose and intent as set forth in Chapter 161 Zoning Regulations, and the development standards and review guidelines set forth herein. Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as

to preserve and enhance the neighborhood. Proper planning shall involve a consideration of tree preservation, water conservation, preservation of natural site amenities, and the protection of watercourses from erosion and siltation. The Planning Commission shall determine that specific development features, including project density, building locations, common usable open space, the vehicular circulation system, parking areas, screening and landscaping, and perimeter treatment shall be combined in such a way as to further the health, safety, amenity and welfare of the community. To these ends, all applications filed pursuant to this ordinance shall be reviewed in accordance with the same general review guidelines as those utilized for zoning and subdivision applications.

FINDING: The proposed Planned Zoning District has been reviewed in light of all applicable development and zoning ordinances. At this time, the Master Development Plan sets out the basic guidelines, development and zoning criteria, commitments offered by the applicant and those recommended by staff, and design standards to ensure the proposal will achieve a high level of compatibility with adjacent properties. Staff finds that the proposal herein does incorporate an acceptable level of compatibility, and development features further the health, safety, amenity and welfare of the community. Density, maximum dwelling units and maximum intensity (non-residential square feet) have been addressed for each planning area; open space is to be provided, both concentrated and within the development as a whole; circulation is achieved via public and private streets, with an emphasis on a traditional urban design, allowing pedestrians freedom of movement; parking, screening, signage, landscaping and tree preservation are all proposed to meet City of Fayetteville standards, allowing for a project that enhances the neighborhood.

- (2) *Screening and landscaping.* In order to enhance the integrity and attractiveness of the development, and when deemed necessary to protect adjacent properties, the Planning Commission shall require landscaping and screening as part of a PZD. The screening and landscaping shall be provided as set forth in §166.09 Buffer Strips and Screening. As part of the development plan, a detailed screening and landscaping plan shall be submitted to the Planning Commission. Landscape plans shall show the general location, type and quality (size and age) of plant material. Screening plans shall include typical details of fences, berms and plant material to be used.

FINDING: Screening is not required at this time; with development of the site, all applicable development criteria will be applied for appropriate landscaping, screening and buffering of parking areas and objectionable uses.

- (3) *Traffic circulation.* The following traffic circulation guidelines shall apply:

- (a) The adequacy of both the internal and external street systems shall be reviewed in light of the projected future traffic volumes.
- (b) The traffic circulation system shall be comprised of a hierarchal scheme of local collector and arterial streets, each designed to accommodate its proper function and in

appropriate relationship with one another.

- (c) Design of the internal street circulation system must be sensitive to such considerations as safety, convenience, separation of vehicular and pedestrian traffic, general attractiveness, access to dwelling units and the proper relationship of different land uses.
- (d) Internal collector streets shall be coordinated with the existing external street system, providing for the efficient flow of traffic into and out of the planned zoning development.
- (e) Internal local streets shall be designed to discourage through traffic within the planned zoning development and to adjacent areas.
- (f) Design provisions for ingress and egress for any site along with service drives and interior circulation shall be that required by Chapter 166 Development of this code.

FINDING: Traffic circulation has been evaluated with a traffic study, the results of which are included at the end of the project booklet. Ingress and egress interior to the project shall be evaluated and required to be constructed with the development of the property. A hierarchical system of boulevards, public streets, alleys, rear parking, private drives seem to be proposed. Issues of connectivity will be evaluated and addressed with more refined development of the Planning Areas. Block length, alley width for services, curb cuts and other design criteria will be addressed at the time of development. The "frontage" drive along Ruppel Road, specifically, will need to be re-evaluated.

- (4) *Parking standards.* The off-street parking and loading standards found in Chapter 172 Parking and Loading shall apply to the specific gross usable or leasable floor areas of the respective use areas.

FINDING: Standard parking ratios for the proposed uses shall apply. All parking areas shall conform to City of Fayetteville standard specifications, unless approved otherwise.

- (5) *Perimeter treatment.* Notwithstanding any other provisions of a planned zoning district, all uses of land or structures shall meet the open space, buffer or green strip provisions of this chapter of this code.

FINDING: The development provides a great deal of open space to be retained for community use. Open spaces are indicated to be met with development of each Planning Area, and all buffering, screening and landscaping required by city code will be applicable.

- (6) *Sidewalks.* As required by §166.03.

FINDING: Sidewalks and other pedestrian connections will be evaluated at the time of development to ensure compliance.

(7) *Street Lights*. As required by §166.03.

FINDING: Street lights will be required at the time of development.

(8) *Water*. As required by §166.03.

FINDING: Public water will be provided to the project site, pursuant to city code.

(9) *Sewer*. As required by §166.03.

FINDING: Public sewer will be provided to the project site, pursuant to city code. The developer will be responsible for contributing to the interim solution for wastewater capacity issues in the Hamestring basin, as determined by the City Council.

(10) *Streets and Drainage*. Streets within a residential PZD may be either public or private.

(a) *Public Streets*. Public streets shall be constructed according to the adopted standards of the City.

(b) *Private Streets*. Private streets within a residential PZD shall be permitted subject to the following conditions:

(i) Private streets shall be permitted for only a loop street, or street ending with a cul-de-sac. Any street connecting one or more public streets shall be constructed to existing City standards and shall be dedicated as a public street.

(ii) Private streets shall be designed and constructed to the same standards as public streets with the exceptions of width and cul-de-sacs as noted below.

(iii) All grading and drainage within a Planned Zoning District including site drainage and drainage for private streets shall comply with the City's Grading (Physical Alteration of Land) and Drainage (Storm water management) Ordinances. Open drainage systems may be approved by the City Engineer.

(iv) Maximum density served by a cul-de-sac shall be 40 units. Maximum density served by a loop street shall be 80 units.

(v) The plat of the planned development shall designate each private street as a "private street."

(vi) Maintenance of private streets shall be the responsibility of the developer or of a neighborhood property owners association (POA) and shall not be the responsibility of the City. The method for maintenance and a maintenance fund

shall be established by the PZD covenants. The covenants shall expressly provide that the City is a third party beneficiary to the covenants and shall have the right to enforce the street maintenance requirements of the covenants irrespective of the vote of the other parties to the covenants.

(vii) The covenants shall provide that in the event the private streets are not maintained as required by the covenants, the City shall have the right (but shall not be required) to maintain said streets and to charge the cost thereof to the property owners within the PZD on a pro rata basis according to assessed valuation for ad valorem tax purposes and shall have a lien on the real property within the PZD for such cost. The protective covenants shall grant the City the right to use all private streets for purposes of providing fire and police protection, sanitation service and any other of the municipal functions. The protective covenants shall provide that such covenants shall not be amended and shall not terminate without approval of the City Council.

(viii) The width of private streets may vary according to the density served. The following standard shall be used:

Paving Width

(No On-Street Parking)

Dwelling Units	One-Way	Two-Way
1 - 20	14'	22'
21+	14'	24'

***Note:** If on-street parking is desired, 6 feet must be added to each side where parking is intended.

- (ix) All of the traffic laws prescribed by Title VII shall apply to traffic on private streets within a PZD.
- (x) There shall be no minimum building setback requirement from a private street.
- (xi) The developer shall erect at the entrance of each private street a rectangular sign, not exceeding 24 inches by 12 inches, designating the street a "private street" which shall be clearly visible to motor vehicular traffic.

FINDING: All public and private streets/drives shall conform to city standards, which has been indicated in the submitted statement of commitments. Public and Private streets shall not be gated, unless permitted by express approval from the City Council.

- (11) *Construction of nonresidential facilities.* Prior to issuance of more than eight building permits for any residential PZD, all approved nonresidential facilities shall be constructed. In the event the developer proposed to develop the PZD in phases, and the nonresidential facilities are not proposed in the initial phase, the developer shall enter into a contract with the City to guarantee completion of the nonresidential facilities.

FINDING: The parkland dedication and development of community open space is planned with Phase I of construction. If more than eight building permits are desired prior to completion of the required nonresidential facilities, guarantees in the amount of 150% will be deposited with the city.

- (12) *Tree preservation.* All PZD developments shall comply with the requirements for tree preservation as set forth in Chapter 167 Tree Preservation and Protection. The location of trees shall be considered when planning the common open space, location of buildings, underground services, walks, paved areas, playgrounds, parking areas, and finished grade levels.

FINDING: A tree preservation plan shall be submitted at the time of development. It is anticipated that a large tree preservation/undisturbed area will be protected; however, it is important to note that each Planning Area will also be responsible for its own tree preservation and mitigation.

- (13) *Commercial design standards.* All PZD developments that contain office or commercial structures shall comply with the commercial design standards as set forth in §166.14 Site Development Standards and Construction and Appearance Design Standards for Commercial Structures.

FINDING: All commercial structures shall be evaluated as set forth in the code, at the time of development. Though strict adherence is not essential, submitted concept drawings will be utilized as templates for the future buildings.

- (14) *View protection.* The Planning Commission shall have the right to establish special height and/or positioning restrictions where scenic views are involved and shall have the right to insure the perpetuation of those views through protective covenant restrictions.

FINDING: Staff finds no specific scenic views to be protected on the subject property.

(E) *Revocation.*

- (1) *Causes for revocation as enforcement action.* The Planning Commission may recommend to the City Council that any PZD approval be revoked and all building or occupancy permits be voided under the following circumstances:

- (a) *Building permit.* If no building permit has been issued within the time allowed.
- (b) *Phased development schedule.* If the applicant does not adhere to the phased development schedule as stated in the approved development plan.
- (c) *Open space and recreational facilities.* If the construction and provision of all common open spaces and public and recreational facilities which are shown on the final plan are proceeding at a substantially slower rate than other project components.

Planning staff shall report the status of each ongoing PZD at the first regular meeting of each quarter, so that the Planning Commission is able to compare the actual development accomplished with the approved development schedule. If the Planning Commission finds that the rate of construction of dwelling units or other commercial or industrial structures is substantially greater than the rate at which common open spaces and public recreational facilities have been constructed and provided, then the Planning Commission may initiate revocation action or cease to approve any additional final plans if preceding phases have not been finalized. The city may also issue a stop work order, or discontinue issuance of building or occupancy permits, or revoke those previously issued.

- (2) *Procedures.* Prior to a recommendation of revocation, notice by certified mail shall be sent to the landowner or authorized agent giving notice of the alleged default, setting a time to appear before the Planning Commission to show cause why steps should not be made to totally or partially revoke the PZD. The Planning Commission recommendation shall be forwarded to the City Council for disposition as in original approvals. In the event a PZD is revoked, the City Council shall take the appropriate action in the city clerk's office and the public zoning record duly noted.
 - (3) *Effect.* In the event of revocation, any completed portions of the development or those portions for which building permits have been issued shall be treated to be a whole and effective development. After causes for revocation or enforcement have been corrected, the City Council shall expunge such record as established above and shall authorize continued issuance of building permits.
- (F) *Covenants, trusts and homeowner associations.*
- (1) *Legal entities.* The developer shall create such legal entities as appropriate to undertake and be responsible for the ownership, operation, construction, and maintenance of private roads, parking areas, common usable open space, community facilities, recreation areas, building, lighting, security measure and similar common elements in a development. The city encourages the creation of homeowner associations, funded community trusts or other nonprofit organizations implemented by agreements, private improvement district, contracts and covenants. All legal instruments setting forth a plan or manner of permanent care and maintenance of such open space, recreation areas and communally-owned facilities shall be approved by the City Attorney as to legal form and effect, and

by the Planning Commission as to the suitability for the proposed use of the open areas. The aforementioned legal instruments shall be provided to the Planning Commission together with the filing of the final plan, except that the Guarantee shall be filed with the preliminary plan or at least in a preliminary form.

- (2) *Common areas.* If the common open space is deeded to a homeowner association, the developer shall file with the plat a declaration of covenants and restrictions in the Guarantee that will govern the association with the application for final plan approval. The provisions shall include, but not necessarily be limited to, the following:
- (a) The homeowner's association must be legally established before building permits are granted.
 - (b) Membership and fees must be mandatory for each home buyer and successive buyer.
 - (c) The open space restrictions must be permanent, rather than for a period of years.
 - (d) The association must be responsible for the maintenance of recreational and other common facilities covered by the agreement and for all liability insurance, local taxes and other public assessments.
 - (e) Homeowners must pay their pro rata share of the initial cost; the maintenance assessment levied by the association must be stipulated as a potential lien on the property.

FINDING: The applicant shall comply with the above requirements, as part of the Planned Zoning District ordinance.

Sec. 161.25 Planned Zoning District

(A) **Purpose.** The intent of the Planned Zoning District is to permit and encourage comprehensively planned developments whose purpose is redevelopment, economic development, cultural enrichment or to provide a single-purpose or mixed-use planned development and to permit the combination of development and zoning review into a simultaneous process. The rezoning of property to the PZD may be deemed appropriate if the development proposed for the district can accomplish one or more of the following goals.

- (1) Flexibility. Providing for flexibility in the distribution of land uses, in the density of development and in other matters typically regulated in zoning districts.
- (2) Compatibility. Providing for compatibility with the surrounding land uses.
- (3) Harmony. Providing for an orderly and creative arrangement of land uses that are harmonious and beneficial to the community.

- (4) Variety. Providing for a variety of housing types, employment opportunities or commercial or industrial services, or any combination thereof, to achieve variety and integration of economic and redevelopment opportunities.
- (5) No negative impact. Does not have a negative effect upon the future development of the area;
- (6) Coordination. Permit coordination and planning of the land surrounding the PZD and cooperation between the city and private developers in the urbanization of new lands and in the renewal of existing deteriorating areas.
- (7) Open space. Provision of more usable and suitably located open space, recreation areas and other common facilities that would not otherwise be required under conventional land development regulations.
- (8) Natural features. Maximum enhancement and minimal disruption of existing natural features and amenities.
- (9) General Plan. Comprehensive and innovative planning and design of mixed use yet harmonious developments consistent with the guiding policies of the General Plan.
- (10) Special Features. Better utilization of sites characterized by special features of geographic location, topography, size or shape.

FINDING: The proposed Master Development Plan incorporates the majority of the above criteria, as evidenced in the variety of uses in the Planning Areas; the transitioning from commercial to mixed use to condominium to townhouse to single family detached; a maximum enhancement of existing natural amenities, capitalizing on the stream corridor traversing the property to provide public and private open space and the proximity and extension of an adjacent public park; creating a community atmosphere near two arterial streets, while providing necessary infrastructure improvements to alleviate any potential impact; and providing a variety of housing types within the same area, allowing for a socio-economic diversity while promoting a community atmosphere in which one can work, live and play.

(B) **Rezoning.** Property may be rezoned to the Planned Zoning District by the City Council in accordance with the requirements of this chapter and Chapter 166, Development. Each rezoning parcel shall be described as a separate district, with distinct boundaries and specific design and development standards. Each district shall be assigned a project number or label, along with the designation "PZD". The rezoning shall include the adoption of a specific master development plan and development standards.

FINDING: The subject described real property is proposed to be rezoned to R-PZD 05-

1636, with nine (9) unique Planning Areas. The development standards, statement of commitments and Master Development Plan approved shall be adopted with the rezoning.

(C) *R – PZD, Residential Planned Zoning District.*

(1) *Purpose and intent.* The R-PZD is intended to accommodate mixed-use or clustered residential developments and to accommodate single-use residential developments that are determined to be more appropriate for a PZD application than a general residential rezone. The legislative purposes, intent, and application of this district include, but are not limited to, the following:

(a) To encourage a variety and flexibility in land development and land use for predominately residential areas, consistent with the city's General Plan and the orderly development of the city.

(b) To provide a framework within which an effective relationship of different land uses and activities within a single development, or when considered with abutting parcels of land, can be planned on a total basis.

(c) To provide a harmonious relationship with the surrounding development, minimizing such influences as land use incompatibilities, heavy traffic and congestion, and excessive demands on planned and existing public facilities.

(d) To provide a means of developing areas with special physical features to enhance natural beauty and other attributes.

(e) To encourage the efficient use of those public facilities required in connection with new residential development.

FINDING: The proposed use is mixture of uses containing single family detached and attached residential, multifamily residential, commercial, office, retail and restaurant uses. It provides a variety and flexibility of land use, while retaining a primary emphasis on the residential component. Existing adjacent land uses are considered, and transitioned within the development to provide compatibility. Improvements to infrastructure will be required in order to not create heavy traffic congestion, as the primary point of entry (Ripple Road) is substandard for existing traffic. By clustering more densely, a much higher percentage (30%) of open space can be maintained for use and enjoyment of this community and Fayetteville at large.

(2) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities

Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 12	Offices, studios and related services
Unit 13	Eating places
Unit 15	Neighborhood shopping
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Professional offices
Unit 26	Multi-family dwellings

(3) *Condition.* In no instance shall the residential use area be less than fifty-one percent (51%) of the gross floor area within the development.

FINDING: See Zoning Criteria Chart within the project booklet provided by the applicant for the uses permitted by right and by conditional use in each Planning Area as proposed by the applicant. This project booklet, if approved, will remain on file in the Planning Division for comparison to future development on the property.

***Required Findings for Rezoning Request.**

RECOMMENDATION: Staff recommends approval of the rezoning request from R-A, Residential Agricultural and RSF-1, Residential Single Family, 1 unit per acre, to R-PZD 05-1636, with the adoption of the associated Master Development Plan.

LAND USE PLAN: The General Plan 2020 Future Land Use Plan designates this site as a Residential Area. Rezoning this property to R-PZD 05-1636, with the associated Master Development Plan, varies this future land use to a mixed use, though the principal use on the property will remain residential. The proposed plan, commitments, design standards and other conditions placed upon the project result in a compatible development with surrounding land uses in the general vicinity, meeting many of the goals of the General Plan 2020 for new development.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The proposed rezoning is to a great degree consistent with many of the principles and policies in place. The policies encouraged by the General Plan 2020 call for mixtures of uses, housing sizes and types, pedestrian-friendly neighborhoods, siting new development adjacent to arterials, schools and other public services, and expanding the public trails and parks system. This project meets all of these goals, and creates an internal transition of land uses that attempt to address adjacent land uses.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zoning is needed in order to develop anything other than agricultural or low density single family uses on the property.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The proposed zoning will undoubtedly result in an increase in vehicle trips, due to the change in use from an existing farm to 1,037 dwelling units and 254,00 SF of nonresidential space. It is essential that street improvements occur as a result, to be installed with development of the project. With the significant improvements caused by the magnitude of development proposed, other users of Ruppel Road and Wedington will likely benefit as well, due to the fact that Ruppel Road is stressed at the current time. An estimated 3% in calls for service is anticipated by the Police Department, and an appreciable increase for the Fire Department, given their proximity (1.5 minutes) to the property, is not anticipated.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: Population density will be increasing in this area, and has been anticipated with the construction of new public services in the area, including schools, a fire station, and the Boys & Girls Club. Water and sewer services will be required to be evaluated and submitted at the time of development; those improvements necessary to retain an acceptable level of service for all infrastructure as dictated by the City of Fayetteville will be required of the developer, including the extension of water service, sewer lines, contribution to the interim capacity solutions in this basin, and other infrastructure needs deemed appropriate and meeting the rough proportionality of the impact of this development on the existing infrastructure.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:
 - a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
 - b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why

the proposed zoning is not desirable.

Finding: N/A



FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

POLICE DEPARTMENT

RECEIVED
JUL 25 2005
PLANNING DIV.

July 25, 2005

Jeremy Pate
Director of Current Planning
City of Fayetteville
125 W. Mountain Street
Fayetteville, AR 72702

Dear Mr. Pate:

This document is in response to your request for estimated implications/expectations the **Wellspring Community PZD** would place on the Fayetteville Police Department. Based on historical data of similar demographic and geographic commercial and residential areas, estimations can be made regarding an increase in police calls for service. Upon completion of the build out of this PZD, the Fayetteville Police Department can realize an estimated three percent increase in total calls for service. Given the current traffic environment in this area, a development of this size would have an obvious impact on traffic congestion. The Engineering Department may provide more specific information regarding questions about the traffic impact for the Wellspring Community PZD.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Turberville", is written over the word "Sincerely,".

Rob Turberville
Fayetteville Police



Fayetteville Fire Department

303 W. Center St. Fayetteville AR. 72701

Date: August 31, 2005

To: Jeremy Pate

From: Captain Dale Riggins

Subject: Re-zoning review from the Fayetteville Fire Department.

PZD05-1670 (Pratt Place Inn)

These 72 acres are covered by Station 2 on North Garland.

The property is 1.4 miles from the station with an anticipated response time of 4 minutes. No calls for service are figured on this type of development and there should be no adverse affects on our call volume. Our only concern is the access of our ladder trucks to this property. With the road and trees it will be very hard to maneuver an aerial truck to this property without improvements. Another concern is the access to the future 'cabins' and their locations.

RPZD05-1636 (Well Spring)

These 152 acres are currently covered by Station 7 on Ruppel Road.

The property is 0.8 miles from the station with an anticipated response time of 1.5 minutes to the beginning of this subdivision and 2.5 minutes after the maximum build out is completed. We project this development to produce 235 calls for service per year at maximum build out (92 fire/other and 143 EMS). This accounts for the residential properties only. Typically, commercial properties do not greatly affect our call volume with-in a fire district. The service impact of this development will typically take eighteen months, after the development is started, to occur. Since this project is predicted to take 4-5 years to complete there should be no adverse effects on our call volume or response times to this subdivision. Since Ruppel Road is narrow and curvy, the widening of this road will greatly help getting our apparatus to the scene of this development along with any calls north of that area.

If you have any questions, please feel free to call or email me.

Dale Riggins
Captain
Fayetteville Fire Department



THE CITY OF FAYETTEVILLE, ARKANSAS

PARKS AND RECREATION DIVISION CORRESPONDENCE

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 444-3471

To: Critical Path Design, Inc.

From: Sarah K. Patterson (Landscape Administrator)

Date: July 22, 2005

Subject: Master Development Comments

ITEM #: PZD-Master Development Plan (Wellspring Development)

TREE PRESERVATION PLAN

1. Zoned PZD, a preserved canopy of 25% will be expected for this area. Significant tree canopies, as defined in the Landscape Manual, will need to be denoted on the Tree Preservation Plan so that their location can be compared to that of development.
2. In the overall design, significant trees in good condition will be expected to have a higher priority of preservation. I would stress the importance of designing structures that work around these trees versus complete removal.
3. Although I am in support of one area to be undisturbed Tree Preservation, I would like to see some tree groupings preserved throughout the development to help break up impermeable services, commercial development, and to lessen the overall impact on the existing environment.
4. As each lot comes through the planning process, a significant tree inventory, site analysis report with map, and a tree preservation plan will need to be submitted so that each can be reviewed on an individual basis.
5. As I am familiar with the property, my concern is for the wet marshy area along Wedington Drive. As it appears the widening of Wedington Drive has caused this area to have drainage issues which I hope will be taken into consideration when developing.

Trees and vegetation benefit these kinds of areas and I am concerned at the effect impermeable services, corresponding with the commercial design, will create.

6. I also have a concern for the sloped areas around the ponds and creek. This might be an area at which you could look into developing a tree preservation buffer along the stream banks. The trees on these hillsides should be categorized as high priority due to their substantial benefits in stabilization/erosion control and storm water management. I would like to see these areas designed with the existing topography to help ensure that environmental impact is kept to a minimum.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: 479-444-3469

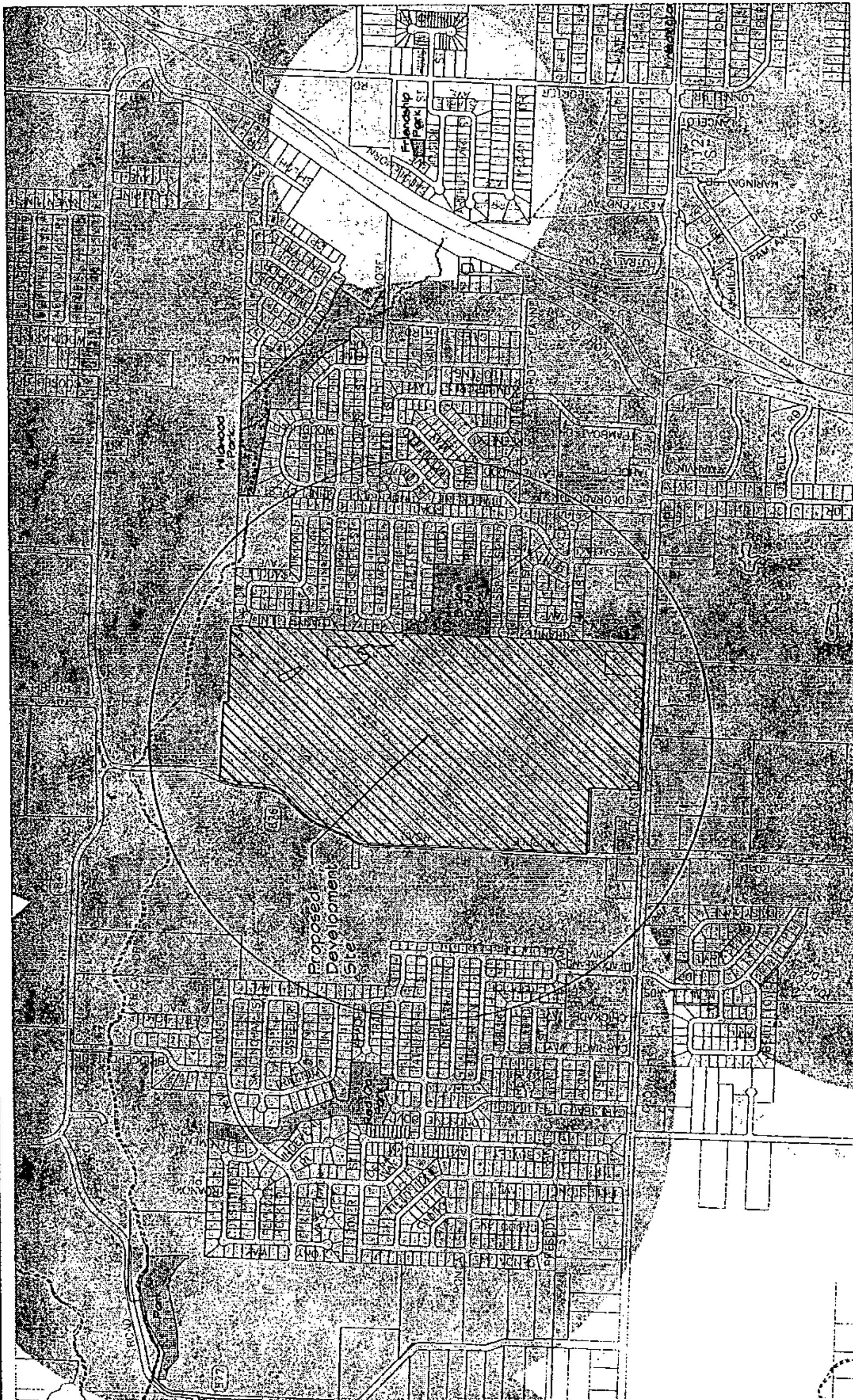
TO: Jeremy Pate, Director of Current Planning
FROM: Alison Jumper, Park Planner
DATE: July 20, 2005
SUBJECT: Parks & Recreation Plat Review Comments

Meeting Date: August 16, 2005
Item: Wellspring PZD
Park District: NW
Zoned: PZD
Billing Name & Address: SCB Investments, LLC
2921 S. Old Missouri Rd.
Springdale, AR 72764

	<u>Land Dedication Requirement</u>	<u>Money in Lieu</u>
Single Family	_____ @ .024 acre per unit = _____ acres	_____ @ \$555 per unit = \$ _____
Multi Family	_____ @ .017 acre per unit = _____ acres	_____ @ \$393 per unit = \$ _____
Mobile Home	_____ @ .024 acre per unit = _____ acres	_____ @ \$555 per unit = \$ _____
Lot Split		_____ @ \$555 per unit = \$ _____

COMMENTS:

- Bryce Davis Park, currently approximately 9.2 acres, borders a portion of the east property line of this proposed development. This adjacency creates opportunity for expansion of the park.
- On May 2, 2005 Parks and Recreation Advisory board recommended accepting a land dedication of approximately 19 acres to meet the requirements of the Park Land Dedication Ordinance. This would expand the park to approximately 28.2 acres.
- A deed for the full land requirement will be due before the final plat is signed.
- Additionally, a trail corridor is planned to the north of this property along Hamestring Creek. It is recommended that the developer provide a pedestrian connection from the park land to the north property line for future connection to the Hamestring Creek trail corridor.



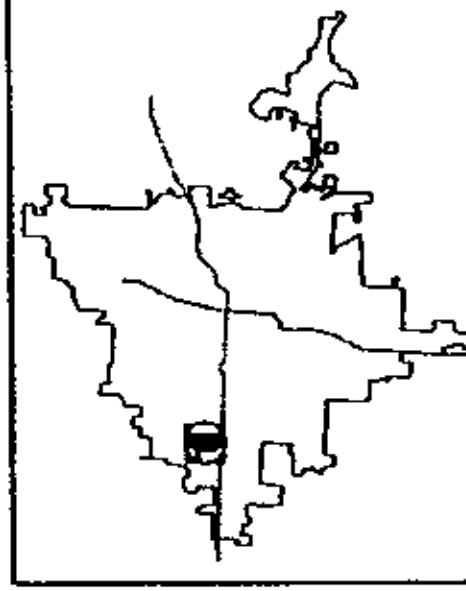
Wellspring



Legend

-  Existing Park Land
-  Community Park Service Area
-  Neighborhood Park Service Area
-  Mini Park Service Area

PROXIMITY MAP	
Wellspring PROJECT NUMBER	
Barber Development Group	
DATE OF PROJECT REVIEW: 05/16/05	
PROJECT NAME	PROJECT NUMBER
PROJECT LOCATION	PROJECT STATUS
PROJECT TYPE	PROJECT DATE
PROJECT DESCRIPTION	PROJECT COMMENTS
PROJECT OWNER	PROJECT CONTACT
PROJECT ADDRESS	PROJECT PHONE
PROJECT CITY	PROJECT FAX
PROJECT STATE	PROJECT ZIP
PROJECT COUNTRY	PROJECT EMAIL
PROJECT WEBSITE	PROJECT URL
PROJECT SOCIAL MEDIA	PROJECT BLOG
PROJECT YOUTUBE	PROJECT TWITTER
PROJECT FACEBOOK	PROJECT LINKEDIN
PROJECT GITHUB	PROJECT STACKOVERFLOW
PROJECT RESEARCHGATE	PROJECT SCORPIO
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PARKS AND RECREATION ADVISORY BOARD

Meeting Minutes May 2, 2005

Opening:

The regular meeting of the Parks and Recreation Advisory Board was called to order at 5:30 p.m. on May 2, 2005 in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas by Mike Hill.

Present:

Parks and Recreation Advisory Board members Hill, Bailey, Langsner, Marley, Davidson, Mauritsen, Pawlik-Holmes and Park Staff Hatfield, Edmonston, Jumper, Whillock and Audience.

1. Park Land Dedication: Alison Jumper, Park Planner

Development Name:	Wellspring
Engineer:	Critical Path Construction
Owner:	Barber Group
Location:	East of Ruppel Road, north of Wedington Dr.
Park District:	NW
Units:	111 Single Family, 962 Multi family
Total Acres:	114 acres
Land Dedication Requirement:	19 acres
Money in Lieu Requirement:	\$439,671
Existing Parks:	Bryce Davis Park is within a half mile service area.
Developer's Request:	Land
Staff Recommendation:	Land
Developer's Comments:	
Justification:	

Bryce Davis Park is located adjacent to the proposed development's east property line. This creates opportunity for the expansion of the park. Additional land is appropriate considering the number of residences being added to the area. Bryce Davis park is currently 9.2 acres. If land is accepted, the park would be expanded to 28.2 acres.

Though a tour of this property had been scheduled it was decided to continue at City Hall with discussion and presentations due to the familiarity of the Board with the location.

John Nock, representing Westside Development L.L.C and the proposed Wellspring development, presented the proposed plan to maintain the topography of the area as well as the established flora consisting of mature trees. He said the community would be directed to retirement living and would create areas for public use in conjunction with a neighborhood park that will be

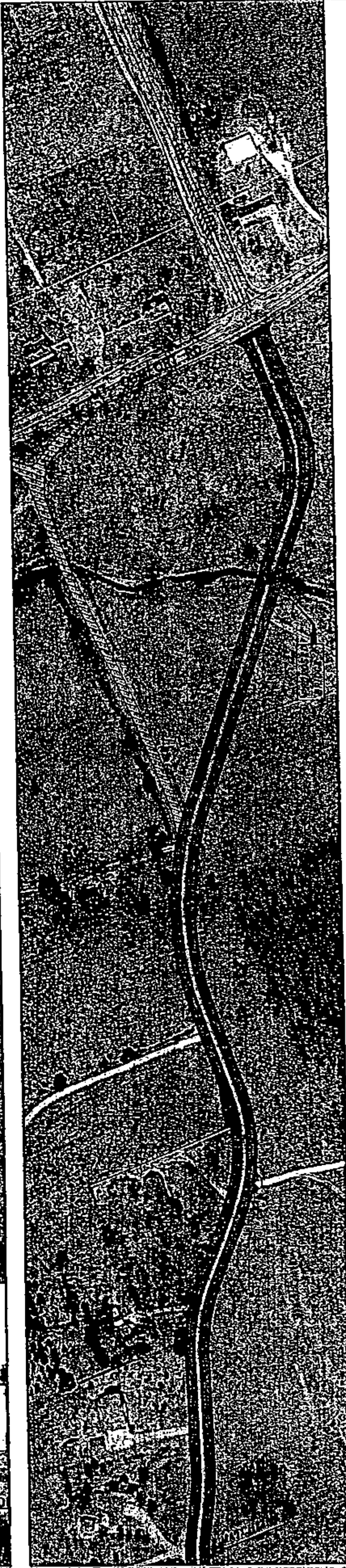
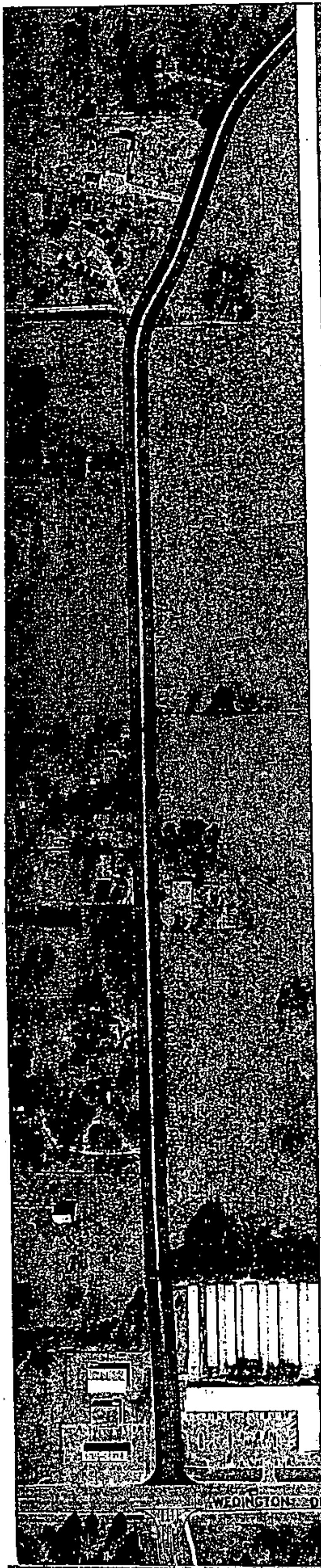
managed by the POA. The total open area including public park, community maintained park and tree preservation area will amount to about 50 acres of green space.

PRAB Motion:

Langsner moved to accept staff recommendation to accept 19 acres of land which will be adjacent to Bryce Davis Park.

Mauritson seconded the motion.

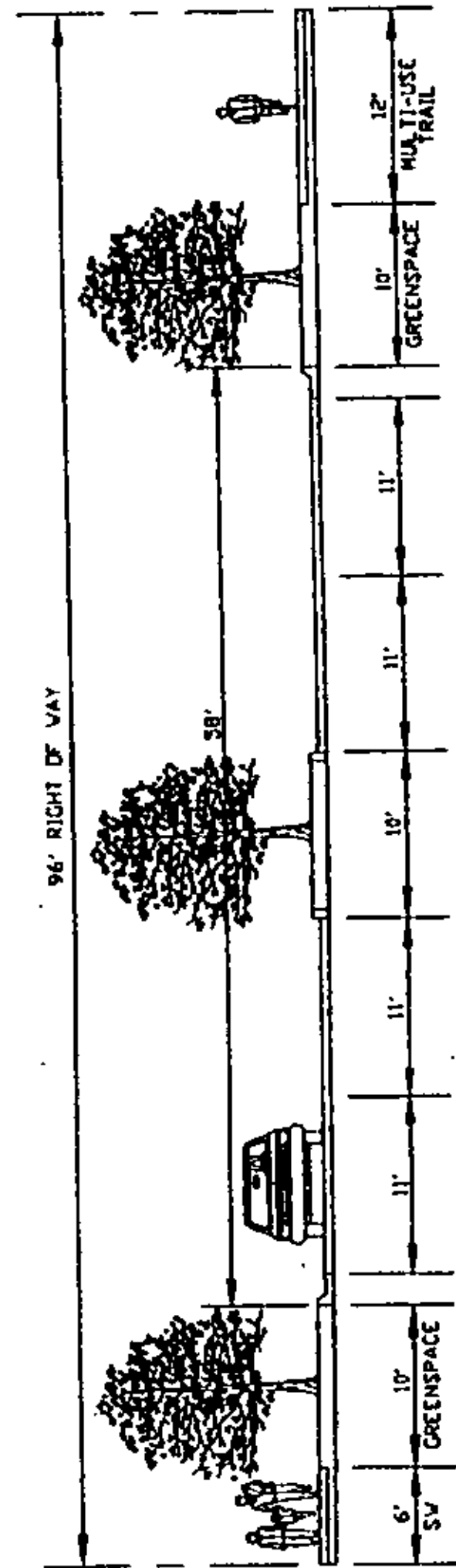
The motion was approved 7-0-0 with Hill, Bailey, Langsner, Marley, Davidson, Mauritson and Pawlik-Holmes voting 'yes', and Harrison absent for the vote.



R-PZD 05-1636

Wellspring
Page 35 of 44

**RUPPLE ROAD IMPROVEMENTS
WEDINGTON DR. to MT. COMFORT RD.
CONCEPT PLAT**



**ADJOINING PROPERTY OWNERS NOTIFICATION
OF UPCOMING PUBLIC HEARING**

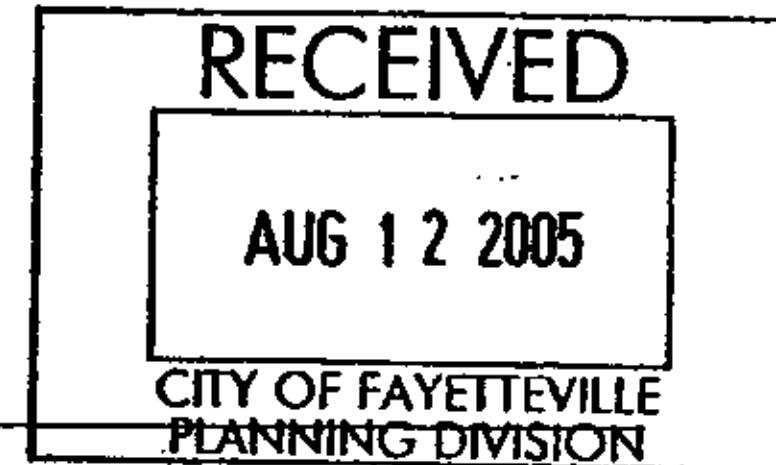
Today's Date: July 19, 2005

APPLICANT/REPRESENTATIVE CONTACT INFO:

Critical Path Design, Inc.

21 W. Mountain, Ste. 121

Fayetteville, AR 72701



City Council Meeting:

Tuesday, August 16, 6:30 P.M.
Fayetteville City Administration Building
113 W. Mountain Street, Room 219

PROJECT DESCRIPTION: Wellspring is a planned community that will offer several types of residential living. The 164-acre site is located just northeast of the Wedington Dr. and Ruppel Rd. Wellspring will offer garden homes for families seeking low-density living, courtyard condos for residents looking for a more urban lifestyle, and townhomes for residents not wanting the responsibilities of yard maintenance. Over 40 acres of city park and tree preservation space will provide green space that separates the residential area from a commercial thoroughfare that will be along Wedington Dr.

**ADJOINING PROPERTY OWNERS COMMENTS
FOR WELLSPRING DEVELOPMENT**

(Return Comments to City of Fayetteville Planning Division in Stamped Enclosed Envelope.)

☐ I have been notified of the above meetings for the described project.

☐ I do not object to the project described above.

☒ I do object to the project described above because:

C. L. De Long
Name of Property Owner (Printed)

C. L. De Long
Signature of Property Owner

ADJOINING PROPERTY OWNERS NOTIFICATION OF UPCOMING PUBLIC HEARING

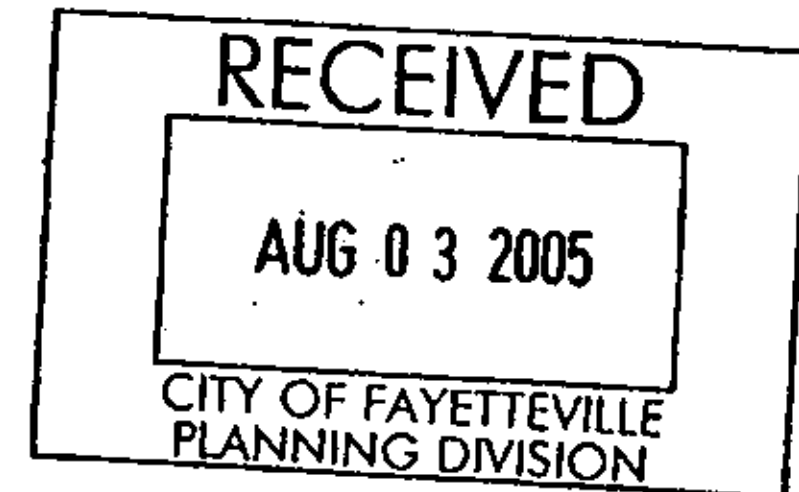
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ADJOINING PROPERTY OWNERS COMMENTS FOR WELLSPRING DEVELOPMENT

(Return Comments to City of Fayetteville Planning Division in Stamped Enclosed Envelope.)

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 I do not object to the project described above.

 X I do object to the project described above because:

JAMES L. HAZEN
Name of Property Owner (Printed)

[Signature]
Signature of Property Owner

mind single family homes, but high density is not good. JH

I am concerned about the density of people, cars, and becoming rental property. Ruppel Rd is already overloaded. Also concerned about planned low cost townhomes across the street from above property. I don't

**ADJOINING PROPERTY OWNERS NOTIFICATION
OF UPCOMING PUBLIC HEARING**

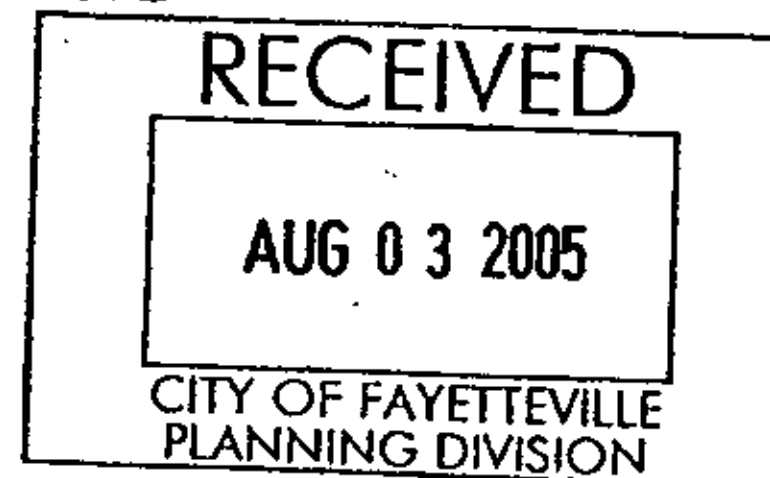
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**ADJOINING PROPERTY OWNERS COMMENTS
FOR WELLSPRING DEVELOPMENT**

(Return Comments to City of Fayetteville Planning Division in Stamped Enclosed Envelope.)

 I have been notified of the above meetings for the described project.

 I do not object to the project described above.

 X I do object to the project described above because:

- 1) Ruppel Rd can not take the traffic & is not schedule for overhaul before you will start.
- 2) I do not want a view looking at the back of several HUNDRED apartments (you call them town houses.)
- 3) Your development more than likely will LOWER the value & re-sale of my property.
- 4) I am really afraid this will turn into residence for college students.

Loren Berry

Name of Property Owner (Printed)

[Signature]
Signature of Property Owner

ADJOINING PROPERTY OWNERS NOTIFICATION OF UPCOMING PUBLIC HEARING

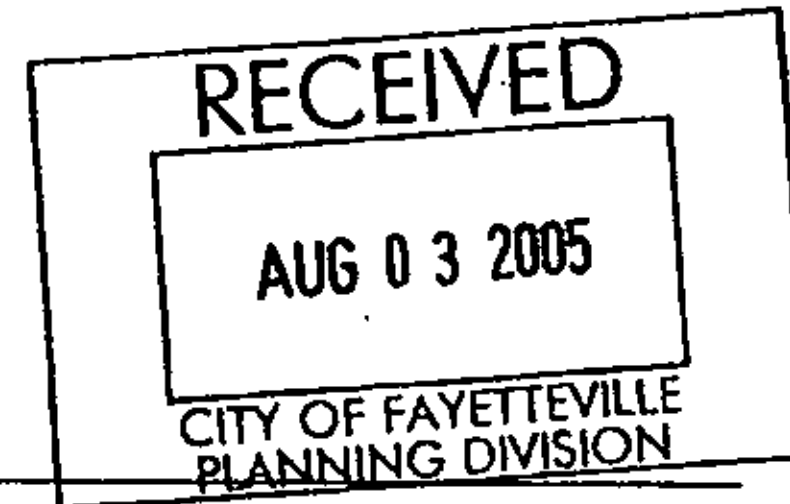
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21 W. Mountain, Ste. 121

Fayetteville, AR 72701



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ADJOINING PROPERTY OWNERS COMMENTS FOR WELLSPRING DEVELOPMENT

(Return Comments to City of Fayetteville Planning Division in Stamped Enclosed Envelope.)

☒ I have been notified of the above meetings for the described project.

☐ I do not object to the project described above.

☒ I do object to the project described above because:

Peter J. Farrell
Name of Property Owner (Printed)

Peter J. Farrell
Signature of Property Owner

What in the world
Are you going to do
about the traffic?
These roads are already
over loaded - put the
road out lets in before they
start building - let
the builders put them
in - at there cost not
the city's

ADJOINING PROPERTY OWNERS NOTIFICATION OF UPCOMING PUBLIC HEARING

Today's Date: July 19, 2005

APPLICANT/REPRESENTATIVE CONTACT INFO:

Critical Path Design, Inc.

21 W. Mountain, Ste. 121

Fayetteville, AR 72701

City Council Meeting:

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ADJOINING PROPERTY OWNERS COMMENTS FOR WELLSPRING DEVELOPMENT

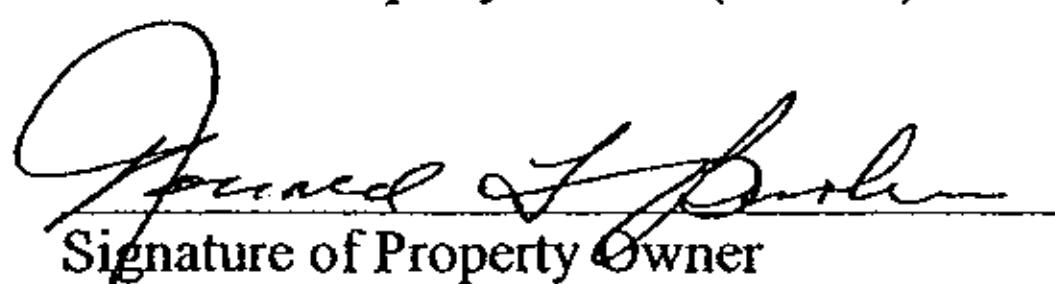
(Return Comments to City of Fayetteville Planning Division in Stamped Enclosed Envelope.)

X I have been notified of the above meetings for the described project. NOTE

 I do not object to the project described above.

X I do object to the project described above because: I AM NOT IN FAVOR OF DEVELOPMENT IN WHAT WAS A RURAL AREA.

RONALD L. BUTLER
Name of Property Owner (Printed)


Signature of Property Owner

NOTE: THE PROPERTY AT 1893 N. RUPPEL ROAD, FORMERLY OWNED BY ME, WAS SOLD ON 15 JULY 2005 TO DR. BREWER.

ADJOINING PROPERTY OWNERS NOTIFICATION OF UPCOMING PUBLIC HEARING

Today's Date: July 19, 2005

APPLICANT/REPRESENTATIVE CONTACT INFO:

Critical Path Design, Inc.

21 W. Mountain, Ste. 121

Fayetteville, AR 72701

City Council Meeting:

Tuesday, August 16, 6:30 P.M.
Fayetteville City Administration Building
113 W. Mountain Street, Room 219

PROJECT DESCRIPTION: Wellspring is a planned community that will offer several types of residential living. The 164-acre site is located just northeast of the Wedington Dr. and Ruppel Rd. Wellspring will offer garden homes for families seeking low-density living, courtyard condos for residents looking for a more urban lifestyle, and townhomes for residents not wanting the responsibilities of yard maintenance. Over 40 acres of city park and tree preservation space will provide green space that separates the residential area from a commercial thoroughfare that will be along Wedington Dr.

ADJOINING PROPERTY OWNERS COMMENTS FOR WELLSPRING DEVELOPMENT

(Return Comments to City of Fayetteville Planning Division in Stamped Enclosed Envelope.)

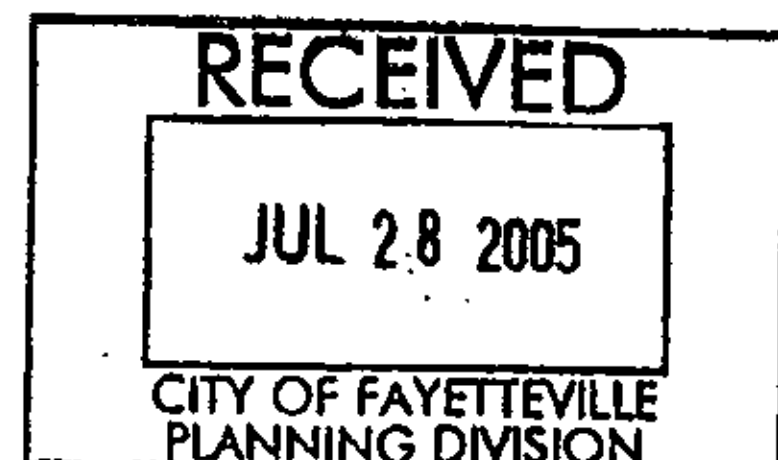
 / I have been notified of the above meetings for the described project.

 / I do not object to the project described above.

 I do object to the project described above because:

William Hazenby
Name of Property Owner (Printed)

[Signature]
Signature of Property Owner



try to make it Easy

**ADJOINING PROPERTY OWNERS NOTIFICATION
OF UPCOMING PUBLIC HEARING**

RECEIVED

JUL 25 2005

PLANNING DIV.

Today's Date: July 19, 2005

APPLICANT/REPRESENTATIVE CONTACT INFO:

Critical Path Design, Inc.

21 W. Mountain, Ste. 121

Fayetteville, AR 72701

City Council Meeting:

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**ADJOINING PROPERTY OWNERS COMMENTS
FOR WELLSPRING DEVELOPMENT**

(Return Comments to City of Fayetteville Planning Division in Stamped Enclosed Envelope.)

 I have been notified of the above meetings for the described project.

 X I do not object to the project described above.

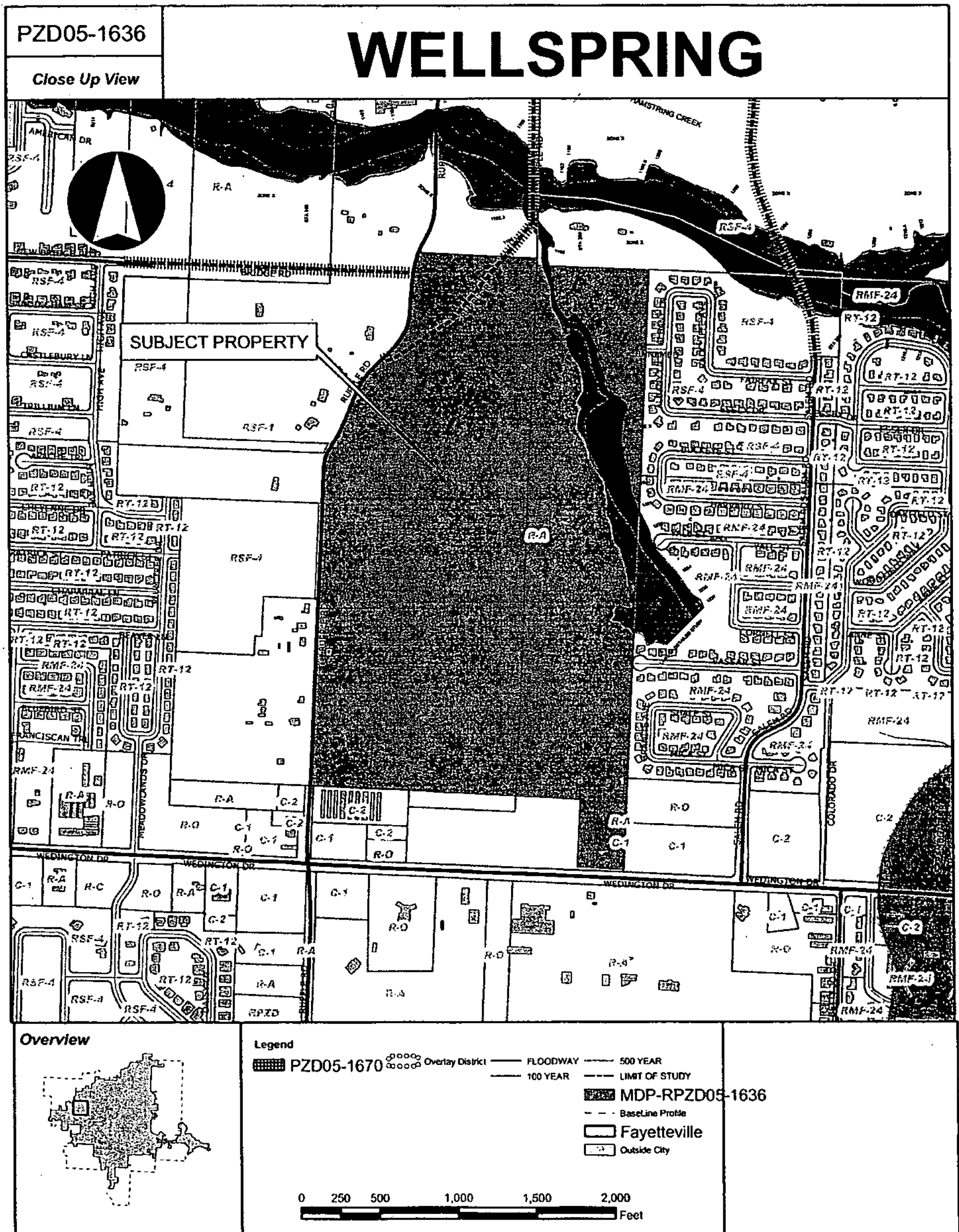
 I do object to the project described above because:

John R. Meyers

Name of Property Owner (Printed)

1857 ALBANY
FAYETTEVILLE AR

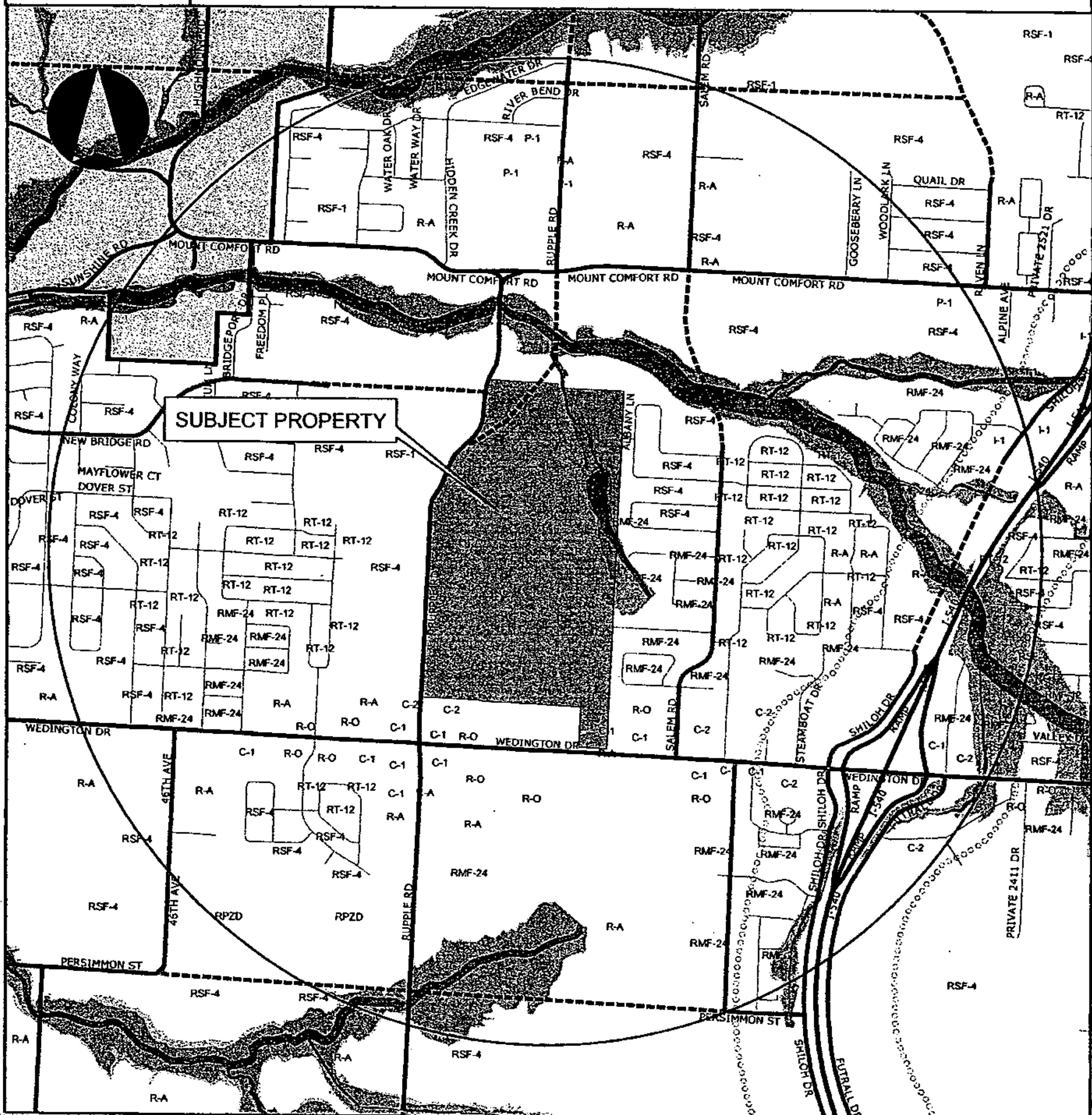
[Signature]
Signature of Property Owner



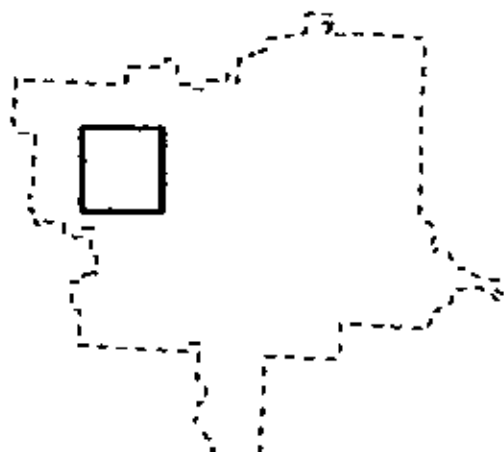
PZD05-1636

One Mile View

WELLSPRING



Overview



Legend

Subject Property

Boundary

- Planning Area
- Overlay District
- Outside City

MDP-RPZD05-1636

0 0.125 0.25 0.5 0.75 1
Miles

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C.1.
Fayetteville Municipal Property Owners'
Improvement District #9 - Biella
Page 1 of 14

October 4, 2005
City Council Meeting Date

Sondra Smith
Submitted By

City Clerk
Division

City Clerk
Department

Action Required:

An ordinance to establish Fayetteville Municipal Property Owners' Improvement District No. 9 - Biella. This petition is being filed under the Arkansas Municipal Property Owners' Improvement District law. Arkansas Code Ann. Sec. 14-94-101 et seq. The petition is being filed by Jim McCord on behalf of the Improvement District.

N/A Cost of this request	N/A Category / Project Budget	N/A Program Category / Project Name
N/A Account Number	N/A Funds Used to Date	N/A Program / Project Category Name
N/A Project Number	N/A Remaining Balance	N/A Fund Name

Budgeted Item ☐ N/A

Budget Adjustment Attached ☐ N/A

Sondra Smith
Department Director

9/15/05
Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

D. P. White
City Attorney

9/16/05
Date

Received in City Clerk's Office

ENTERED
9/16/05

Stephane
Finance and Internal Service Director

9-16-05
Date

Received in Mayor's Office

ENTERED
9/16/05

Don Cook
Mayor

9/16/05
Date

Comments:



113 West Mountain
Fayetteville, AR 72701
Telephone: (479) 575-8323
Fax: (479) 718-7695
city_clerk@ci.fayetteville.ar.us

City Clerk/Treasurer Division

September 15, 2005

Honorable Dan Coody, Mayor
City Administration Building
113 W. Mountain
Fayetteville, AR 72701

RE: Petition to form Fayetteville Municipal Property Owners'
Improvement District No. 9
Biella

Dear Mayor:

Pursuant to Arkansas Code Ann. Sec. 14-94-105 (e)(3), you are hereby notified that the enclosed Petition to form Fayetteville Municipal Property Owners' Improvement District No. 9 – Biella has been filed in the office of the Fayetteville City Clerk. Pursuant to Ark. Code Ann. Sec. 14-94-106 (a)(1), I hereby present you with the Petition.

Sincerely,


Sondra Smith
City Clerk/Treasurer

cc: Kit Williams, City Attorney
James N. McCord

JAMES N. McCORD
Attorney at Law
11 N. WEST AVE.
SUITE #202
FAYETTEVILLE, ARKANSAS 72701

TELEPHONE (479) 695-1134
FACSIMILE (479) 695-1135
jimmccordlaw@alltel.net

September 15, 2005

Sondra Smith
Fayetteville City Clerk
City Administration Building
113 West Mountain Street
Fayetteville, AR 72701

VIA HAND DELIVERY

Re: Petition to Form Fayetteville Municipal Property Owners' Improvement
District No. 9- Biella

Dear Ms. Smith:

Enclosed for filing in the office of the Fayetteville City Clerk are three executed counterparts of a Petition to Form Fayetteville Municipal Property Owners' Improvement District No. 9- Biella. Please file mark each Petition, retain one for the City's permanent file, one for presentation to the Mayor, and return the other counterpart to me. The Petition is being filed under the Arkansas Municipal Property Owners' Improvement District law, Ark. Code Ann. Sec. 14-94-101 et seq.

. Ark. Code Ann. Sec. 14-94-106 provides:

- (a)(1) Upon the filing of the petition with the clerk, it shall be the duty of the clerk to present the petition to the mayor.
- (2) The mayor shall thereupon set a date and time not later than fifteen (15) days after the date of the presentation of the petition to the mayor, for a hearing before the governing body for consideration of the petition.
- (b)(1) At the hearing, it shall be the duty of the governing body to hear the petition and to ascertain whether those signing the petition constitute all the owners of the real property to be located in the district.

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SEP 15 2005

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

09-15-05P03:17 RCVD

- (2) If the governing body determines that all the owners of the real to be located in the district have petitioned for the improvements, it shall be its duty by ordinance to establish and lay off the district as defined in the petition and to appoint the commissioners named in the petition.

* * *

- (c) The ordinance establishing the district shall be published within thirty (30) days after its adoption by one (1) insertion in some newspaper of general circulation in the municipality in which the district lies.

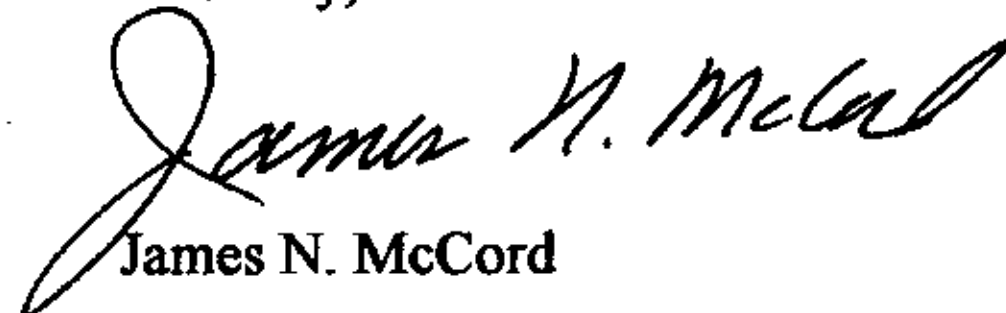
Enclosed is a form the Mayor may use to give the City Council notice of the date and time of the hearing on the Petition. Also enclosed is an executed Abstracter's Certificate certifying that the improvement district petition is signed by the owners of the record title to all the real property described in the Petition. I have drafted and enclose an ordinance which would establish the district and name the commissioners.

Formation of a municipal property owners' improvement district is merely a financing alternative for the cost of subdivision infrastructure. The improvement district issues special assessment bonds, bond proceeds are used to construct or purchase the improvements, the district levies an annual tax on each lot in the district to pay debt service on the bonds, the annual taxes are collected by the county tax collector and paid to the bond trustee, and the trustee makes debt service payments to the bondholders. The developer must comply with all city development ordinances.

Biella subdivision is proposed to have 96 lots on 120 acres located west of Arkansas Highway 265 south of the Fayetteville Fire Station.

Should there be any questions, please contact me.

Sincerely,



James N. McCord

pc: Kit Williams, City Attorney
Brandon Barber

TO: Fayetteville City Council
FROM: Mayor Dan Coody
DATE: September ____, 2005
RE: Petition to Form Fayetteville Municipal Property Owners'
Improvement District No. 9 – Biella

Pursuant to Ark. Code Ann. Sec. 14-94-106(a)(2), I hereby set Tuesday, October 4, 2005, at 6:00 p.m. as the date and time for a hearing before the Fayetteville City Council for consideration of the Petition to Form Fayetteville Municipal Property Owners' Improvement District No. 9 – Biella.

Ark. Code Ann. Sec. 14-94-106(b)(1) provides that, at the hearing, it shall be the duty of the governing body to hear the petition and to ascertain whether those signing the petition constitute all the owners of the real property to be located in the district. Ark. code Ann. §14-94-106(b)(2)(A) provides that if the governing body determines that all the owners of the real property to be located in the district have petitioned for the improvements, it shall be its duty by ordinance to establish and layoff the district as defined in the petition and to appoint the commissioners named in the petition.

cc: Kit Williams, City Attorney
James N. McCord

ORDINANCE NO. _____

**AN ORDINANCE TO ESTABLISH AND LAY OFF
FAYETTEVILLE MUNICIPAL PROPERTY OWNERS'
IMPROVEMENT DISTRICT NO. 9- BIELLA**

WHEREAS, a Petition to form Fayetteville Municipal Property Owners' Improvement District No. 9- Biella has been filed with the Fayetteville City Clerk; and,

WHEREAS, the City Clerk has presented said petition to the Mayor; and,

WHEREAS, the Mayor has set October 4, 2005, at 6:00 p.m. as the date and time for a hearing before the Fayetteville City Council for consideration of said petition; and,

WHEREAS, the Fayetteville City Council has determined from an abstracter's certificate of property ownership that those signing the petition constitute all the owners of the real property to be located in the district; and,

WHEREAS, the Arkansas Municipal Property Owners' Improvement District Law provides at Ark. Code Ann. Sec. 14-94-106(b)(2) that if the governing body determines that all the owners of the record title to the real property to be located in the district have petitioned for the improvements, it shall then be its duty by ordinance to establish and lay off the district as defined in the petition and to appoint the commissioners named in the petition.

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

SECTION 1: That the real property described in Exhibit "A" attached hereto and made a part hereof is hereby established and laid off as Fayetteville Municipal Property Owners' Improvement District No. 9-Biella for the purpose of constructing, purchasing, accepting as a gift or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electric and telephone distribution systems, sanitary sewers, streets and highways including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one of those purposes.

SECTION 2: The following three individuals are hereby appointed as commissioners of said improvement district: Brandon Barber, Seth Kaffka and Brandon Rains.

SECTION 3: The name of said improvement district shall be Fayetteville Municipal Property Owners' Improvement District No. 9- Biella.

SECTION 4. The district shall not cease to exist upon the acquiring, constructing or completion of the improvements, but it shall continue to exist for the purpose of preserving, maintaining, and operating the improvements, replacing equipment, paying salaries to employees, and performing any other functions or services authorized in Ark. Code Ann., Title 14, Chapter 94.

PASSED AND APPROVED this ____ day of _____, 2005.

APPROVED:

MAYOR

ATTEST:

CITY Clerk

BOUNDARY DESCRIPTION:

THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND A PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 16 NORTH, RANGE 30 WEST OF THE FIFTH PRINCIPAL MERIDIAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND 3/8" REBAR LOCATED AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 11, AND RUNNING THENCE N03°20'34"E 1324.85 FEET; THENCE S87°10'56"E 1299.78 FEET TO A FOUND ALUMINUM MONUMENT; THENCE S86°59'45"E 1065.42 FEET; THENCE S03°00'15"W 100.00 FEET; THENCE S86°59'45"E 267.21 FEET; THENCE S01°44'27"W 735.44 FEET TO THE WEST RIGHT-OF-WAY LINE OF ARKANSAS STATE HWY NO 265; THENCE SOUTHERLY ALONG SAID RIGHT-OF-WAY THE FOLLOWING: S12°13'34"W 210.37 FEET, S08°26'24"E 216.59 FEET, S01°44'27"W 65.62 FEET TO A FOUND 3/8" REBAR LOCATED ON THE SOUTH LINE OF SAID SECTION 11; THENCE LEAVING SAID RIGHT-OF-WAY AND RUNNING N87°12'56"W 1334.12 FEET ALONG SAID SOUTH LINE TO A FOUND IRON PIN WITH A CAP LS NO. 755; THENCE N87°07'51"W 1333.04 FEET TO THE POINT OF BEGINNING, CONTAINING 79.7 ACRES MORE OR LESS, CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS.

ALSO

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 16 NORTH, RANGE 30 WEST OF THE FIFTH PRINCIPAL MERIDIAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND 3/8" REBAR LOCATED AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 11 AND RUNNING THENCE S02°20'18"W 1308.94 FEET TO A FOUND STONE; THENCE N87°31'00"W 1311.47 FEET TO A FOUND IRON PIN ON THE WEST LINE OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER, THENCE N02°13'23"E 1327.06 FEET TO AN ALUMINUM SECTION CORNER MONUMENT; THENCE S86°43'37"E 1314.31 FEET TO THE POINT OF BEGINNING CONTAINING 39.7 ACRES MORE OR LESS, CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS.

SUBJECT TO ANY EASEMENTS OR RIGHTS-OF-WAY OF RECORD.

BEFORE THE CITY COUNCIL OF FAYETTEVILLE, ARKANSAS
PETITION TO FORM FAYETTEVILLE MUNICIPAL PROPERTY OWNERS'
IMPROVEMENT DISTRICT NO. 9- BIELLA

ABSTRACTER'S CERTIFICATE OF PROPERTY OWNERSHIP

Blue Star Title of Arkansas, Inc. hereby certifies that the deed records in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, reflect that the following are the owners of the record title to all of the real property described in Exhibit "A" to the Petition to Form Fayetteville Municipal Property Owners' Improvement District No. 9 – Biella, a copy of which Exhibit "A" is attached hereto and made a part hereof:

LynnKohn, LLC, Brandon Barber, Seth Kaffka and Brandon Rains

DATED this 15th day of September, 2005.

Blue Star Title of Arkansas, Inc.

By: 
AUTHORIZED REPRESENTATIVE

09-15-05P03:18 RCVD

RECEIVED

SEP 15 2005

**CITY OF FAYETTE
CITY CLERK'S OFFICE**

BOUNDARY DESCRIPTION:

THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND A PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 16 NORTH, RANGE 30 WEST OF THE FIFTH PRINCIPAL MERIDIAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND 3/8" REBAR LOCATED AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 11, AND RUNNING THENCE N03°20'34"E 1324.85 FEET; THENCE S87°10'56"E 1299.78 FEET TO A FOUND ALUMINUM MONUMENT; THENCE S86°59'45"E 1065.42 FEET; THENCE S03°00'15"W 100.00 FEET; THENCE S86°59'45"E 267.21 FEET; THENCE S01°44'27"W 735.44 FEET TO THE WEST RIGHT-OF-WAY LINE OF ARKANSAS STATE HWY NO 265; THENCE SOUTHERLY ALONG SAID RIGHT-OF-WAY THE FOLLOWING: S12°13'34"W 210.37 FEET, S08°26'24"E 216.59 FEET, S01°44'27"W 65.62 FEET TO A FOUND 3/8" REBAR LOCATED ON THE SOUTH LINE OF SAID SECTION 11; THENCE LEAVING SAID RIGHT-OF-WAY AND RUNNING N87°12'56"W 1334.12 FEET ALONG SAID SOUTH LINE TO A FOUND IRON PIN WITH A CAP LS NO. 755; THENCE N87°07'51"W 1333.04 FEET TO THE POINT OF BEGINNING, CONTAINING 79.7 ACRES MORE OR LESS, CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS.

NOTICE

YOUR SIGNATURE HEREON SHOWS THAT YOU FAVOR THE ESTABLISHMENT OF AN IMPROVEMENT DISTRICT. IF THE DISTRICT IS FORMED, YOU MAY BE CHARGED FOR THE COSTS OF THE IMPROVEMENTS.

BEFORE THE CITY COUNCIL OF FAYETTEVILLE, ARKANSAS

PETITION TO FORM FAYETTEVILLE MUNICIPAL PROPERTY OWNERS'
IMPROVEMENT DISTRICT NO. 9- BIELLA

For their petition to form Fayetteville Municipal Property Owners' Improvement District No. 9- Biella, the undersigned petitioners state:

1. Petitioners are the record title owners to all of the real property described in Exhibit "A" attached hereto and made a part hereof as reflected by the deed records in the office of the Circuit Clerk and Ex-Officio Recorder of Washington, County Arkansas. All of said property is located within the corporate limits of the City of Fayetteville, Arkansas.

2. Petitioners desire that the real property described in Exhibit "A" attached hereto and made a part hereof be established and laid off into a municipal property owners' improvement district pursuant to Ark. Code Ann. Sec. 14-94-101 et seq. for the purpose of constructing, purchasing, accepting as a gift or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electric and

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SEP 15 2005

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

telephone distribution systems, sanitary sewers, streets and highways including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one of those purposes.

3. Petitioners desire that the district shall not cease to exist upon the acquiring, constructing or completion of the improvements, but it shall continue to exist for the purpose of preserving, maintaining, and operating the improvements, replacing equipment, paying salaries to employees, and performing any other functions or services authorized in Ark. Code Ann., Title 14, Chapter 94.

4. Petitioners name the following three individuals who own real property in the district to be appointed as commissioners of the district: Brandon Barber, Seth Kaffka and Brandon Rains.

5. Petitioners propose that the name of the district be Fayetteville Municipal Property Owners' Improvement District No. 9- Biella.

WHEREFORE, the undersigned Petitioners hereby petition the City Council of Fayetteville Arkansas to adopt an ordinance establishing and laying off the real property described in Exhibit "A" attached hereto and made a part hereof into Fayetteville Municipal Property Owners' Improvement District No. 9- Biella for the purpose of constructing, purchasing, accepting as a gift or maintaining facilities for waterworks recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electricity and telephone distribution systems, sanitary sewers, streets including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one of those purposes.

DATED this 15th day of September, 2005.



Brandon Barber



Seth Kaffka



Brandon Rains

LynnKohn, LLC
An Arkansas limited liability company

By: 

Brandon Barber, authorized member

BOUNDARY DESCRIPTION:

THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND A PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 16 NORTH, RANGE 30 WEST OF THE FIFTH PRINCIPAL MERIDIAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT A FOUND 3/8" REBAR LOCATED AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 11, AND RUNNING THENCE N03°20'34"E 1324.85 FEET; THENCE S87°10'56"E 1299.78 FEET TO A FOUND ALUMINUM MONUMENT; THENCE S86°59'45"E 1065.42 FEET; THENCE S03°00'15"W 100.00 FEET; THENCE S86°59'45"E 267.21 FEET; THENCE S01°44'27"W 735.44 FEET TO THE WEST RIGHT-OF-WAY LINE OF ARKANSAS STATE HWY NO 265; THENCE SOUTHERLY ALONG SAID RIGHT-OF-WAY THE FOLLOWING: S12°13'34"W 210.37 FEET, S08°26'24"E 216.59 FEET, S01°44'27"W 65.62 FEET TO A FOUND 3/8" REBAR LOCATED ON THE SOUTH LINE OF SAID SECTION 11; THENCE LEAVING SAID RIGHT-OF-WAY AND RUNNING N87°12'56"W 1334.12 FEET ALONG SAID SOUTH LINE TO A FOUND IRON PIN WITH A CAP LS NO. 755; THENCE N87°07'51"W 1333.04 FEET TO THE POINT OF BEGINNING, CONTAINING 79.7 ACRES MORE OR LESS, CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS.

ALSO

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SUBJECT TO ANY EASEMENTS OR RIGHTS-OF-WAY OF RECORD.

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C.2.
Fayetteville Municipal Property Owners'
Improvement District #10 - Wellspring
Page 1 of 14

October 4, 2005

City Council Meeting Date

Sondra Smith

Submitted By

City Clerk

Division

City Clerk

Department

Action Required:

An ordinance to establish Fayetteville Municipal Property Owners' Improvement District No. 10 - Wellspring. This petition is being filed under the Arkansas Municipal Property Owners' Improvement District law. Arkansas Code Ann. Sec. 14-94-101 et seq. The petition is being filed by Jim McCord on behalf of the Improvement District.

N/A

Cost of this request

N/A

Category / Project Budget

N/A

Program Category / Project Name

N/A

Account Number

N/A

Funds Used to Date

N/A

Program / Project Category Name

N/A

Project Number

N/A

Remaining Balance

N/A

Fund Name

Budgeted Item

N/A

Budget Adjustment Attached

N/A

Sondra Smith
Department Director

9/15/05
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

Approved as to form.
J. F. Whit
City Attorney

9/16/05
Date

Stephen
Finance and Internal Service Director

9-16-05
Date

Received in City Clerk's Office



Received in Mayor's Office



Mayor

9/16/05
Date

Comments:



113 West Mountain
Fayetteville, AR 72701
Telephone: (479) 575-8323
Fax: (479) 718-7695
city_clerk@ci.fayetteville.ar.us

City Clerk/Treasurer Division

September 15, 2005

Honorable Dan Coody, Mayor
City Administration Building
113 W. Mountain
Fayetteville, AR 72701

RE: Petition to form Fayetteville Municipal Property Owners'
Improvement District No. 10
Wellspring

Dear Mayor:

Pursuant to Arkansas Code Ann. Sec. 14-94-105 (e)(3), you are hereby notified that the enclosed Petition to form Fayetteville Municipal Property Owners' Improvement District No. 10 – Wellspring has been filed in the office of the Fayetteville City Clerk. Pursuant to Ark. Code Ann. Sec. 14-94-106 (a)(1), I hereby present you with the Petition.

Sincerely,

A handwritten signature in cursive script that reads "Sondra Smith".

Sondra Smith
City Clerk/Treasurer

cc: Kit Williams, City Attorney
James N. McCord

JAMES N. McCORD
Attorney at Law
11 N. WEST AVE.
SUITE #202
FAYETTEVILLE, ARKANSAS 72701

TELEPHONE (479) 695-1134
FACSIMILE (479) 695-1135
jimmccordlaw@alltel.net

September 15, 2005

Sondra Smith
Fayetteville City Clerk
City Administration Building
113 West Mountain Street
Fayetteville, AR 72701

VIA HAND DELIVERY

Re: Petition to Form Fayetteville Municipal Property Owners' Improvement
District No. 10- Wellspring

Dear Ms. Smith:

Enclosed for filing in the office of the Fayetteville City Clerk are three executed counterparts of a Petition to Form Fayetteville Municipal Property Owners' Improvement District No. 10- Wellspring. Please file mark each Petition, retain one for the City's permanent file, one for presentation to the Mayor, and return the other counterpart to me. The Petition is being filed under the Arkansas Municipal Property Owners' Improvement District law, Ark. Code Ann. Sec. 14-94-101 et seq.

Ark. Code Ann. Sec. 14-94-106 provides:

- (a)(1) Upon the filing of the petition with the clerk, it shall be the duty of the clerk to present the petition to the mayor.
- (2) The mayor shall thereupon set a date and time not later than fifteen (15) days after the date of the presentation of the petition to the mayor, for a hearing before the governing body for consideration of the petition.
- (b)(1) At the hearing, it shall be the duty of the governing body to hear the petition and to ascertain whether those signing the petition constitute all the owners of the real property to be located in the district.

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SEP 15 2005
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

09-15-05P03:19 RCVD

- (2) If the governing body determines that all the owners of the real to be located in the district have petitioned for the improvements, it shall be its duty by ordinance to establish and lay off the district as defined in the petition and to appoint the commissioners named in the petition.

* * *

- (c) The ordinance establishing the district shall be published within thirty (30) days after its adoption by one (1) insertion in some newspaper of general circulation in the municipality in which the district lies.

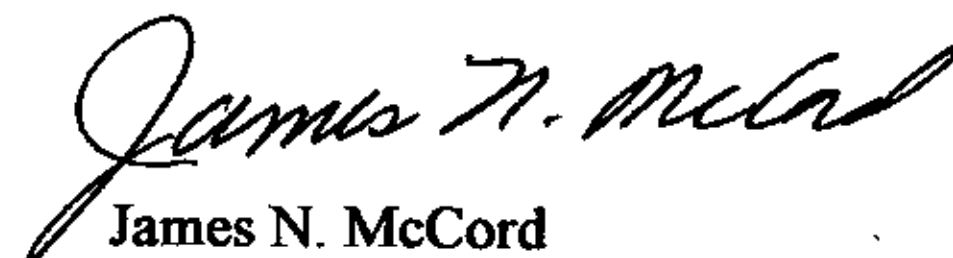
Enclosed is a form the Mayor may use to give the City Council notice of the date and time of the hearing on the Petition. Also enclosed is an executed Abstractor's Certificate certifying that the improvement district petition is signed by the owners of the record title to all the real property described in the Petition. I have drafted and enclose an ordinance which would establish the district and name the commissioners.

Formation of a municipal property owners' improvement district is merely a financing alternative for the cost of subdivision infrastructure. The improvement district issues special assessment bonds, bond proceeds are used to construct or purchase the improvements, the district levies an annual tax on each lot in the district to pay debt service on the bonds, the annual taxes are collected by the county tax collector and paid to the bond trustee, and the trustee makes debt service payments to the bondholders. The developer must comply with all city development ordinances.

Wellspring subdivision is proposed to have approximately 1,000 lots on 150 acres located on the east side of Ruppel Road north of Wedington Drive.

Should there be any questions, please contact me.

Sincerely,



James N. McCord

pc: Kit Williams, City Attorney
Brandon Barber

TO: Fayetteville City Council
FROM: Mayor Dan Coody
DATE: September ____, 2005
RE: Petition to Form Fayetteville Municipal Property Owners'
Improvement District No. 10 -- Wellspring

Pursuant to Ark. Code Ann. Sec. 14-94-106(a)(2), I hereby set Tuesday, October 4, 2005, at 6:00 p.m. as the date and time for a hearing before the Fayetteville City Council for consideration of the Petition to Form Fayetteville Municipal Property Owners' Improvement District No. 10 -- Wellspring.

Ark. Code Ann. Sec. 14-94-106(b)(1) provides that, at the hearing, it shall be the duty of the governing body to hear the petition and to ascertain whether those signing the petition constitute all the owners of the real property to be located in the district. Ark. code Ann. §14-94-106(b)(2)(A) provides that if the governing body determines that all the owners of the real property to be located in the district have petitioned for the improvements, it shall be its duty by ordinance to establish and layoff the district as defined in the petition and to appoint the commissioners named in the petition.

cc: Kit Williams, City Attorney
James N. McCord

ORDINANCE NO. _____

**AN ORDINANCE TO ESTABLISH AND LAY OFF
FAYETTEVILLE MUNICIPAL PROPERTY OWNERS'
IMPROVEMENT DISTRICT NO. 10- WELLSPRING**

WHEREAS, a Petition to form Fayetteville Municipal Property Owners' Improvement District No. 10- Wellspring has been filed with the Fayetteville City Clerk; and,

WHEREAS, the City Clerk has presented said petition to the Mayor; and,

WHEREAS, the Mayor has set October 4, 2005, at 6:00 p.m. as the date and time for a hearing before the Fayetteville City Council for consideration of said petition; and,

WHEREAS, the Fayetteville City Council has determined from an abstractor's certificate of property ownership that those signing the petition constitute all the owners of the real property to be located in the district; and,

WHEREAS, the Arkansas Municipal Property Owners' Improvement District Law provides at Ark. Code Ann. Sec. 14-94-106(b)(2) that if the governing body determines that all the owners of the record title to the real property to be located in the district have petitioned for the improvements, it shall then be its duty by ordinance to establish and lay off the district as defined in the petition and to appoint the commissioners named in the petition.

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

SECTION 1: That the real property described in Exhibit "A" attached hereto and made a part hereof is hereby established and laid off as Fayetteville Municipal Property Owners' Improvement District No. 10- Wellspring for the purpose of constructing, purchasing, accepting as a gift or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electric and telephone distribution systems, sanitary sewers, streets and highways including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one of those purposes.

SECTION 2: The following three individuals are hereby appointed as commissioners of said improvement district: Brandon Barber, Seth Kaffka and Brandon Rains.

SECTION 3: The name of said improvement district shall be Fayetteville Municipal Property Owners' Improvement District No. 10- Wellspring.

SECTION 4. The district shall not cease to exist upon the acquiring, constructing or completion of the improvements, but it shall continue to exist for the purpose of preserving, maintaining, and operating the improvements, replacing equipment, paying salaries to employees, and performing any other functions or services authorized in Ark. Code Ann., Title 14, Chapter 94.

PASSED AND APPROVED this ____ day of _____, 2005.

APPROVED:

MAYOR

ATTEST:

CITY Clerk

EXHIBIT - A

SURVEY DESCRIPTION:

A PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 16 NORTH, RANGE 30 WEST, AND A PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 16 NORTH, RANGE 31 WEST, AND A PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 16 NORTH, RANGE 30 WEST, AND A PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 16 NORTH, RANGE 31 WEST, ALL IN WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT WHICH IS S87°42'05"E 617.60' AND N03°03'08"E 102.59' FROM THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7 AND RUNNING THENCE S87°03'27"E 93.41' TO A SET IRON PIN, THENCE N02°40'05"E 1716.06' TO A FOUND IRON PIN, THENCE N02°40'00"E 2143.06' TO A FOUND IRON PIN, THENCE N87°46'42"W 715.35' TO A FOUND IRON PIN, LOCATED AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 7, THENCE N02°27'56"E 46.74' TO A FOUND IRON PIN, LOCATED AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, THENCE N86°58'50"W 751.69' TO THE CENTERLINE OF RUPPLE ROAD, THENCE ALONG SAID CENTERLINE S20°20'50"W 44.46', S14°10'34"W 65.18', S09°16'42"W 44.03', S06°40'25"W 54.50', S05°18'51"W 54.60', S04°54'39"W 54.72', S04°57'12"W 59.85', S07°17'28"W 55.76', S13°38'10"W 52.31', S23°24'21"W 49.39', S32°18'04"W 47.75', S36°38'10"W 37.75', S40°31'21"W 59.19', S44°51'16"W 60.06', S46°48'24"W 67.32', S44°39'19"W 56.83', S39°09'37"W 55.03', S30°55'13"W 66.99', S24°56'32"W 57.82', S22°38'12"W 58.87', S22°23'40"W 54.61', S22°23'30"W 58.25', S23°21'56"W 55.44', S27°27'36"W 58.17', S31°39'13"W 58.36', S31°28'21"W 57.48', S21°21'38"W 54.39', S09°23'27"W 60.29', S02°47'11"W 51.61', S01°55'43"W 51.38', S02°08'41"W 57.15', S02°26'03"W 49.97', S02°30'26"W 51.03', S02°49'34"W 51.91', S02°57'05"W 54.52', S02°54'57"W 52.46', S02°50'56"W 55.16', S02°43'15"W 48.89', S02°33'25"W 54.35', S02°31'07"W 51.57', S02°25'23"W 56.41', S02°19'43"W 50.93', S02°27'09"W 38.77', S02°34'15"W 44.03', S03°12'55"W 52.16', S02°57'10"W 49.78', S02°33'54"W 51.59', S02°57'20"W 63.38', S03°10'04"W 52.97', S02°59'07"W 52.35', S02°31'09"W 51.19', S03°12'19"W 54.91', S02°13'15"W 33.15', S02°14'57"W 49.48', S02°42'49"W 48.61', S02°37'18"W 50.94', S02°42'26"W 49.47', S02°18'12"W 48.56', S02°45'16"W 52.85', S02°38'45"W 52.94', S02°54'55"W 41.80', S02°54'55"W 360.64', THENCE LEAVING SAID CENTERLINE S87°30'27"E 629.81' TO A CORNER POST, THENCE S03°09'47"W 7.60' TO A SET IRON PIN, THENCE S86°50'13"E 1088.84', THENCE S03°03'08"W 434.54', THENCE ALONG SAID RIGHT-OF-WAY S87°02'59"E 209.22' TO THE POINT OF BEGINNING, CONTAINING 152.23 ACRES MORE OR LESS. SUBJECT TO EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

BEFORE THE CITY COUNCIL OF FAYETTEVILLE, ARKANSAS

**PETITION TO FORM FAYETTEVILLE MUNICIPAL PROPERTY OWNERS'
IMPROVEMENT DISTRICT NO. 10- WELLSRING**

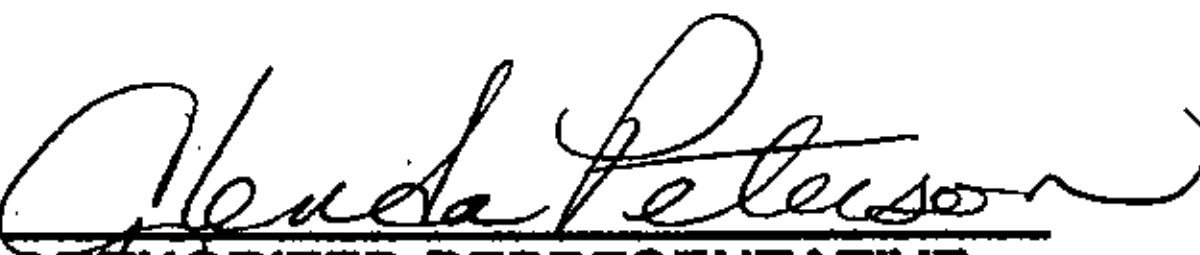
ABSTRACTER'S CERTIFICATE OF PROPERTY OWNERSHIP

Blue Star Title of Arkansas, Inc. hereby certifies that the deed records in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, reflect that the following are the owners of the record title to all of the real property described in Exhibit "A" to the Petition to Form Fayetteville Municipal Property Owners' Improvement District No. 10 – WellSpring, a copy of which Exhibit "A" is attached hereto and made a part hereof:

CB Ventures, LLC, Brandon Barber, Seth Kaffka and Brandon Rains

DATED this 15th day of September, 2005.

Blue Star Title of Arkansas, Inc.

By: 
AUTHORIZED REPRESENTATIVE

09-15-05P03:21 RCVD

RECEIVED

SEP 15 2005

**CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE**

EXHIBIT - A

SURVEY DESCRIPTION:

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NOTICE

YOUR SIGNATURE HEREON SHOWS THAT YOU FAVOR THE ESTABLISHMENT OF AN IMPROVEMENT DISTRICT. IF THE DISTRICT IS FORMED, YOU MAY BE CHARGED FOR THE COSTS OF THE IMPROVEMENTS.

BEFORE THE CITY COUNCIL OF FAYETTEVILLE, ARKANSAS

PETITION TO FORM FAYETTEVILLE MUNICIPAL PROPERTY OWNERS'
IMPROVEMENT DISTRICT NO. 10- WELLSPRING

For their petition to form Fayetteville Municipal Property Owners' Improvement District No. 10- Wellspring, the undersigned petitioners state:

1. Petitioners are the record title owners to all of the real property described in Exhibit "A" attached hereto and made a part hereof as reflected by the deed records in the office of the Circuit Clerk and Ex-Officio Recorder of Washington, County Arkansas. All of said property is located within the corporate limits of the City of Fayetteville, Arkansas.

2. Petitioners desire that the real property described in Exhibit "A" attached hereto and made a part hereof be established and laid off into a municipal property owners' improvement district pursuant to Ark. Code Ann. Sec. 14-94-101 et seq. for the purpose of constructing, purchasing, accepting as a gift or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electric and

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CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

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telephone distribution systems, sanitary sewers, streets and highways including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one of those purposes.

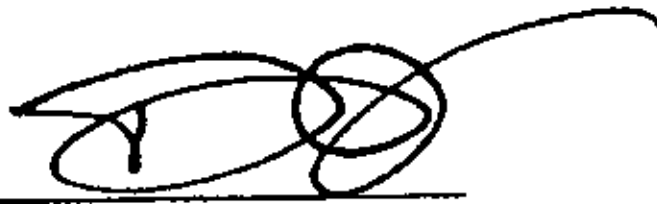
3. Petitioners desire that the district shall not cease to exist upon the acquiring, constructing or completion of the improvements, but it shall continue to exist for the purpose of preserving, maintaining, and operating the improvements, replacing equipment, paying salaries to employees, and performing any other functions or services authorized in Ark. Code Ann., Title 14, Chapter 94.

4. Petitioners name the following three individuals who own real property in the district to be appointed as commissioners of the district: Brandon Barber, Seth Kaffka and Brandon Rains.

5. Petitioners propose that the name of the district be Fayetteville Municipal Property Owners' Improvement District No. 10- Wellspring.

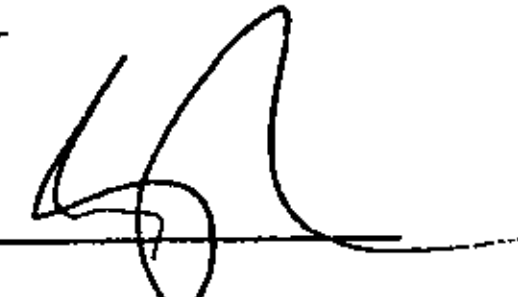
WHEREFORE, the undersigned Petitioners hereby petition the City Council of Fayetteville Arkansas to adopt an ordinance establishing and laying off the real property described in Exhibit "A" attached hereto and made a part hereof into Fayetteville Municipal Property Owners' Improvement District No. 10- Wellspring for the purpose of constructing, purchasing, accepting as a gift or maintaining facilities for waterworks recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electricity and telephone distribution systems, sanitary sewers, streets including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one of those purposes.

DATED this 15th day of September, 2005.



Brandon Barber

CB Ventures, LLC
An Arkansas limited liability company



Seth Kaffka



Brandon Rains

By: 

Brandon Barber, authorized member

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**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

10/4/2005

City Council Meeting Date

Sharon Jenkins

Submitted By

Utilities Management

Division

Operations

Department

Action Required:

A resolution approving a bid waiver and contract renewal for the lease of the Plexar-Custom Telecommunications Service with Southwestern Bell Telephone, L.P.

\$69,000.00

Cost of this request

\$

Category/Project Budget (2005)

-

Program Category / Project Name

Various Funds

Account Number

\$

Funds Used to Date

-

Utilities Management

Program / Project Category Name

\$

Remaining Balance

-

Various Funds

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

Finance and Internal Service Director

Date

Received in City Clerk's Office



Received in Mayor's Office



Mayor

Date

Comments:

Approval of Bid Waiver and Plexar Contract Renewal
October 4, 2005 Council Meeting
Page 1 of 1

AGENDA REQUEST MEMO

TO: Mayor Dan Coody

THRU: Gary Dumas, Director of Operations

FROM: Sharon Jenkins, Parking Manager 

DATE: September 13, 2005

SUBJECT: Approval of a Bid Waiver and Contract Renewal with Southwestern Bell Telephone Company

RECOMMENDATION

Staff requests the approval of a bid waiver and contract renewal for the lease of the Plexar-Custom Telecommunications Service with Southwestern Bell Telephone Company. The Plexar System is a Central Office based switching system that provides dial tone as well as many other features to each of our offices and facilities. The Plexar system is the only system where such service and switching equipment is based in the office of the company providing the service (SBTC), thus making it a sole source product. For this reason, staff recommends approving a bid waiver to renew the current services we have in place.

BACKGROUND

The City originally subscribed to this service in 1989, renewed the contract in 1995, and renewed again in 2000. The rates for this renewal have remained the same as the 2000 contract prices. We began the 2000 contract with 427 lines and grew to 481 lines. Today, through efficient auditing and utilization practices, we have only 459 lines which average about \$12.00 per month.

DISCUSSION

The contract for the Plexar-Custom Service will be for a term of 5 years. We have a 15% growth added into the contract for any additions that would be needed over the term of the contract. Attached is the contract(s) for the lease of the Plexar-Custom System. Also attached are the system highlights for further clarification of its benefits.

BUDGET IMPACT

All program budgets already have adequate funds budgeted in the Telephone Expense Accounts to cover this cost. Since the rates remain the same, there will be no increase necessary to any fund or program.

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING A FIVE-YEAR RENEWAL OF THE SERVICE AGREEMENT WITH SOUTHWESTERN BELL TELEPHONE, L.P. IN THE AMOUNT OF \$69,000.00 TO PROVIDE PLEXAR CUSTOM TELECOMMUNICATIONS SERVICE.

WHEREAS, maximum cost savings, PBX system reliability, expandability and flexibility can only be achieved through a Central Office based switching system; and,

WHEREAS, Southwestern Bell Telephone, L.P. is the only telecommunications company that provides such a Central Office based switching system, making them the sole-source provider for these telecommunications services.

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 finds that such circumstances constitute an exceptional situation where competitive bidding is not feasible or practical; waives the requirements of formal competitive bidding, and approves a five-year renewal of the service agreement with Southwestern Bell Telephone, L.P. in the amount of \$69,000.00 to provide Plexar Custom Telecommunications Service.

PASSED and APPROVED this 10th day of October, 2005

APPROVED:

By: _____

DAN COODY, Mayor

ATTEST:

By: _____

SONDRA SMITH, City Clerk

SOUTHWESTERN BELL TELEPHONE COMPANY PROPOSAL

PLEXAR-CUSTOM SYSTEM HIGHLIGHTS

The Plexar-Custom System is a leased telecommunications system housed in the Fayetteville Central Office which can provide an unlimited number of plexar telephone lines. It is a switched voice communications system provided by an arrangement of exchange access lines, station lines, switching equipment and other facilities located on Telephone Company premises.

The Plexar-Custom System provides efficient internal communications; direct inward dialing and direct outward dialing.

The standard features of the Plexar-Custom System are included in the monthly rate, plus those optional features you have selected. Optional features are at additional costs but are available on a per station basis which eliminates the necessity of installing a feature package when only a few stations need a particular feature. A list of standard and optional features is included.

Southwestern Bell Telephone Company is proposing the Plexar-Custom System for the City of Fayetteville because we feel it has many advantages over a premise-based PBX system. Specifically, we would like to state these advantages as:

1. **NO LARGE CAPITAL INVESTMENT REQUIRED**

The Plexar-Custom System is offered under a Rate Stability Plan Lease Arrangement for a period of one, two, three, four, or five years. Therefore, it is not necessary to invest thousands of dollars in a purchased, premise-based PBX system which can quickly become obsolete due to the fast-changing electronic technology. The Rate Stability Plan means that the base charge of your Plexar rate will not change for the duration of the contract.

2. **CONTRACT RENEWAL CAPABILITY**

Although you subscribe to a fixed-term rate stability plan, you may, at your option prior to the expiration of the existing contract term, renew the contract for any available term at the time of renewal. A new contract is required and you will be subject to the prevailing rates for the term chosen (a longer contract period will ensure a cheaper rate).

3. **MAXIMUM SYSTEM RELIABILITY**

Since the Plexar-Custom System is provided from the Central Office, reserve power is automatically provided from the generators that back-up our Central Office thus providing the City of Fayetteville with the most reliable system available without the added expense of purchasing a premise-based back-up power source for a premise-based PBX system.

4. LOWER MAINTENANCE COSTS

The monthly rate for your Plexar-Custom System includes Southwestern Bell Telephone Company-provided 24-hour monitoring and maintenance on your plexar stations and trunks. The only maintenance costs you will incur will be charged by the equipment vendor for your actual on-premise telephone equipment.

5. NO COSTLY SPACE REQUIREMENTS FOR PLEXAR-CUSTOM SYSTEM

For most on-premise PBX systems, the vendor requires floor space for the equipment. In addition, most electronic systems require this space to be environmentally controlled. Since the Plexar-Custom System is housed in the Fayetteville Central Office, the City will not have to provide space for equipment. All that will be required is wall space for us to place our Network Interface at your building on which your plexar station lines will terminate.

6. FACILITATION OF CHANGES AND ADDITIONS

Orders for station feature changes or additions may be placed with your local Southwestern Bell Telephone Representative. The standard interval for minor changes or additions is three working days. However, Southwestern Bell provides, at no charge, software to the customer to enable them to initiate feature changes in-house and eliminate the standard service charge of \$4.50 per feature change. These customer initiated feature changes are instantaneous and eliminate the 2 to 3 day wait.

7. NO ADDITIONAL DIRECT INWARD DIALING CHARGES ARE INCURRED

Trunk line charges for direct inward dialing normally run \$49.50 per line per month. With the Plexar-Custom System, all 427 stations are equivalent to a trunk line by offering direct inward dialing capabilities on each individual station, and are all included in the contract price averaging \$6.92 per station per month.

8. THE PLEXAR-CUSTOM SYSTEM HAS VIRTUALLY UNLIMITED GROWTH

No longer do you have to worry about the number of station or trunk ports available for growth, the cabinet size, the size of the processor, the number of slots available for trunk cards, the cost of equipment upgrades, or the size of your equipment facility.

9. NO AIR CONDITIONING, HEATING, OR ELECTRICAL COSTS

Since the Plexar-Custom System is housed at the Central Office, the City does not have to provide a facility that is environmentally controlled.

10. SOUTHWESTERN BELL WILL HELP YOU BETTER MANAGE YOUR COMMUNICATIONS

Southwestern Bell will provide you with a monthly printout of all stations and trunks installed on your system and detailed charges incurred for all stations.

11. LOCAL TECHNICIANS PROVIDE THE INSTALLATION AND MAINTENANCE TO THE PLEXAR-CUSTOM SYSTEM

This will provide faster response times for installation of new lines and maintenance of existing lines.

12. SOUTHWESTERN BELL'S TROUBLE RESPONSE BEGINS AS SOON AS YOU CALL IN THE TROUBLE

Since the Plexar-Custom System is part of the Central Office, we have full remote diagnostic and maintenance procedures that will help get you back in business quicker. Our average clear-time for most problems is 2 to 4 hours.

Plexar-Custom System Features:

- Station-to-Station Call (call another station by dialing only 3 digits)
- Call Hold (place a call on hold)
- Conference Call (3-Way Call)
- Call Transfer (transfer call to another phone)
- Call Pickup (answer another ringing phone in your group)
- Call Hunting (incoming calls search a group of stations for first available line)
- Call Waiting (allows second call to come in on station already in use)
- Caller Identification (displays the number of the incoming caller)
- Call Forwarding - Variable (forward all calls to another station)
- Call Forwarding - Busy (forward incoming calls when your line is busy)
- Call Forwarding - No answer (forward incoming calls after 3 rings)
- Automatic Call Back (reinitiates call when station you are calling is no longer busy)
- Toll Restriction (restrict certain levels of outward dialing capabilities such as long distance)
- Speed Calling 6 (one button speed calling)
- Speed Calling 30 (two button speed calling)



Plexar®-Custom Service Agreement

Southwestern Bell Telephone Service Agreement
C.3.
Page 8 of 14
SW-4325B
Revised 8-03

ICB/CSP Number: 00-BAR-1083A

Page 1 of 2

I. PREAMBLE

The undersigned hereby agrees to subscribe to Plexar-Custom Service ("SERVICE") as set forth in the following terms and conditions.

II. SCOPE OF SERVICE

Plexar-Custom SERVICE is a central office based business communications system, which serves customers with a minimum of 75 stations within a single serving office.

Plexar-Custom SERVICE is provided utilizing existing SOUTHWESTERN BELL TELEPHONE, L.P. (SWBT) facilities and equipment, construction of new facilities, the purchase of new central office equipment, or any combination thereof. The SERVICE is provided by an arrangement of station lines, switching equipment, customer facility groups, and other facilities located on SWBT's premises. Plexar-Custom SERVICE is offered pursuant to the provisions of SWBT's tariffs and such rules, regulations, rates and charges are hereby made a portion of this Agreement. Should any part of this Agreement be in conflict with the applicable tariffs, the tariffs will govern.

III. TERMS OF AGREEMENT

This Agreement shall be effective for 60 months, beginning with the date of service installation.

IV. GENERAL PROVISIONS

- A. SERVICE will be provided to CUSTOMER for a Fixed Rate Term as specified on SWBT form SW-4325C, Services Covered, attached and made a part hereof. This SERVICE is intended for the administrative use by CUSTOMER only and should not be used by or resold to any other entity.
- B. This Agreement shall be subject to all applicable Federal, State, and Local laws, ordinances, and regulations, and shall be construed in accordance with the laws of the state in which SERVICE is furnished. The rates and charges, terms and conditions of this Agreement, including form SW-4325C, are subject to the review and/or approval by the regulatory authorities of the State in which SERVICE is furnished.
- C. Items specified in the attached SW-4325C will be provided at the rates and charges shown.

V. CUSTOMER SERVICE LOCATION(S) & PLEXAR STATION QUANTITIES

- A. SERVICE shall be provided to CUSTOMER at the locations specified and at the Cutover and Capacity Quantities for Plexar Station types (Digital, Basic, Off-Premises and/or Non-Working Plexar Stations) shown on form SW-4325C attached.
- B. Installation of Off-Premises stations will be subject to charges set out in the SW-4325C, charges in applicable sections of SWBT's tariffs, and all other terms and conditions herein.

VI. FIXED PAYMENT PLAN PROVISIONS

- A. The Fixed Payment Plan provides that CUSTOMER shall pay a Fixed Monthly Rate for SERVICE over the Fixed Rate Term, beginning on the date SERVICE is installed.
- B. Installation and Non-Recurring Charges shown for this SERVICE may be deferred over the fixed rate term. For subsequent additions of service items after the system is cutover (Additions), Customer may elect to defer Installation and Non-Recurring Charges over the remaining Fixed Rate Term based on the discount rate referenced on the SW-4325C. Installation and Non-Recurring Charges will be applied each and every time services are installed or reinstalled.
- C. Fixed Rates are not subject to rate increases initiated by SWBT during the course of this Agreement.
- D. Tariffed exchange access services and/or trunk services and miscellaneous service offerings not specified in the attached SW-4325C are subject to SWBT initiated rate changes.
- E. The rates, minimum quantities and maximum capacities specified in the attached SW-4325C are applicable to Additions made during the period of the Fixed Rate Term. Charges for Fixed Monthly Additions begin at installation of the Addition and end at the end of the Fixed Rate Term. For Additions not specified on the SW-4325C, the rate will be established by an addendum to this Agreement at the time of the Customer's request.



Plexar®-Custom Service Agreement

C.3.
Southwestern Bell Telephone Service Agreement
SW-4325C
Revised 8-03

ICB/CSP Number: 00-BAR-1083A

Page 2 of 2

VII. PROVISIONS FOR DISCONNECTION'S OR MOVES

A. Disconnection of Plexar Stations

If CUSTOMER disconnects Plexar Stations prior to the expiration of this Agreement, termination liability may apply. Termination liability is applicable only on those Plexar Stations disconnected which result in a reduction in the number of remaining in-service Plexar Stations below 65% of the Cutover Quantity (including all other cutover station quantities resulting from subsequent system additions during the Fixed Rate Term). The termination liability is the present worth of the sum of the station rates for the unexpired portion of the Fixed Rate Term for the number of Plexar Stations determined above. In addition, the present worth of any Installation and Non-Recurring Charges that have been deferred must be paid in full. The discount rate to be used in determining the present worth of these charges is shown on the attached SW-4325C.

B. Complete Disconnection of SERVICE

If CUSTOMER disconnects SERVICE in its entirety, termination liability applies. The termination liability is the present worth of the sum of the station rates for the unexpired portion of the Fixed Rate Term for the number of stations determined in VI.A or 65% of the Cutover Quantity (including all other cutover station quantities resulting from subsequent system additions during the duration of the Fixed Rate Term), whichever is greater. In addition, the present worth of any Installation and Non-Recurring Charges that have been deferred must be paid in full. The discount rate to be used in determining the present worth of these charges is shown on the attached SW-4325C. Note: Stations previously disconnected, for which termination liability has already been incurred, should not be included in calculating station termination liability for a complete disconnection of service.

C. Moves of SERVICE to Different CUSTOMER Locations

CUSTOMER may move services from one CUSTOMER location to another where facilities permit, subject to the appropriate Installation, Non-Recurring and Recurring Charges associated with the move, and subject to regulatory approval, where applicable. Fixed Monthly Rates for Plexar Stations at the new location will be established by an addendum to this Service Contract at the time of the request. Fixed monthly rates for features affected by the move will also be established by an addendum to this Service Contract at the time of the request. Termination liability may apply if the 65% condition of paragraph VI.A above is met.

VIII. MISCELLANEOUS PROVISIONS

All additions to this Agreement will be made coterminous with the original contract period unless the CUSTOMER initially requests a shorter term.

One primary directory listing will be furnished with this SERVICE in accordance with the regulations set forth in the Directory Listings section of SWBT's tariff.

The assignment of telephone numbers for this SERVICE shall be in accordance with the Rules and Regulations Applying to All Customers' Contracts section of SWBT's tariff.

Sufficient floor space and the necessary wiring, outlets and commercial power for the operation of the SERVICE shall be furnished by the CUSTOMER who assumes all responsibility for the safe condition of such floor space, wiring, outlets and power.

Monthly End User Common Line Charges will be billed to CUSTOMER for each Plexar-Custom station as prescribed by the FCC and set forth in SWBT's Access tariff. An additive equivalent to the Business End User Common Line Charge will apply for each Plexar-Custom Access Line. The difference between these two amounts will be credited to the CUSTOMER's account.

IX. ENTIRE AGREEMENT

This Agreement, including SWBT form SW-4325C and any other Attachments, constitute the entire Agreement of the parties for the provision and use of Plexar-Custom Service and can be amended only by a writing signed by the parties hereto.

IN WITNESS WHEREOF, the foregoing Agreement has been executed by the parties hereto, as of the dates set forth below.

Accepted:
SOUTHWESTERN BELL TELEPHONE, L.P.
By its General Partner
SWBT TEXAS, L.L.C.

By: _____

Title: _____

Date: _____

Accepted:
City of Fayetteville

By: _____

Title: _____

Date: _____



PLEXAR-CUSTOM SERVICE ARRANGEMENT **Services Covered**

Page: 2 of 4

Date: _____

Issued: _____

Service Order Number: _____

Contract ICBPS/CSP #: 00-BAR-1083a renewalCustomer: City of FayettevilleTelephone Number: 479 521-7700Type of Service: Plexar Custom Renewal

Cutover Quantity	Capacity Quantity	USOC Code	Description	Unit		Fixed Rate	Service Connection & Non-Recurring Charges		Total Fixed Rate
				Non-Recurring Charges	Service Connection Charges		Unit	Total	
2	4	SHWCF	835 N Ruppel Rd	N/A	N/A	18.77	N/A		37.54
1	1	SHWCF	6608 E Lake Sequoyah	N/A	N/A	12.86	N/A		12.86
1	1	SHWCF	4780 N. College Av	N/A	N/A	7.47	N/A		7.47
8	12	SHWCF	4201 N Shiloh Dr.	N/A	N/A	13.52	N/A		108.16
11	15	SHWCF	4500 S School Dr	N/A	N/A	8.05	N/A		88.55
1	2	SHWCF	650 Wilson Av	N/A	N/A	4.32	N/A		4.32
2	4	SHWCF	100 Summit Av	N/A	N/A	5.15	N/A		10.30
10	15	SHWCF	385 W Ernest Lancaster	N/A	N/A	14.21	N/A		142.10

Initial installation discount rate: N/A RENEWAL

- To be used in determining the present worth of Termination Liability pursuant to Paragraph VI of the Agreement.

- To be used in determining the Annulity Factor for Deferral of initial installation and/or non-recurring charges pursuant to Paragraph V of the Agreement.

Customer Elects to defer the following amount
of installation and Non-Recurring charges over
the Plexar-Custom Contract Period \$ N/A RENEWAL

This addendum may be reissued, as required, to reflect service and/or
equipment changes ordered by the customer.

Date	_____	Customer Signature	_____
Customer Authorized	_____		
Date	_____		

SOUTHWESTERN BELL TELEPHONE, L.P.
By its General Partner, SWBT TEXAS, LLC

SW4325C
Revised 8-03



PLEXAR-CUSTOM SERVICE ARRANGEMENT Services Covered

Page: 3 of 4

Date: _____

Issued: _____

Service Order Number: _____

Contract ICBPS/CSP #: 00-BAR-1083a renewal

Customer: City of Fayetteville

Telephone Number: 479 521-7700

Type of Service: Plexar Custom Renewal

Cutover Quantity	Capacity Quantity	USOC Code	Description	Unit Non-Recurring Charges	Unit Service Connection Charges	Unit Fixed Rate	Total Service Connection & Non-Recurring Charges	Total Fixed Rate
1	2	SHWCF	833 N Crossover Rd	N/A	N/A	18.65	N/A	18.65
1	2	SHWCF	708 N Garland Av	N/A	N/A	12.56	N/A	12.56
2	4	SHWCF	900 S. Hollywood Av	N/A	N/A	12.25	N/A	24.50
2	4	SHWCF	3385 Plainview Av	N/A	N/A	18.77	N/A	37.54
2	4	SHWCF	401 W Ernest Lancaster	N/A	N/A	13.01	N/A	26.02
1	1	SHWCF	1170 S Skyline Rd	N/A	N/A	5.20	N/A	5.20
1	1	SHWCF	4568 S School Av	N/A	N/A	8.05	N/A	8.05
15	40	SHWCF	2835 S Industrial Parkway	N/A	N/A	6.76	N/A	101.40

Initial installation discount rate: N/A RENEWAL

- To be used in determining the present worth of Termination Liability pursuant to Paragraph VI of the Agreement.
- To be used in determining the Annuity Factor for Deferral of initial installation and/or non-recurring charges pursuant to Paragraph V of the Agreement.

Customer Elects to defer the following amount
of Installation and Non-Recurring charges over
the Plexar-Custom Contract Period \$ N/A RENEWAL

This addendum may be reissued, as required, to reflect service and/or
equipment changes ordered by the customer.

Date

Customer Authorized

Customer Signature

SOUTHWESTERN BELL TELEPHONE, L.P.
By its General Partner, SWBT TEXAS, LLC



PLEXAR-CUSTOM SERVICE ARRANGEMENT
Services Covered

Page: 4 of 4
Date: _____
Issued: _____

Service Order Number: _____
Contract ICBPS/CSP #: 00-BAR-1083a renewal

Customer: City of Fayetteville

Telephone Number: 479 521-7700

Type of Service: Plexar Custom Renewal

Cutover Quantity	Capacity Quantity	USOC Code	Description	Unit Non-Recurring Charges	Unit Service Connection Charges	Unit Fixed Rate	Service Connection & Non-Recurring Charges	Total Fixed Rate
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23	25	SWZL4	CALLER ID NAME AND NUMBER	N/A	N/A	1.85	N/A	42.55
48	50	SW8LC	LOOP CONDITIONING	N/A	N/A	6.50	N/A	312.00

Initial installation discount rate: _____

- To be used in determining the present worth of Termination Liability pursuant to Paragraph VI of the Agreement.

- To be used in determining the Annuity Factor for Deferral of initial installation and/or non-recurring charges pursuant to Paragraph V of the Agreement.

Customer Elects to defer the following amount of Installation and Non-Recurring charges over the Plexar-Custom Contract Period \$ N/A RENEWAL

This addendum may be reissued, as required, to reflect service and/or equipment changes ordered by the customer.

Date	Customer Signature
Customer Authorized Date	<u>Michael P. [Signature]</u>

SOUTHWESTERN BELL TELEPHONE, L.P.
By its General Partner, SWBT TEXAS, LLC



PLEXAR-CUSTOM SERVICE ARRANGEMENT Services Covered

Page: 1 of 4

Date: _____

Issued: _____

Service Order Number: _____

Contract ICBPS/CSP #: 00-BAR-1083a renewal

Total

Customer: City of Fayetteville		Telephone Number: 479 521-7700		Service Order Number: _____		Contract ICBPS/CSP #: 00-BAR-1083a renewal	
Type of Service: Plexar Custom Renewal							
Cutover Quantity	Capacity Quantity	USOC Code	Description	Unit Non-Recurring Charges	Unit Service Connection Charges	Unit Fixed Rate	Service Connection & Non-Recurring Charges Total Fixed Rate
313	320	SHWCF	140 W Rock	N/A	N/A	4.37	N/A 1367.81
7	10	SHWCF	303 W Center	N/A	N/A	4.24	N/A 29.68
10	12	SHWCF	101 W Rock	N/A	N/A	4.41	N/A 44.10
5	7	SHWCF	1640 Armstrong	N/A	N/A	26.36	N/A 131.80
46	50	SHWCF	1525 S Happy Hollow Rd	N/A	N/A	14.05	N/A 646.30
13	15	SHWCF	1475 W. Cato Springs Rd	N/A	N/A	13.25	N/A 172.25
4	6	SHWCF	240 E Rock	N/A	N/A	12.93	N/A 51.72
13	15	SHWCF	1560 S Happy Hollow Rd	N/A	N/A	14.05	N/A 182.65

Initial installation discount rate: N/A RENEWAL

- To be used in determining the present worth of Termination Liability pursuant to Paragraph VI of the Agreement.

- To be used in determining the Annuity Factor for Deferral of initial installation and/or non-recurring charges pursuant to Paragraph V of the Agreement.

Customer Elects to defer the following amount
of Installation and Non-Recurring charges over
the Plexar-Custom Contract Period \$ N/A RENEWAL

This addendum may be reissued, as required, to reflect service and/or
equipment changes ordered by the customer.

_____	_____
Date	Signature
_____	_____
Customer Authorized	By its General Partner, SWBT TEXAS, LLC
Date	

 SOUTHWESTERN BELL TELEPHONE, L.P.
 SW4325C
 Revised 8-03

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C.4.
Fayetteville Depot, LLC Lease Agreement
Page 1 of 10

10/4/2005

City Council Meeting Date

Sharon Jenkins

Submitted By

Parking Management

Division

Operations

Department

Action Required:

A resolution approving a Lease Agreement with Fayetteville Depot, LLC to allow the City of Fayetteville to lease a parcel of private property for the purpose of providing parking enforcement services and revenue collections.

\$0.00

Cost of this request

\$

Category/Project Budget (2005)

-

Parking Revenue

Program Category / Project Name

Rent revenue 2130-0913-4426-66
Citation revenue 2130-0913-4500-00

Account Number

\$

Funds Used to Date

-

Parking Management

Program / Project Category Name

05049

Project Number

\$

Remaining Balance

-

Off-Street Parking Fund

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐


Department Director

9-14-05
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:


City Attorney

9/16/05
Date


Finance and Internal Service Director

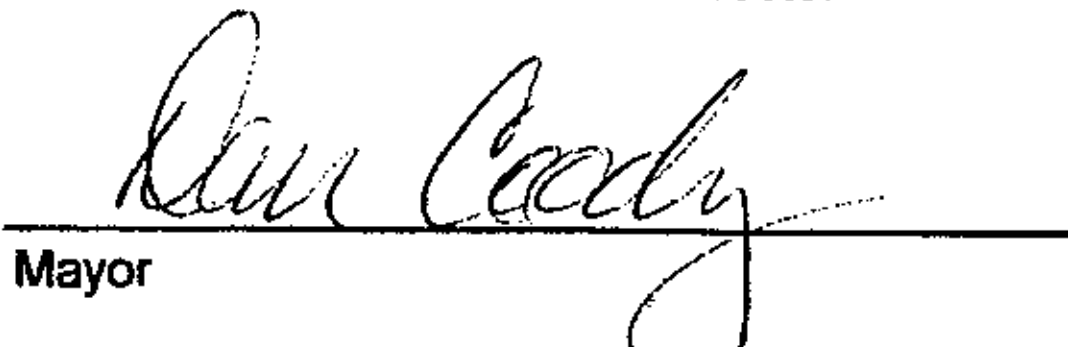
9-16-05
Date

Received in City Clerk's Office



Received in Mayor's Office




Mayor

9/16/05
Date

Comments:

Approval of Lease Agreement with Fayetteville Depot, LLC
October 4, 2005 Council Meeting
Page 1 of 1

AGENDA REQUEST MEMO

TO: Mayor Dan Coody
THRU: Gary Dumas, Director of Operations
FROM: Sharon Jenkins, Parking Manager *slj*
DATE: September 12, 2005
SUBJECT: Approval of a Lease Agreement with Fayetteville Depot, LLC

RECOMMENDATION

Staff requests the approval of a lease agreement with Fayetteville Depot, LLC to allow the City to lease a parcel of private property for the purpose of providing parking enforcement and revenue collections.

BACKGROUND

This property is located on the northwest corner of Dickson St. and West Ave. (the old train depot property) and is owned by Greg House and Steve Mansfield. The property owners are beginning to construct a paved 150+ space parking lot at this location and wish to install revenue control equipment to generate parking revenues. Under this lease agreement, City personnel will operate this lot like other public parking lots by collecting parking revenues, writing parking citations for overtime parking, and providing cleanup and litter removal. The fee to park in this lot would vary depending on time of day and day of the week. The average fee to park in this lot will be \$0.50 per hour.

DISCUSSION

There are four other public parking lots in this vicinity that are currently "free" lots. City staff has held numerous meetings with area merchants and the Walton Arts Center about changing these lots to generate parking revenues to fund a parking deck in this area. There is still a great deal of work to be done before staff will be ready to present an overall plan to the City Council.

BUDGET IMPACT

The total net revenues generated for the City are estimated at \$10,613.33 by the end of 2006, and \$52,024.00 per year, thereafter.

RESOLUTION NO. _____

A RESOLUTION APPROVING A LEASE AGREEMENT WITH FAYETTEVILLE DEPOT, LLC FOR PROPERTY LOCATED AT THE NORTHWEST CORNER OF DICKSON STREET AND WEST AVENUE TO PROVIDE PARKING ENFORCEMENT AND REVENUE COLLECTION SERVICES FOR A PROPOSED PARKING LOT.

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 a Lease Agreement with Fayetteville Depot, LLC for property located at the northwest corner of Dickson Street and West Avenue to provide parking enforcement and revenue collection services for a proposed parking lot. A copy of the Lease Agreement marked Exhibit "A" is attached hereto, and made a part hereof.

PASSED and APPROVED this 4th day of October, 2005.

APPROVED:

By: DAN COODY Mayor

ATTEST:

By: SONDRA SMITH City Clerk

DRAFT

**COMMERCIAL
LEASE CONTRACT**

IT IS UNDERSTOOD, COVENANTED AND AGREED that in consideration of the promises contained herein, the rent herein reserved, and of the covenants herein contained by the City of Fayetteville to be performed, Fayetteville Depot, LLC hereby leases to the City of Fayetteville, and the City of Fayetteville hereby agrees to lease from Fayetteville Depot, LLC, approximately 140 spaces in the parking lot located at Dickson Street and West Avenue, Fayetteville, AR 72701, as described in Exhibit A, attached hereto and made a part hereof, hereafter the Leased Premises, according to the following terms and conditions:

1. **PARTIES:** This Lease is between the City of Fayetteville, Arkansas (The City of Fayetteville), and Fayetteville Depot, LLC, owner, with offices at 932 N. Garland, Fayetteville, AR 72701 (Fayetteville Depot, LLC), for use as parking space only.

2. **LEASE TERM:** The initial term of the Lease shall begin on _____, 2005 and shall end on _____, 2006. This lease will automatically renew for subsequent 90 day terms unless written notice of termination is given by either party at least 90 days before the end of the above lease term.

3. **RENT:** The City of Fayetteville agrees to pay Fayetteville Depot, LLC during the term of this lease, or any extension thereof, 80% of the gross revenues derived from the leased premises. The term "gross revenues" shall mean all monies collected from the parking control equipment installed on the premises, hang tags, permits, and any special events not included in paragraph 4, and all monies collected from rent paid to park in any gated area(s), if applicable. Said revenues shall be paid to Fayetteville Depot, LLC monthly in arrears. The first rental payment will be due 60 days from initiation of this lease, initiation being once city equipment is set and operational, with rental payments due every 30 days thereafter.

4. **THE CITY OF FAYETTEVILLE'S OBLIGATIONS:** The City of Fayetteville hereby agrees that during the term of this Lease, or any extension thereof, the City of Fayetteville shall operate the leased premises as a revenue producing off-street parking lot; the City of Fayetteville agrees to equip the leased premises with parking revenue control equipment and/or parking gates and to maintain and keep said equipment in good working order; the City of Fayetteville agrees to collect the revenues from the parking equipment and/or parking gates located on the leased premises; and the City of Fayetteville agrees to be responsible for all trash and debris removal and to police the leased premises to insure that motorists parking thereon are paying required usage fees as are now, or as may hereafter, be reasonably established by the City of Fayetteville.

The City of Fayetteville agrees to allow Fayetteville Depot, LLC the right to operate the property on a cash-in-hand basis during major special events, not to exceed 15 days per calendar year. The City of Fayetteville agrees to allow Fayetteville Depot, LLC the ability to set its own rates during these special events only, and allow Fayetteville Depot, LLC to retain 100% of the revenues collected by cash-in-hand. During these special events, the City of Fayetteville would not provide any collection, cleanup, or enforcement services. Fayetteville Depot, LLC agrees to give the City of Fayetteville at least 5 days notice of its intent to use the Leased Premises for any special event.

5. **REAL ESTATE TAXES AND OTHER ASSESSMENTS:** Fayetteville Depot, LLC will pay all real estate taxes and other assessments which are assessed or imposed upon the Leased Premises or any part thereof, and due and/or payable during the term of this Lease.

6. **UTILITIES:** Fayetteville Depot, LLC shall be solely responsible for and promptly pay all utilities, including all charges for electricity and water, consumed at the Leased Premises.

7. **SUBLETTING, ASSIGNMENT:** The Leased Premises may not be sublet nor can the City of Fayetteville assign this Lease.

8. **SIGNS, AWNINGS, CANOPIES, FIXTURES, ALTERATIONS:** Initially, Fayetteville Depot, LLC and the City of Fayetteville must agree on a signage plan. If an agreement cannot be reached, then this Contract becomes null and void within 30 days of execution. Thereafter, the City of Fayetteville may, at its sole cost and expense, make such non-structural alterations, additions or changes, to the Leased Premises as it may desire provided, however, the City of Fayetteville obtains Fayetteville Depot, LLC's prior written consent for any such non-structural alterations, additions or changes including any exterior trade fixture, exterior signs, exterior lighting, plumbing fixtures, shades or awnings.

9. **SUBORDINATION:** This lease is subject to all present or future mortgages, deeds of trust or liens, affecting the demised premises and the City of Fayetteville hereby appoints the Fayetteville Depot, LLC as the City of Fayetteville's Attorney-in-Fact to execute and deliver any and all necessary documents to subordinate this lease to any present or future mortgages or deeds of trust affecting the demised premises.

10. **CONDEMNATION:** In the event the demised premises, or any part thereof, are taken by condemnation by the United States, the State of Arkansas, or any other governmental agency or authority, this lease shall be terminated at the option of Fayetteville Depot, LLC; and the City of Fayetteville hereby

specifically waives any right to any portion of the award received as damages for the taking of the real estate; provided, however, the City of Fayetteville shall be entitled to any condemnation awarded to the City of Fayetteville.

11. **FAYETTEVILLE DEPOT, LLC'S COVENANT OF QUIET ENJOYMENT:** Upon payment by the City of Fayetteville of the rents herein provided, and upon the observance and performance of all the covenants, terms and conditions on the City of Fayetteville's part to be observed and performed, the City of Fayetteville shall peaceably and quietly hold and enjoy the leased premises for the term hereby demised without hindrance or interruption by Fayetteville Depot, LLC or any other person or persons lawfully or equitably claiming by, through or under Fayetteville Depot, LLC, subject to the terms and conditions of this Lease. However, any repairs or maintenance that are performed, should be performed by the mutual consent of Fayetteville Depot, LLC and the City of Fayetteville at a time and in a manner which are calculated in exercise of good faith and reasonable business practice to minimize any disruption of the City of Fayetteville's business.

12. **DEFAULT BY THE CITY OF FAYETTEVILLE:** Any one or more of the following events shall constitute an "Event of Default":

- a. The failure of the City of Fayetteville to pay any item of rent, or rent is not paid within seven (7) days after notice of default is received by the City of Fayetteville, or other sum of money within ten (10) days after notice of default is received by the City of Fayetteville; or,
- b. Vacating or removing property from the Leased Premises other than in the normal course of business; or,
- c. Failure by the City of Fayetteville in the performance or observance of any covenant or agreement of this Lease (other than a failure involving the payment of money), which failure is not cured within thirty (30) days of receipt by the City of Fayetteville of notice of default or,
- d. Violation by the City of Fayetteville of any applicable Federal, state or local laws as same pertain to this Lease; or,
- e. The City of Fayetteville abandons the Leased Premises for more than ten (10) continuous days.

13. **REMEDIES IN EVENT OF DEFAULT:** Upon the occurrence and continuance of an Event of Default, Fayetteville Depot, LLC may, without notice to the City of Fayetteville (except where notice is expressly required by law), do any one or more of the following:

- a. Perform, on behalf and at the expense of the City of Fayetteville, any obligation of the City of Fayetteville under this Lease which the City of Fayetteville has failed to perform, the cost of which performance by Fayetteville Depot, LLC, together with interest thereon at the highest rate permitted by law from the date of such expenditure, shall be deemed additional rental hereunder and shall be payable by the City of Fayetteville to Fayetteville Depot, LLC upon demand;
- b. Elect to terminate this Lease and the tenancy created hereby by giving notice of such election to the City of Fayetteville, and may reenter the Leased Premises, without the necessity of legal proceedings, and may remove the City of Fayetteville and all other persons (if the City of Fayetteville is still in possession) and property from the Premises, and may store such property in a public warehouse or elsewhere at the cost of and in the account of the City of Fayetteville without resort to legal process and without Fayetteville Depot, LLC being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby;
- c. Fayetteville Depot, LLC may declare immediately due and payable the balance of any rent, Operating Costs and other charges that may otherwise be due and payable over the remainder of the term;
- d. Exercise any other legal or equitable right or remedy it may have.

Notwithstanding the provisions of clause (b) above and regardless of whether an Event of Default shall have occurred, Fayetteville Depot, LLC may exercise the remedy described in clause (b) without notice to the City of Fayetteville if Fayetteville Depot, LLC, in its good faith judgment, believes it would be injured by failure to take rapid action or if the unperformed obligation of the City of Fayetteville constitutes an emergency. Any costs and expenses incurred by Fayetteville Depot, LLC (including, without limitation attorney's fees) in enforcing any of its rights or remedies under this Lease shall be deemed to be additional rental hereunder and shall be repaid to Fayetteville Depot, LLC by the City of Fayetteville upon demand. Any notice required herein will be deemed delivered if left with Fayetteville Depot, LLC or Fayetteville Depot, LLC's guarantor or if left or posted at a conspicuous place at the Leased Premises.

14. **LEGAL EXPENSES:** In case suit shall be brought for recovery of possession of the Leased Premises, for the recovery of rent or any other amount due hereunder, or because of the breach of any other covenant herein contained on the part of the City of Fayetteville to be kept or performed, and a breach shall be established, the City of Fayetteville shall pay to Fayetteville Depot, LLC all expenses therefor, including Fayetteville Depot, LLC's reasonable attorney's fees. Should a breach be established as to an obligation due by Fayetteville Depot, LLC, then Fayetteville Depot, LLC shall pay all expenses therefor, including the City of Fayetteville's attorney's fees.

15. **SURRENDER OF PREMISES:** At the expiration of the tenancy hereby created, the City of Fayetteville shall surrender the Leased Premises in the same condition as the Leased Premises were in upon delivery of possession thereto under this Lease, reasonable wear and tear excepted, and shall surrender all keys for the Leased Premises to Fayetteville Depot, LLC at the place then fixed for the payment of rent.

16. **NOTICES:** All notices and other communications desired or required to be given hereunder shall be in writing and shall be given or made by (i) registered or certified mail, return receipt requested, (ii) hand delivery, or (iii) Federal Express or other nationally recognized carrier, addressed as follows: (x) if to

Fayetteville Depot, LLC, Fayetteville Depot, LLC, 932 N. Garland Ave., Fayetteville, AR 72701, Attention: Stephen Mansfield, with a copy to Houses Development Co., LLC, 217 N. East Ave., Fayetteville, AR 72701, Attention: Greg House, or (y) if to the City of Fayetteville, City of Fayetteville, 113 W. Mountain St., Fayetteville, AR 72701, Attention: Sharon Jenkins, with an additional copy to (z) any other person(s) or address(es) that either party may hereafter designate for such purpose by a written notice. All notices or other communications shall be deemed given (i) in the case of hand delivery, on the date it is delivered, (ii) in the case of delivery by U.S. mail, three business days after they are deposited in the U.S. mail, as provided above or (iii) in the case of overnight courier, on the date of delivery or refusal thereof.

17. **WAIVER:** The waiver by Fayetteville Depot, LLC of any breach of any term, covenant or condition herein contained shall not be deemed to be a continuing waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Fayetteville Depot, LLC shall not be deemed to be a waiver of any prior breach by the City of Fayetteville of any term, covenant or condition of this Lease, other than the failure of the City of Fayetteville to pay the particular rental so accepted, regardless of Fayetteville Depot, LLC's knowledge of such prior breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Fayetteville Depot, LLC, unless such waiver be in writing by Fayetteville Depot, LLC.

18. **COPIES:** This lease has been executed in multiple copies, one for the City of Fayetteville and one or more for Fayetteville Depot, LLC.

19. **ADDENDUMS:** Any and all addendums attached hereto shall become a part of this lease and shall be considered incorporated herein by reference as if set forth word for word.

20. **AGENCY:** The City of Fayetteville is aware that Fayetteville Depot, LLC's agent is a licensed attorney and/or Real Estate Broker and/or Real Estate Sales Agent. Fayetteville Depot, LLC's agent represents Fayetteville Depot, LLC only.

21. **SPECIAL CONDITIONS:**

a. This lease is contingent upon Fayetteville Depot, LLC closing its contract to purchase 550 W. Dickson Street.

b. This lease is contingent upon the City of Fayetteville having converted its Downtown Fayetteville lot 55 (Jose's) to paid parking, employing the same collection systems as used on the Leased Premises and at rates in parity with those charged for the Leased Premises, within 4 months of execution of this agreement. If said parking lot is not converted to paid parking within said time, Fayetteville Depot, LLC shall then have the right to terminate the contract with a thirty (30) written notice of termination given to the City of Fayetteville.

c. Fayetteville Depot, LLC has the right quarterly to approve the City of Fayetteville's rate structure and the location and number of gates and/or collection equipment; which shall initially occur no later than _____, 2005.

d. Fayetteville Depot, LLC has the right at its cost to audit the City of Fayetteville's accounts with respect to its gross revenues (as stated in paragraph 3 herein) on a quarterly basis or at such other time if a prior audit has shown a discrepancy of greater than 2%.

e. If the City of Fayetteville's gross revenue is less than 60% of the City of Fayetteville's projections (attached as Exhibit B hereto) by June 30, 2006, then Fayetteville Depot, LLC has the right to terminate this Lease Agreement within 5 days of providing Notice to the City of Fayetteville.

f. Fayetteville Depot, LLC agrees to pay the City of Fayetteville during the term of this Lease, or any extension thereof, an annual sum of \$150.00 per parking space for services rendered by the City of Fayetteville. This fee shall be prorated and payable in advance on a quarterly basis upon implementation of revenue collection equipment.

g. Fayetteville Depot, LLC may operate the Leased Premises as a paid lot with no obligation to the City of Fayetteville until the City of Fayetteville's equipment is set and operational.

h. Fayetteville Depot, LLC reserves the right to use up to 6 spaces at the north end of the Leased Premises with no revenue payment obligation from or to Fayetteville Depot, LLC for duration of this lease.

i. Fayetteville Depot, LLC shall have the option to purchase the revenue control equipment in advance.

j. If, after the advance purchase of said equipment, the City Council approves this contract, then the City agrees to purchase the equipment from Fayetteville Depot, LLC at Fayetteville Depot's cost for same. In the event the City Council fails to approve this contract, the City shall owe nothing and Fayetteville Depot, LLC shall own and retain the equipment.

k. All equipment purchased by Fayetteville Depot, LLC must conform with new parking equipment specified by the City and be purchased from Associated Time & Parking Controls, Inc., which is the City's current revenue control equipment vendor.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed in person thereunto duly authorized and their respective seals to be hereunto affixed; the day and year first hereinabove written.

THIS IS A BINDING LEGAL DOCUMENT - READ CAREFULLY BEFORE SIGNING

FAYETTEVILLE DEPOT, LLC

By: *Stephen Mansfield*
Owner/Manager

STEPHEN MANSFIELD
Printed Name

CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Dan Coody, Mayor

ATTEST:

By: _____
Sondra Smith, City Clerk

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY
FAYETTEVILLE DEPOT, LLC

Page 1 of 2

BOUNDARY

TRACT 2B: (S-2212: APR. 2000) (ORIGINAL DESCRIPTION)

FINAL ADJUSTED TRACT: SCHULER DEVELOPMENT CO., INC.

A PART OF THE NW 1/4 OF THE NE 1/4 OF SECTION 16, T-16-N, R-30-W, MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE NORTH QUARTER-CORNER [N 1/4] 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 164.68 FEET; THENCE N 02-50-37 E 13.17 FEET TO THE POINT OF BEGINNING, SAID POINT BEING A CHISELED "X" IN CONCRETE AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY OF DICKSON STREET AND THE EASTERLY RIGHT-OF-WAY OF A RAILROAD; SAID RAILROAD RIGHT-OF-WAY BEING A PERPENDICULAR DISTANCE OF 25.00 FEET EAST OF THE CENTERLINE OF EXISTING RAILROAD; THENCE ALONG SAID RAILROAD RIGHT-OF-WAY N 02-50-37 E 405.71 FEET TO THE PC OF A CURVE TO THE LEFT HAVING A RADIUS OF 1378.75 FEET AND A DELTA ANGLE OF 13-26-56 (RAILROAD CURVE DATA); SAID POINT BEING A FOUND IRON PIN; SAID POINT BEING 25 FEET EAST OF SAID RAILROAD CENTERLINE;

THENCE ALONG SAID CURVE AN ARC DISTANCE OF -323.63 FEET, HAVING A CHORD BEARING AND DISTANCE OF N 03-54-04 W 322.82 FEET; SAID POINT BEING A FOUND COTTON SPINDLE IN THE CENTERLINE ON THE OVERPASS OF LAFAYETTE STREET;

THENCE ALONG SAID CENTERLINE N 74-37-36 E 46.82 FEET TO A FOUND COTTON SPINDLE; SAID COTTON SPINDLE AT THE INTERSECTION OF SAID CENTERLINE OF LAFAYETTE STREET AND THE EASTERLY RIGHT-OF-WAY OF THE ORIGINAL RAILROAD; SAID INTERSECTION POINT BEING AT A RADIAL DISTANCE OF 50 FEET EASTERLY OF THE CENTERLINE OF THE ORIGINAL MAIN TRACK; THENCE SOUTHEASTERLY ALONG A CURVE TO THE RIGHT AN ARC DISTANCE OF 287.30 FEET HAVING A CHORD BEARING AND DISTANCE OF S 13-40-40 E 286.85 FEET TO A POINT OF TANGENCY; SAID POINT BEING A RADIAL DISTANCE OF 50 FEET EASTERLY FROM THE CENTERLINE OF ORIGINAL MAIN TRACK;

THENCE S 15-59-20 E 70.26 FEET;

THENCE S 75-51-38 W 2.23 FEET TO THE CORNER OF A BUILDING;

THENCE S 02-12-02 W 317.87 FEET TO A FOUND IRON PIN AT THE BACK OF A CURB;

THENCE ALONG SAID CURB LINE S 03-08-43 W 81.12 FEET TO A CHISELED "X" ON THE NORTH RIGHT-OF-WAY OF DICKSON STREET.

THENCE ALONG SAID RIGHT-OF-WAY OF DICKSON STREET N 87-03-14 W 111.82 FEET TO THE POINT OF BEGINNING; CONTAINING 1.60 ACRES, MORE OR LESS, CITY OF FAYETTEVILLE, ARKANSAS.

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY
FAYETTEVILLE DEPOT, LLC

Page 2 of 2

PARKING LOT LEASE DESCRIPTION FOR RAIL ROAD DEPOT

A PART OF THE NW 1/4 OF THE NE 1/4 OF SECTION 16, T-16-N, R-30-W, MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE NORTH QUARTER-CORNER [N 1/4] 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 164.68 FEET; THENCE N 02-50-37 E 13.17 FEET, SAID POINT BEING A CHISELED "X" IN CONCRETE AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY OF DICKSON STREET AND THE EASTERLY RIGHT-OF-WAY OF A RAILROAD; SAID RAILROAD RIGHT-OF-WAY BEING A PERPENDICULAR DISTANCE OF 25.00 FEET EAST OF THE CENTERLINE OF EXISTING RAILROAD;

THENCE ALONG SAID NORTH RIGHT-OF-WAY S 87-03-26 E 111.82 FEET TO A CHISELED "X" AT A CONCRETE CURB;

THENCE LEAVING SAID RIGHT-OF-WAY, ALONG SAID CURB LINE N 03-08-43 E 81.12 FEET TO A FOUND IRON PIN;

THENCE N 02-12-02 E 169.72 FEET TO THE POINT OF BEGINNING, SAID POINT BEING ON A COMMON LINE WITH PROPERTY DESCRIBED PREVIOUSLY "TRACT 2B" (S-2212; APR, 2000);

THENCE N 02-12-02 E 148.16 FEET TO THE CORNER OF A BUILDING;

THENCE N 75-51-38 E 2.23 FEET;

THENCE N 76-07-03 E 1.03 FEET TO A PARTY WALL;

THENCE ALONG SAID PARTY WALL N 74-40-12 E 63.06 FEET TO BUILDING FACE;

THENCE ALONG SAID BUILDING FACE N 03-42-28 E 5.60 FEET;

THENCE LEAVING SAID BUILDING FACE S 88-29-34 E 21.54 FEET TO THE WEST RIGHT-OF-WAY OF WEST AVENUE;

THENCE ALONG SAID RIGHT-OF-WAY S 02-27-30 W 175.01 FEET;

THENCE LEAVING SAID RIGHT-OF-WAY N 87-03-28 W 84.16 FEET TO THE POINT OF BEGINNING CONTAINING 0.316 ACRES MORE OR LESS, FAYETTEVILLE, AR.

EXHIBIT B

PARKING REVENUE PROJECTIONS

FAYETTEVILLE DEPOT, LLC PROPERTY

Parking Location	Number of Spaces	All expenses 16 hours/day 7 days/week \$150/space	Citation Revenue \$150/space	Meter Revenue \$0.50/hour
Dickson St. and West Ave.	140	\$21,000.00	\$21,000.00	\$155,120.00

	2005 1 month	2006 12 months	Total for first 13 months	2007 12 months
CITY OF FAYETTEVILLE:				
Revenue - Rent	\$1,750.00	\$21,000.00	\$22,750.00	\$21,000.00
Revenue - 20% of Collections	\$2,585.33	\$31,024.00	\$33,609.33	\$31,024.00
Revenue - Citations	\$1,750.00	\$21,000.00	\$22,750.00	\$21,000.00
GROSS REVENUES	\$6,085.33	\$73,024.00	\$79,109.33	\$73,024.00
Less Equipment/Startup Costs	(\$45,746.00)		(\$45,746.00)	
Less Expenses/Labor	(\$1,750.00)	(\$21,000.00)	(\$22,750.00)	(\$21,000.00)
NET PROFIT	(\$41,410.67)	\$52,024.00	\$10,613.33	NET PROFIT for 2007 \$52,024.00

	2005 1 month	2006 12 months	Total for first 13 months	2007 12 months
FAYETTEVILLE DEPOT, LLC				
Revenue - 80% of Collections	\$10,341.33	\$124,096.00	\$134,437.33	\$124,096.00
Revenue - Special Events	\$ unknown	\$ unknown	\$ unknown	\$ unknown
GROSS REVENUES			\$134,437.33	\$124,096.00
Less Construction Costs (est.)	(\$100,000.00)		(\$100,000.00)	
Less Rent Paid to City	(\$1,750.00)	(\$21,000.00)	(\$22,750.00)	(\$21,000.00)
NET PROFIT			\$11,687.33	NET PROFIT for 2007 \$103,096.00

2

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C.5.
Associated Time & Parking Controls, Inc.
Page 1 of 14

10/4/2005

City Council Meeting Date

Sharon Jenkins

Submitted By

Parking Management

Division

Operations

Department

Action Required:

A resolution approving a bid waiver and the purchase of revenue collection equipment from Associated Time & Parking Controls, Inc. for the amount of \$44,085.00, plus \$2,720.10 for use tax, plus a 10% project contingency in the amount of \$4,408.50; and approval of a budget adjustment for same in the amount of \$51,213.60.

\$51,213.60

Cost of this request

\$

-

Category/Project Budget (2005)

Dickson St. Parking Equipment

Program Category / Project Name

2130-9130-5801-00

Account Number

\$

-

Funds Used to Date

Parking Management

Program / Project Category Name

05049

Project Number

\$

-

Remaining Balance

Off-Street Parking

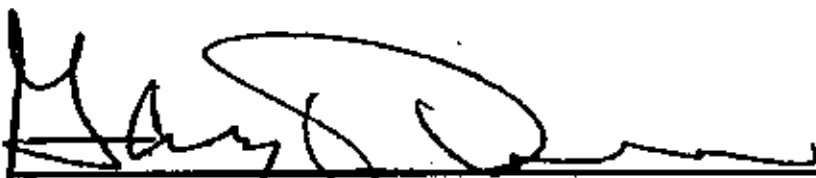
Fund Name

Budgeted Item

☐

Budget Adjustment Attached

X


Department Director

9-14-05
Date

Previous Ordinance or Resolution #

Original Contract Date:


City Attorney

9/15/05

Original Contract Number:


Finance and Internal Service Director

9-16-05
Date

Received in City Clerk's Office




Mayor

9/16/05
Date

Received in Mayor's Office



Comments:

Approval of Bid Waiver and Purchase of Parking Equipment
October 4, 2005 Council Meeting
Page 1 of 1

AGENDA REQUEST MEMO

TO: Mayor Dan Coody

THRU: Gary Dumas, Director of Operations

FROM: Sharon Jenkins, Parking Manager 

DATE: September 12, 2005

SUBJECT: Approval of a Bid Waiver and Purchase of Revenue Collection Equipment

RECOMMENDATION

Staff requests the approval of a bid waiver and the purchase of revenue collection equipment from Associated Time & Parking Controls, Inc. for the amount of \$44,085.00, plus \$2,720.10 for use tax, plus a 10% project contingency in the amount of \$4,408.50; and approval of a budget adjustment for same in the amount of \$51,213.60.

BACKGROUND

This request is for the purchase of 2 revenue collection machines to be installed on the property of Fayetteville Depot, LLC which is located on the northwest corner of Dickson St. and West Ave. If City Council approves the Lease Agreement with Fayetteville Depot, LLC for city staff to provide parking enforcement services at this location, then this equipment will be utilized to collect fees paid to park in the lot.

DISCUSSION

The 2 machines will be strategically located in the approximate 150 space parking lot to centralize revenue collections. The machines accept coins, bills, tokens, and credit card payments. The equipment is integrated with a server located at City Hall to provide real-time information and warning messages to parking staff in the office. The City recently purchased parking equipment (card readers, gate controllers, and revenue collection equipment) from Associated Time and Parking Controls for the municipal parking deck and other public parking lots in the Downtown Square area. Staff recommends approval of a bid waiver for the purchase of this equipment in order to remain with the same vendor and integrate with existing equipment.

BUDGET IMPACT

There is a total of \$70,033.45 in C-3 Parking Escrows account that can be used to cover the cost of the parking equipment. There are funds that are collected from C-3 merchants in the area to offset the number of off-street parking spaces provided by the merchant. An in lieu fee of \$1,200 for each on-site parking space is paid to the city and shall be expended for public parking facilities within the district it is collected.

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING THE PURCHASE OF PARKING REVENUE COLLECTION EQUIPMENT FROM ASSOCIATED TIME AND PARKING CONTROLS, INC. IN THE AMOUNT OF \$46,805.10; APPROVING A 10% CONTINGENCY IN THE AMOUNT OF \$4,408.50; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$51,213.60.

WHEREAS, the City of Fayetteville has placed Associated Time and Parking Controls, Inc.'s Revenue Collection Equipment in the Municipal Parking Deck, and other downtown parking lots; and,

WHEREAS, the existing Revenue Collection Equipment is integrated with a server located in the City Administration Building; and,

WHEREAS, any new Revenue Collection Equipment needs to be compatible with the existing equipment and server.

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 finds that such circumstances constitute an exceptional situation where competitive bidding is not feasible or practical, and waives the requirements of formal competitive bidding for as long as the Parking Management Division uses Associated Time and Parking Controls, Inc. Revenue Collection Equipment, and approves the purchase of Parking Revenue Collection Equipment from Associated Time and Parking Controls, Inc. in the amount of \$46,805.10.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a 10% contingency in the amount of \$4,408.50

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of \$51,213.60.

PASSED and APPROVED this 6th day of April 2004.

APPROVED

By: _____

DAN COODY, Mayor

ATTEST:

By: _____

SONDRA SMITH, City Clerk

Associated Time & Parking Controls

September 14, 2005

Ms. Sharon Jenkins
City Of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

Dear Ms. Jenkins,,

Please find the following pricing for the **SHELBY** Pay By Space Units and Shelters as discussed for the Fayetteville Depot Parking Lot. The units are priced per the specifications given by the City of Fayetteville. If you have any questions, please do not hesitate to contact me.

ITEM	QTY	DESCRIPTION	
1	2	SHELBY Parking Stations, Coin/CC/Bill/Token Acceptance	
2	2	Coin Changer Controller and Base Complete (\$1.00/\$0.25 coins)	
3	2	Pedestals - 22" CRS	
4	2	AC Power Option	
5	2	GSM Modem Kit, Cabinet Mount Antenna	
6	2	BOSS Software - Per Parking Station	
7	2	1000 Note Bill Stacker	
8	1	Mobile Data Key and Software	
9	1	BOSS Software - PC License (per software installation)	
10	1	USB Key Door Option	
11	1	Remote Training	
12	2	B.I.G. 3' X 3' Pre-Fabricated Steel Pay Station Shelters	
TOTAL EQUIPMENT COST			\$38,790
INSTALLATION, PROGRAMMING & WARRANTY			<u>\$ 5,295</u>
TOTAL INVESTMENT			\$44,085

Exclusions; Tax, Freight, 110VAC, Concrete Pad, Communication Wire

Respectfully submitted,

Christopher J. Archer

Christopher J. Archer
Associated Time & Parking Controls

Corporate Office- Dallas: 9104 Diplomacy Row • Dallas, Texas 75247 • Phone (214) 637-2763 • Fax (214) 688-0411
Austin: 4202 Santiago, Suite 3 • Austin, Texas 78745 • Phone (512) 693-9200 • Fax (512) 693-9091
Houston: 1217 West Loop North, Suite 190 • Houston, Texas 77055 • Phone (713) 263-1366 • Fax (713) 263-8154
New Orleans: 1000 Caruso Boulevard, Suite 413 • Slidell, Louisiana 70461 • Phone (985) 781-3929 • Fax (985) 781-3950
Salt Lake City: 1775 South 4130 West, Suite B • Salt Lake City, Utah 84104 • Phone (801) 886-9219 • Fax (801) 886-9278

www.associatedtime.com

City Of Fayetteville
Standard Parking Sales Contract
Fayetteville Depot Lot

INSTALLATION

- Mount above listed equipment.
- Includes complete system training.
- Final hook up and check out for a complete operating system.
- Exclusions: Power, permits and phone line.

WARRANTY

Factory Equipment Warranty: All equipment is warranted by the factory against defects in material and workmanship for one full year from the date of shipment, providing recommended installation and maintenance procedures are followed. These warranties normally cover repair or replacement of any part which fails under normal operation.

Associated Time & Parking Controls Labor Warranty: Associated Time & Parking Controls (ATPC) will provide a labor warranty period of 90 days for all work performed under this contract. This will cover the labor to repair or replace any parts or equipment included in this contract which malfunctions under normal use. All damaged or broken parts or items inoperative as a result of malicious or accidental damage shall be repaired or replaced on a time and material basis. Associated Time & Parking Controls' labor warranty is valid only during normal business hours: Monday – Friday 8:00 a.m. to 5:00 p.m. excluding holidays. All repairs provided during non-business hours will be at the prevailing overtime rates.

City of Fayetteville acknowledges that this sales contract constitutes the entire agreement and there are no warranties of any kind, express, implied or statutory or otherwise, not expressly set forth herein. No warranty is given concerning the effectiveness of the material used, recommendations given or the services rendered. This warranty is expressly in lieu of any other warranty, expressed or implied, including without limitation, any warranty of merchantability or fitness for a particular purpose.

PAYMENT TERMS

25% Deposit due with the order, progressive billings for equipment as delivered, and balance due upon completion. If in sole opinion of Associated Time & Parking Controls, the financial condition of City of Fayetteville at any time does not justify continue of shipment on the terms specified, ATPC may require full or partial payment in advance.

Associated Time & Parking Controls will not issue order for this equipment until deposit billings are paid. Delay's in payment of deposit billings will affect lead times

~~All past due amounts are subject to interest at a rate of 1.5% per month.~~ 

A cancellation or restocking charge of 25% may be assessed on canceled orders. Special order items may carry up to a 100% cancellation/restocking fee based on factory return policies.

CHANGE ORDERS

Any alteration or deviation from the above specifications, including but not limited to any such alteration or deviation involving additional material and/or labor costs, will be executed only upon a written order for same, signed by both City of Fayetteville and Associated Time & Parking Controls, and if there is any charge for such alteration or deviation, the additional charge will be added to the contract price of this contract. All 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.

PERMITS

The costs associated with obtaining required city building or electrical permits are not included in this contract unless expressly stated herein. If ATPC is required to obtain permits in connection with this contract, all costs will be billed as incurred. Permit costs may include time, mileage, city fees, drafting expenses, copies, etc.

GENERAL PROVISIONS

All work shall be completed in a workman-like manner and in compliance with all building codes and other applicable laws.

This contract is based upon visually observed conditions. As a result of the nature of the services to be provided by Associated Time & Parking Controls hereunder, it is possible that unforeseen conditions will arise that could not be determined by visual inspection prior to starting work. In the event this occurs, additional work shall be performed on either a time and materials or fixed fee basis, after City of Fayetteville has been notified that such additional work is necessary and has approved said additional work in writing.

ATPC may, at its discretion engage subcontractors to perform work hereunder; provided ATPC shall fully pay said subcontractor and in all instances remain responsible for the proper completion of this Contract.

Associated Time & Parking Controls warrants it is adequately insured for injury to its employees and others incurring loss or injury as a result of the acts of ATPC or its employees or subcontractors. Owner to carry fire, flood, and other necessary insurance.

If any tax, public charge, tariff, duty, or increase therein, is now or hereafter assessed, levied, or imposed upon this transaction, on the goods to be sold, or upon any sale, delivery, or other action taken hereunder, or upon the import of such goods, the burden or such charge or change shall be borne by City of Fayetteville.

City of Fayetteville shall bear the risk of any loss, deterioration, or damage of all goods from the time the goods are delivered to City of Fayetteville's premises.

DELAY

Associated Time & Parking Controls shall be excused for delay in completion of the work covered by this Contract caused by federal, state, or municipal action or regulation, strikes or other labor troubles not the fault of ATPC, inclement weather, fire, acts of God, acts of the City of Fayetteville, City of Fayetteville's Agent, lender, and/or other subcontractor(s), damage to or destruction in whole or part of merchandise or manufacturing plant; lack of, or inability to obtain raw materials, labor, fuel, or supplies; or any other causes, contingencies, or circumstances unforeseen by ATPC and beyond its reasonable control which prevent or hinder the manufacture or delivery of the merchandise or make the fulfillment of this Agreement impracticable.

In the event performance is delayed through no fault of Associated Time & Parking Controls, the time for completion of ATPC's performance shall be extended by the same amount of time as the length of the delay and ATPC shall be entitled to additional compensation to fully compensate ATPC for damages incurred by ATPC for labor, materials, and its profit and overhead.

DEFAULT

Associated Time & Parking Controls may stop work if any payment specified hereinabove is not paid when due. If payment is not made within ^{thirty} ~~ten~~ (30) days after its respective due date, Associated Time & Parking Controls Systems may abandon the work and pursue all rights and remedies available to it, including, but not limited to, suing the City of Fayetteville for the reasonable value of work theretofore performed and/or damages for breach of contract, including ATPC's lost profits, lost opportunities and overhead as well as interest and attorneys' fees thereon.

COSTS AND ATTORNEY'S FEES

If any action, suit or other proceeding is instituted to remedy, prevent or obtain relief from a default in the performance by any party of its obligations under this Agreement, the prevailing party shall recover all of such party's costs and its reasonable, but not less than its actual, attorneys' fees incurred in each and every such action, suit, or other proceeding, including any and all appeals or petitions therefrom.

LIMITATION OF LIABILITY

In no event shall Associated Time & Parking Controls liability (whether based on an action or claim in contract, tort or otherwise) to City of Fayetteville arising out of or related to the product hereunder exceed the contract price.

ENTIRE CONTRACT

This writing constitutes the entire Agreement between the parties and exclusively determines the rights and obligations of the parties. Any prior course of dealing, custom or usage of trade or cause of performance notwithstanding.

INVALID PROVISION

In the event that any provision hereof is found to be invalid or unenforceable pursuant to judicial decree, the remainder to this Agreement shall remain valid and enforceable according to its terms.

INDEMNITY

City of Fayetteville hereby releases, and shall defend, indemnify and hold harmless, Associated Time & Parking Controls and ATPC's officers, agents and/or employees, and assigns ("ATPC Related Parties") from any and all claims, suits, or causes of action for damages for bodily injury, or property damage, arising out of or in any way connected with, or alleged to be arising out of or connected with, the goods or services described in this sales contract. "Bodily injury" shall mean physical injury to any person, emotional distress, death and/or loss of consortium. Such duties as set forth herein shall be owed to Associated Time & Parking Controls and to the ATPC Related Parties to the full extent allowed by law and regardless of any alleged or actual liability or fault on the part of ATPC or any ATPC Related Party, whether vicarious, direct, active, passive, sole, or concurrent, save and except that a duty to defend only, and no duty to indemnify, shall arise should it be finally adjudicated by a forum of competent jurisdiction that the said bodily injury, personal injury or property damage arises from the willful misconduct of the City of Fayetteville or any City of Fayetteville Related Party, provided that nothing herein shall be construed to alter, limit or otherwise compromise in any form whatsoever, that immunity afforded the City of Fayetteville under the Constitution and Statutes of the State of Arkansas.

The defense obligation contemplated herein is contingent upon the tender by ATPC or ATPC Related Parties of a claim which wholly or partially comes within the ambit of the above, and City of Fayetteville shall pay promptly when due and as incurred, all attorneys' fees and costs generated in the defense of ATPC and/or ATPC Related Parties in connection with the entire action, including bonds and the costs of appeal. No obligation of City of Fayetteville shall be lessened, reduced, delayed or affected by the existence of other potential or actual indemnitors or insurers, or by ATPC or ATPC Related Parties' rights against any third party for contribution, subrogation or pro-rata.

FREEDOM OF INFORMATION ACT.

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, ATPC 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 costs pursuant to the FOIA may be assessed for this compliance.

GOVERNING LAW AND JURISDICTION

The construction and performance of this Agreement shall be governed by the laws of the State of Arkansas. The parties irrevocably consent to the institution of any legal action or proceeding against them or any of their property arising out of or in any way connected with this Agreement in Arkansas State or United States federal district court located in Washington County, Arkansas, and submits to the nonexclusive jurisdiction of the aforesaid courts in any such legal action or proceeding.

ACCEPTANCE OF ORDER

The prices, specification and conditions are satisfactory and are hereby accepted. Associated Time & Parking Controls is authorized to do the work as specified.

CITY OF FAYETTEVILLE, ARKANSAS

ASSOCIATED TIME & PARKING CONTROLS, INC.

DAN COODY, Mayor

Signature: Christopher J. Archer
Christopher J. Archer

ATTEST:

Title: Vice President

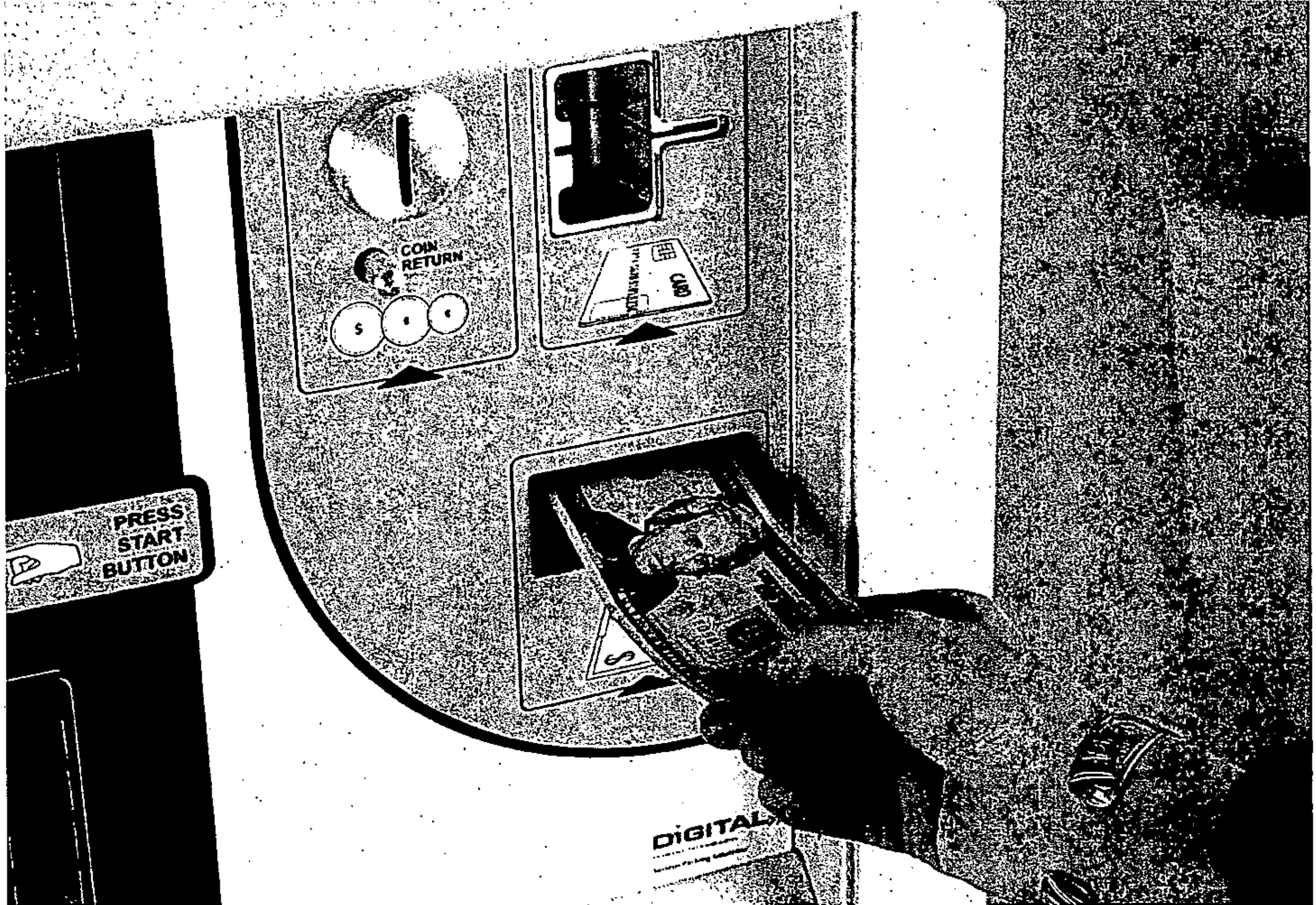
SONDRA SMITH, City Clerk

Date: 9/14/05

Date : _____

Note: This proposal may be withdrawn by Associated Time & Parking Controls, Inc. if not accepted within thirty (90) days.

The Parking Station



DIGITAL»
PAYMENT TECHNOLOGIES
Serious Parking Solutions™

Building on a Legend

The Intella-Pay Payment Station from Digital Payment set new standards for audit control, reliability and ease of use. With Shelby, Intella-Pay's capabilities are enhanced with a new engine – the latest technology platform that allows low cost real-time communication, a full color screen and low power, low temperature operation. Security has been key in the design of Shelby, with no exposed hinges, solid construction and an imposing look.

Automating your parking facilities means higher revenue, lower costs, more control and more flexibility. All that is available without compromising security or audit controls and backed by the best customer service in the industry.



The Parking Station

Features & Benefits



>> Vandal/Theft Resistance

No pry points – Minimizes theft and vandalism by eliminating the ability to gain purchase with prying tools.

No exposed hinges – Having no hinges external to the enclosure eliminates this common point of attack.

Control – The Shelby Parking Station communicates by sending information out rather than waiting to be asked for information. Unlike competitive products, information is “pushed” out rather than waiting for it to be “pulled.” This means information from Shelby is always up to date and accurate.

Audit – Serialized and detailed. Audit reports list coins, bills and credit card payments separately. Reports can also be generated from Shelby directly showing details for the last 10,000 transaction and totals for the entire life of the product.

True real-time alarming – All alarm notifications are sent in real-time to email, cell phones or pagers for immediate response by the appropriate authority.

True real-time reporting – Each transaction is sent from Shelby as soon as it is completed. This means up to the second reporting – not reports that show what happened yesterday or the last time you downloaded. It also means you have access to information about each individual transaction for complete analysis.

>> Configuration Flexibility

There are lots of ways to configure rates with Shelby including; by day of week, by time of day, by calendar day, by payment type and by stall number. Hardware options include solar battery charging, an AC heater and a variety of communications options. Shelby can also be configured to issue permits and communicate with other systems such as non-cash payment systems (campus cards, cell phones, smart cards, etc.).

>> Operational Efficiency

Remote rate/message configuration – No restrictions on changing rates, messages or configuration. Everything is configurable via the Internet or a USB Key.

Very simple maintenance – Easy access and minimal tools required means low downtime and low overall cost of ownership.

>> Easy to Use

Pay by Space or Pay and Display – (or both) whatever Whichever is best for your application and can be changed at any time using software and updated remotely.

Full color graphic ready screen – Means more clarity and more communication.

Multi-lingual capability – A Microsoft operating system means support for any language supported by Microsoft.

Custom screens/messages – Much more flexibility than just changing a little text.

Online or Offline — What are your requirements today and tomorrow?

- Complete audit control
- More accurate enforcement
- No more unfolding bills
- More payment options
- More secure
- Detailed reporting
- More rate flexibility



The Shelby Parking Station has the ability to operate in many modes from simple, offline, standalone mode requiring data to be physically collected, all the way to full online mode where full control of settings, collecting data and monitoring can be done remotely. Shelby also has the ability to grow with your needs. You can start with simple offline parking stations and add capabilities as your requirements change.

	Offline	Online
Non-Cash Transactions	Batch processing	Batch processing with remote collection or real-time processing
	Limited to credit card	Can include pre-paid cards and other non-cash payment methods
Monitoring of operational status		Remote monitoring, real-time alarming, intelligent dispatch
Configuration of rates and messages	Created offline and transferred via disk or net	Created online and sent to parking station directly or opportunity to schedule for a specific date
Reporting	Data collected using "sneaker-net"	All data real-time reflecting all transactions
	Reports generated and distributed manually	Access to data and reports can be given directly to other departments or landlords

Digital Payment is known for customer service. Below are a few comments from happy customers. Ask us about our reference list!

"I would highly recommend Digital!"

"I have been very pleased with my decision"

"We have nearly paid for our investment in less than two months."

"One thing will always stick out when talking about Digital Payment. Customer Service!"

"I would recommend you to anybody considering this type of investment!"

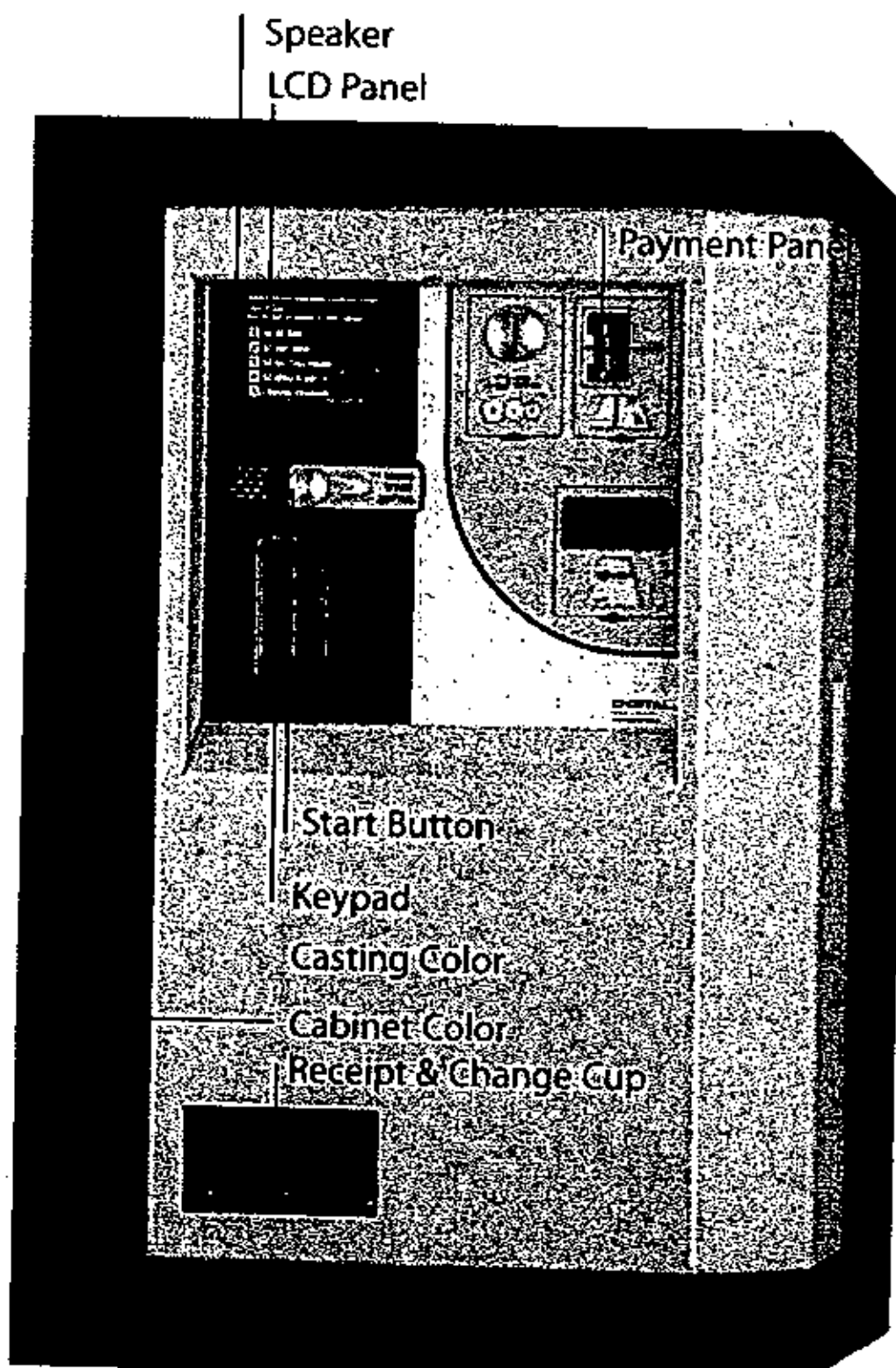
"We have seen a huge jump, with almost a 50% increase in revenue."

"Our customers love it!"



Parking Station

Specifications



Coin Acceptor

- Accepts up to 12 different coins/tokens
- Returns rejected coins, tokens or slugs immediately
- Coin acceptor release button for clearing of acceptor path
- Differentiates coins or tokens using two optical sensors and by examining diameter, width and metal content
- Is vandal resistant, weather proof and corrosion resistant

Coin Changer – Replenishing

Five high capacity tubes
Completely mechanically secured
Highest change capacity
Water and jam resistant
Easy to clear without tools

Coin Changer – Hoppers

Two independent hoppers
\$0.05, \$0.25, \$1.00 or \$2.00 (Canada)
Up to 900 coins per hopper
Completely auditable

Credit/Smart Card Reader and Operation

- Reads track 1, 2 and 3 of all mag-stripe cards conforming to ISO 7810 and 7811.
- Reads and writes to chip based smart cards conforming to ISO 7810 and 7816
- Cards are not ingested – no moving parts to fail
- Is modular, unplugs easily and can be replaced in less than 2 minutes
- Flush mounted with no part of the reader protruding outside the cabinet
- Stores a minimum 10,000 bad card numbers in the payment station memory.

Receipt Printer / Paper

Standard - 2" with partial cut for receipt (Pay and Display)
Optional - 3" perforated two piece paper (Pay and Display)
100% recyclable
Thermal coating is made from water-soluble ingredients
Can be pre-printed with customized messages on back of receipt
Resistant to heat, fading, and curling and can be left on a vehicle dashboard for extended periods of time

Alarm

- Senses shock, vibration, door open and tilt
- Sends alarm notifications to EMS if unit is equipped for real-time communication
- Can wake the parking station from sleep mode

Display

320 x 240 resolution
16 bit color (65,536 colors)

Environmental Specifications

25°C to +40°C (-13°F to +104°F)
95% Relative Humidity

Power

120Vac 60Hz for charging battery or solar panel

Keypad

Standard – high security tactile buttons with audible indicator
Optional – piezo-electric non-moving buttons with audible indicator
Piezo-electric start switches

Locks

Can be re-keyed twice without removing lock cylinder

Cabinet

12 gauge stainless steel
No pry points or exposed hinges

Controller

64MB non-volatile memory
100MHz Intel XScale processor
Microsoft Windows CE Operating System

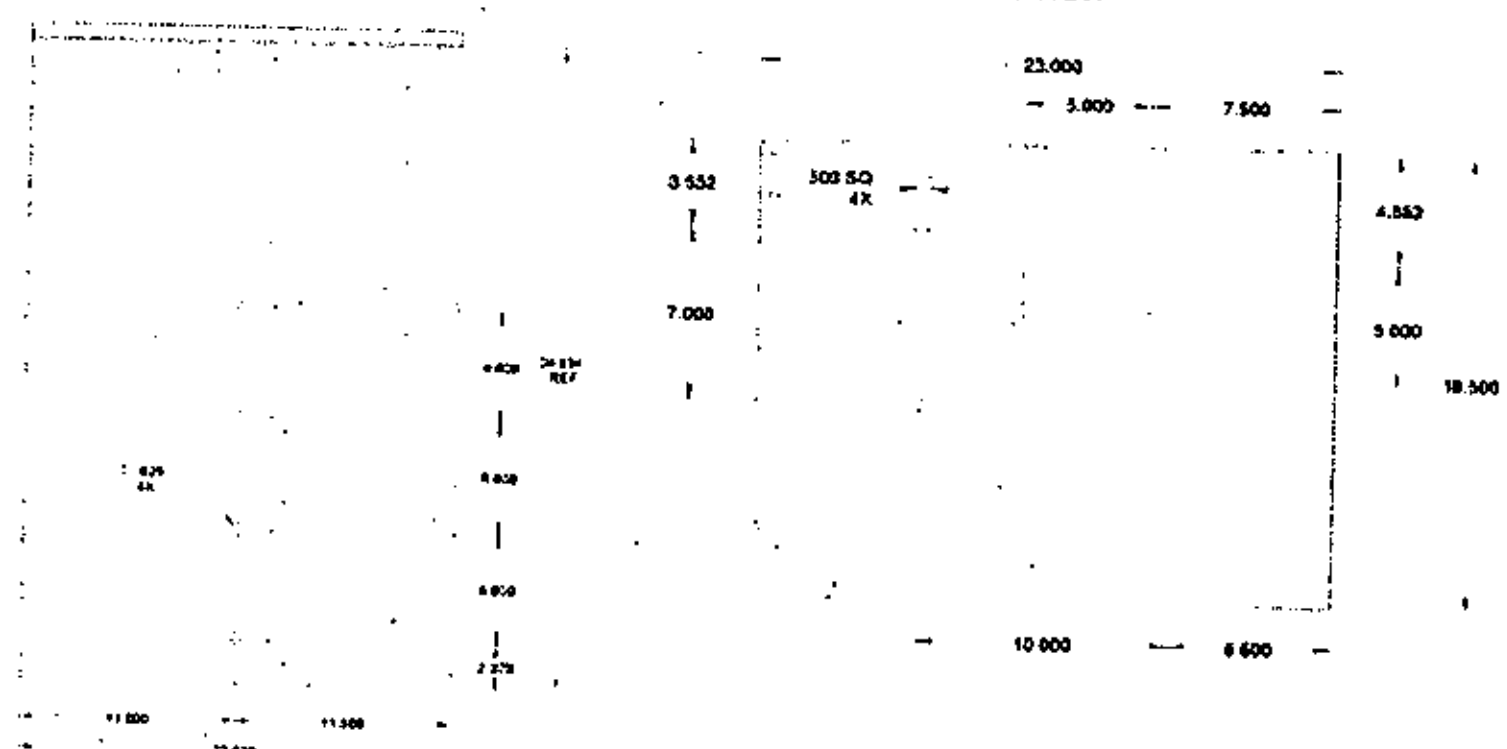
Communications

all communication via TCP/IP encrypted with 128-bit SSL

Mounting

Cabinet back view

Cabinet bottom view





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

C.5.
Associated Time & Parking Controls, Inc.
Page 14 of 14

Budget Year 2005	Department: Operations Division: Telecommunications & Parking Program: Off Street Parking Exp	Date Requested 9/13/2005	Adjustment Number
----------------------------	--	------------------------------------	-------------------

Project or Item Added/Increased: \$51,214 in the Fixed Assets account in the Dickson Street Parking Equipment capital project.	Project or Item Deleted/Reduced: \$51,214 from C-3 Parking Escrows; in lieu fees collected for public parking facilities. (There is currently \$70,033.45 in this account.)
--	--

Justification of this Increase: The funding is for the purchase of three Revenue Collection Equipment for the public parking lots near Dickson Street.	Justification of this Decrease: C-3 Parking Escrows are funds collected from C-3 merchants in the area to offset the number of off-street parking spaces provided by the merchant. An in lieu fee of \$1,200 for each on-site parking space is paid to the city and held in an interest bearing account and shall be expended for public parking facilities within the district it is collected.
--	--

Increase Expense Budget (Decrease Revenue Budget)

Account Name	Account Number				Amount	Project Number	
Fixed assets	2130	9130	5801	00	51,214	05049	1

Decrease Expense Budget (Increase Revenue Budget)

Account Name	Account Number				Amount	Project Number	
#N/A	2130		1529	03	51,214		

Approval Signatures

Requested By: Sharon Jenkins Date: 9-13-05

Budget Manager: _____ Date: _____

Department Director: _____ Date: _____

Finance & Internal Services Director: Steph Davis Date: 9-16-05

Mayor: _____ Date: _____

Budget Office Use Only

Type: A B C D E

Date of Approval: _____

Posted to General Ledger: _____

Posted to Project Accounting: _____

Entered in Category Log: _____

Initial	Date
Initial	Date
Initial	Date
Initial	Date

3

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C.6.
Parking Management Division Position
Page 1 of 10

10/4/2005

City Council Meeting Date

Sharon Jenkins

Submitted By

Parking Management

Division

Operations

Department

Action Required:

A resolution approving the addition of a full-time position in the Parking Management Division and a budget adjustment in the amount of \$3,282.00.

\$3,282.00

Cost of this request

Category/Project Budget (2005)

Personnel Services

Program Category / Project Name

1010-5300- (various)

Account Number

Salaries and Wages

Program / Project Category Name

\$

Funds Used to Date

General Fund

Project Number

Remaining Balance

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

X

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

Date

Received in City Clerk's Office



Finance and Internal Service Director

Date

Received in Mayor's Office



Mayor

Comments:

Addition of a Full-Time Position in Parking Management
October 4, 2005 Council Meeting
Page 1 of 2

AGENDA REQUEST MEMO

TO: Mayor Dan Coody

THRU: Gary Dumas, Director of Operations 

FROM: Sharon Jenkins, Parking Manager 

DATE: September 12, 2005

SUBJECT: Approval of a Full-Time Position in the Parking Management Division
and a Budget Adjustment for \$3,282.00

RECOMMENDATION

Staff requests the approval of a half-time position for the Parking Management Division and budget adjustment for \$3,282.00. This will cover salary expenses for the remainder of 2005.

BACKGROUND

The City is seeking to enter into a contract with Fayetteville Depot, L.L.C. to operate a private parking lot located on the northwest corner of Dickson St. and West Ave. With the addition of this 150+ space parking lot, parking staff will provide parking enforcement and revenue collections for up to 16 hours per day. Currently, the City has one full-time Parking Enforcement Officer and one half-time Parking Enforcement Officer. This new full-time position is for a Field Operations Supervisor that will provide parking services for the Fayetteville Depot lot as well as all other public parking areas in the Downtown Square and Dickson Street areas.

DISCUSSION

Although this position will be providing all the same duties as a Parking Enforcement Officer, staff requests this position to be a Field Operations Supervisor so that special field projects can be administered by this position. By having a lead position, we can provide regular supervision and assistance for field workers, perform regular surveys and audits, perform maintenance checks of all the equipment on a daily basis, allocate resources accordingly to ensure all operational activities are handled in an efficient and productive manner. This position will have a direct impact on increased revenues simply by ensuring all resources are operational and performing at the highest capacity. Another very important project that will be developed and implemented by this position is a comprehensive residential parking program for the Downtown Square and Dickson Street areas. A full description of the job responsibilities are attached for further explanation.

BUDGET IMPACT

The total budget needed for 2005 will be \$3,282.00. The total additional funds needed to fund this position annually are \$30,830.00, plus \$14,969.00 for benefits. Revenues generated from parking citations written typically cover the cost of salaries. We anticipate over \$73,000.00 in annual revenues to be generated from the Fayetteville Depot parking lot alone. Efficiency improvements employed by this position in other areas will result in an increase in revenues in all parking areas.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ADDITION OF ONE (1) FULL-TIME POSITION IN THE PARKING MANAGEMENT DIVISION; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$3,282.00.

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 addition of One (1) Full-Time Position in the Parking Management Division.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of \$3,282.00.

PASSED and APPROVED this 10th day of October, 2005.

APPROVED

By: DAN GOODY, Mayor

ATTEST:

By: SONDRA SMITH, City Clerk

DRAFT

**CITY OF FAYETTEVILLE
NON-EXEMPT
POSITION DESCRIPTION**

SECTION 1

HEADING

Position: Field Operations Supervisor

Incumbent: New FTE

Dept: Operations

Reports to: Parking Manager

Approvals: _____

Date: August 9, 2005

SECTION 2

BASIC FUNCTION

(Briefly describe the role of your job in the City and the reasons your job exists.)

Supervises working crews in the accomplishment of scheduled work activities. Working crews include 2 to 4 parking enforcement officers, 1 to 2 maintenance workers, public service workers, and jail trustees as assigned.

Field investigates all reports of problems and takes the appropriate action to correct emergency situations.

Determines material, personnel and equipment required to complete projects, and allocates resources accordingly to ensure all operational activities are handled in an efficient and productive manner.

Responds to citizen calls, requests, complaints, and customer service needs. These may include parking equipment damage, parking deck/structure damage, pavement and parking lot cracks, equipment failure, facility maintenance needs, poor or negligent parking enforcement service, litter control problems, etc.

Visits work sites to inspect work in progress and ensures projects and work assignments are completed properly and according to schedule.

Advises supervisor of potential operational problems and proposes and implements corrective actions as necessary using independent judgment when circumstances necessitate. This may include equipment, job site conditions, safety problems, various staffing needs, or special conditions requiring contracts or permits.

Maintains records to document materials, manpower, and equipment required to complete projects and other operational or service information. May enter data into a work order system or utilize other software designed for tracking projects, work orders, service requests, and productivity.

Participates in the hiring process and provides performance counseling and input for disciplinary actions.

Prepares performance evaluations on all crew members.

Ensures that employees are properly trained in work processes, work site and equipment safety, vehicle and equipment maintenance schedules and techniques.

Ensures that employees properly and accurately enforce all parking regulations and city ordinances for the issuance of parking citations and towing procedures.

Provides secure methods of revenue collections on all parking meters and revenue collection equipment.

Provides project management and installation support for all parking related projects.

Ensures contract compliance of service providers; facilitates meetings with parking management and security companies providing services.

Analyzes customer use of parking facilities and prepares reports and memorandums of findings.

Prepares rules, regulations, and policies for parking facilities for contractors, monthly customers, and transient customers.

Makes recommendations on parking operation improvements to ensure a successful parking program.

Performs all duties of the Parking Enforcement Officers, as needed, including issuing citations, revenue collections, equipment maintenance, sign maintenance, etc.

Formulates schedules for all work crews to ensure enforcement services are provided 16 hours per day, 6 days per week.

Coordinates all field activities for special events; assists with traffic control, parking and safety issues related to special events and parades.

Works variable shifts, from time to time, to ensure full supervision of work crews; provides on-call service for emergency situations.

Assists Communications Coordinator with workload, as needed, with telecommunications work orders, including cable installation and minor programming changes.

Performs related work as required.

SECTION 3

MAJOR DUTIES & TASKS

(Describe the major duties and tasks you perform when doing your job and the % of your time you spend on each of the duties)

1. Supervise and coordinate parking operations	% of Time 25
2. Supervise activities and scheduling of working crews	% of Time 25
3. Project management and implementation	% of Time 8
4. Responds to citizen needs and complaints	% of Time 8

5. Trains employees, allocates materials, personnel, equipment and schedules work crew assignments	% of Time 10
6. Coordinates all special event activities; assists with traffic, parking and safety issues	% of Time 2
7. Provides maintenance of equipment	% of Time 7
8. Issues parking citations and warnings	% of Time 15

SECTION 4

EQUIPMENT OPERATED AND SKILL LEVEL REQUIRED

(Describe the equipment you operated on the job)

Skilled electrical work is required in the repair of revenue collection equipment, card readers, gate controllers, telco cabling, light fixtures in the parking decks, and parking control devices.

Bench work in the shop includes operating power saws, drills, meter calibration devices, soldering tools, and other related power tools.

Operates light to heavy equipment such as street sweeper, ride-on vacuum equipment, power washer, ice removal equipment, etc.

Utilizes electronic handheld devices for issuing parking citations; utilizes desktop computers to download and update parking ticket information and related information and reports.

Graduation from high school or equivalent, and considerable experience in parking operations and/or public works maintenance or operational activities.

Ability to organize and lead teams of employees to accomplish specific work tasks and maintain a high level of morale.

Knowledge of the occupational hazards involved and the safety precautions necessary to the safe conduct of heavy manual work and equipment operation.

Working knowledge of principles and practices of on and off-street parking operations, applicable federal, state, and local laws, rules and regulations pertaining to parking.

Ability to make decisions recognizing established precedents and practices, and be resourceful in meeting new problems.

Ability to establish and maintain effective working relationships with other employees and the general public.

SECTION 5

SPECIAL LICENSES OR CERTIFICATES

(Describe any special licenses, certificates, etc. you need to do your job)

Possession of a valid Arkansas driver's license; possession of or ability to obtain within 60 days a valid Arkansas Commercial Driver's License; must pass a pre-employment drug screen.

SECTION 6

WORKING CONDITIONS

(Describe the environment in which you do your work)

Physical effort: This position requires walking of the entire downtown patrol area approx. 50% of the time; required to carry up to 50 pounds on a regular basis.

Adverse Conditions: Extreme weather elements are a huge factor in performing daily job duties; from extreme heat temperatures (over 100 degrees on asphalt streets and parking lots), to extreme cold while performing ice and snow removal. Most work is performed outdoors.

Hazards: Routinely subjected to traffic hazards and moving vehicles. Also, the tempers of parking violators are often quite violent and abusive. Shift work involves late night work in the Dickson Street area subjecting this employee to extreme violence from intoxicated offenders.

SECTION 7

NATURE & SCOPE

(Describe the type of work you do)

Major Challenges: The major challenges of this position are to coordinate and supervise work crews to ensure all operational shifts are adequately staffed, and ensure that all parking rules and regulations are carried out by the parking enforcement officers. Problem solving is constant and requires frequent interaction with the public to resolve citizen complaints. Other challenges require formulating comprehensive solutions for downtown parking management and making recommendations for future efficiency improvements.

Workflow: This position reports directly to the Parking and Telcommunications Manager. This position provides field supervision of all work crews, and also assists the Communications Coordinator with job responsibilities as needed.

Decision Making: An employee in this position exercises independent judgment in identifying problem situations, taking appropriate corrective action and responding to citizens, committees, and other staff.

Contacts: This position must communicate effectively with technical, business, internal and external constituents and must develop and maintain excellent relations with a diverse spectrum of parking patrons. Excellent communications skills are needed to be able to provide customer services and information to the community and individuals pertaining to parking issues and programs. Meets frequently with the City Prosecutor and/or District Judge regarding parking citations, warrants, and outstanding summons; occasionally required to testify in court pertaining to a contested parking violation.

SECTION 8

ADDITIONAL REMARKS

(Add any other important information not included above)

This position involves a wide spectrum of activities and projects. The ongoing duties of this position are diverse in nature and require the ability to successfully alter priorities or activities to meet the demands of a new situation due to weather changes, special events, etc.

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

C.6.
Parking Management Division Position
Page 9 of 10

Budget Year 2005	Department: Division: Program:	Date Requested 9/12/2005	Adjustment Number
--------------------------------	---	--	--------------------------

Project or Item Added/Increased:

- \$2,569 Salaries
- \$ 197 FICA Taxes
- \$ 10 Life Insurance
- \$ 453 Health Insurance
- \$ 9 LTD Insurance
- \$ 2 ADD Insurance
- \$ 42 Retirement Savings

\$3,282.00 TOTAL for Parking Management Division

Project or Item Deleted/Reduced:

\$3,282 Parking Fine Revenues

Justification of this Increase:

The addition of this full-time position will allow us to provide parking enforcement and revenue collections in a parking lot located on Dickson Street. This is a private lot that is being converted into a 150+ space paved parking lot to be used by the general public. It will also afford us more staffing to improve our overall operations and substantially increase daily revenues in all public parking areas.

Justification of this Decrease:

Revenues generated from parking citations written typically covers the cost of salaries.

During the first 8 1/2 months of 2005, we have already exceeded anticipated parking fine revenues by \$5,800.00. We expect this overage to exceed \$14,000.00 by the end of the year. This increase was due solely to procedural changes in issuance and collections of citations that were implemented in January 2005.

Increase Expense Budget (Decrease Revenue Budget)

Account Name	Account Number	Amount	Project Number
Salaries and wages	1010 5300 5100 00	3,282	
	<i>↑ Various accounts See Attachment</i>		

Decrease Expense Budget (Increase Revenue Budget)

Account Name	Account Number	Amount	Project Number
Parking fines	1010 0001 4500 00	3,282	

Approval Signatures 9-14-05 Requested By Date Budget Manager Date Department Director Date Finance & Internal Services Director Date Mayor Date	Budget Office Use Only Type: A B C D E Date of Approval Initial Date Posted to General Ledger Initial Date Posted to Project Accounting Initial Date Entered in Category Log Initial Date
---	--

Funding Source for full-time position in the Parking Management Division

Increase Expense Budget:

<u>Account Name</u>	<u>Account Number</u>	<u>Amount</u>
Salaries and Wages	1010-5300-5100-00	\$2,569
Overtime	1010-5300-5103-00	\$0
FICA Taxes	1010-5300-5105-00	\$197
Life Insurance	1010-5300-5107-00	\$10
Health Insurance	1010-5300-5108-00	\$453
LTD Insurance	1010-5300-5108-01	\$9
ADD Insurance	1010-5300-5108-02	\$2
Retirement Savings	1010-5300-5109-06	\$42
		<u>\$3,282</u>

Decrease Expense Budget:

<u>Account Name</u>	<u>Account Number</u>	<u>Amount</u>
Parking Fine Revenues	1010-0001-4500-00	\$3,282

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C. 7
RZN 05-1687 (Hopmann)
Page 1 of 22

4-Oct-05

City Council Meeting Date

Jeremy Pate *J*
Submitted By

Planning
Division

Operations
Department

Action Required:

RZN 05-1687: (HOPMANN, 446): Submitted by Jeremy Kennedy for property located at 935 North College. The property is zoned R-O, Residential Office, and contains approximately 0.18 acres. The request is to rezone the subject property to C-1, Neighborhood Commercial.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

Budgeted Item ☐

Budget Adjustment Attached ☐

Hayden
Department Director

9-15-05
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

Kennedy
City Attorney

9-16-05

Original Contract Number: n/a

Steph
Finance and Internal Service Director

9-16-05
Date

Received in City Clerk's Office

ENTERED
9/15/05

Don Coody
Mayor

9/16/05
Date

Received in Mayor's Office

ENTERED
9/16/05

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning *JP*

Date: September 14, 2005

Subject: Rezoning for Bob Hopmann (RZN 05-1687)

RECOMMENDATION

The Planning Commission voted to recommend approval of the subject rezoning request rezoning approximately 0.18 acres of property from R-O, Residential Office, to C-1 Neighborhood Commercial.

BACKGROUND

The subject property contains 0.18 acres and is owned by Robert Hopmann. It is located between Cleburn St. and North St., fronting onto N. College Ave. and Pollard Ave. Surrounding properties are a mix of RSF-4, Residential Single Family, R-O, Residential Office and C-2, Thoroughfare Commercial. There are no known plans for redevelopment of the property at this time. The applicant has requested the rezoning to allow for a larger dimensioned sign for the proposed business use. With the request for rezoning of the subject property from R-O to C-1, the applicant has also offered a Bill of Assurance limiting the uses of the property, if the rezoning is approved. Staff recommends approval of this rezoning request based on findings stated herein, with the limitations as stated within the Bill of Assurance, finding that the uses allowed will be compatible and similar to surrounding uses allowed within existing zoning districts.

DISCUSSION

This item was heard at the regular Planning Commission on August 8, 2005. The Planning Commission voted 5-2-0 to recommend this rezoning request to the City Council, with Commissioners Anthes and Ostner voting no.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED
IN REZONING PETITION RZN 05-1687 FOR APPROXIMATELY
0.18 ACRES LOCATED AT 935 NORTH COLLEGE AVENUE FROM
R-O, RESIDENTIAL-OFFICE TO C-1, NEIGHBORHOOD
COMMERCIAL.

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

Section 1: That the zone classification of the following described property is
hereby changed as follows:

From R-O, Residential-Office to C-1, Neighborhood Commercial,
as shown on Exhibit "A" Attached hereto and made a part hereof.

Section 2: That the official zoning map of the City of Fayetteville, Arkansas is
hereby amended to reflect the zoning change provided in Section 1 above.

PASSED and APPROVED this _____ day of _____, 2005.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"
RZN 05-1687

LOT NUMBERED EIGHT (8) IN BLOCK NUMBERED THIRTEEN (13), TRENT'S
REVISED PLAT OF THE CITY PARK ADDITION TO THE CITY OF
FAYETTEVILLE, AS DESIGNATED UPON THE RECORDED PLAT OF SAID
ADDTION.

DRAFT

BILL OF ASSURANCE FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In order to attempt to obtain approval of a request for a zoning reclassification, the owner, developer, or buyer of this property, (hereinafter "Petitioner")

Bob Hopmann, hereby voluntarily offers this Bill of Assurance and enters into this binding agreement and contract with the City of Fayetteville, Arkansas.

The Petitioner expressly grants to the City of Fayetteville the right to enforce any and all of the terms of this Bill of Assurance in the Chancery/Circuit Court of Washington County and agrees that if Petitioner or Petitioner's heirs, assigns, or successors violate any term of this Bill of Assurance, substantial irreparable damage justifying injunctive relief has been done to the citizens and City of Fayetteville, Arkansas. The Petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will reasonably rely upon all of the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

Petitioner hereby voluntarily offers assurances that Petitioner and Petitioner's property shall be restricted as follows IF Petitioner's rezoning is approved by the Fayetteville City Council.

1. The use of Petitioner's property shall be limited to any C-1
"neighborhood commercial" uses except those listed
in Section 3.

2. Other restrictions including number and type of structures upon the property are limited to _____

3. Specific activities will not be allowed upon petitioner's property include Use Unit 13 Eating Places, Use Unit 18 Gasoline
service stations and drive in restaurants, Use unit 34 Liquor Stores
and Use Unit 35 outdoor music.

4. (Any other terms or conditions) _____

5. Petitioner specifically agrees that all such restrictions and terms shall run with the land and bind all future owners unless and until specifically released by Resolution of the Fayetteville City Council. This Bill of Assurance shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning is effective and shall be noted on any Final Plat or Large Scale Development which includes some or all of Petitioner's property.

IN WITNESS WHEREOF and in agreement with all the terms and conditions stated above, I, Bob Hopmann, as the owner, developer or buyer (Petitioner) voluntarily offer all such assurances and sign my name below.

Sep. 8, 2005
Date

Bob Hopmann
Printed Name

3551 Madison Drive
Address
Fayetteville, AR 72701

[Signature]
Signature

NOTARY OATH

STATE OF ARKANSAS |
COUNTY OF WASHINGTON |

And now on this the ____ day of _____, 200__, appeared before me, _____ and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.

NOTARY PUBLIC

My Commission Expires:



PC Meeting of September 12, 2005

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Jesse Fulcher, Current Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: September 7, 2005

RZN 05-1687: Rezoning (Hopmann, 446): Submitted by ROBERT HOPMANN for property located at 935 N. COLLEGE AVE. The property is zoned R-O, RESIDENTIAL-OFFICE and contains approximately 0.18 acres. The request is to rezone the subject property to C-1, Neighborhood Commercial.

Property Owner: ROBERT HOPMANN

Planner: JESSE FULCHER

RECOMMENDATION:

Staff recommends approval of the requested rezoning based on the findings included as part of this report.

PLANNING COMMISSION ACTION:	Required	<u>YES</u>
	☒ Approved	☐ Denied
Date: <u>September 12, 2005</u>		
CITY COUNCIL ACTION:	Required	<u>YES</u>
	☒ Approved	☐ Denied
Date: <u>October 4, 2005 (1st reading if recommended)</u>		

Comments: _____

BACKGROUND:

Property description: The subject property is located between Cleburn St. and North St., fronting onto N. College Ave. and Pollard Ave. Surrounding properties are a mix a of RSF-4, Residential Single Family, R-O, Residential Office and C-2, Thoroughfare Commercial. The 0.18-acre tract contains an existing nonconforming building that was constructed in the 1940's. Property to the

north and south is zoned R-O, to the west RSF-4, and C-2 to the east.

Proposal: The applicant has requested the rezoning to allow for a more appropriately dimensioned sign for the proposed business use. The applicant has also submitted a Bill of Assurance limiting uses on the property, if the rezoning is approved to the following uses:

District R-O, Residential Office

Permitted Uses

Use Unit	
Unit 1	City-wide uses by right
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 12	Offices, studios, related services
Unit 25	Professional offices

Conditional Uses

Use Unit	
Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 13	Eating places
Unit 24	Home occupations
Unit 26	Multi-family dwellings
Unit 36	Wireless communications facilities

District C-1, Neighborhood Commercial with Bill of Assurance

Permitted Uses

Use Unit	
Unit 1	City-wide uses by right
Unit 12	Offices, studios, related services
Unit 13	Eating Places
Unit 15	Neighborhood Shopping
Unit 18	Gasoline service stations and drive-in restaurants
Unit 25	Professional offices

Conditional Uses

Use Unit	
Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities

Unit 4	Cultural and recreational facilities
Unit 34	Liquor Stores
Unit 35	Outdoor Music Establishments
Unit 36	Wireless Communications Facility

Request: The request is to rezone the subject property from R-O, Residential Office to C-1, Neighborhood Commercial. There has been considerable discussion regarding the re-use of an existing pole on the site for a sign. With the current proposal and ordinance requirements, this pole may not be utilized at its current location. However, the C-1 zoning district may give more opportunity for the use of a larger sign on the subject property, subject to the requirements of Chapter 174 Signs.

SURROUNDING LAND USE AND ZONING

Direction	Land Use	Zoning
North	Office	R-O, Residential Office
South	Office	R-O, Residential Office
East	Commerical	C-2, Thoroughfare Commercial
West	Single family homes	RSF-4, Residential Single Family, 4 Units per Acre

INFRASTRUCTURE:

Streets: The property fronts and is accessed both by N. Pollard Ave. and N. College Ave. If redevelopment occurs on this site, standard street improvements will be required along the property frontage on Pollard Ave.

Water: Public water is adjacent to the site. Improvements to the water system may not be required as there is currently work about to begin to upgrade the current system. An evaluation will need to be made at the time of Large Scale Development or building permit.

Sewer: Sanitary sewer is adjacent to the site. A study of the downstream system shall be conducted by the developer if the usage is to intensify greatly over current usage.

Fire: The subject property is located 1.2 miles from the Fire Station #1 on Center St. Fire response time is approximately 4 minutes. There should be no adverse affects on the call volume or response time.

Police: It is the opinion of the Fayetteville Police Department that this rezoning request will have a negligible impact on both the population density and the traffic congestion for that area.

LAND USE PLAN: The Future Land Use Plan designates this site for Community Commercial. Rezoning this property to C-1 is consistent with the land use plan. Furthermore, the owner has provided a Bill of Assurance that would limit the allowable uses, so that the property, if rezoned, would remain compatible with surrounding land uses in the area.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The proposed rezoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans. Surrounding properties are commercial in nature except those properties to the west, across Pollard Ave. By limiting several of the permitted uses in the C-1 zoning district, the property will remain compatible with the residential area as well as provide limited commercial services for those residents.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zoning is justified and needed in order to regulate the allowable uses on this property as well as provide the applicant an opportunity to utilize the subject property in an appropriate manner that is compatible with adjacent land uses.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: There is no known proposed re-use of the site at this time. It is anticipated that a future commercial use on the property would increase traffic from that which is currently generated. However, N. College Ave. is a 4-lane, Principal Arterial in this location, which should adequately serve the increase on an 0.18-acre site. At the time of redevelopment, curb cuts/entry drives onto the property would be reviewed for safety.

Police – It is the opinion of the Fayetteville Police Department that this rezoning request will have a negligible impact on both the population density and the traffic congestion for that area.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The proposed zoning would not alter the population density in the area.

Public service providers have responded accordingly:

Police – It is the opinion of the Fayetteville Police Department that this rezoning request will have a negligible impact on both the population density and the traffic congestion for that area.

Fire – The subject property is located 1.2 miles from the Fire Station #1 on Center St. Fire response time is approximately 4 minutes. There should be no adverse affects on the call volume or response time.

Engineering - The property is currently served by a 6" water line on the west side of N. College Ave.

The site is currently served by an 8" sewer main on N. Pollard Ave.

The property fronts and is accessed both by N. Pollard Ave. and N. College Ave. If redevelopment occurs on this site, standard street improvements will be required along the property frontage on Pollard Ave.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

161.16 District C-1, Neighborhood Commercial

(A) *Purpose.* The Neighborhood Commercial District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 12	Offices, studios and related services
Unit 13	Eating places
Unit 15	Neighborhood shopping
Unit 18	Gasoline service stations and drive-in restaurants
Unit 25	Professional offices

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 34	Liquor stores
Unit 35	Outdoor music establishments
Unit 36	Wireless communications facilities

(C) *Density.* None.

(D) *Bulk and area regulations.* None.

(E) *Setback regulations.*

Front	50 ft.
Side	None
Side, when contiguous to a residential district	10 ft.
Rear	20 ft.

(F) *Height regulations.* There shall be no maximum height limits in C-1 District, provided, however, that any building which exceeds the height of 10 feet shall be setback from any boundary line of any residential district a distance of one foot for each foot of height in excess of 10 feet.

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

(Code 1965, App. A., Art. 5(V); Ord. No. 2603, 2-19-80; Ord. No. 1747, 6-29-70; Code 1991, §160.035; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99)

161.15 District R-O, Residential Office

(A) *Purpose.* The Residential-Office District is designed primarily to provide area for offices without limitation to the nature or size of the office, together with community facilities, restaurants and compatible residential uses.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 12	Offices, studios and related services
Unit 25	Professional offices

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 11	Manufactured home park
Unit 13	Eating places
Unit 24	Home occupations
Unit 26	Multi-family dwellings
Unit 36	Wireless communications facilities

(C) *Bulk and area regulations.*

(Per dwelling unit for residential structures)

(1) *Lot width minimum.*

Manufactured home park	100 ft.
Lot within a manufactured home park	50 ft.
Single-family	60 ft.
Two-family	60 ft.
Three or more	90 ft.

(2) *Lot area minimum.*

Manufactured home park	3 acres
Lot within a manufactured home park	4,200 sq. ft.
Townhouses:	
Development	10,000 sq. ft.
Individual lot	2,500 sq. ft.
Single-family	6,000 sq. ft.
Two-family	6,500 sq. ft.
Three or more	8,000 sq. ft.
Fraternity or Sorority	1 acre

(3) *Land area per dwelling unit.*

Manufactured home	3,000 sq. ft.
Townhouses & apartments:	
No bedroom	1,000 sq. ft.
One bedroom	1,000 sq. ft.
Two or more bedrooms	1,200 sq. ft.
Fraternity or Sorority	500 sq. ft. per resident

(D) *Density.*

Units per acre	4 to 24
----------------	---------

(E) *Setback regulations.*

Front	30 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.
Side	10 ft.
Side, when contiguous to a residential district	15 ft.
Rear, without easement or alley	25 ft.
Rear, from center line of public alley	10 ft.

(F) *Height regulations.* There shall be no maximum height limits in R-O Districts, provided, however, that any building which exceeds the height of 20 feet shall be set back with any boundary line of any RSF or RMF District an additional distance of one foot for each foot of height in excess of 20 feet.

(G) *Building area.* On any lot, the area occupied by all buildings shall not exceed 60% of the total area of such lot.

(Code No. 1965, App. A., Art. 5(x); Ord. No. 2414, 2-7-78; Ord. No. 2603, 2-19-80; Ord. No. 2621, 4-1-80; Ord. No. 1747, 6-29-70; Code 1991, §160.041; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 4726, 7-19-05)



THE CITY OF FAYETTEVILLE, ARKANSAS

PLANNING DIVISION CORRESPONDENCE

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

August 30, 2005

Robert C. Hopmann
3551 Madison Dr.
Fayetteville, AR 72701

Re: Rezoning 935 N. College Ave.

Dear Mr. Hopmann:

Currently, staff is reviewing a rezoning request for 935 N. College Ave. from R-O, Residential Office to C-1, Neighborhood Commercial. Presumably, the rezoning is being requested so that an existing pole on the property may be used for the erection of a sign. The C-1 zoning district would allow for a larger sign than the R-O district, however the use of a nonconforming structure (the existing pole structure) for the erection of a new sign would be limited and/or restricted in either zoning district. Since the structure located on the lot was abandoned or was not in use for 6 consecutive months it shall hereafter only be used in conformity with the regulations of the district in which it is located. *As a result, a freestanding or monument sign erected on the property shall meet all current regulations for the zoning district in which it is located, whether Residential Office or Neighborhood Commercial.*

The regulations for the R-O and C-1 zoning districts are as follows:

Table 1
Residential Office

	Freestanding Sign	Monument Sign
Setbacks	15' from right-of-way & 25' from adjoining property lines	10' from right-of-way & 25' from adjoining property lines
Square Footage	4 square feet	16 square feet
Maximum Height	6' above the level of the street which it faces	6' above surrounding finish grade

Table 2
Neighborhood Commercial

	Freestanding Sign	Monument Sign
Setbacks	15'-40' from right-of-way & 25' from	10' from right-of-way & 25' from

	adjoining property lines	adjoining property lines
Square Footage	10 square feet @ 15' setback up to 75 square feet @ 40' setback	Up to 75 square feet @ 10' setback
Maximum Height	30' above the level of the street which it faces	6' above surrounding finish grade

Currently, the right-of-way for N. College Ave. is 110' (55' from centerline) per the Master Street Plan. Our records indicate the Master Street Plan right-of-way extends to at least the front of the existing structure located on said property. Chapter 166.18 of the Unified Development Code requires that all setbacks be dimensioned from the established right-of-way and the establishment of any new structure within the right-of-way be prohibited. As a result, the erection of a monument or freestanding sign in front of the existing structure would be prohibited, since it would be located within the Master Street Plan right-of-way and the sign would not meet the minimum setbacks as required by Chapter 174 of the Unified Development Code¹. Based on the ordinance criteria, a rezoning request to C-1 would not result in approval for the requested sign or reuse of the existing pole

The City Council will soon hear a request to modify the required right-of-way in this location to a 60' total right-of-way as opposed to the current 110' total right-of-way required. This would reduce the required right-of-way by 25' on this property. Nevertheless, the location of the existing pole would most likely still be located within the 60' right-of-way¹. It is difficult to determine the exact location of the pole without a survey of the property. However, if the right-of-way was decreased to 60' a pole sign could potentially be located between the building and the right-of-way, with a maximum size of 4 square feet in the R-O zoning district. A monument sign in the R-O zoning district could have to 16 square feet of display area. In the C-1 zoning district a pole sign between the building and the right-of-way could have as much as 20 square feet of display area and a monument sign could have as much as 75 square feet of display area. Both the monument sign and a pole sign would be subject to a 25' setback from adjacent property lines in either zoning district in addition to the setbacks from the right-of-way as shown in the table above.

We are providing this information in order for you to determine if proceeding with the rezoning request is still desired. At this time, the rezoning request could be withdrawn and the fees refunded. However, after Thursday, September 01, staff will not be able to refund fees associated with this request. If you have any further questions, please contact Jesse Fulcher at 575-8264.

Sincerely,

Jesse Fulcher
City of Fayetteville

¹The location of the right-of-way as well as the distance between the structure and the right-of-way as discussed are approximations. A current survey would more accurately determine the location of the structure, right-of-way and property lines.



FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

C. 7
RZN 05-1687 (Hopmann)
Page 17 of 22

POLICE DEPARTMENT

Thursday, August 25, 2005

Jeremy Pate
Director of Current Planning
125 W Mountain Street
Fayetteville, AR 72702

Dear Mr. Pate,

This document is in response to the request for a determination of whether the proposed rezoning **RZN 05-1687 (Hopmann, 446)** submitted by Jeremy Kennedy would substantially alter the population density and thereby undesirably increase the load on police or create an appreciable increase in traffic congestion and danger.

It is the opinion of the Fayetteville Police Department this rezoning request will have a negligible impact on both the population density and the traffic congestion for that area.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Turberville", is written over the typed name.

Lieutenant Rob Turberville
Fayetteville Police Department



Fayetteville Fire Department

303 W. Center St. Fayetteville AR. 72701

Date: August 23, 2005

To: Suzanne Morgan, Jeremy Pate, Andrew Garner, and Jesse Fulcher

From: Captain Dale Riggins

Subject: Re-zoning review from the Fayetteville Fire Department.

RZN05-1687 (Hopman, 466)

This 0.18 acres is covered by Station 1 on Center Street.

The property is 1.2 miles from the station with an anticipated response time of 4 minutes. No calls for service are figured on Commercial re-zonings and there should be no adverse affects on our call volume or response time to this re-zoning.

RZN05-1688 (JDM Investments)

These 6.34 acres is currently covered by Station 5 on Crossover Road.

The property is 1.9 miles from the station with an anticipated response time of 3.5 minutes to the beginning of this subdivision and 4 minutes after the maximum build out is completed. We project this development to produce 6 calls for service per year at maximum build out (2 fire/other and 4 EMS). The service impact of this development will typically take eighteen months, after the development is started, to occur. There should be no adverse effects on our call volume or response times to this subdivision.

If you have any questions, please feel free to call or email me.

Dale Riggins
Captain
Fayetteville Fire Department

Hopmann (RZN 05-1687)

Public water is adjacent to the site. Improvements to the water system may not be required as there is currently work about to begin to upgrading the current system. An evaluation will need to be made at the time of Large Scale Development or building permit.

Sanitary sewer is adjacent to the site. A study of the downstream system shall be conducted by the developer if the usage is to intensify greatly over the current usage.

The site has access to Pollard Avenue on the west and North College on the east. Standard improvements to Pollard Avenue will be required along the property frontage. Off-site improvements to Pollard Avenue will need to be evaluated by staff at the time of Large Scale Development or building permit.

Runoff from most of the site flows overland to the west to Pollard Avenue. A small portion flows west to the existing storm drain system in North College.

JDM Investments (RZN 05-1688)

Public water is adjacent to the site. There is a 12" main along Crossover and an 8" main in the Candlewood subdivision. Water service will need to be extended within the property at the time of development. Additional connections will be required to complete a looped system.

A sanitary sewer main crosses the east end of the site. There is also a large diameter force main that parallels the gravity main. Sewer service will need to be extended within the property at the time of development. A study of the downstream sewer system must be completed by the developer prior to submittal of construction plans.

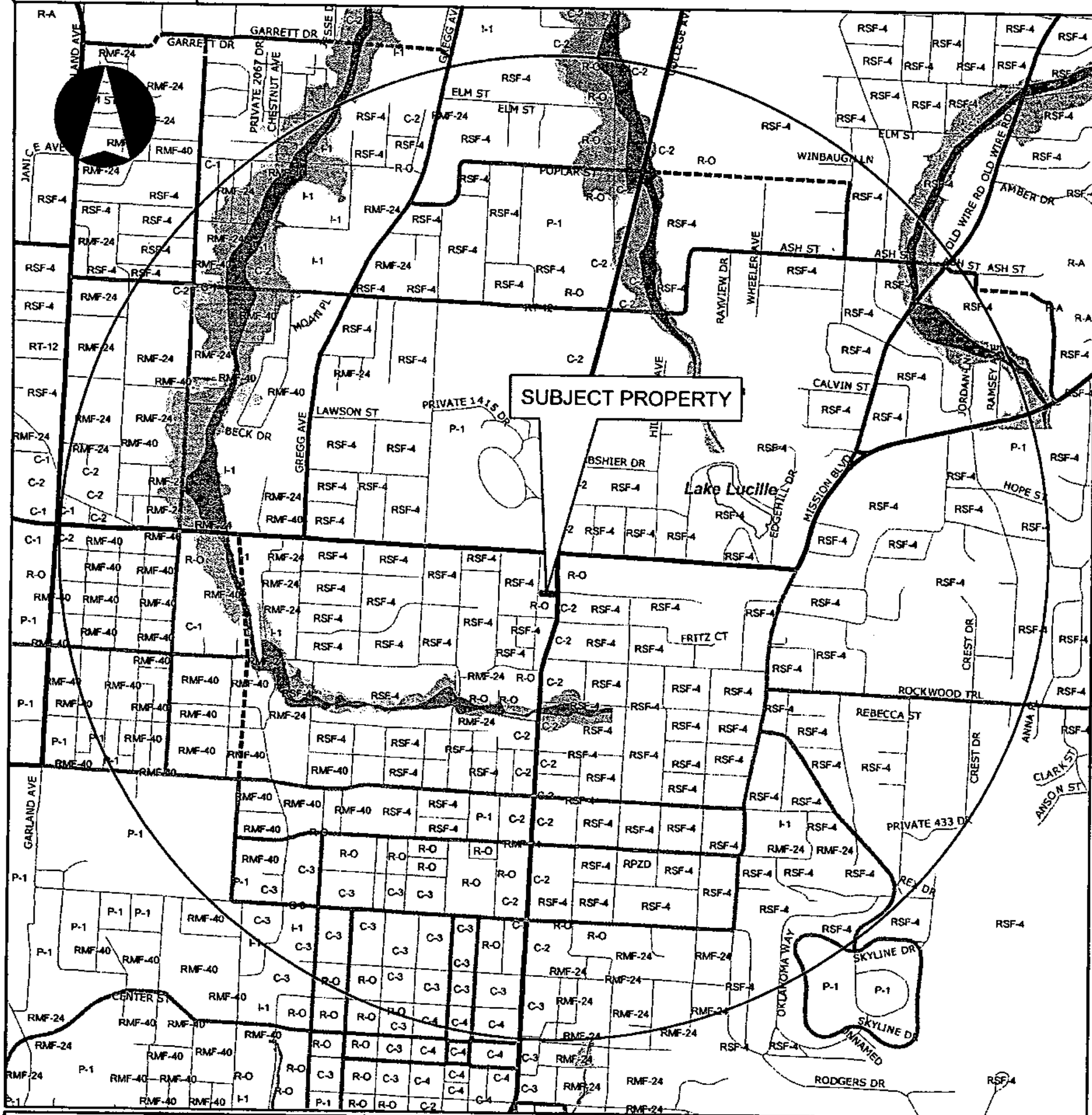
The site will have access to Crossover Road. There is also a stub-out on the Candlewood Subdivision plat from the south, extending to this property.

The site is divided by a ridgeline with half the flow going northwest and half going northeast. Detention shall be provided to allow for the additional runoff.

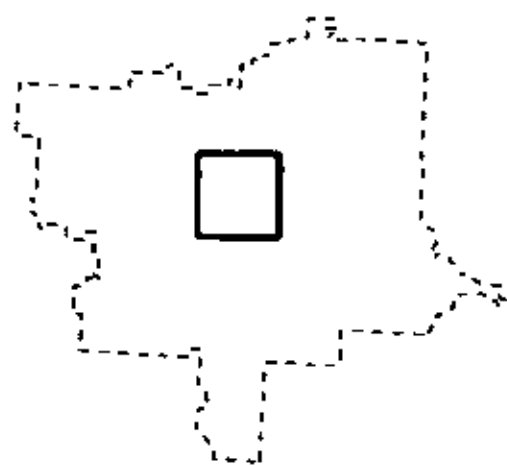
RZN05-1687

One Mile View

HOPMANN



Overview



Legend

Subject Property

RZN05-1687

Boundary

Planning Area

Overlay District

Outside City

Legend

0 0.125 0.25

0.5

0.75

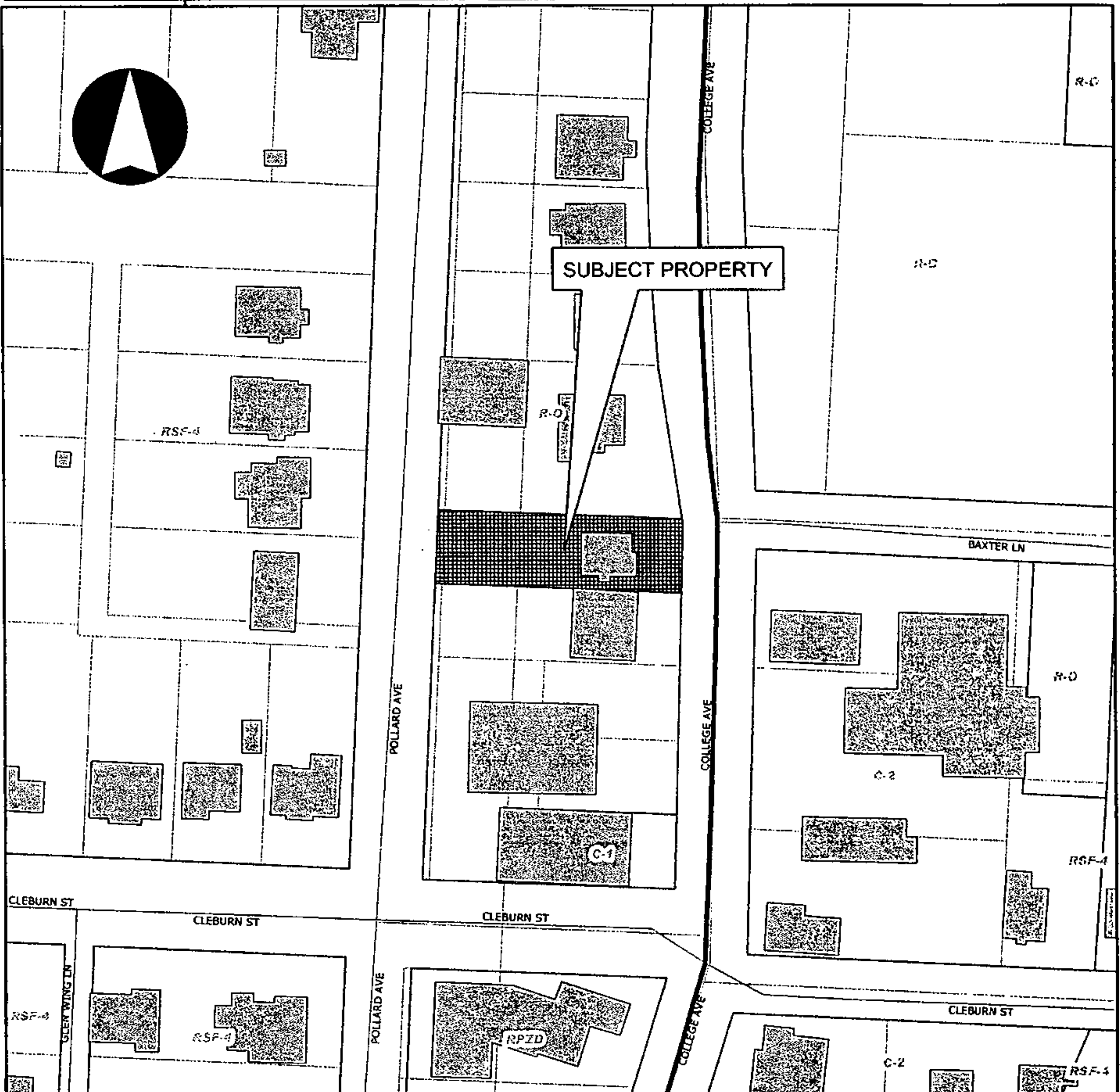
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Miles

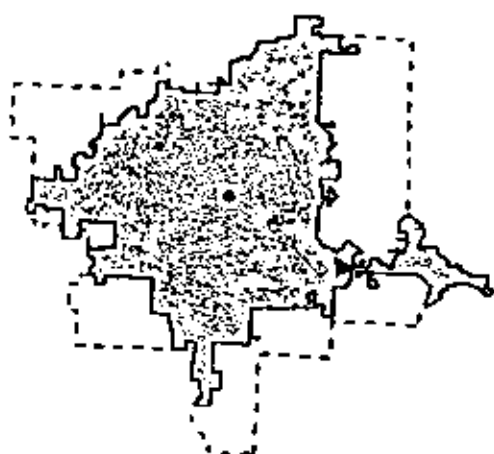
RZN05-1687

Close Up View

HOPMANN



Overview



Legend

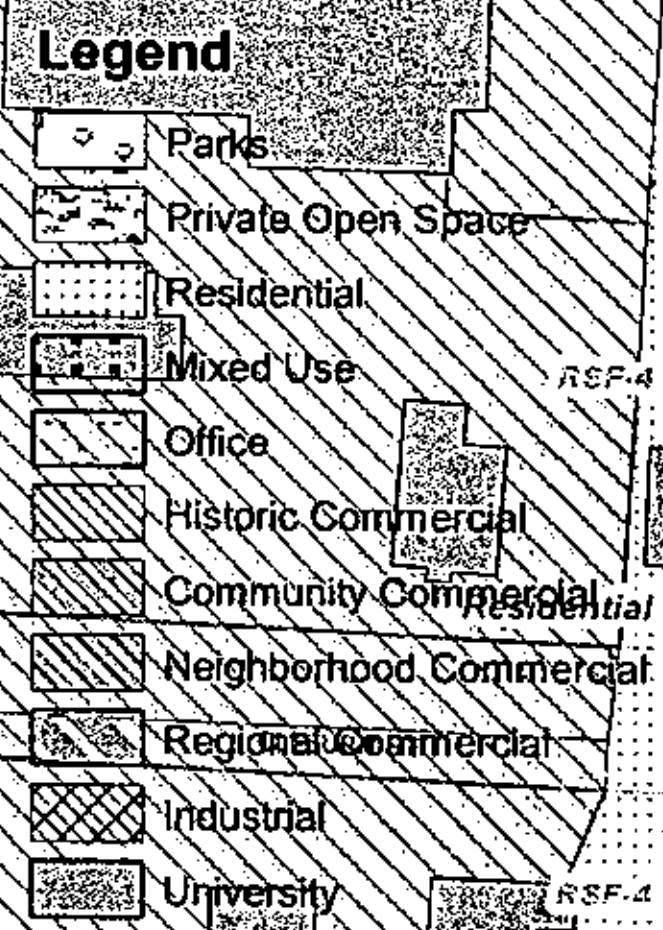
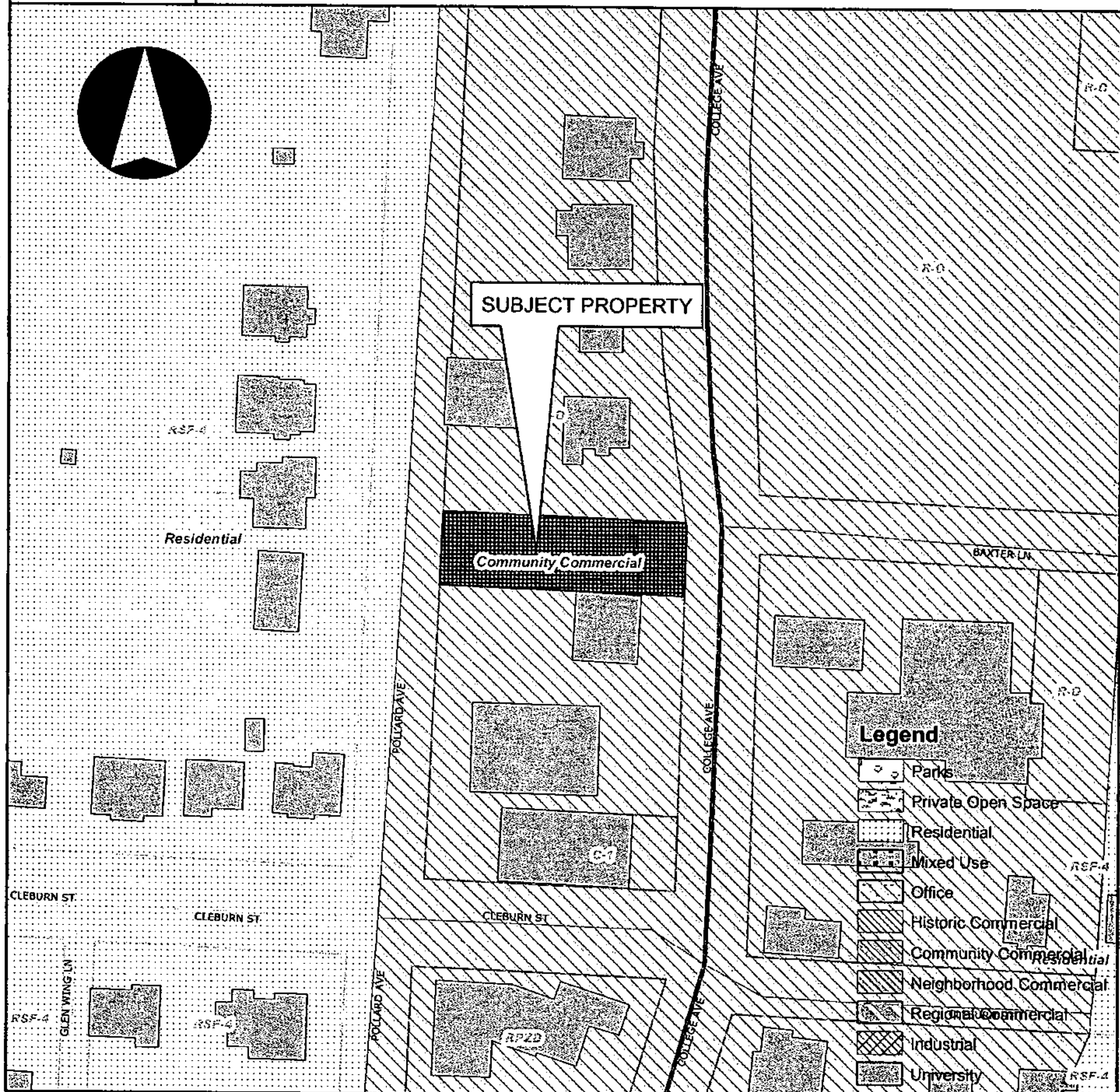
-  RZN05-1687
-  Overlay District
-  FLOODWAY
-  500 YEAR
-  100 YEAR
-  LIMIT OF STUDY
-  BaseLine Profile
-  Fayetteville
-  Outside City

0 50 100 200 300 400 Feet

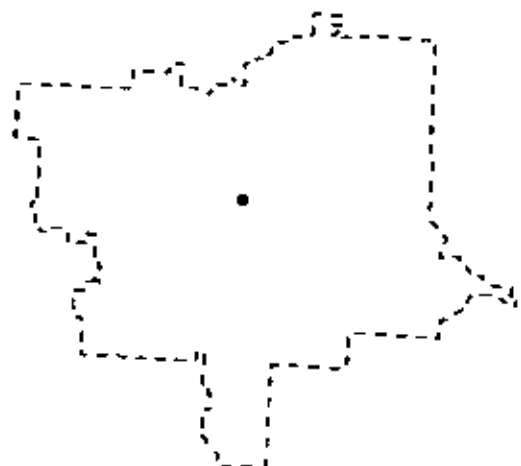
RZN05-1687

Future Land Use

HOPMANN



Overview



Legend

Subject Property



RZN05-1687

Streets



Existing



Planned

Boundary



Planning Area



Overlay District



Outside City

Legend



City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C. 8
RZN 05-1688 (JDM Investments)
Page 1 of 16

4-Oct-05

City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

RZN 05-1688: (JDM INVESTMENTS, 294): Submitted by Roger Trotter for property located at 2806 Crossover, north of Candlewood Subdivision. The property is zoned R-A, Residential-Agricultural, and contains approximately 6.34 acres. The request is to rezone the subject property to RSF-4, Residential Single Family, 4 units per acre.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

Budgeted Item

☐

Budget Adjustment Attached

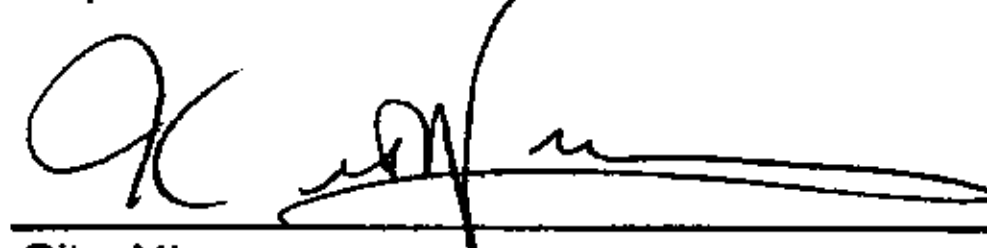
☐


Department Director

9-18-05
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a


City Attorney

9-16-05

Original Contract Number: n/a


Finance and Internal Service Director

9-16-05
Date

Received in City Clerk's Office




Mayor

9/16/05
Date

Received in Mayor's Office



Comments:

City Council Meeting of October 4, 2005
Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning &

Date: September 14, 2005

Subject: Rezoning for JDM Investments (RZN 05-1688)

RECOMMENDATION

The Planning Commission voted to recommend approval of the subject rezoning request rezoning approximately 6.34 acres of property from R-A, Residential-Agricultural to RSF-4, Residential Single Family Four Units Per Acre.

BACKGROUND

The subject property contains 6.34-acres and is owned by JDM Investments. It is located at 2806 Crossover Road, just north of the Candlewood Subdivision. The site is surrounded by single family residences on three sides, with the Lake Hills Baptist Church adjacent to the north. The site is undeveloped with a dense tree canopy over the majority of the eastern portion of the site and Flynn Creek flows north-south adjacent to the eastern border of the site. The applicant intends to develop this property for residential uses, similar in density and character to the surrounding development. The applicant requests a rezoning of the subject property from R-A to RSF-4 to allow the development of a residential subdivision. Staff recommends approval of this rezoning request based on findings stated herein. The development of this property will be compatible with those residential developments surrounding the property and in the vicinity.

DISCUSSION

This item was heard at the regular Planning Commission on September 12, 2005. The Planning Commission voted 7-0-0 to recommend this rezoning request to the City Council.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED
IN REZONING PETITION RZN 05-1688 FOR APPROXIMATELY
6.34 ACRES LOCATED AT 2806 CROSSOVER, NORTH BOUNDARY
OF CANDLE WOOD SUBDIVISION FROM R-A, RESIDENTIAL -
AGRICULTURAL TO RSF-4, RESIDENTIAL SINGLE FAMILY, 4
UNITS PER ACRE.

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

Section 1: That the zone classification of the following described property is
hereby changed as follows:

From R-A, Residential-Agricultural to RSF-4, Residential Single Family,
4 units per acre, as shown on Exhibit "A" Attached hereto and made a part hereof.

Section 2: That the official zoning map of the City of Fayetteville, Arkansas is
hereby amended to reflect the zoning change provided in Section 1 above.

PASSED and APPROVED this _____ day of _____, 2005.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"
RZN 05-1688

A PART OF THE N 1/2 OF THE SW 1/4 OF SECTION 31, T-17-N, R-29-W, MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE WEST QUARTER CORNER (W 1/4) OF SAID SECTION, THENCE S87°29'23"E 411.71 FEET TO THE POINT OF BEGINNING, SAID POINT BEING THE INTERSECTION OF THE EASTERLY RIGHT OF WAY OF ARKANSAS HWY 265 AND THE NORTH BOUNDARY OF SAID 80 ACRE TRACT; THENCE ALONG SAID NORTH BOUNDARY S87°29'23"E 911.44 FEET TO THE NORTHEAST CORNER OF THE NW 1/4 OF THE SW 1/4; THENCE S02°21'15"W 62.79 FEET TO THE CHANNEL OF A BRANCH; THENCE ALONG SAID CHANNEL S30°19'09"E 105.49 FEET AND S01°08'55"E 149.06 FEET; THENCE LEAVING SAID CHANNEL N87°29'23"W 915.48 FEET TO THE EASTERLY RIGHT OF WAY OF ARKANSAS HWY 265; THENCE ALONG SAID RIGHT OF WAY N09°18'44"W 303.43 FEET TO A RIGHT OF WAY MARKER, SAID POINT BEING THE P.C. OF A CURVE TO THE RIGHT HAVING A RADIUS OF 768.93 FEET AND A DELTA ANGLE OF 00°14'36"; THENCE ALONG SAID CURVE AND CONTINUING ALONG SAID RIGHT OF WAY AN ARC DISTANCE OF 3.27 FEET HAVING A CHORD BEARING AND DISTANCE OF N09°21'40"W 3.27 FEET TO THE POINT OF BEGINNING, CONTAINING 6.34 ACRES, MORE OR LESS. CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS.

DRAFT



PC Meeting of September 12, 2005

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: September 7, 2005

RZN 05-1688: Rezoning (JDM INVESTMENTS, 294): Submitted by ROGER TROTTER for property located at 2806 CROSSOVER, NORTH BOUNDARY OF CANDLEWOOD S/D. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and contains approximately 6.34 acres. The request is to rezone the subject property to RSF-4, Residential Single Family, 4 units per acre.

Planner: ANDREW GARNER

RECOMMENDATION:

Staff recommends approval of the requested rezoning based on the findings herein.

PLANNING COMMISSION ACTION:	Required: <u>YES</u>
	☒ Approved ☐ Denied
Date: <u>September 12, 2005</u>	
CITY COUNCIL ACTION:	Required: <u>YES</u>
	☒ Approved ☐ Denied
Date: <u>October 4, 2005 (1st reading if recommended)</u>	

BACKGROUND:

Property Description and Setting: The property is zoned Residential Agriculture (R-A), and contains approximately 6.34 acres located immediately east of Crossover Road and north of Candlewood Drive and the Candlewood Subdivision. Access is only currently available from Crossover Road. There is an existing 50' right-of-way stub out from Candlewood Drive extending north approximately 180' to the proposed property. The applicant is requesting a vacation of this right-of-way to avoid connecting the subject property to Candlewood Drive, also to be heard at this Planning Commission meeting. The site has an existing access driveway directly onto Crossover Road. The property is undeveloped with a dense tree canopy over the majority of the eastern portion of the site and Flynn Creek is just east of the site. As depicted in *Table 1*, this site is surrounded by

single family residential uses to the south, east, and west, with the Lake Hills Baptist Church located to the north.

Table 1
Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Lake Hills Baptist Church	Residential-Agricultural (R-A)
South	Single family residences (Candlewood Subdivision)	Residential Single Family Residences (RSF-4)
East	Single family residences (Brookbury Woods Subdivision)	Residential Single Family Residences (RSF-4)
West	Single family residences (Cedarwood Addition)	Residential Single Family Residences (RSF-4)

Proposal: The applicant intends to develop the property for residential use. Therefore, the applicant is requesting the property be rezoned from R-A, Residential Agricultural, to RSF-4, Residential Single-Family, 4 Units per Acre.

Recommendation: Staff recommends approval of the rezoning request. The site is entirely surrounded by development and the existing R-A zoning is no longer appropriate considering the surrounding RSF-4 zoning and single-family development.

INFRASTRUCTURE:

Streets: Currently the site has access to State Highway 265 (Crossover Road) on the west, a Principal Arterial. There is also a 50' right-of-way stub-out on the Candlewood Subdivision from the south, extending to this property.

Water: Public water is adjacent to the site. There is a 12" main along Crossover and an 8" main in the Candlewood subdivision. Water service will need to be extended within the property at the time of development. Additional connections will be required to complete a looped system.

Sewer: A sanitary sewer main crosses the east end of the site. There is also a large diameter force main that parallels the gravity main. Sewer service will need to be extended within the property at the time of development. A study of the downstream sewer system must be completed by the developer prior to submittal of construction plans.

Fire: The subject property is located approximately 1.9 miles from the Fire Station #5. Response time to the property is approximately 3.5 minutes. The Fire Department has projected a response time of 4 minutes at full build-out, with 6 calls per year. It is the opinion of the Fayetteville Fire Department that this rezoning will not result in adverse effects on call volume or response times.

Police: It is the opinion of the Fayetteville Police Department that this rezoning will not

substantially alter the population density and thereby undesirably increase the load on police services or create and appreciable increase in traffic danger and congestion in the area.

LAND USE PLAN: General Plan 2020 designates this site **Residential**. Rezoning this property to RSF-4 is consistent with the land use plan and compatible with surrounding land uses in the area.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The proposed RSF-4 zoning for a Single family residential use is compatible with adjacent and nearby single family residential land use. The General Plan designates this area for residential use, which is compatible with the proposed RSF-4 zoning.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zoning is justified in order to promote orderly and consistent development patterns making use of existing infrastructure. A subdivision with density compatible to those surrounding subdivisions within the City could not be developed as it is currently zoned. A higher density than the R-A zoning district is appropriate in this area, and would provide compatibility with adjoining developments that are zoned RSF-4.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The proposed zoning will provide additional traffic on all adjacent streets. State Highway 265 (Crossover Road, a Principal Arterial on the Master Street Plan) is adjacent to the western property line of the subject property. In addition, there is a 50' right-of-way stub out from Candlewood Drive (a local street) to the south connecting to the property. These existing streets that surround the property will allow traffic to disperse in an efficient manner and lessen any negative affects from the addition of vehicular traffic in this area.

Police - The Fayetteville Police Department finds that rezoning this property will not result in an appreciable increase in the level of traffic danger and congestion in the area.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The proposed zoning would increase population density. Under an R-A, Residential Agricultural designation, the 6.34-acre tract would allow for a maximum of 3 dwelling units (1 unit / 2 acres). With the proposed RSF-4 designation 24 dwelling units would be permitted. Rezoning the property increases the possible number of residential units and population over that which is allowed in the R-A zoning district, but the proposed rezoning is consistent with land use, zoning, and development patterns in the immediate vicinity.

Increased load on public services were taken into consideration and recommendations from Engineering, Fire, and Police Departments summarized below:

Police – This rezoning will not substantially alter the population density thereby undesirably increasing the load on police services.

Fire – This rezoning is in close proximity to Fire Station No. 5 and has an adequate response time of 3.5 minutes.

Engineering - **Water:** Public water is adjacent to the site. There is a 12" main along Crossover and an 8" main in the Candlewood subdivision. Water service will need to be extended within the property at the time of development. Additional connections will be required to complete a looped system.

Sewer: A sanitary sewer main crosses the east end of the site. There is also a large diameter force main that parallels the gravity main. Sewer service will need to be extended within the property at the time of development. A study of the downstream sewer system must be completed by the developer prior to submittal of construction plans.

Streets: The site has access to Crossover Road. There is also a stub-out on the Candlewood Subdivision plat from the south, extending to this property.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

Fayetteville Unified Development Code
Section 161.03 District R-A, Residential-Agricultural

(A) *Purposes.* The regulations of the agricultural district are designed to protect agricultural land until an orderly transition to urban development has been accomplished; prevent wasteful scattering of development in rural areas; obtain economy of public funds in the providing of public improvements and services of orderly growth; conserve the tax base; provide opportunity for affordable housing, increase scenic attractiveness; and conserve open space.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 3	Public protection and utility facilities
Unit 6	Agriculture
Unit 7	Animal husbandry
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 37	Manufactured homes

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 4	Cultural and recreational facilities
Unit 20	Commercial recreation, large sites
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

Units per acre	One-half
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(D) *Bulk and area regulations.*

Lot width minimum	200 ft.
Lot Area Minimum:	
Residential:	2 acres
Nonresidential:	2 acres
Lot area per dwelling unit	2 acres

(E) *Setback requirements.*

Front	Side	Rear
35 ft.	20 ft.	35 ft.

(F) *Height requirements.* There shall be no maximum height limits in the A-1 District, provided, however, that any building which exceeds the height of 15 feet shall be setback from any boundary line of any residential district a distance of 1.0 foot for each foot of height in excess of 15 feet. Such setbacks shall be measured from the required setback lines.

(G) *Building area.* None.

Fayetteville Unified Development Code

Section 161.07 District RSF-4, Residential Single-Family – Four Units Per Acre

(A) *Purpose.* The RSF-4 Residential District is designed to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwelling

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 9	Two-family dwellings
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

	Single-family dwellings	Two-family dwellings
Units per acre	4 or less	7 or less

(D) *Bulk and area regulations.*

	Single-family dwellings	Two-family dwellings
Lot minimum width	70 ft.	80 ft.
Lot area minimum	8,000 sq. ft.	12,000 sq. ft.
Land area per dwelling unit	8,000 sq. ft.	6,000 sq. ft.

(E) *Setback requirements.*

Front	Side	Rear
25 ft.	8 ft.	20 ft.

(F) *Height.* None.

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

CITY OF FAYETTEVILLE, ARKANSAS
WRITTEN DESCRIPTION OF REZONING REQUEST

REQUEST FOR REZONING FROM R-A TO RSF-4
SUBJECT PROPERTY: 6.34 ACRES – HWY 265
Date: June 2005

This property is located on Highway 265 and lies just north of Candlewood subdivision, south Lake Hills Church and west of a proposed trail corridor that is owned by the city. The property in question was recently purchased by the applicant, JDM Investments, LLC. The purpose of the purchase is to subdivide the property into eleven lots approximately 100' wide by 120' deep. The 6.44 acre property is currently zoned RA and will require RSF4 zoning to subdivide as proposed.

There is a 12" water main along highway 265 with adequate pressure and fire flow. There is a sewer main across the east side of the property and also on the west side of the property across the highway.

The requested zoning, RSF-4, is consistent with the future land use plan for single family housing. The purpose of the current R-A zoning, Residential Agriculture is to allow for an orderly transition to urban development. We have met with the neighbors to the south, the Candlewood Property Owners Association, and it is my pleasure to say that as a group they are in favor of our rezoning request to a like neighborhood. We have also contacted the Lake Hills Church to the north and they are in favor of our project.



Fayetteville Fire Department

303 W. Center St. Fayetteville AR. 72701

Date: August 23, 2005

To: Suzanne Morgan, Jeremy Pate, Andrew Garner, and Jesse Fulcher

From: Captain Dale Riggins

Subject: Re-zoning review from the Fayetteville Fire Department.

RZN05-1687 (Hopman, 466)

This 0.18 acres is covered by Station 1 on Center Street.

The property is 1.2 miles from the station with an anticipated response time of 4 minutes. No calls for service are figured on Commercial re-zonings and there should be no adverse affects on our call volume or response time to this re-zoning.

RZN05-1688 (JDM Investments)

These 6.34 acres is currently covered by Station 5 on Crossover Road.

The property is 1.9 miles from the station with an anticipated response time of 3.5 minutes to the beginning of this subdivision and 4 minutes after the maximum build out is completed. We project this development to produce 6 calls for service per year at maximum build out (2 fire/other and 4 EMS). The service impact of this development will typically take eighteen months, after the development is started, to occur. There should be no adverse effects on our call volume or response times to this subdivision.

If you have any questions, please feel free to call or email me.

Dale Riggins
Captain
Fayetteville Fire Department



FAYETTEVILLE

C. 8
RZN 05-1688 (JDM Investments)
Page 14 of 16

THE CITY OF FAYETTEVILLE, ARKANSAS

POLICE DEPARTMENT

Thursday, August 25, 2005

Jeremy Pate
Director of Current Planning
125 W Mountain Street
Fayetteville, AR 72702

Dear Mr. Pate,

This document is in response to the request for a determination of whether the proposed rezoning RZN 05-1688 (JDM Investments, 294) submitted by Roger Trotter would substantially alter the population density and thereby undesirably increase the load on police or create an appreciable increase in traffic congestion and danger.

It is the opinion of the Fayetteville Police Department this rezoning request will not have an appreciable impact on the population density and traffic congestion for that area.

Sincerely,

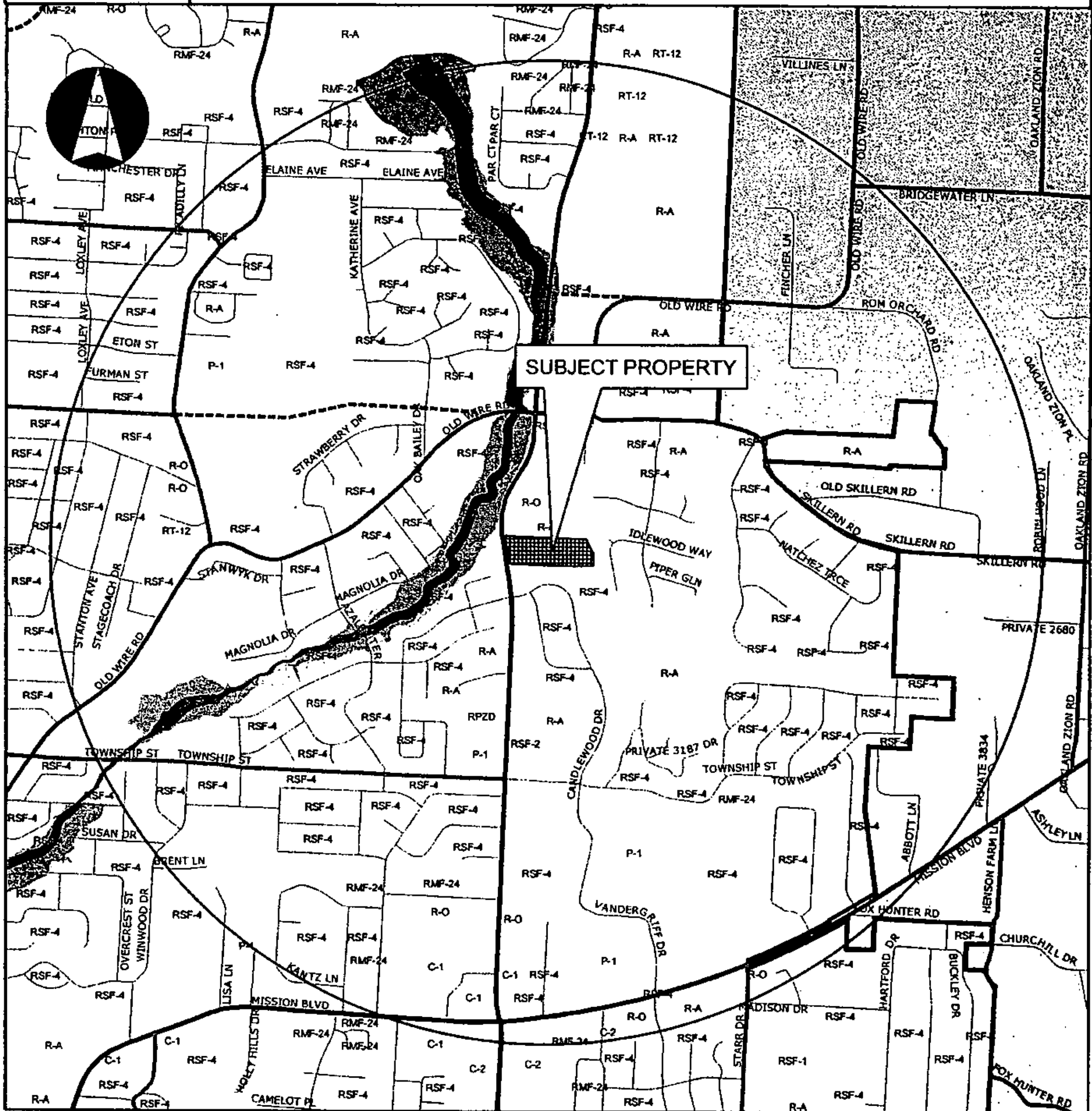
A handwritten signature in black ink, appearing to read "R. Turberville", is written over the word "Sincerely,".

Lieutenant Rob Turberville
Fayetteville Police Department

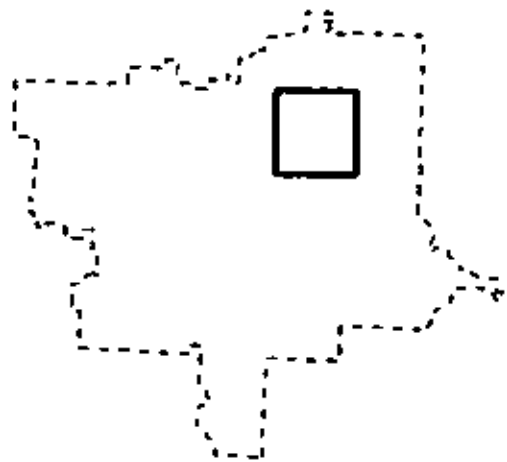
RZN05-1688

JDM INVESTMENTS

One Mile View



Overview



Legend

Subject Property

RZN05-1688

Boundary

Planning Area

Overlay District

Outside City

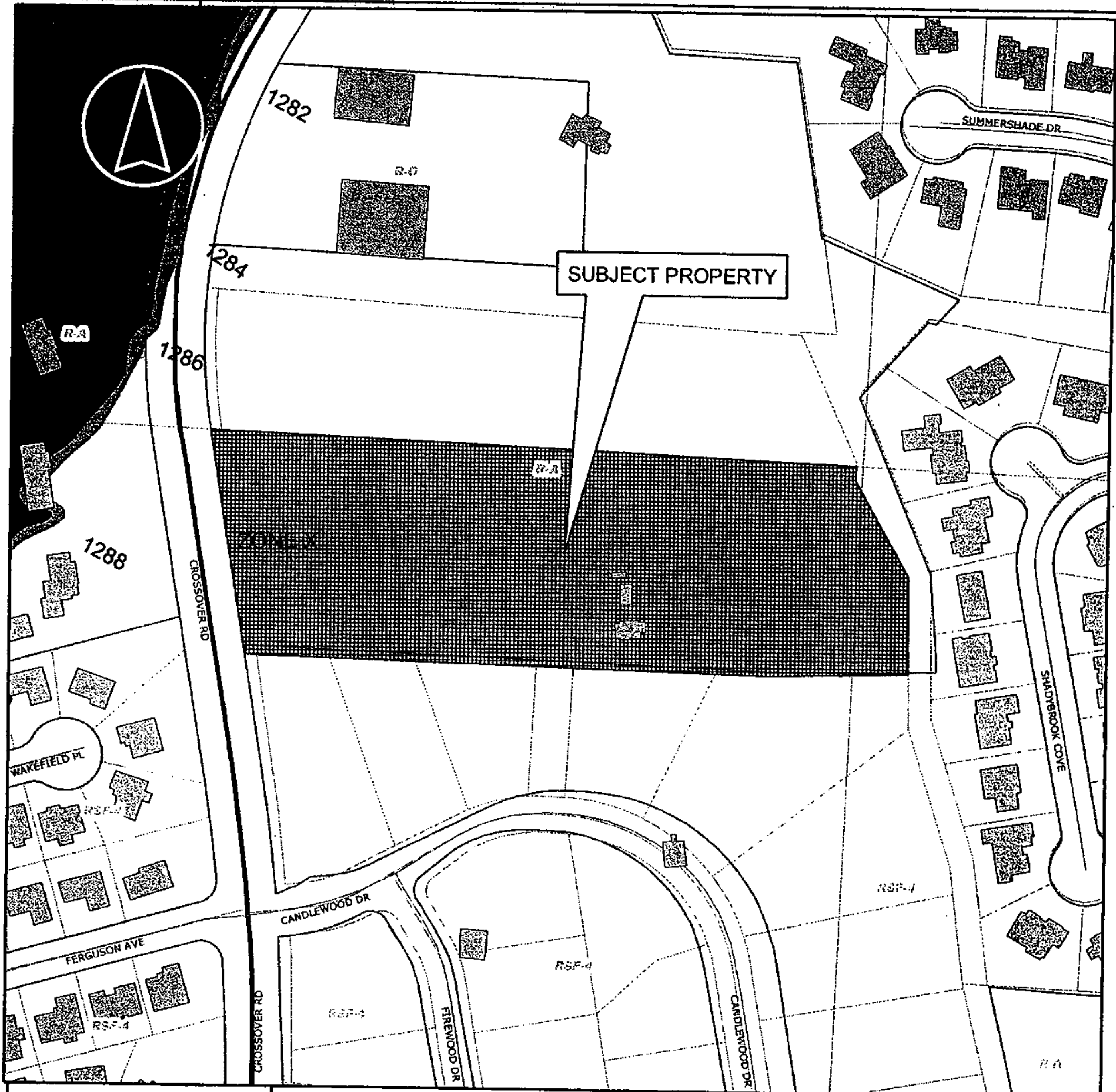
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Miles

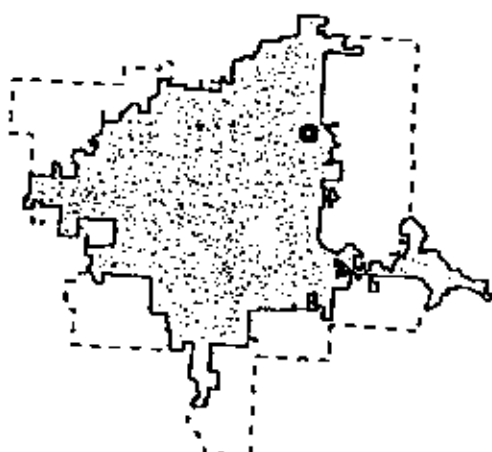
RZN05-1688

Close Up View

JDM INVESTMENTS



Overview



Legend

- RZN05-1688
- Overlay District
- FLOODWAY
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- BaseLine Profile
- Fayetteville
- Outside City



City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C. 9
RZN 05-1711 (Mathias)
Page 1 of 16

4-Oct-05

City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

RZN 05-1711: (MATHIAS, 557): Submitted by H2 Engineering for property located at Hwy 62 West. The property is zoned R-A, Residential Agricultural, and contains approximately 1.25 acres. The request is to rezone the subject property to C-1, Neighborhood Commercial.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐


Department Director

9-15-05
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a


City Attorney

9-16-05

Original Contract Number: n/a


Finance and Internal Service Director

9-16-05
Date

Received in City Clerk's Office




Mayor

9/16/05
Date

Received in Mayor's Office



Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning X

Date: September 14, 2005

Subject: Rezoning for Mathias (RZN 05-1711)

RECOMMENDATION

Planning staff recommends approval of the subject rezoning request to rezone approximately 1.25 acres of property from R-A, Residential Agricultural, to C-1, Neighborhood Commercial.

BACKGROUND

The subject property is located between 6th Street (Hwy 62) and Old Farmington Road. The overall site is zoned C-1, R-A, and RSF-4. The subject rezoning requests involves only a portion of property zoned R-A, Residential Agricultural. There are no existing structures on the subject property.

The applicant requests to rezone a portion of the subject property containing 1.25 acres from R-A to C-1. The applicant intends to develop the portion of property zoned C-1 for commercial uses. Currently the northern boundary of the C-1 zoning is angled on the property. The applicant intends to increase the C-1 zoning on the property such that the northern boundary parallels the south property line of the adjacent single family lots. The applicant anticipates that realigning the northern boundary of the C-1 zoning district will allow for more usable space. The northern portion of the property will remain R-A and RSF-4, which allows for residential uses compatible with the adjacent single family neighborhoods.

Staff recommends approval of the requested rezoning finding that it complies with the intent of the General Plan 2020 and retains the dichotomy of residential and commercial land use between Old Farmington Road and 6th Street.

DISCUSSION

This item was heard at the regular Planning Commission on September 12, 2005. The Planning Commission voted 6-0-1 to forward this item to the City Council with a recommendation for approval of the rezoning request to the City Council. Commissioner Trumbo recused from this item.

Public comment was received at the Planning Commission meeting. The surrounding property owners expressed concern with the potential of traffic from a commercial development accessing Old Farmington Road, a narrow and unimproved street. They expressed no objections, however, to the boundary of the rezoning request.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED
IN REZONING PETITION RZN 05-1711 FOR APPROXIMATELY
1.25 ACRES LOCATED AT HWY 62 WEST FROM R-A,
RESIDENTIAL-AGRICULTURAL TO C-1, NEIGHBORHOOD
COMMERCIAL.

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

Section 1: That the zone classification of the following described property is
hereby changed as follows:

From R-A, Residential-Agricultural to C-1, Neighborhood Commercial,
as shown on Exhibit "A" Attached hereto and made a part hereof.

Section 2: That the official zoning map of the City of Fayetteville, Arkansas is
hereby amended to reflect the zoning change provided in Section 1 above.

PASSED and APPROVED this _____ day of _____, 2005.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"
RZN 05-1711

PART OF THE NW $\frac{1}{4}$ OF THE SE $\frac{1}{4}$ OF THE NW $\frac{1}{4}$ OF SECTION 19, TOWNSHIP 16 NORTH, RANGE 30 WEST OF THE FIFTH PRINCIPLE MERIDIAN IN WASHINGTON COUNTY, ARKANSAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NW $\frac{1}{4}$ OF THE SE $\frac{1}{4}$ OF THE NW $\frac{1}{4}$ OF 16-16-30, SAID POINT BEING A FOUND RAILROAD SPIKE IN THE CENTER LINE OF ONE MILE ROAD, THENCE WEST 612.51 FEET, THENCE SOUTH 113.76 FEET TO THE POINT OF BEGINNING; THENCE S02°16'39"W 30.48 FEET, THENCE S70°40'09"W 485.75 FEET; THENCE N01°28'10"E 209.39 FEET, THENCE S87°43'21"E 454.57 FEET TO THE POINT OF BEGINNING. CONTAINING 1.25 ACRES MORE OF LESS.

DRAFT



PC Meeting of September 12, 2005

THE CITY OF FAYETTEVILLE, ARKANSAS

PLANNING DIVISION CORRESPONDENCE

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

TO: Fayetteville Planning Commission
FROM: Suzanne Morgan, Current Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: September 7, 2005

RZN 05-1711: Rezoning (MATHIAS, 557): Submitted by H2 ENGINEERING for property located at Hwy 62W. The property is zoned R-A, RESIDENTIAL AGRICULTURAL, and contains approximately 1.20 acres. The request is to rezone the subject property to C-1, Neighborhood Commercial.

Planner: SUZANNE MORGAN

RECOMMENDATION:

Staff recommends approval of the requested rezoning based on the findings included as part of this report.

PLANNING COMMISSION ACTION:	Required <u>YES</u>
	☒ Approved ☐ Denied
Date: September 12, 2005	
CITY COUNCIL ACTION:	Required <u>YES</u>
	☐ Approved ☐ Denied
Date: October 4, 2005 (1 st reading if recommended)	

Comments: _____

BACKGROUND:

Property description: The subject property is located between 6th Street and Old Farmington Road. The overall site is zoned C-1, R-A, and RSF-4. The subject rezoning requests involves only a portion of property zoned R-A, Residential Agricultural. There are no existing structures on the subject property.

Background: In 1992, the owner of the overall property requested a rezoning to allow commercial uses (on the southern three-quarters of the property) and multi-family development adjacent to Old Farmington Road. The City Council approved a rezoning to allow Neighborhood Commercial adjacent to 6th Street and single family residential along Old Farmington Road. In 2004, the owner requested a similar rezoning to that proposed in 1992 with multi-family to the north. This item was eventually withdrawn, and in May of 2005 a C-PZD was requested to create a commercial and multi-family development. Based on staff's comments and review of the project, the applicant withdrew this C-PZD and is now requested to rezone only a portion of the property for commercial development.

Proposal: The applicant has requested to rezone a portion of the subject property containing 1.2 acres from R-A to C-1. The applicant intends to develop the portion of property zoned C-1 for commercial uses. Currently the northern boundary of the C-1 zoning is angled on the property. The applicant intends to increase the C-1 zoning on the property such that the northern boundary parallels the south property line of the adjacent single family lots. The applicant anticipates that realigning the northern boundary of the C-1 zoning district will allow for more usable space. The northern portion of the property will remain R-A and RSF-4, which allows for residential uses compatible with the adjacent single family neighborhoods.

Request: The request is to rezone the subject property from R-A, Residential Agricultural, to C-1, Neighborhood Commercial.

SURROUNDING LAND USE AND ZONING

Direction	Land Use	Zoning
North	Vacant	R-A, Residential Agricultural RSF-4, Res. Single Family – 4 DU/acre
South	Office	R-O, Residential Office
East	Single Family Dwellings	R-A, Residential Agricultural
West	Single Family Dwellings	R-A, Residential Agricultural

INFRASTRUCTURE:

Streets: The subject property has access from 6th Street and Old Farmington Road. The portion of property zoned for commercial use has access to 6th Street. Access to this property and street improvements shall be reviewed at the time of Large Scale Development.

Water: A 6" water main is available on Old Farmington Road and a 12" water main is available on 6th Street. The developer shall extend water within the development and create a looped system, with specifications to be determined at a later date.

Sewer: Sanitary sewer is adjacent to the site. The developer shall extend the sewer main within the development and shall conduct a downstream study at the time of development.

Fire: The subject property is located 1.1 miles from the Fire Station #6. Fire response time is approximately 2 minutes. There should be no adverse affects on the call volume or response time.

Police: It was the opinion of the Fayetteville Police Department for a similar rezoning request in 2004 for this property that it will not substantially alter the population density and thereby undesirably increase the load on police services or create an appreciable increase in traffic danger and congestion on the area.

LAND USE PLAN: The Future Land Use Plan designates this site for Mixed Use and Residential. Rezoning this small portion of property to C-1 is consistent with the land use plan.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The proposed rezoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans. The overall property is designated Residential and Mixed Use on the General Plan. The requested rezoning will still retain the dichotomy of uses on the property. Surrounding properties affected by this zoning are residential in nature. Staff finds that rezoning 1.2 acres of the site will not adversely affect adjacent residential property to the west and vacant residential property to the north. Development of the property will be screened per ordinance requirements.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zoning will allow the development of this tract for Neighborhood Commercial uses that will benefit the surrounding single family neighborhoods. The rezoning of this small portion of the overall tract will still allow for the development of commercial and residential uses in areas as designated by the General Plan.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: Development of the overall site will create additional traffic on 6th Street, a Principal Arterial Street on the Master Street Plan. The rezoning of 1.2 acres to Neighborhood Commercial will allow for a larger commercial development, but have negligible impact on the amount of potential traffic to

this site. At the time of development, curb cuts/entry drives onto the property will be evaluated for safety.

Police – It was the opinion of the Fayetteville Police Department for a similar rezoning request in 2004 for this property that it will not substantially alter the population density and thereby undesirably increase the load on police services or create an appreciable increase in traffic danger and congestion on the area.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The proposed zoning would not alter the population density in the area. Comments from public service providers have been included in this staff report.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:
- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
 - b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

161.16 District C-1, Neighborhood Commercial

(A) *Purpose.* The Neighborhood Commercial District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 12	Offices, studios and related services
Unit 13	Eating places
Unit 15	Neighborhood shopping
Unit 18	Gasoline service stations and drive-in restaurants
Unit 25	Professional offices

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 34	Liquor stores
Unit 35	Outdoor music establishments
Unit 36	Wireless communications facilities

(C) *Density.* None.

(D) *Bulk and area regulations.* None.

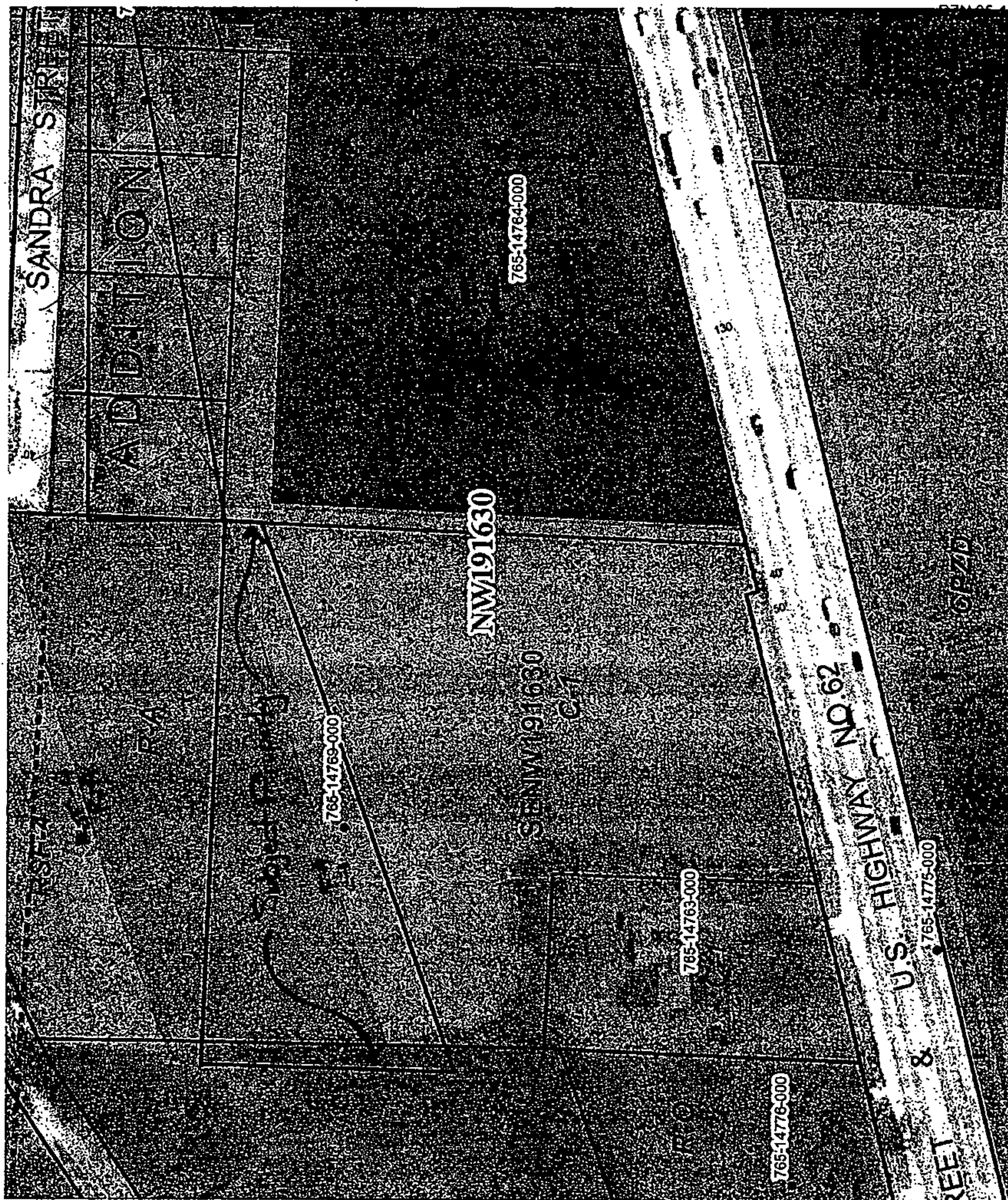
(E) *Setback regulations.*

Front	50 ft.
Side	None
Side, when contiguous to a residential district	10 ft.
Rear	20 ft.

(F) *Height regulations.* There shall be no maximum height limits in C-1 District, provided, however, that any building which exceeds the height of 10 feet shall be setback from any boundary line of any residential district a distance of one foot for each foot of height in excess of 10 feet.

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

Mathias





City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

August 16, 2005

Attn: Planning Commission
Re: Mathias Shopping Centers RZN

Dear Commissioners,

This correspondence addresses items relating to a Rezoning request submitted by H2 Engineering, Inc., on behalf of Mathias Shopping Centers, Inc.

This property is located on the north side of Highway 62 west of Interstate 540 and is currently zoned C-1 and R-A. The rezoning request is being made to "square up" the zoning lines (i.e. rezone a portion from R-A to C-1) as they relate to this property boundary.

The requested zoning change is merely an adjustment to the current zoning lines. The requested C-1 zoning is adjacent to R-A to the north and west, C-1 to the south, and C-2 to the east. As stated previously, the rezoning is needed to square up the zoning lines as they relate to the boundary. This rezoning will not appreciably increase either traffic danger or congestion. The proposed zoning will not alter the population density significantly.

Sincerely

A handwritten signature in black ink, appearing to read 'Tom Hennelly', is written over a horizontal line.

Thomas A. Hennelly, P.E.



City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

August 16, 2005

Attn: Planning Staff
Re: Mathias Shopping Centers RZN

Dear Staff,

This correspondence addresses items relating to a Rezoning request submitted by H2 Engineering, Inc., on behalf of Mathias Shopping Centers, Inc.

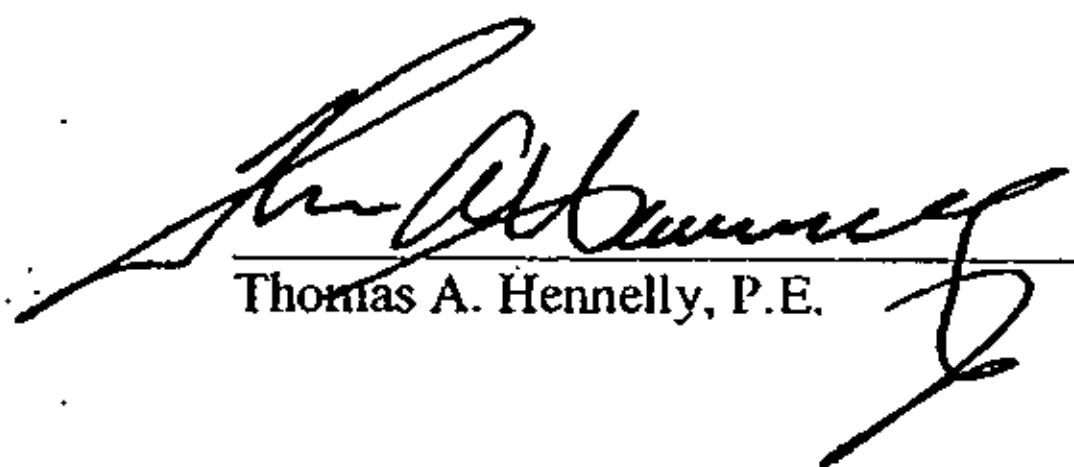
This property is located on the north side of Highway 62 west of Interstate 540 and is currently zoned C-1 and R-A. The rezoning request is being made to "square up" the zoning lines (i.e. rezone a portion from R-A to C-1) as they relate to this property boundary.

The property is currently owned by Sam Mathias, Bleaux Barnes, and Samantha Barnes.

The proposed usage will conform in both appearance and function to surrounding properties. Near by restaurants, and retail developments are similar to this use in both land use, traffic generation and appearance.

Water is available via a 12" line on the south side, south of Highway 62. 6" Sanitary sewer is available on the west side of the property.

Sincerely

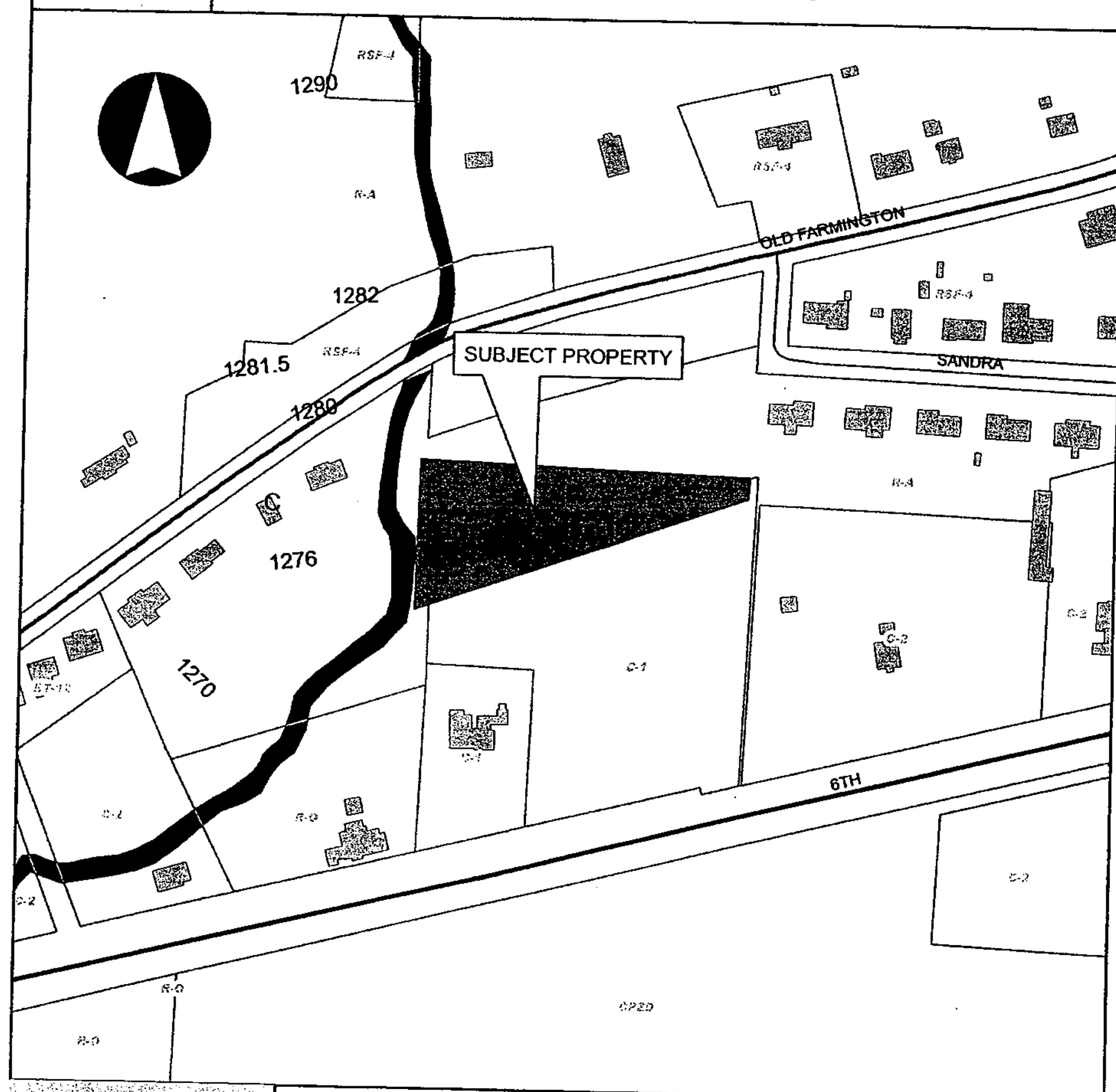


Thomas A. Hennelly, P.E.

RZN05-1711

Close Up View

MATHIAS



Legend

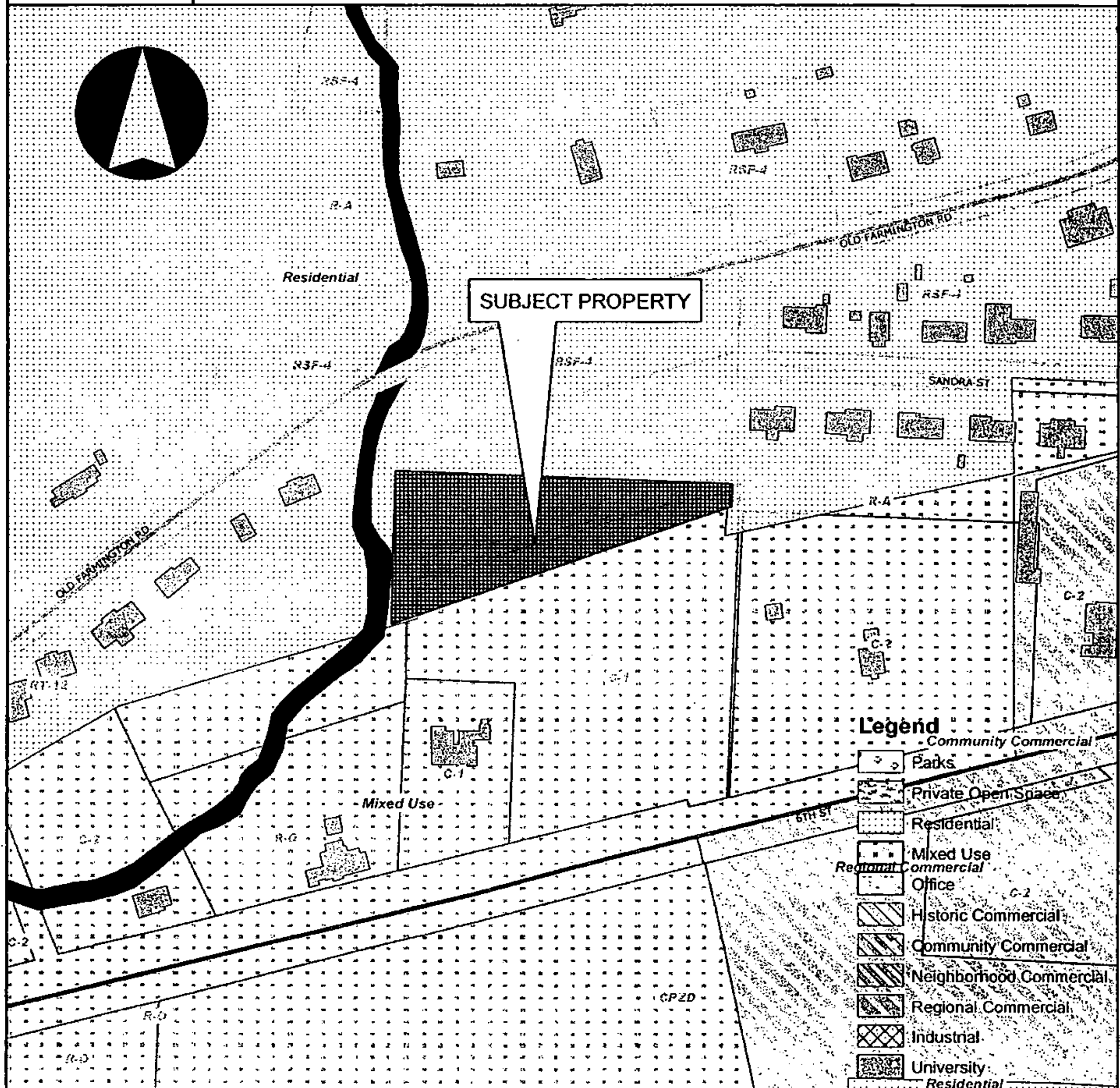
- ○ ○ ○ ○ Overlay District
- FLOODWAY
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- - - BaseLine Profile
- Fayetteville
- Outside City
- RZN05-1711
- streets

0 75 150 300 450 600
Feet

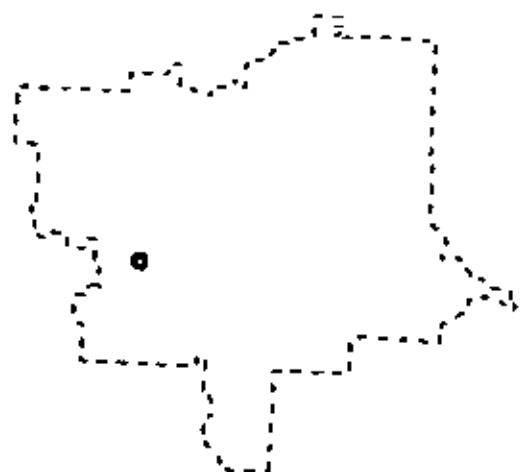
RZN05-1711

Future Land Use

MATHIAS



Overview



Legend

Subject Property

RZN05-1711

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

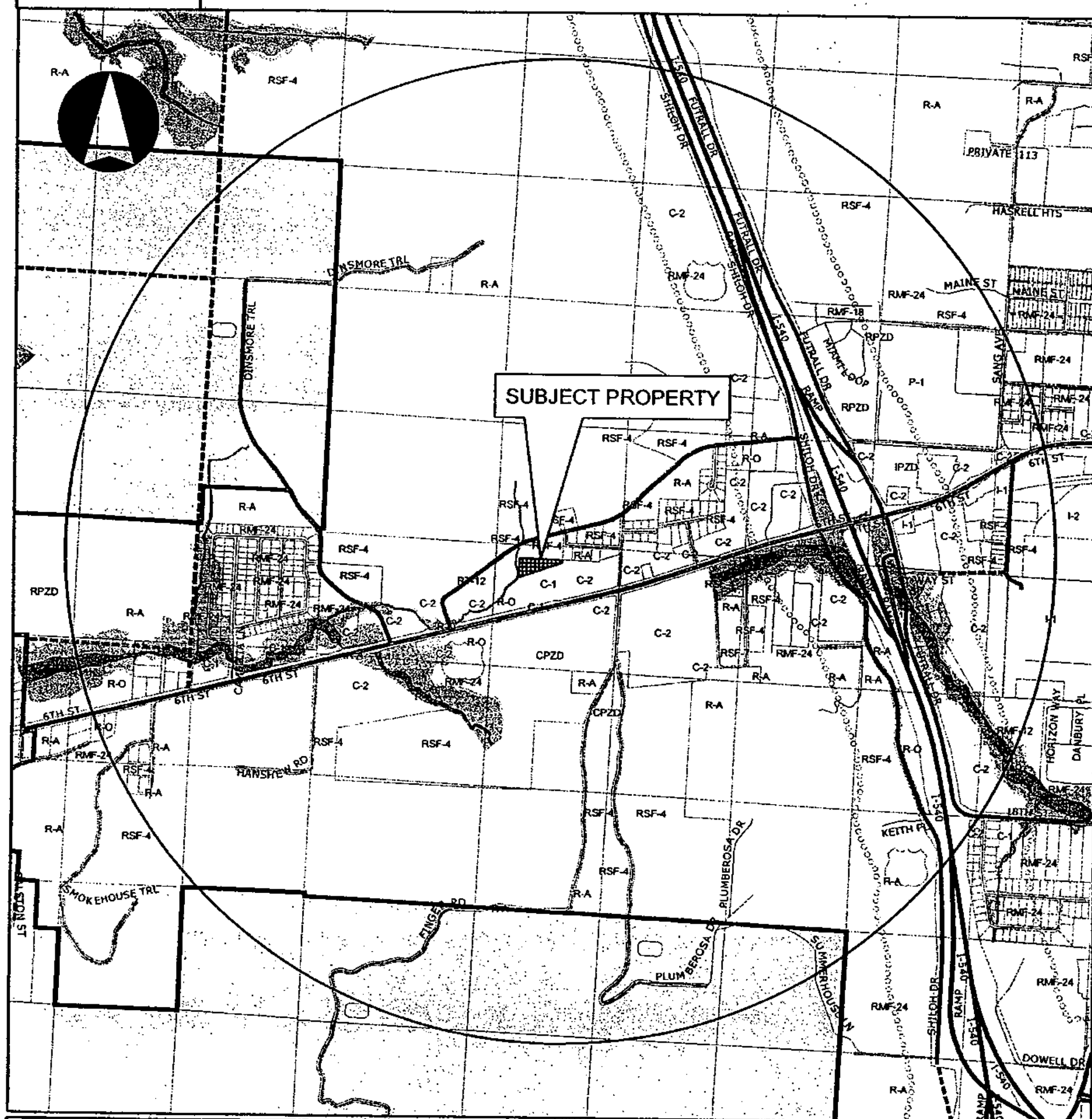
Outside City

Legend

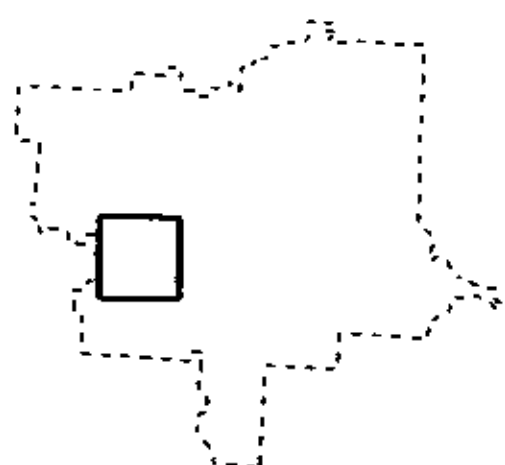


One Mile View

MATHIAS



Overview



Legend

Subject Property

RZN05-1711

Boundary

 Planning Area
Overlay District

☐ Outside City

Legend

0 0.125 0.25

0.5

0.75

1

Miles

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C. 10
VAC 05-1632
(East Square Development)
Page 1 of 12

4-Oct-05

City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

VAC 05-1632: (East Square Development, 523): Submitted by Bob Kohler, for property located at the city block between East Avenue and College Avenue, and Center Street and Mountain Street. The property is zoned C-4, Downtown Commercial. The request is to vacate the east-west alley running at the approximate center of subject property.

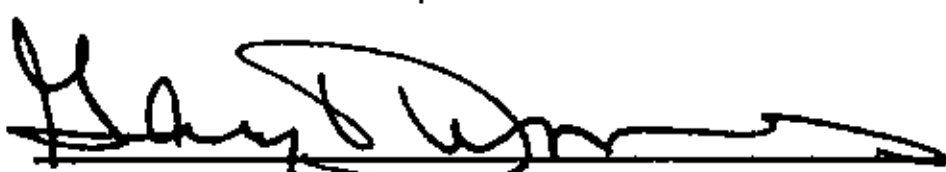
\$363.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐


Department Director

9-15-05
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

Original Contract Number: n/a


City Attorney

9-16-05


Finance and Internal Service Director

9-16-05
Date

Received in City Clerk's Office




Mayor

9/16/05
Date

Received in Mayor's Office



Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning

Date: September 14, 2005

Subject: Alley Vacation for East Square Development (VAC 05-1632)

RECOMMENDATION

Planning Staff recommends approval of an ordinance vacating an existing alley located between Center Street and Mountain Street, as depicted herein.

BACKGROUND

The subject property is located within the Original Town Plat on the block between Center Street and Mountain Street and contains approximately 0.07 acres. The property is currently zoned C-4, Downtown. The Mountain Inn, parking deck, and other deteriorated structures on this property have been demolished by the City of Fayetteville. The applicant has requested consideration of a Commercial Planned Zoning District to redevelop this property.

The applicant requests approval to vacate an existing alley on the property in order to facilitate the construction of structures on this city block. There are existing utilities located within this alley. Utilities have been or are in the process of being relocated. There is a 6" waterline in the alley that must be abandoned and the service locations moved prior to final approval of the vacation. A memo from the Water and Wastewater Director is attached with specific conditions of approval.

Staff recommends approval of the requested alley vacation. The conditions set forth by the Water/Wastewater Division shall be made official conditions of this vacation.

DISCUSSION

Notification was provided to all appropriate utility representatives and adjoining property owners. No objections were submitted. Conditions as requested and pertinent to the subject request are included as a condition of approval. The Planning Commission voted 7-0-0 to forward this item to the City Council with a recommendation for approval of the vacation request at the regular meeting of September 12, 2005.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE APPROVING VAC 05-1632 SUBMITTED BY BOB KOHLER FOR ALLEY LOCATED ON THE CITY BLOCK BETWEEN EAST AVENUE AND COLLEGE AVENUE, AND CENTER STREET AND MOUNTAIN STREET, AS INDICATED ON THE ATTACHED MAP AND LEGAL DESCRIPTION.

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

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

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

Section 1. That the City of Fayetteville, Arkansas releases, vacates, and abandons all its rights, together with the rights of the public generally, in and to the street (alley) designated as follows:

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

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

Section 3. That this Vacation approval is subject to the conditions set forth by the Water/Wastewater Division, which is attached.

PASSED AND APPROVED this _____ day of _____, 2005.

APPROVED:

By _____
Dan Coody, Mayor

ATTEST:

By _____
Sondra Smith, City Clerk

EXHIBIT "A"
VAC 05-1632

ALL OF THE 10 FOOT EAST-WEST ALLEY LYING SOUTH OF LOTS 1-6 AND NORTH OF LOTS 14-19 OF BLOCK TWENTY-EIGHT (28) OLD TOWN PLAT FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, CONTAINING 0.07 ACRES, MORE OR LESS.

DRAFT



PC Meeting of September 12, 2005

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Brent O'Neal, Staff Engineer
Suzanne Morgan, Current Planner
THRU: Jeremy Pate, Director of Current Planning
DATE: September 7, 2005

VAC 05-1632: Vacation (East Square Development, pp 523) was submitted by Bob Kohler for property located on the city block between East Avenue and College Avenue, and Center Street and Mountain Street. The property is zoned C-4, Downtown Commercial. The request is to vacate the east-west alley running at the approximate center of the property.

Findings: Vacating the alley would not adversely affect access to the property or any other adjacent property with the relocation of several utilities.

Background: The alley is for general utility and access for the existing buildings along Center and Mountain Streets. There are existing utilities located within this alley. Utilities have been or are in the process of being relocated. There is a 6" waterline in the alley that must be abandoned and the service locations moved prior to final approval of the vacation. A memo from the Water and Wastewater Director is attached with specific requirements. The applicant has applied for a rezoning request to zone the property C-PZD.

Request: The request is to vacate an alley.

The applicant has submitted the required notification forms to the utility companies and to the City. The results are as follows:

UTILITIES

Ozarks Electric

Cox Communications

AEP/SWEPCO

SW Bell

RESPONSE

No Objections.

No Objections.

No Objections.

No Objections. The vacation must be recorded at the Washington County Courthouse.

No Objections.

RESPONSE

See attached memo.

No Objections.

No Objections.

No Objections.

Public Comment: The applicant has submitted the required notification forms to the adjacent property owners. Adjacent property owners had no objections to the proposed vacation.

Recommendation: Staff recommends approval of the requested alley vacation VAC 05-1632. The conditions set forth by the Water/Wastewater Division shall be made official conditions of this vacation.

PLANNING COMMISSION ACTION: yes Required
 X Approved Denied

Date: September 12, 2005

Comments: _____

The "CONDITIONS OF APPROVAL", as stated in this report, are accepted in total without exception by the entity requesting approval of this development item.

By _____

Title

Date _____

CITY COUNCIL ACTION: yes Required
 Approved Denied

Date: _____

161.19 District C-4, Downtown

(A) *Purpose.* The Downtown District is designed to accommodate the commercial, office, governmental, and related uses commonly found in the central downtown area which provides a wide range of retail, financial, professional office, and governmental office uses.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 12	Offices, studios and related services
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 15	Neighborhood shopping goods
Unit 16	Shopping goods
Unit 19	Commercial recreation, small sites
Unit 25	Professional offices
Unit 34	Liquor stores

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 17	Trades and services
Unit 18	Gasoline service station & drive-in restaurants
Unit 26	Multi-family dwellings
Unit 28	Center for collecting recyclable materials
Unit 35	Outdoor music establishments
Unit 36	Wireless communications facilities

(C) *Density.* None.

(D) *Bulk and area regulations.* None.

(E) *Setback regulations.*

Front	5 ft.
Front, if a sidewalk is in existence or to be provided	None
Side	None
Side, when contiguous to a residential district	10 ft.
Rear, without easement or alley	None
Rear, from center line of an easement or alley	8 ft.

(Code 1965, App. A., Art. 5(VII(a)); Ord. No. 2148, 10-7-75; Ord. No. 2351, 6-21-77; Ord. No. 2362, 8-2-77; Ord. 1747, 6-29-70; Code 1991, §160.038; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99)

WATER AND WASTEWATER DIVISION
DEPARTMENTAL CORRESPONDENCE

To: City Planning

Thru: Engineering

From: David Jurgens, Water/Wastewater

Date: July 25, 2005

Subject: Easement Vacation Request, Mountain Inn Alley

The attached request to vacate the east-west alley on the north side of the old Mountain Inn is approved as of when the conditions listed below are met. If the conditions listed below are not all met, then the vacation cannot be approved.

Conditions:

1. The water line in the alley shall be fully abandoned at both ends of the alley. In order for this to be accomplished:
 - all services that tie off the alley line shall be tied to the water main on Center Street;
 - said services shall not cross any lot line, and shall tie to the main at approximately a 90 degree angle to the right-of-way line;
 - meters shall be located directly in front of the building/business which they serve;
 - the existing meter loops and meters shall be removed and, upon coordination with the Meter Superintendent, shall be returned to the City;
 - the existing water main that runs westward up the alley shall be capped at the mains in North College Avenue or in the alley behind Bank of America, with inspection and testing observed by the City Engineer's office.
2. A new sewer main shall be constructed from the existing manhole in North College at the east end of this alley northward to the intersection of College and Center and the to the west in the Center Street right of way to a point at which:
 - all services that tie to the alley line shall be tied to the new sewer main on Center Street;
 - said services shall not cross any lot line, and shall tie to the main at approximately a 90 degree angle to the right-of-way line;
 - the existing sewer main that runs westward up the alley shall be capped at the manhole in North College Avenue, with inspection and testing observed by the City Engineer's office.
3. All work performed under contract shall go through the standard review, approval, and inspection process administered by the City Engineer's office.

**PETITION TO VACATE ALLEY LOCATED IN BLOCK TWENTY EIGHT (28)
ORIGINAL TOWN PLAT CITY OF FAYETTEVILLE, WASHINGTON COUNTY,
ARKANSAS**

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

We, the undersigned, being all the owners of the real estate abutting the alley hereinafter sought to be abandoned and vacated, lying in Block 28 Original Town Plat, City of Fayetteville, Arkansas, a municipal corporation, petition to vacate an alley which is described as follows:

All of the 10 foot East-West alley lying South of Lots 1-6 and North of Lots 14-19 of Block Twenty-eight (28) Old Town Plat Fayetteville, Washington County, Arkansas, containing 0.07 acres, more or less.

That the abutting real estate affected by said abandonment of the alley (10 foot East-West alley lying South of Lots 1-6 and North of Lots 14-19 of Block Twenty-eight (28) Old Town Plat Fayetteville, Washington County, Arkansas) City of Fayetteville used by the public for a period of many years, and that the public interest and welfare would not be adversely affected by the portion of the above described alley.

The petitioners pray that the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject, however to the existing utility easements and sewer easements as required, and that the above described real estate be used for their respective benefit and purpose as now approved by law.

The petitioners further pray that the above described real estate be vested in the abutting property owners as provided by law.

Wherefore, the undersigned petitioners respectfully pray that the governing body of the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject to said utility easements, and that title to said real estate sought to be abandoned be vested in the abutting property owners as provided by law, and as to that particular land the owners be free from the easements of the public for the use of said alley.

Dated this 13 day of July, 2005

John Nock
printed name

[Signature]
signature

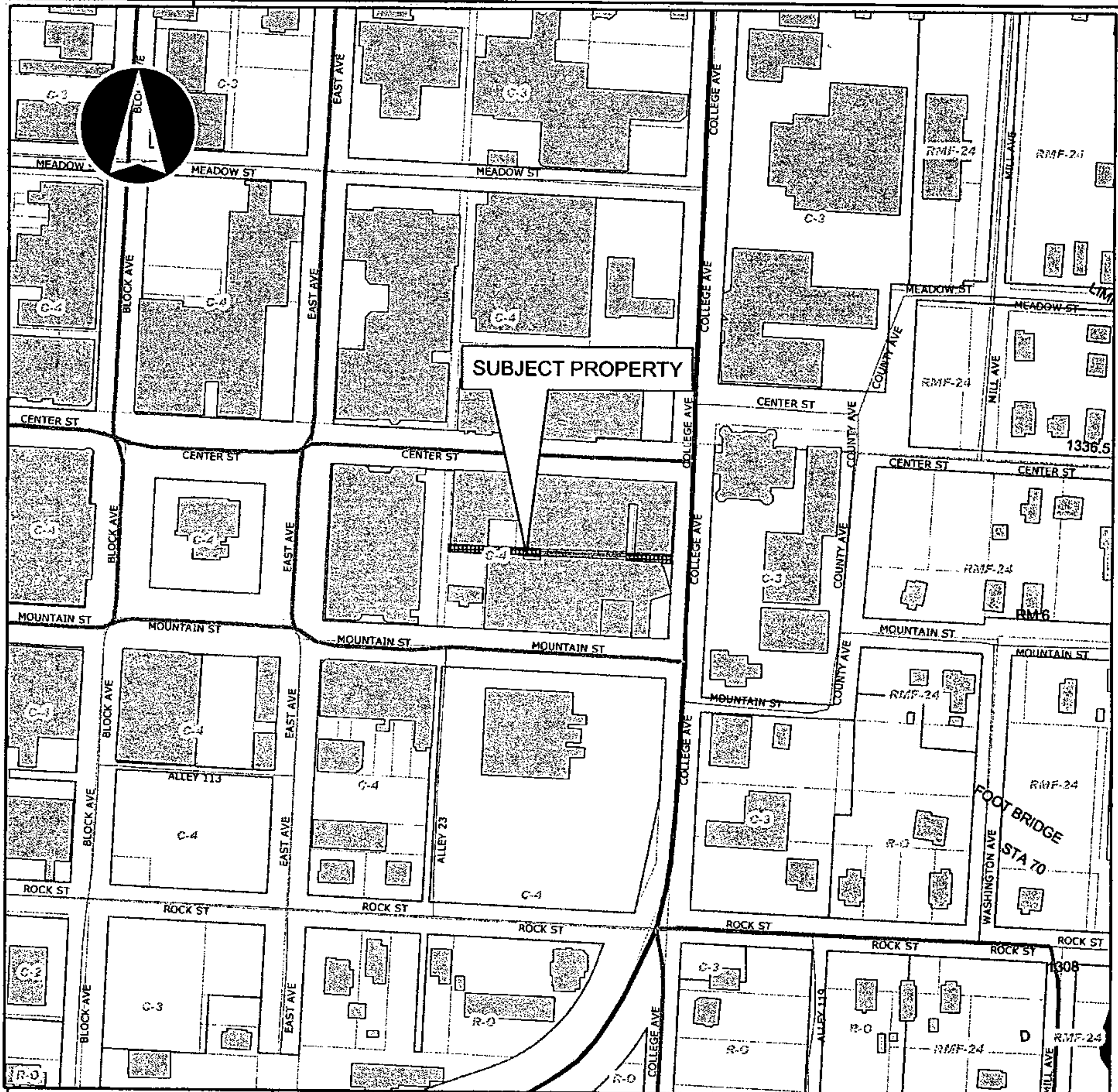
RICHARD ALEXANDER
printed name

[Signature]
signature

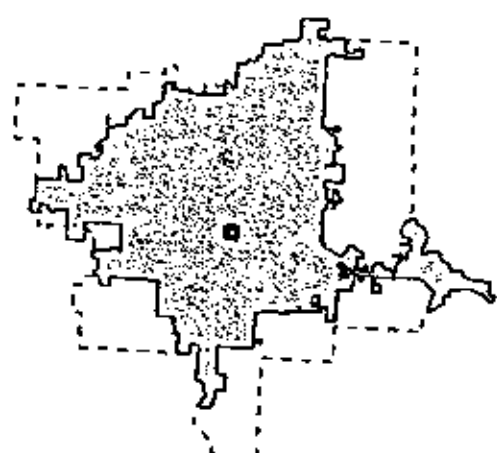
VAC05-1632

Close Up View

EAST SQUARE DEVELOPMENT



Overview



Legend

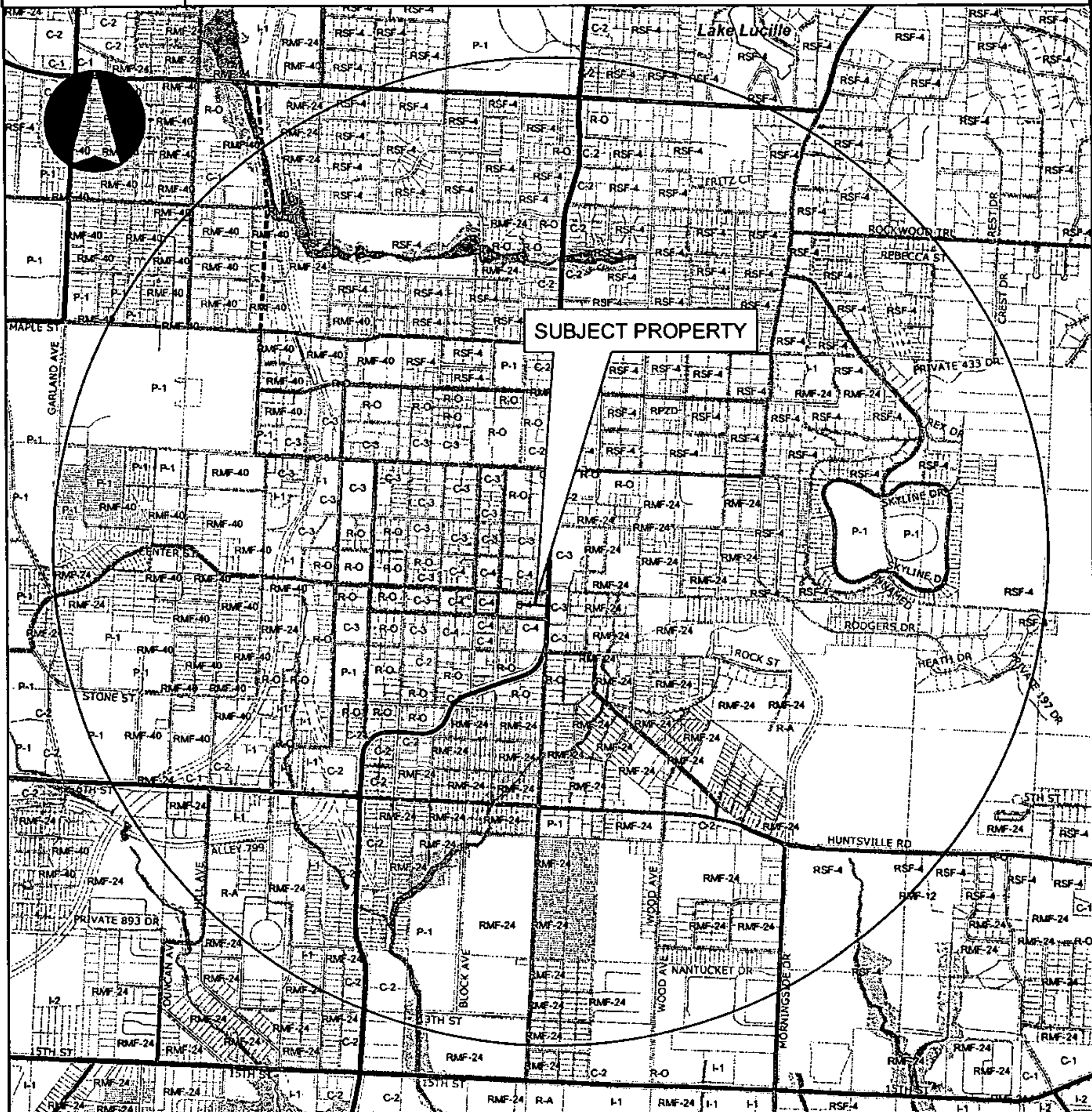
- VAC05-1632
- Overlay District
- FLOODWAY
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- BaseLine Profile
- Fayetteville
- Outside City

0 75 150 300 450 600 Feet

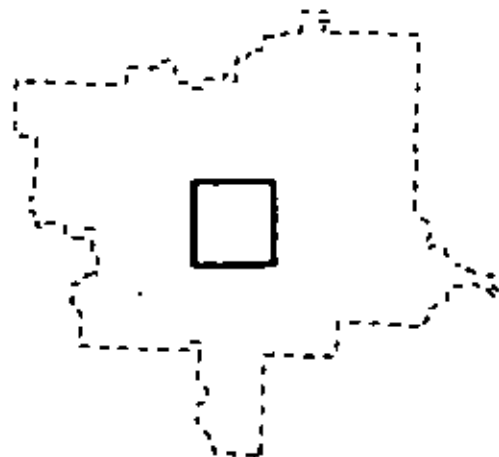
VAC05-1632

EAST SQUARE DEVELOPMENT

One Mile View



Overview



Legend

Subject Property
 VAC05-1632

Boundary

Planning Area
 Overlay District
 Outside City

Legend

0 0.125 0.25 0.5 0.75 1 Miles

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C. 11
VAC 05-1686 (Schultz)
Page 1 of 22

4-Oct-05
City Council Meeting Date

Jeremy Pate *J.P.*
Submitted By

Planning
Division

Operations
Department

Action Required:

VAC 05-1686: (Schultz, 599): Submitted by N. Arthur Scott, for property located at 1921 South Vale Avenue. The property is zoned RMF-24, Residential Multi Family, 24 units per acre. The request is to vacate a portion of the right of way at the subject property.

\$363.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

Budgeted Item ☐

Budget Adjustment Attached ☐

[Signature]
Department Director
9-15-05
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

Original Contract Number: n/a

[Signature]
City Attorney
9-16-05
Date

[Signature]
Finance and Internal Service Director
9-16-05
Date

Received in City Clerk's Office
ENTERED
9/15/05

[Signature]
Mayor
9/16/05
Date

Received in Mayor's Office
ENTERED
9/16/05

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning

Date: September 14, 2005

Subject: Right-of-Way Vacation for Schultz (VAC 05-1686)

RECOMMENDATION

Planning Staff recommends approval of an ordinance vacating the Junction Street right-of-way east of Razorback Road and west of Vale Avenue and a 10-foot north-south alley, as depicted herein.

BACKGROUND

The subject property is in south Fayetteville east of Razorback Road, west of Vale Avenue, and south of Sligo Street. The plat on record in the Washington County assessor's office depicts this right-of-way as Junction Street in the Meadow Vale Subdivision. Currently no public utilities or public uses occupy the easement. Junction Street (the subject right-of-way) was platted as a local street/alley varying in right-of-way width from 40' in the western portion to 20' in the eastern portion. Additionally, a 10-foot north-south alley is requested to be vacated. The street/right-of-way grid in this area was dramatically altered when the State Highway Department installed Razorback Road. This right-of-way is currently undeveloped. A 25' front setback required off of this right-of-way is required under the City's current zoning criteria. Due to the lot configuration, it is not feasible to construct buildings on the property that meet these required building setbacks. The applicant requests to vacate the right-of-way as described and depicted in the attached documents.

DISCUSSION

Notification was provided to all appropriate utility representatives and adjoining property owners. No objections were submitted. Conditions pertinent to the subject request are included as a condition of approval. These conditions include dedicating an appropriately sized utility easement and having the applicant construct a private street to public street standards, including sidewalks connecting Vale Avenue and Razorback Road in the vicinity of the right-of-way. The Planning Commission voted 7-0-0 to forward this item to the City Council with a recommendation for approval of the vacation request at the regular meeting of September 12, 2005.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE APPROVING VAC 05-1686 SUBMITTED BY N. ARTHUR SCOTT FOR PROPERTY LOCATED AT 1921 SOUTH VALE AVENUE, VACATING A PORTION OF THE RIGHT OF WAY AS INDICATED ON THE ATTACHED MAP AND LEGAL DESCRIPTION.

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

WHEREAS, the City Council has determined that the following described portion of right of way is not required for corporate purposes.

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

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

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

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

Section 3. That the applicant shall construct a minimum 24' width private street including sidewalks on both sides to City standards through the vacated right-of-way vicinity connecting Vale Avenue and Razorback Road. This paved street shall remain open for public access and maintained by the applicant.

Section 4. That a utility easement along the private street shall be recorded, prior to issuance of a building permit, meeting the requirements of the City.

PASSED AND APPROVED this _____ day of _____, 2005.

APPROVED:

By _____
Dan Coody, Mayor

ATTEST:

By _____
Sondra Smith, City Clerk

EXHIBIT "A"
VAC 05-1686

DESCRIPTION OF RIGHT OF WAY TO BE VACATED

THAT PART OF JUNCTION STREET ADJACENT TO LOTS 4, 5, 6 AND 12, BLOCK 4 IN MEADOW VALE SUBDIVISION (PLAT BOOK 1 AT PAGE 25) IN THE CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS AND LOTS 1, 4, 5, 6 AND 7, BLOCK 5 IN MEADOW VALE SUBDIVISION AND THAT PART OF THE PLATTED ALLEY ADJACENT TO LOTS 6 AND 11 AND 12, BLOCK 4 AND LOTS 6 AND 7, BLOCK 5 IN MEADOW VALE SUBDIVISION, BEING PART OF THE SW1/4 OF THE SE1/4 OF SECTION 20, TOWNSHIP 16 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND IRON PIN AT THE NORTHEAST CORNER OF LOT 1, BLOCK 4 OF SAID MEADOW VALE SUBDIVISION; THENCE ALONG THE EAST LINE OF SAID LOT 1 S02°56'38"W 220.01 FEET TO A FOUND IRON PIN ON THE EAST LINE OF SAID LOT 4, BLOCK 4 OF SAID MEADOW VALE SUBDIVISION; THENCE CONTINUING ALONG THE EAST LINE OF SAID LOT 4 S02°57'51"W 90.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 4, BLOCK 4 AND THE POINT OF BEGINNING; THENCE S02°57'51"W 20.00 FEET; THENCE S87°08'48"E 143.15 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF VALE AVENUE; THENCE ALONG SAID RIGHT OF WAY LINE S01°30'10"E 20.06 FEET; THENCE DEPARTING SAID RIGHT OF WAY LINE N87°08'48"W 294.81 FEET TO THE NORTHWEST CORNER OF SAID LOT 6, BLOCK 5; THENCE ALONG THE WEST LINE OF SAID LOT 6, BLOCK 5 S02°56'48"W 28.19 FEET; THENCE N87°06'08"W 10.00 FEET TO A POINT ON THE EAST LINE OF SAID LOT 7, BLOCK 5; THENCE N02°56'48"E 28.18 FEET TO THE NORTHEAST CORNER OF SAID LOT 7, BLOCK 5; THENCE ALONG THE NORTH LINE OF SAID LOT 7, BLOCK 5 N87°08'48"W 59.72 FEET; THENCE N02°52'32"E 40.00 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 12, BLOCK 4; THENCE ALONG SAID SOUTH LINE S87°08'48"E 59.77 FEET TO THE SOUTHEAST CORNER OF SAID LOT 12, BLOCK 5; THENCE ALONG THE EAST LINE OF SAID LOTS 12 AND 11, BLOCK 5 N02°56'48"E 89.83 FEET; THENCE S87°12'32"E 10.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT 6, BLOCK 4; THENCE S02°56'48"W 89.84 FEET TO THE SOUTHWEST CORNER OF SAID LOT 6, BLOCK 5; THENCE S87°08'48"E 150.12 FEET TO THE POINT OF BEGINNING, CONTAINING 12,853 SQUARE FEET OR 0.295 ACRES, MORE OR LESS, SUBJECT TO ANY EASEMENTS, COVENANTS OR RESTRICTIONS OF RECORD OR FACT.



PC Meeting of September 12, 2005

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Planner
Brent O'Neal, Staff Engineer
THRU: Jeremy Pate, Director of Current Planning
DATE: September 8, 2005; September 14, 2005

VAC 05-1686: Vacation (Schultz, pp 599) Submitted by N. ARTHUR SCOTT for property located at 1921 SOUTH VALE AVENUE. The property is zoned RMF-24, MULTI FAMILY - 24 UNITS/ACRE and contains approximately 0.29 acres. The request is to vacate a portion of the right-of-way at the subject property.

Planner: ANDREW GARNER

Findings:

Property Description and Background: The subject property is in south Fayetteville east of Razorback Road, west of Vale Avenue, and south of Sligo Street. The plat on record in the Washington County assessor's offices depicts this right-of-way as Junction Street in the Meadow Vale Subdivision. Currently no public utilities or public uses occupy the easement. Junction Street (the subject right-of-way) was platted as a local street/alley varying in right-of-way width from 40' in the western portion to 20' in the eastern portion. This right-of-way is currently undeveloped.

Request: The applicant's request is to vacate the Junction Street right-of-way as it is no longer necessary to facilitate the construction of a public street through the area, and in order to enable the development of lots to the north and south of the subject right-of-way. A 25' front setback required off of this right-of-way is required under the City's current zoning criteria. It is not feasible to construct buildings that meet these required building setbacks.

The applicant has submitted the required notification forms to the utility companies and to the City. The results are as follows:

UTILITIES

RESPONSE

Ozarks Electric

No Objections

TCA Cable

No Objections

Southwestern Electric Power Company No Objections

Arkansas Western Gas No Objections

Southwestern Bell Telephone No Objections

CITY OF FAYETTEVILLE:

RESPONSE

Water/Sewer No Objections.

Transportation No Objections

Solid Waste No Objections

Engineering No Objections

Public Comment: The applicant has submitted the required notification forms to the adjacent property owners. Adjacent property owners have not provided any written or verbal objections to the proposed right-of-way vacation.

Recommendation: Staff finds that vacating the right-of-way would not adversely affect the City's Master Street Plan, or traffic flow to the property or any other properties. Staff recommends approval of the proposed right-of-way vacation VAC 05-1686 with the following conditions:

1. The applicant shall construct a minimum 24' width private street including 6' sidewalk on both sides to City standards through the vacated right-of-way vicinity connecting Vale Avenue and Razorback Road. This paved street shall remain open for public access and maintained by the applicant.

PLANNING COMMISSION ACTION: yes Required
Recommendation to be: X Approved Denied
Date: September 12, 2005 *Anthes, Clark and 7-0-0*

Comments: _____

The "CONDITIONS OF APPROVAL", as stated in this report, are accepted in total without exception by the entity requesting approval of this development item.

By _____

Title _____

Date _____

UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: May 16, 2005

UTILITY COMPANY: City of Fayetteville Water & Sewer

REQUESTED VACATION (applicant must check all that apply)

Utility Easement

☒ Right-of-way for alley or street and all utility easement located within the vacated right-of-way

☒ Alley

Street of right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location/Address: Junction Street See attached Exhibit (Site has been staked to show Vacating Request)

Between Vale & RAZORBACK

(Included legal description and graphic representation of what is being vacated)

UTILITY COMPANY COMMENTS:

No objection to the vacation(s) described above.

☒ No objections to the vacation(s) described above, provided following described easement are retained.
(State the location, dimensions, and purpose below.)

Maintain full width utility easement.

[Signature]
Signature of Utility Company Representative
Water/Sewer Maint Superintendent
Title

UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: May 16, 2005

UTILITY COMPANY: Southwestern Electric Power Company.

REQUESTED VACATION (applicant must check all that apply)

Utility Easement

☒ Right-of-way for alley or street and all utility easement located within the vacated right-of-way

☒ Alley

Street of right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location/Address: Junction Street See attached Exhibit (Site has been staked to show Vacating Request)

(Included legal description and graphic representation of what is being vacated)

UTILITY COMPANY COMMENTS:

No objection to the vacation(s) described above.

No objections to the vacation(s) described above, provided following described easement are retained.
(State the location, dimensions, and purpose below.)

Jim Sargent
Signature of Utility Company Representative

Engineer I
Title

UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: May 16, 2005

UTILITY COMPANY: City of Fayetteville Streets Department.

REQUESTED VACATION (applicant must check all that apply)

Utility Easement

☒ Right-of-way for alley or street and all utility easement located within the vacated right-of-way

☒ Alley

Street of right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location/Address: Junction Street See attached Exhibit (Site has been staked to show Vacating Request)_____

(Included legal description and graphic representation of what is being vacated)

UTILITY COMPANY COMMENTS:

☒ No objection to the vacation(s) described above.

No objections to the vacation(s) described above, provided following described easement are retained.

(State the location, dimensions, and purpose below.)

Greg Franklin 6/28/05

Signature of Utility Company Representative

Transportation Supt.
Title TRANSPORTATION Division
Operations Department
CITY OF FAYETTEVILLE
PH 575-8228

UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: May 16, 2005

UTILITY COMPANY: City of Fayetteville Sanitation Department

REQUESTED VACATION (applicant must check all that apply)

Utility Easement

☒ Right-of-way for alley or street and all utility easement located within the vacated right-of-way

☒ Alley

Street of right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location/Address: Junction Street See attached Exhibit (Site has been staked to show Vacating Request) _____

(Included legal description and graphic representation of what is being vacated)

UTILITY COMPANY COMMENTS:

☒ No objection to the vacation(s) described above.

No objections to the vacation(s) described above, provided following described easement are retained.
(State the location, dimensions, and purpose below.)

Signature of Utility Company Representative

Solid Waste Rep.
Title

UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: May 16, 2005

UTILITY COMPANY: TCA Cable.

REQUESTED VACATION (applicant must check all that apply)

Utility Easement

☒ **Right-of-way for alley or street and all utility easement located within the vacated right-of-way**

☒ **Alley**

Street of right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

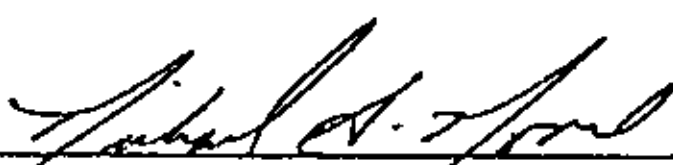
General location/Address: Junction Street See attached Exhibit (Site has been staked to show Vacating Request)

(Included legal description and graphic representation of what is being vacated)

UTILITY COMPANY COMMENTS:

☒ No objection to the vacation(s) described above.

No objections to the vacation(s) described above, provided following described easement are retained.
(State the location, dimensions, and purpose below.)


Signature of Utility Company Representative

Planner
Title

UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: May 16, 2005

UTILITY COMPANY: Arkansas Western Gas Co.

REQUESTED VACATION (applicant must check all that apply)

Utility Easement

☒ **Right-of-way for alley or street and all utility easement located within the vacated right-of-way**

☒ **Alley**

Street of right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location/Address: See attached Exhibit (Site has been staked to show Vacating Request)

(Included legal description and graphic representation of what is being vacated)

UTILITY COMPANY COMMENTS:

☒ No objection to the vacation(s) described above.

No objections to the vacation(s) described above, provided following described easement are retained.

(State the location, dimensions, and purpose below.)


Signature of Utility Company Representative

Northwest Regional Manager
Title

UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: May 16, 2005

UTILITY COMPANY: Ozark Electric Cooperative.

REQUESTED VACATION (applicant must check all that apply)

Utility Easement

☒ **Right-of-way for alley or street and all utility easement located within the vacated right-of-way**

☒ **Alley**

Street of right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location/Address: Junction Street See attached Exhibit (Site has been staked to show Vacating Request) _____

(Included legal description and graphic representation of what is being vacated)

UTILITY COMPANY COMMENTS:

☒ No objection to the vacation(s) described above.

No objections to the vacation(s) described above, provided following described easement are retained.

(State the location, dimensions, and purpose below.)

Mike Phipps
Signature of Utility Company Representative

System Staking Tech
Title

City Engineer

ADJACENT PROPERTY OWNER NOTIFICATION FORM

**FOR RIGHT- OF- WAY, ALLEY, AND
EASEMENT VACATION REQUESTS**

Date: May 16, 2005

Address / location of vacation: 1921 S. Vale Ave

Adjacent property address: 1471 Brower

Lot: 11 + 12 Block: 4 Subdivision: Vale

REQUESTED VACATION:

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

(Include legal description and graphic representation of what is being vacated)

ADJACENT PROPERTY OWNERS COMMENTS:

City Engineer ☒ I have been notified of the requested vacation and decline to comment.

☐ I do not object to the vacation described above.

☐ I do object to the requested vacation because:

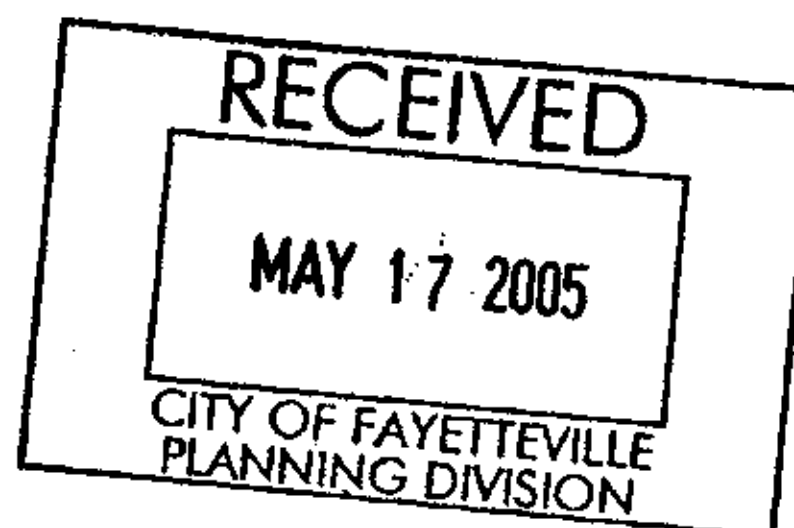
Comments will be provided prior to Planning
Commission Meeting through the normal review process.

City of Fayetteville

Name of Property Owner (*printed*)

Ronald S. [Signature], City Engineer

Signature of Property Owner



Petition

PETITION TO VACATE A(N) (*alley, easement, right of-way*) LOCATED IN Lots 1,4,5,6,7,Block 5 Lots 4,5,6,10,11,12 Block 4 Vale Subdivision), CITY OF FAYETTEVILLE, ARKANSAS

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

We, The undersigned, being all the owners of the real estate abutting the (~~*alley, easement, right-of-way*~~) hereinafter sought to be abandon and vacated, lying in (*lot, block, subdivision*), City of Fayetteville, Arkansas, a municipal corporation, petition to vacate a(n) (*alley, easement, right-of-way*) which is described as follows:

DESCRIPTION OF RIGHT OF WAY TO BE VACATED

THAT PART OF JUNCTION STREET ADJACENT TO LOTS 4, 5, 6 AND 12, BLOCK 4 IN MEADOW VALE SUBDIVISION (PLAT BOOK 1 AT PAGE 25) IN THE CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS AND LOTS 1, 4, 5, 6 AND 7, BLOCK 5 IN MEADOW VALE SUBDIVISION AND THAT PART OF THE PLATTED ALLEY ADJACENT TO LOTS 6 AND 11 AND 12, BLOCK 4 AND LOTS 6 AND 7, BLOCK 5 IN MEADOW VALE SUBDIVISION, BEING PART OF THE SW1/4 OF THE SE1/4 OF SECTION 20, TOWNSHIP 16 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND IRON PIN AT THE NORTHEAST CORNER OF LOT 1, BLOCK 4 OF SAID MEADOW VALE SUBDIVISION; THENCE ALONG THE EAST LINE OF SAID LOT 1 S02°56'38"W 220.01 FEET TO A FOUND IRON PIN ON THE EAST LINE OF SAID LOT 4, BLOCK 4 OF SAID MEADOW VALE SUBDIVISION; THENCE CONTINUING ALONG THE EAST LINE OF SAID LOT 4 S02°57'51"W 90.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 4, BLOCK 4 AND THE POINT OF BEGINNING; THENCE S02°57'51"W 20.00 FEET; THENCE S87°08'48"E 143.15 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF VALE AVENUE; THENCE ALONG SAID RIGHT OF WAY LINE S01°30'10"E 20.06 FEET; THENCE DEPARTING SAID RIGHT OF WAY LINE N87°08'48"W 294.81 FEET TO THE NORTHWEST CORNER OF SAID LOT 6, BLOCK 5; THENCE ALONG THE WEST LINE OF SAID LOT 6, BLOCK 5 S02°56'48"W 28.19 FEET; THENCE N87°06'08"W 10.00 FEET TO A POINT ON THE EAST LINE OF SAID LOT 7, BLOCK 5; THENCE N02°56'48"E 28.18 FEET TO THE NORTHEAST CORNER OF SAID LOT 7, BLOCK 5; THENCE ALONG THE NORRTH LINE OF SAID LOT 7, BLOCK 5 N87°08'48"W 59.72 FEET; THENCE N02°52'32"E 40.00 FEET TO A POINT ON THE SOTH LINE OF SAID LOT 12, BLOCK 4; THENCE ALONG SAID SOUTH LINE S87°08'48"E 59.77 FEET TO THE SOUTHEAST CORNER OF SAID LOT 12, BLOCK 5; THENCE ALONG THE EAST LINE OF SAID LOTS 12 AND 11, BLOCK 5 N02°56'48"E 89.83 FEET; THENCE S87°12'32"E 10.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT 6, BLOCK 4; THENCE S02°56'48"W 89.84 FEET TO THE SOUTHWEST CORNER OF SAID LOT 6, BLOCK 5; THENCE S87°08'48"E 150.12 FEET TO THE POINT OF BEGINNING, CONTAINING 12,853 SQUARE FEET OR 0.295 ACRES, MORE OR LESS, SUBJECT TO ANY EASEMENTS, COVENANTS OR RESTRICTIONS OF RECORD OR FACT.

That the abutting real estate affected by said abandonment of the alley are (*lot, block, subdivision of each adjoining lot to the area requested to be vacated*) City of Fayetteville used by the period of many years, and that the public interest and welfare would not be

From: "Jorge DuQuesne" <jduquesne@pdci-nwa.com>
To: "Jeremy Pate" <jpate@ci.fayetteville.ar.us>
Date: 8/22/05 4:35PM
Subject: Vale Exhibit

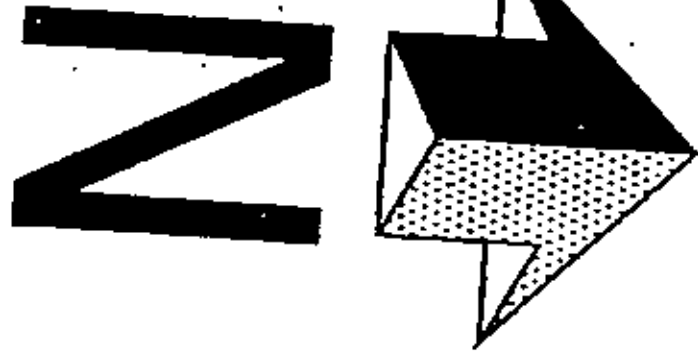
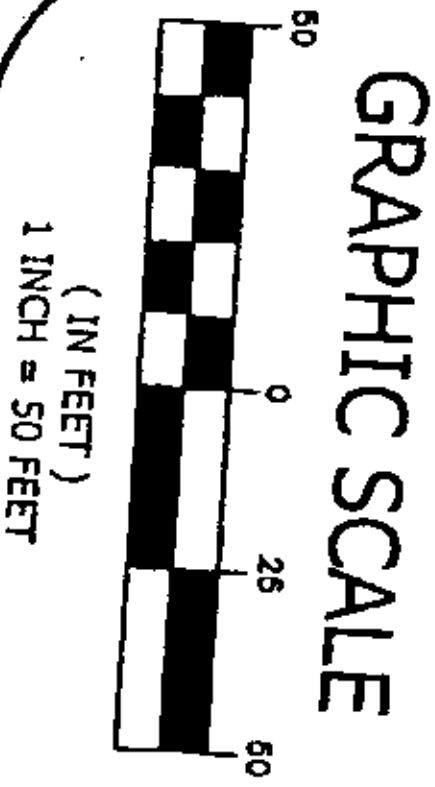
<<Vale Exhibit.pdf>> Jeremy,

I have attached an exhibit for your use. Amy tells me that you called asking why we were trying to vacate the R/W. If we need a front setback of 25' along the right of way, the setback would go into the building. I have attached an exhibit to demonstrate this. The shadings denote, the right-of-way / front and side setbacks. We currently show an 8' side setback behind the buildings. And with a 25' setback in front, there would be no way of putting in a building. If the city would allow 8' side setbacks in front and behind the buildings, we would be able to proceed with connection to the Razorback Road. Please call me if you have any questions. You can either contact me at the office (479) 248-1161 or at my cell at any time (479) 586-2503.

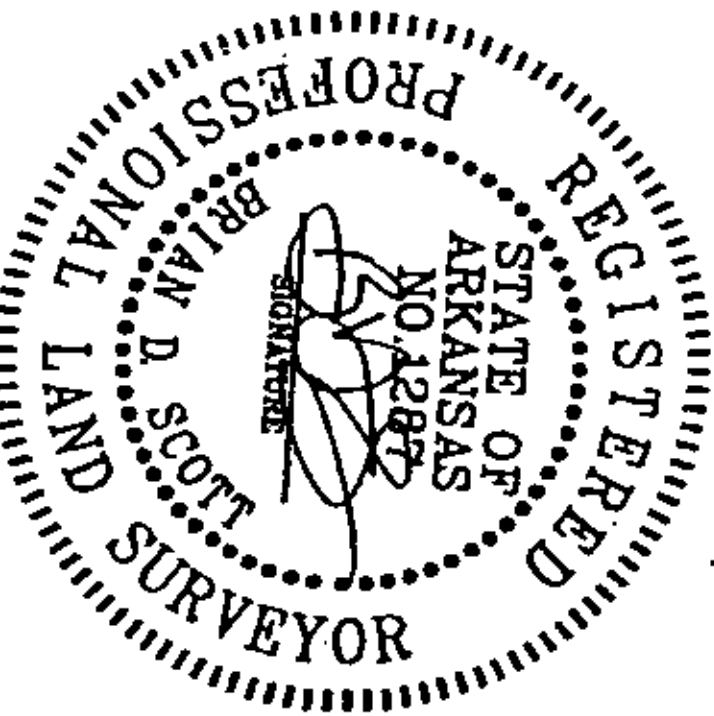
Sincerely,

Jorge DuQuesne, Jr. PE
Project Design Consultants, Inc.

CC: "Amy C. Scott" <acscott@geomatic-consultants.com>, "Bob Sherman" <bsherman@pdci-nwa.com>, "Frieda M. Bell" <fmbell@geomatic-consultants.com>, "Jon Berry" <jberry@pdci-nwa.com>, "N.Arthur Scott" <nascott@pdci-nwa.com>, "Richard Cantor" <rcantor@pdci-nwa.com>



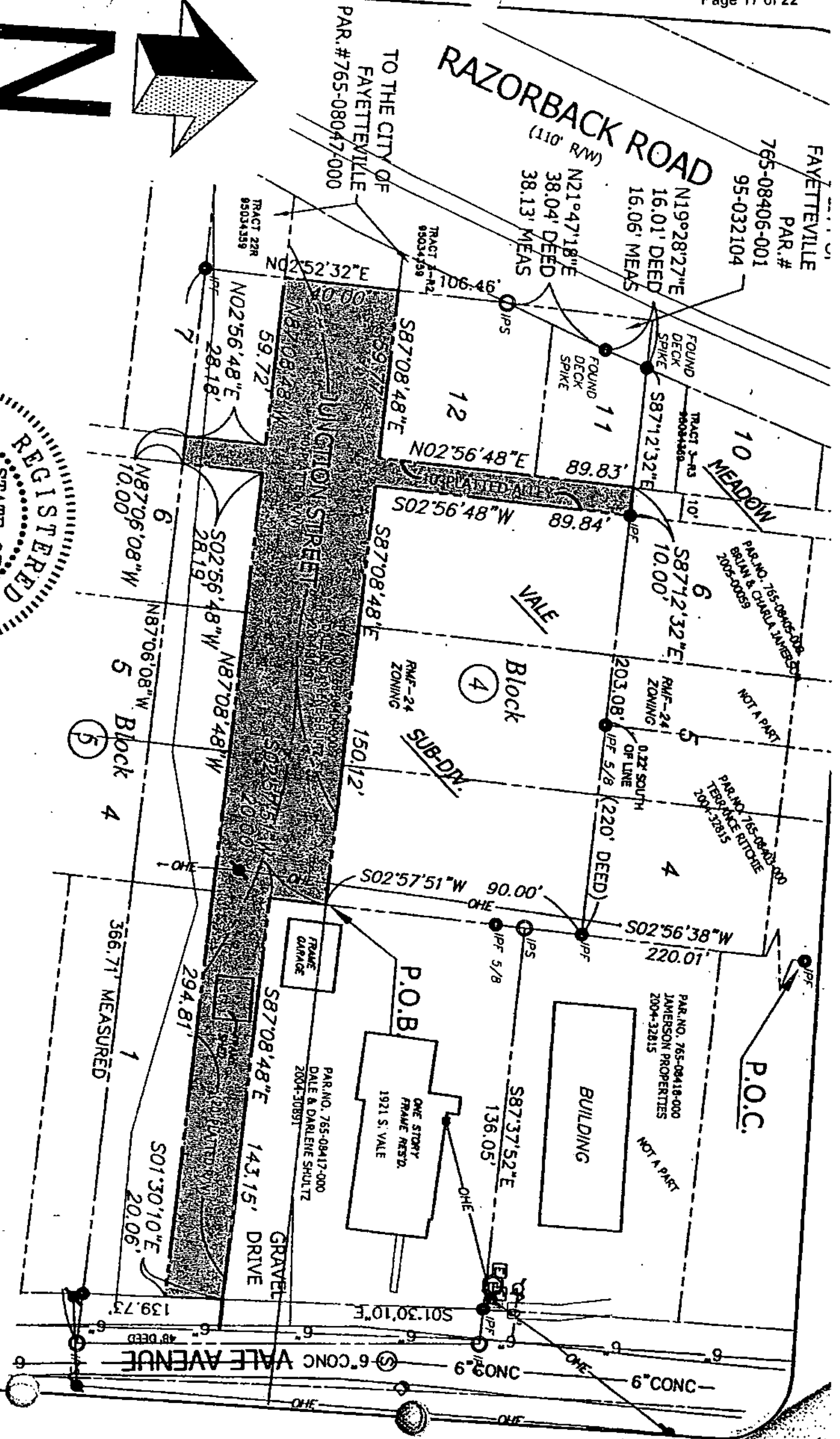
BRIAN D. SCOTT, ARK. PLS #1287

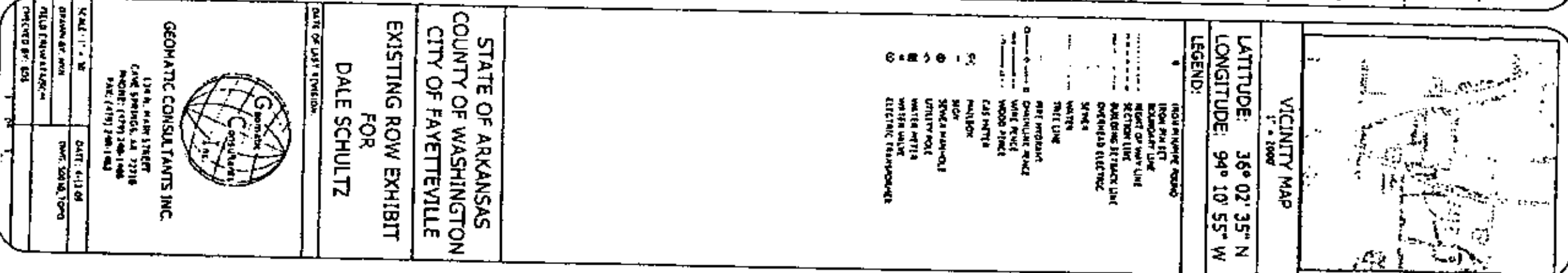


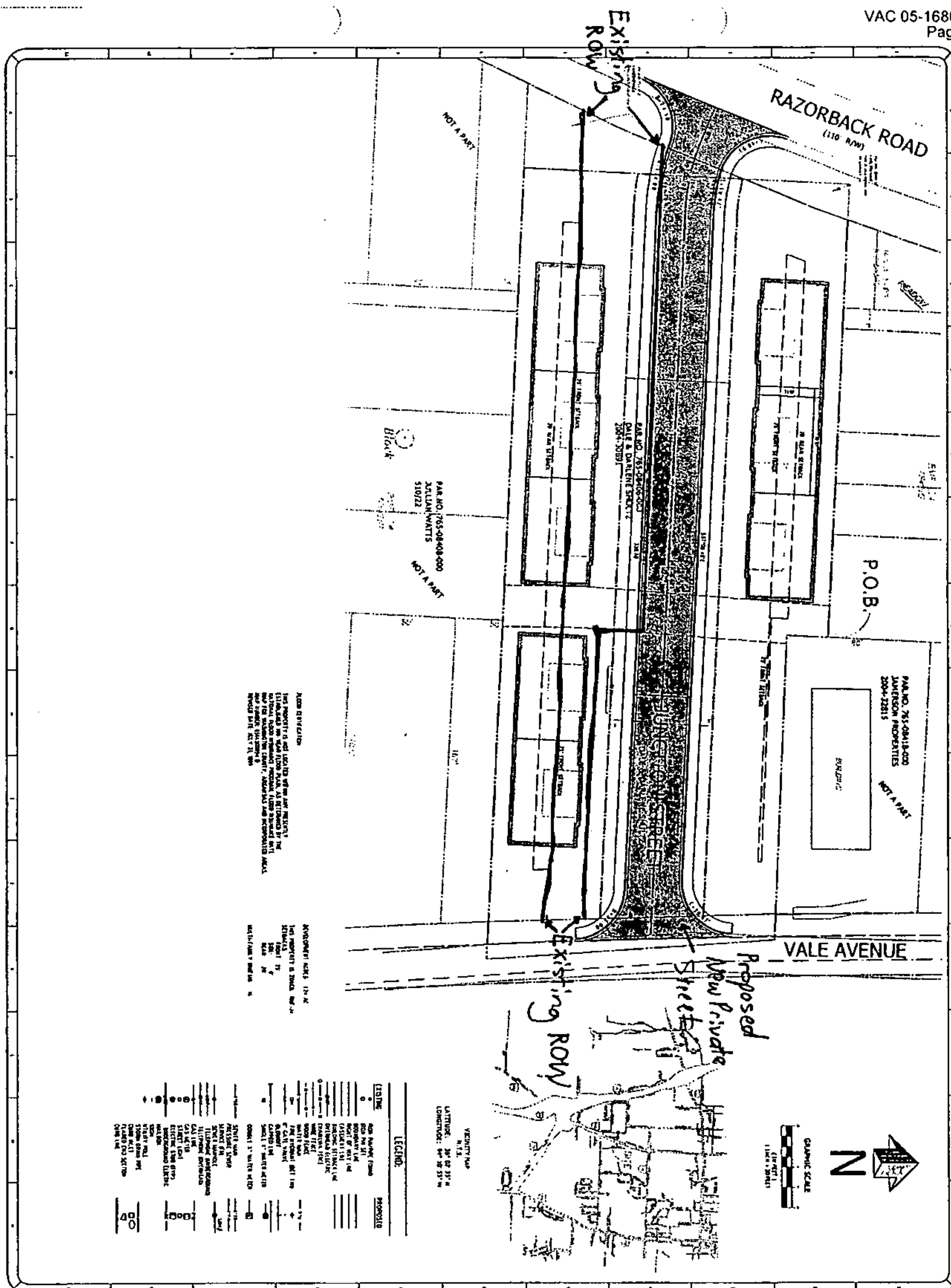
DATE

5/12/05

RIGHT-OF-WAY VACATION FOR DALE SCHULTZ CITY OF FAYETTEVILLE COUNTY OF WASHINGTON STATE OF ARKANSAS		134 N. MAIN STREET CAVE SPRINGS, AR 72718 PHONE: (479) 248-1466 FAX: (479) 248-1462
DRAWN BY: [blank] YDS: [blank] CHECKED BY: [blank] BDS: [blank]	DATE: 05-12-06	GEOMATICS CONSULTANTS INC. 134 N. MAIN STREET CAVE SPRINGS, AR 72718 PHONE: (479) 248-1466 FAX: (479) 248-1462



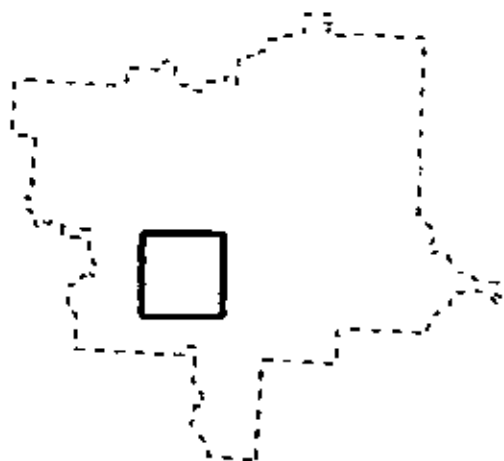




 ARKANSAS REGISTERED PROFESSIONAL ENGINEER No. 5483 Exp. 12-31-83	This drawing is "PRELIMINARY" "NOT FOR CONSTRUCTION" until above seal holder acknowledges the Cancellation of this disclaimer below:
DATE: _____	
O&B _____	
DATE: _____	

One Mile View

SUBJECT PROPERTY



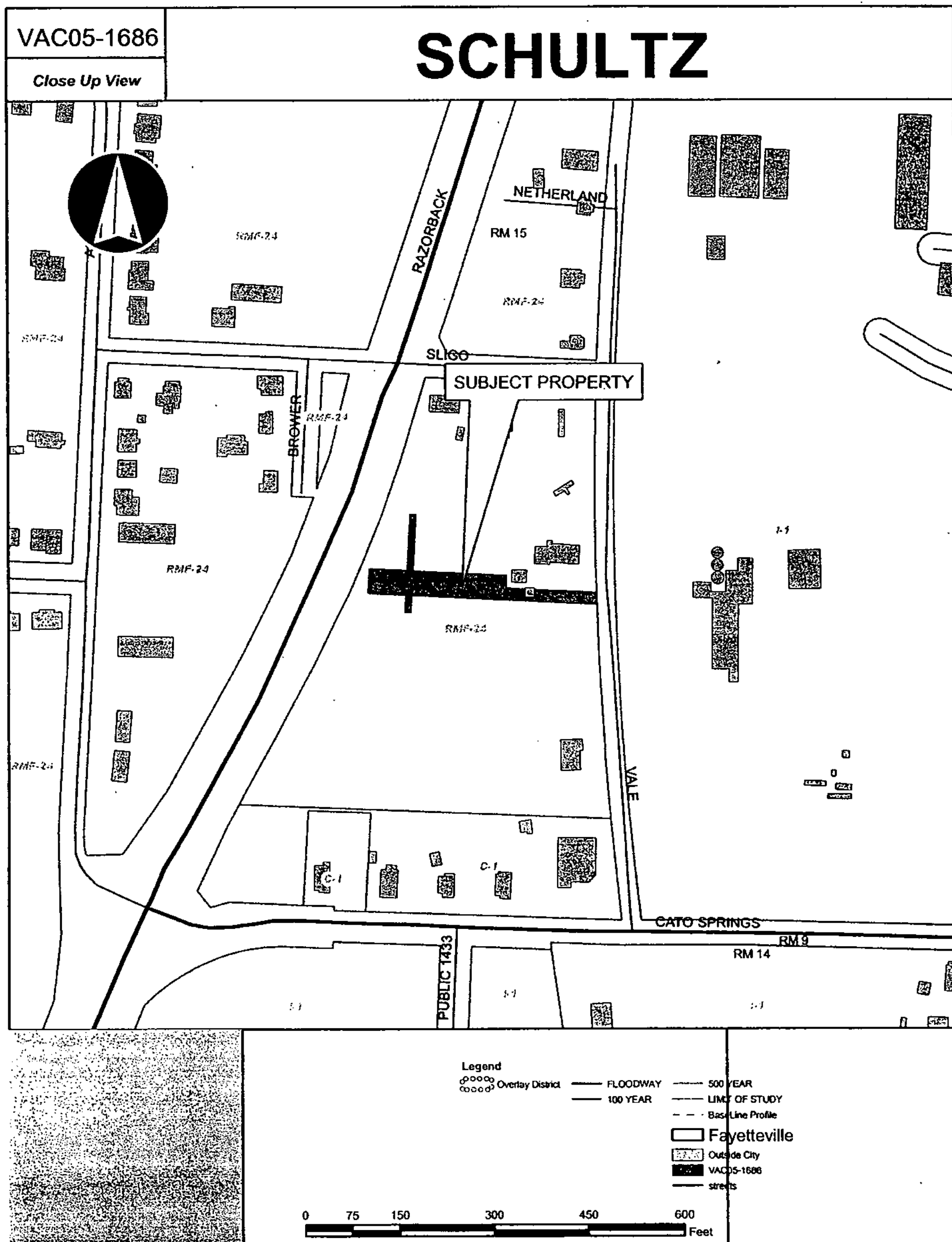
 VAC05-1686

☐ Outside City

1

Miles





City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C. 12
VAC 05-1689 (JDM Investments)
Page 1 of 72

4-Oct-05

City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

VAC 05-1689: (JDM INVESTMENTS, 294): Submitted by Roger Trotter for property located between 2716 and 2728 North Candlewood Drive. The property is zoned RSF-4, Residential Single Family, 4 units per acre. The request is to vacate a right of way at the subject property.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐


Department Director

9-15-05
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a


City Attorney

9-16-05

Original Contract Number: n/a


Finance and Internal Service Director

9-16-05
Date

Received in City Clerk's Office




Mayor

9/16/05
Date

Received in Mayor's Office



Comments:

City Council Meeting of October 4, 2005
Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning &

Date: September 13, 2005

Subject: Right-of-Way Vacation for JDM Investments (VAC 05-1689)

RECOMMENDATION

Planning Commission recommends approval of an ordinance vacating an existing right-of-way stub-out on the subject property, as depicted herein. Planning Staff originally recommended denial of the right-of-way vacation as depicted in the enclosed staff report.

BACKGROUND

The final plat for the Candlewood Subdivision was approved by the City in 1999 requiring a 50' right-of-way stub-out/utility easement extending north from Candlewood Drive approximately 180'. Since that time, the property owners adjacent to this right-of-way stub-out have constructed driveways and installed landscaping and other improvements in the city-owned area. There are public utilities in this right-of-way. Both houses on either side of the existing right-of-way were originally built to conform to the 25' setback off of the right-of-way, and was reflected and required when the houses were constructed, in anticipation of a future street connection. The applicant processed a Conceptual Plat through the Planning Commission on September 12, 2005 for a proposed subdivision with 11 single-family lots on approximately six acres directly north of the Candlewood Subdivision and the subject right-of-way. The applicant's request is to vacate the 50' right-of-way between 2716 and 2728 Candlewood Drive.

DISCUSSION

This item was heard at the regular Planning Commission on September 12, 2005. The Planning Commission voted 5-2-0 to recommend in favor of this vacation request to the City Council. Notification was provided to all appropriate utility representatives and adjoining property owners. No objections were submitted with the condition that the area be maintained as a utility easement. The Candlewood Subdivision had a large turn-out in favor of this request at the Planning Commission meeting.

BUDGET IMPACT

None.

DEPARTMENTAL CORRESPONDENCE



LEGAL DEPARTMENT

TO: City Council

FROM: Kit Williams, City Attorney

DATE: September 16, 2005

RE: VAC 05-1689

Vacation of unbuilt "stub out street"

The City of Fayetteville is often asked to vacate a platted, but not built street or alley or an unused utility easement. The City Council has the power "to vacate ... such portions thereof as **may not ... be required for corporate purposes**" A.C.A. §14-54-104 (emphasis added).

There is another more specific statute for vacating streets and alleys that have been dedicated to the City by platting a subdivision, if such street or alley has not "been actually used by the public as a street or alley for a period of five (5) years" A.C.A. §14-301-301 (b).

Neither of these statutory powers to vacate are mandatory upon the City Council, but only give the City Council that "power to vacate and abandon" streets, alleys, easements, etc.

The power to vacate is limited to the extent that abutting owners object to their loss of "right of ingress or egress across the property being vacated" Wright v. City of Monticello, 345 Ark. 420, 47 S.W. 3rd 851, 856 (2001).

"We have held that the owner of property abutting upon a street has an easement in such street for the purpose of ingress and egress which attaches to his

property and in which he has a right of property as fully as in the lot itself. We have also noted that this property right is not diminished merely because the property owner has alternative means of ingress and egress." Id. at 857 (citations omitted).

Thus, we need to ensure that each abutting property owner has consented to the street vacation. I believe our Planning Division ensures such consent has been obtained before submitting any vacation request to you. You will find that the abutting property owners in this case have requested that the unbuilt stub out street be vacated.

Once all abutting owners have consented, the issues for the City Council are whether the platted street has been actually used by the public during the last five years **and** whether this stub out "from the standpoint of public interest and welfare, the street ... should be vacated" A.C.A. 14-301-303; **or** whether the street, alley, or easement is "required for corporate purposes" A.C.A. §14-54-104.

ORDINANCE NO. _____

AN ORDINANCE APPROVING VAC 05-1689 SUBMITTED BY
ROGER TROTTER FOR PROPERTY LOCATED BETWEEN 2716
AND 2728 NORTH CANDLEWOOD DRIVE, VACATING A
RIGHT OF WAY AS INDICATED ON THE ATTACHED MAP AND
LEGAL DESCRIPTION

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

WHEREAS, the City Council has determined that the following described right of way is not required for corporate purposes; and

WHEREAS, the City Council has additional authority pursuant to A.C.A. §14-301-304 to vacate a street upon petition of all abutting owners if the street has not been used by the public for the last five years and the City Council determines after a public hearing from the standpoint of public interest and welfare, the street should be vacated; and

WHEREAS, the City Council finds this unbuilt stub out has not been used by the public and that the petition of all abutting owners to vacate this street subject to reservation of a public utility easement should, from the standpoint of public interest and welfare, be granted.

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

Section 1: That the City of Fayetteville, Arkansas hereby vacates and abandons all its rights, together with the rights of the public general, in and to the right of way designated as followed:

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

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

Section 3: That this Vacation approval is subject to the condition that the subject area be maintained as a utility easement.

PASSED and APPROVED this 20th day of September, 2005.

APPROVED:

By: _____
DRAFT
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"
VAC 05-1689

A TRACT OF LAND LOCATED BETWEEN LOT 24 AND LOT 25, OF CANDLEWOOD SUBDIVISION, A SUBDIVISION TO THE CITY OF FAYETTEVILLE, ARKANSAS, AND SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 24 THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST A DISTANCE OF 180.96 FEET TO THE NORTHEAST CORNER OF SAID LOT 24; THENCE NORTH 88 DEGREES 47 MINUTES 14 SECONDS EAST A DISTANCE OF 50.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 25; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST A DISTANCE OF 180.08 FEET TO THE SOUTHWEST CORNER OF SAID LOT 25; THENCE SOUTH 87 DEGREES 46 MINUTES 46 SECONDS WEST A DISTANCE OF 50.03 FEET TO THE POINT OF BEGINNING, AND CONTAINING 0.21 ACRES, MORE OR LESS.

AND BEING SUBJECT TO ANY EASEMENTS, RIGHTS OF WAYS, COVENANTS AND RESTRICTIONS OF RECORD.



PC Meeting of September 12, 2005

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Planner
Brent O'Neal, Staff Engineer
THRU: Jeremy Pate, Director of Current Planning
DATE: August 24, 2005 September 14, 2005

VAC 05-1689: Vacation (JDM Investments, pp 294) Submitted by ROGER TROTTER for property located at BETWEEN 2716 AND 2728 N CANDLEWOOD DRIVE. The property is zoned RSF-4, SINGLE FAMILY - 4 UNITS/ACRE. The request is to vacate a right of way on the subject property.

Planner: ANDREW GARNER

List of Report Appendices:

- Appendix A Maps of the Project Area
- Appendix B Applicant's Request
- Appendix C Utility Companies and City Responses
- Appendix D Public Comment and Petition
- Appendix D-1 Photo No. 1: Aerial Photo of Subject Right-of-Way
- Appendix D-2 Photo No. 2: View Looking North from Candlewood Drive
- Appendix D-3 Photo No. 3: Close-up View of Subject Right-of-Way
- Appendix E Candlewood Subdivision Planning Commission and Subdivision Committee Meeting Minutes -1999

Findings:

Property Description and Background: The subject property is located east of State Highway 265 (Crossover Road) in the Candlewood Subdivision and is a 50' right-of-way and utility easement located between 2716 and 2728 North Candlewood Drive (see maps provided in *Appendix A*). The final plat for the Candlewood Subdivision was approved by the City in 1999 requiring the future street stub-out and this 50' right-of-way stub-out/utility easement was included on the final plat. Since that time, the property owners adjacent to this right-of-way stub-out have constructed driveways and installed landscaping and other improvements in the city-owned area. There are public utilities in this right-of-way. Both houses on either side of the existing right-of-way were originally built to conform to the 25' setback off of the right-of-way, and was reflected and required when the houses were constructed, in anticipation of a future street connection.

The applicant is processing a Conceptual Plat for a proposed subdivision with 11 single-family lots on approximately six acres directly north of the Candlewood Subdivision and the subject area. The area proposed to be vacated is intended to provide a potential street connection between these two residential neighborhoods.

Request: The applicant's request (see *Appendix B*) is to vacate a 50' right-of-way in order to avoid a potential street connection between Candlewood Subdivision and the applicant's conceptual development immediately north.

The applicant has submitted the required notification forms to the utility companies and to the City. The results are summarized below and detailed responses are attached as *Appendix C*:

UTILITIES

RESPONSE

Ozarks Electric	No Objections
Cox Communications	No Objections
Southwestern Electric Power Company	No Objections
Arkansas Western Gas	No Objections
Southwestern Bell Telephone	No Objections

CITY OF FAYETTEVILLE:

RESPONSE

Water/Sewer	No Objections.
Transportation	No Objections
Solid Waste	No Objections
Engineering	No Objections

Public Comment: The applicant has submitted the required notification forms to the adjacent property owners. Adjacent property owners had no objections to the proposed vacation. Further, these property owners and the Candlewood Subdivision Property Owner's Association strongly encourage the abandonment of this right-of-way citing that a street connection through the subject area would reduce property values, result in safety concerns, and increase traffic to nearby schools. Extensive responses from the adjacent property owners in response to the notification forms and petition are included in *Appendix D*, and include photos attached as *Appendices D-1* through *D-3*.

Recommendation: Staff finds that vacating the right-of-way in the subject easement would not adversely affect the provision of utilities to the property or any other

properties. However, staff finds that vacating the right-of-way would be inconsistent with City of Fayetteville policy to encourage street connectivity. City of Fayetteville Guiding Policy 9.19d states:

Discourage perimeter walls and guard houses around the perimeter of new residential developments and promote "connectivity" to increase accessibility and provide more livable neighborhoods.¹

This policy was created with the intent to provide street connectivity which allows drivers and pedestrians more than one choice into and out of a subdivision or development and more choices when driving or walking through the City. Street connectivity allows for smoother traffic flow and reduces congestion at intersections and on road segments, which ultimately results in safer conditions for drivers and pedestrians.

Vacating the subject 50' right-of-way stub-out would not only isolate the property to the north of the stub-out, but would also fail to provide a third connection for Candlewood Subdivision that was found to be necessary after a substantial amount of discussion and analysis in 1999 (see Planning Commission and Subdivision Committee minutes in *Appendix E*). The property to the north of the subject 50' right-of-way is being processed in the City as a Conceptual Plat for an 11-lot residential subdivision. Vehicles and pedestrians from this property would be funneled directly onto Crossover Road, with no other options. Further, vehicles and pedestrians on Candlewood Drive would be left with only one option of access onto Crossover Road. The Candlewood Subdivision currently has 59 lots and two points of connectivity: (1) Candlewood Drive/Crossover Road; and (2) Candlewood Drive/Township Street. The subject stub-out was designed to provide an eventual third point of connectivity from Candlewood Drive to the north. This connection was designed to help improve traffic flow into and out of the Candlewood Subdivision for residents, emergency and other public service vehicles, and to provide another option for drivers in the City of Fayetteville to connect local traffic, pedestrians, and emergency access between Township Street and Crossover Road. The rationale that originally led to the creation of this right-of-way stub-out is still valid and the right-of-way is still needed. The desires of the developer of the adjacent property and of existing home owners are certainly taken into consideration; however, the long-term effects of not providing street connectivity are far-reaching, beyond this development and existing property owners.

Based on these findings, staff recommends denial of the proposed right-of-way vacation VAC 05-1689.

PLANNING COMMISSION RECOMMENDED APPROVAL OF THE PROPOSED RIGHT-OF-WAY VACATION WITH THE CONDITION THAT THE SUBJECT AREA BE MAINTAINED AS A UTILITY EASEMENT.

¹ Fayetteville, City of. General Plan 2020. 2001 Revision

PLANNING COMMISSION ACTION:

Recommendation to be:

yes Required

X Approved

 Denied

Date: September 12, 2005

Trumbo, Clark and 5-2-0

Comments: _____

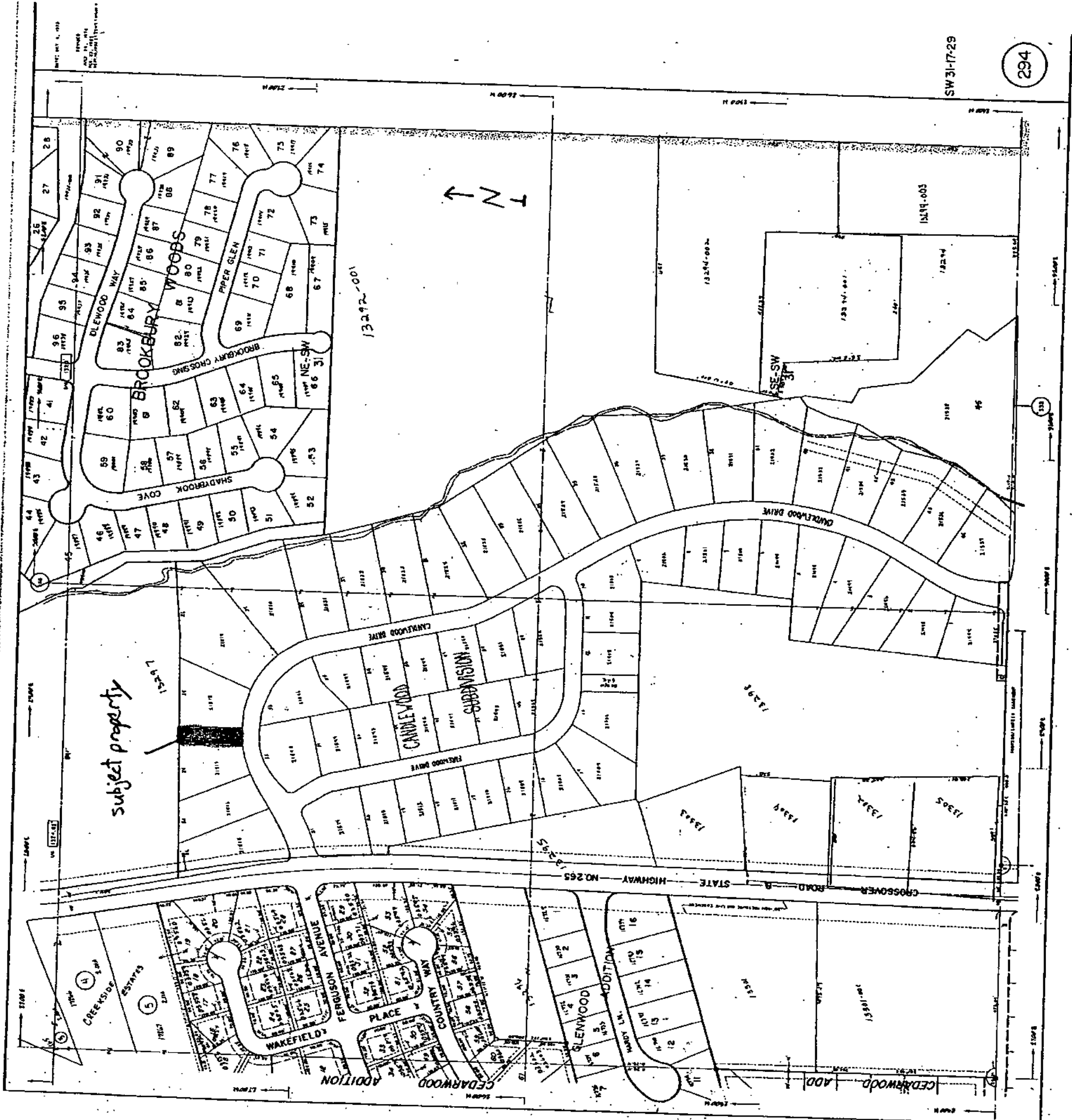
The "CONDITIONS OF APPROVAL", as stated in this report, are accepted in total
without exception by the entity requesting approval of this development item.

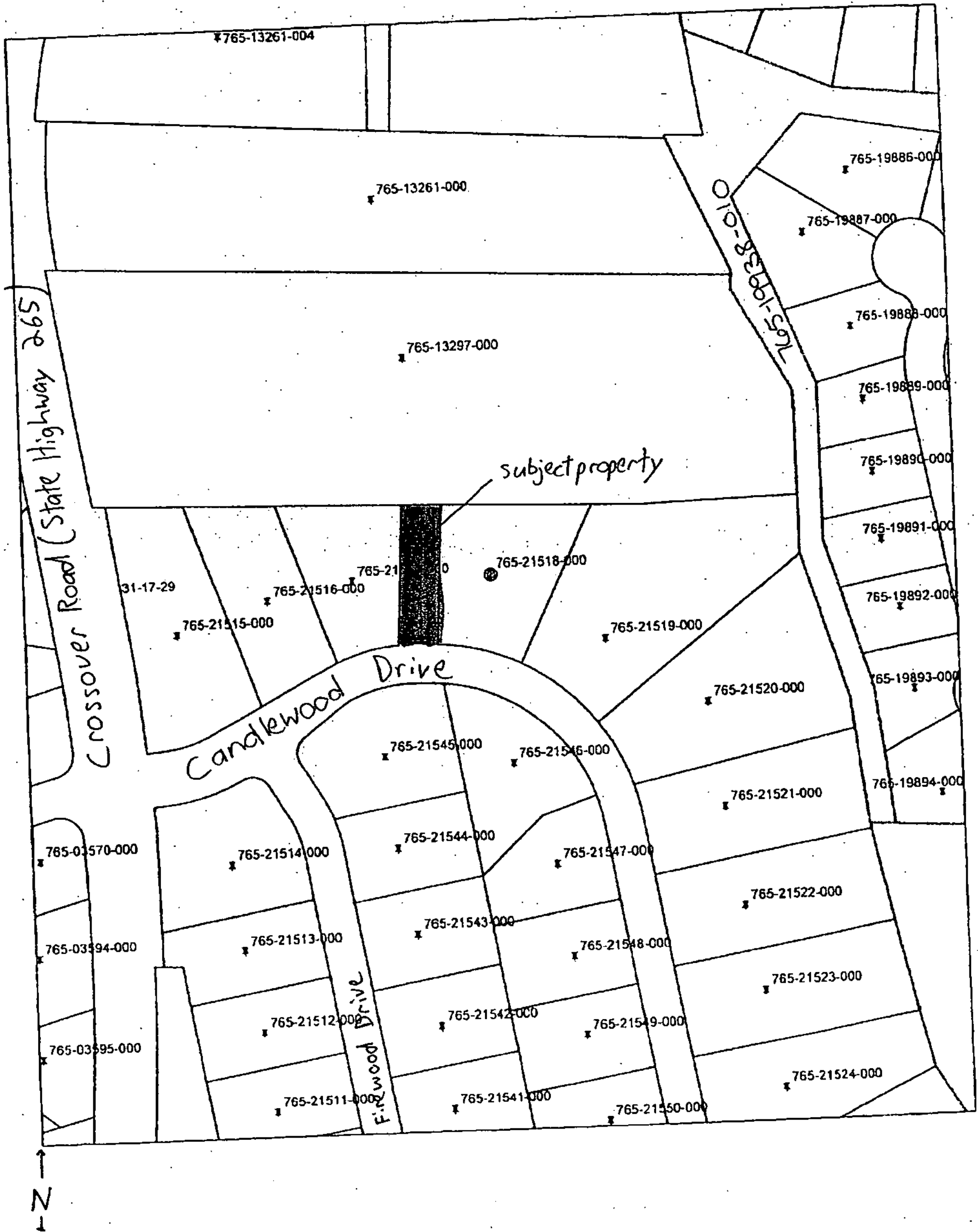
By _____

Title _____

Date _____

APPENDIX A
MAPS OF THE PROJECT AREA





APPENDIX B

APPLICANT'S REQUEST

CITY OF FAYETTEVILLE, ARKANSAS
WRITTEN DESCRIPTION OF VACATION REQUEST

REQUEST FOR VACATING 50' RIGHT-OF-WAY
SUBJECT PROPERTY: 6.34 ACRES - HWY 265
Date: June 2005

We are submitting a vacation application of a 50' right of way that was platted and was intended to be a connection to this property from Candlewood Drive. This connection was platted, however; was not constructed. It is our understanding that there was not any money set aside in lieu for this road.

We feel this connection is not necessary in that it would only serve to put unwarranted and unnecessary traffic into the Candlewood subdivision. As shown on our concept plat we are proposing an entrance off Highway 265 to a less than 500' cul-de-sac. This will create very deep lots at the end of the cul-de-sac with level home sites near the road and a deep, very wooded, and greater than 20% sloped backyard. This vacation would not give up any needed connectivity to future development because this is the last piece to subdivide and it could only be used to serve this 6.34 acre parcel. This option is both unwanted by the owner and by the Candlewood Property owners.

APPENDIX C

UTILITY COMPANIES AND CITY RESPONSES

FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: 7/8/05

UTILITY COMPANY: ARKANSAS WESTERN GAS

REQUESTED VACATION (*applicant must check all that apply*):

- • Utility Easement
- • Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- • Alley
- • Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address: _____

(*Include legal description and graphic representation of what is being vacated*)

UTILITY COMPANY COMMENTS:

- • No objections to the vacation(s) described above.
- • No objections to the vacation(s) described above, provided following described easements are retained.
(State the location, dimensions, and purpose below.)

AWG has utilities in requested area. we have no
objection providing a 20' utility easement is maintained
along the north and East side of area being
vacated

Terry England
Signature of Utility Company Representative
Director, Customer Service
Title

FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: 6-16-05

UTILITY COMPANY: OZARKS Electric

REQUESTED VACATION (applicant must check all that apply):

- • Utility Easement
- • Right-of-way for alley or streets and all utility easements located within the vacated right-of-way.
- • Alley
- • Street right-of-way

I have been notified of the petition to vacate the following (alley, easement, right-of-way), described as follows:

General location / Address: 50 R/W ON CANDLEWOOD ROAD BTW.
LOT 24 & LOT 25

(Include legal description and graphic representation of what is being vacated)

UTILITY COMPANY COMMENTS:

- • No objections to the vacation(s) described above.
- ☺ No objections to the vacation(s) described above, provided following described easements are retained.
(State the location, dimensions, and purpose below.)

OECC needs to Retain a 20' Easement Running
East & West at the North End of the
Existing Road easements.

William K. Smith
Signature of Utility Company Representative

STAKING SUPERVISOR.
Title

FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: 6-16-05

UTILITY COMPANY: Southeastern Bell Telephone CO.

REQUESTED VACATION (*applicant must check all that apply*):

- • Utility Easement
- • Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- • Alley
- • Street right-of-way

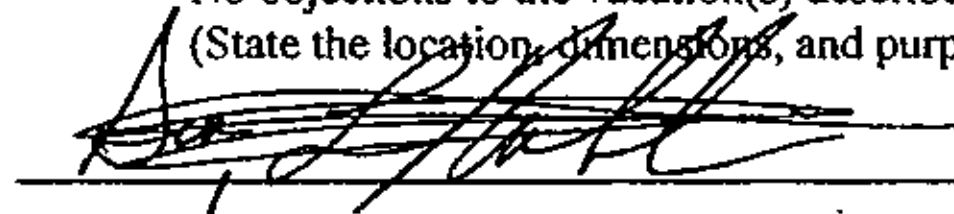
I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address: 50' R/W CANDLEWOOD ROAD BTW.
LOT 24 & LOT 25

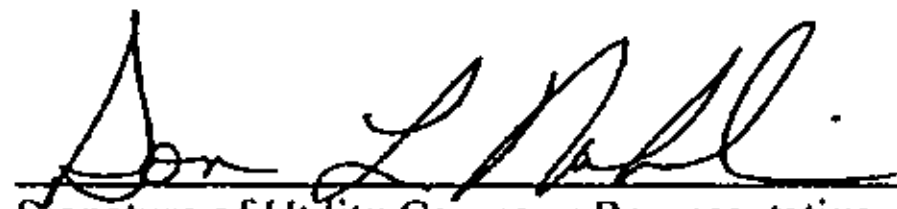
(*Include legal description and graphic representation of what is being vacated*)

UTILITY COMPANY COMMENTS:

- • No objections to the vacation(s) described above.
- • No objections to the vacation(s) described above, provided following described easements are retained.
(State the location, dimensions, and purpose below.)



NO OBJECTIONS TO PROPOSED EASEMENT VACATION



Signature of Utility Company Representative

MANAGER ENGINEERING DESIGN

Title

FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONSDATE: 6-20-05UTILITY COMPANY: Cox CommunicationsREQUESTED VACATION (applicant must check all that apply):

- * Utility Easement
- * Right-of-way for alley or streets and all utility easements located within the vacated right-of-way.
- .. Alley
- * Street right-of-way

I have been notified of the petition to vacate the following (alley, easement, right-of-way), described as follows:

General location / Address: 50' R/W ON CANDLEWOOD DR BTW.
LOT 24 & LOT 25

(Include legal description and graphic representation of what is being vacated)

UTILITY COMPANY COMMENTS:

- .. No objections to the vacation(s) described above.
- * No objections to the vacation(s) described above, provided following described easements are retained.
(State the location, dimensions, and purpose below.)
 - * 20' U.E. along north property line of said R/W.
 - * 20' U.E. running north and south along the west set back line of lot 25.
 - * Existing Cox Cable located in above locations


Signature of Utility Company RepresentativePlanner
Title

ROGER FRATER
FAX # 587-9486

Between 2716 & 2728

CANDLEWOOD

FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE:

7/12/05

UTILITY COMPANY:

Transportation Division - City of Fayetteville

REQUESTED VACATION (applicant must check all that apply):

- ☐ Utility Easement
- ☒ Right-of-way for alley or streets and all utility easements located within the vacated right-of-way.
- ☐ Alley
- ☐ Street right-of-way

I have been notified of the petition to vacate the following (alley, easement, right-of-way), described as follows:

General location / Address: 50' R/W & EASEMENT BTW LOTS 24 & 25
CANDLEWOOD SUBDIVISION(Include legal description and graphic representation of what is being vacated)

UTILITY COMPANY COMMENTS:

- ☒ No objections to the vacation(s) described above.
- ☐ No objections to the vacation(s) described above, provided following described easements are retained.
(State the location, dimensions, and purpose below.)

Signature of Utility Company Representative

Transportation Supt.

Title
Transportation Division
Operations Department
City of Fayetteville

575-8227

FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: 7-8-05

UTILITY COMPANY: CITY SANITATION

REQUESTED VACATION (*applicant must check all that apply*):

- • Utility Easement
- • Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- • Alley
- • Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address: 50 R/W & EASEMENT BTW LOTS 24 & 25
CANONWOOD SUBDIVISION

(*Include legal description and graphic representation of what is being vacated*)

UTILITY COMPANY COMMENTS:



No objections to the vacation(s) described above.

- • No objections to the vacation(s) described above, provided following described easements are retained.
(State the location, dimensions, and purpose below.)

A. Z. H.
Signature of Utility Company Representative

Commercial Solid Waste Rep.
Title

ROGER TRUTER

FAX 587 9486

Cell 422-0744

FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: 7-8-05

UTILITY COMPANY: CITY WATER & SEWER Dept.

REQUESTED VACATION (applicant must check all that apply):

- ☐ Utility Easement
- ☐ Right-of-way for alley or streets and all utility easements located within the vacated right-of-way.
- ☐ Alley
- ☐ Street right-of-way

I have been notified of the petition to vacate the following (alley, easement, right-of-way), described as follows:

General location / Address: 50' R/W Btw Lots 24 & 25 CANCELLED
SUBD. 4. 40N

(Include legal description and graphic representation of what is being vacated)

UTILITY COMPANY COMMENTS:

- ☐ No objections to the vacation(s) described above.
- ☒ No objections to the vacation(s) described above, provided following described easements are retained.
(State the location, dimensions, and purpose below.)

MAINTAIN FULL WIDTH AS UTILITY EASEMENT.

[Signature]
Signature of Utility Company Representative

Water/Wastewater Director
Title

APPENDIX D
PUBLIC COMMENT AND PETITION

ADJACENT PROPERTY OWNER NOTIFICATION FORM

FOR RIGHT-OF-WAY, ALLEY AND EASEMENT VACATION REQUESTS

Date: _____

Address / location of vacation: Part of Lots 24 & 25 of Candlewood Subdivision

Adjacent property address: Lots 24 & 25, Candlewood Subdivision

Lot: _____ Block: _____ Subdivision: _____

REQUESTED VACATION:

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

SEE ATTACHED

ADJACENT PROPERTY OWNERS COMMENTS:

- I do not object to the requested vacation because:
PLEASE SEE ATTACHED – The undersigned and the Candlewood Subdivision (POA) strongly encourage the abandonment to avoid very serious losses to the undersigned's lots (see attached concerns if no abandonment and photos); the undersigned would lose the vast majority of the homes driveway, along with ornamental metal and wood fences, and significant brickwork improvements which existed since purchasing the homes; the POA wishes to have the easement abandoned to avoid significant reduction in value to Candlewood Subdivision properties, related to safety concerns, and the increased traffic to nearby schools.

PAT BROWN (East $\frac{1}{2}$ of 50' R/W)

Pat Brown
Signature

JAY TOLLEY (West $\frac{1}{2}$ of 50' R/W)

Jay Tolley
Signature

EVELYN BROOKS (West $\frac{1}{2}$ of 50' R/W)

Evelyn E. Brooks
Signature

SUPPLEMENT TO PETITION

We, Jay Tolley, Evelyn Brooks and Pat Brown, are adjoining landowners to an easement which JDM Investments, LLC has sought to have vacated.

For a variety of reasons, we not only consent but strongly encourage and seek to petition the City to vacate this easement.

Jay Tolley and Evelyn Brooks purchased their home from an individual and were unaware of the easement. If this easement were ever implemented and used by the City, and a "roadway" was placed in the easement area, it would do significant, serious damage to their property and significant loss in not only the value of the home, but the loss of improvements. In similar fashion, Pat Brown, without knowledge of the easement, had constructed, long ago, the improvements on what has now been determined to be an easement held by the City. Had the developer provided a "stub out" for this easement/road, this problem would not exist and the easement would have been obvious and already invoked. Through not fault of Pat Brown, Jay Tolley or Evelyn Brooks, this was not done and they would have had to have physically gone to review the actual plat that was filed, examine it and then satisfy themselves that the "easement" was not a mere utility easement or otherwise, but was an actual road. Few purchasers, if any, go through this process. This is one of the reasons the city now requires developers to "stub out" streets. In order to give potential property owners fair "notice" that there is a street there and it could potentially go somewhere at some point in the future.

In addition, this easement has not been used for an excess of five years, one of the criteria used under Arkansas Code Ann. §14-301-301 to give the City authority to vacate.

One other criteria typically considered before "vacating" an easement, is whether the easement, alley or road is "required for corporate purpose", pursuant to Arkansas Code Ann. §14-54-104. These property owners, along with the entire Candlewood subdivision, maintain that not only is it not "required" for corporate purpose, but it would be a very real disservice to the public if it were opened. The traffic alone will have an adverse effect on properties in the Candlewood neighborhood. Any other claim that it is "*required for a corporate purpose*" would not only be wrong, but would be pure speculation. The neighbors and the homeowners association both wish to support efforts

to vacate this road roadway, fully understanding that a utility easement of some smaller size would remain.

The traffic, which would be funneled into this new subdivision, would have extremely negative impact on property values and would pose safety concerns for the children in the neighborhood. This, when compared to any type of "benefit", would be enough to convince those reviewing the situation to vacate the easement.

There will be a very significant and severe hardship on the abutting property owners, if this easement were ever actually improved. Attached, you will find the driveways and the various improvements over which this easement lies. Both driveways would have to be completely removed, along with the different brickwork and wrought iron fencing, Cedar fencing, extensive valuable landscape. There would be left, a very short "driveway" into the garage, changing in great fashion, the looks and the appeal of the home.

It can be argued that after five years, upon the request of the property owners and the "non-use", the easement must be vacated. Even assuming for the moment there is no legal requirement that it be vacated, there is no significant "common good" this could provide the City when causing so much damage and loss to an entire neighborhood and significant damage to the above landowners who now request that this easement be vacated.

The petitioners maintain there is no reasonable corporate purpose sufficient to justify the negative impact on the neighborhood and on Pat Brown, Jay Tolley and Evelyn Brooks in not allowing vacation of this easement.

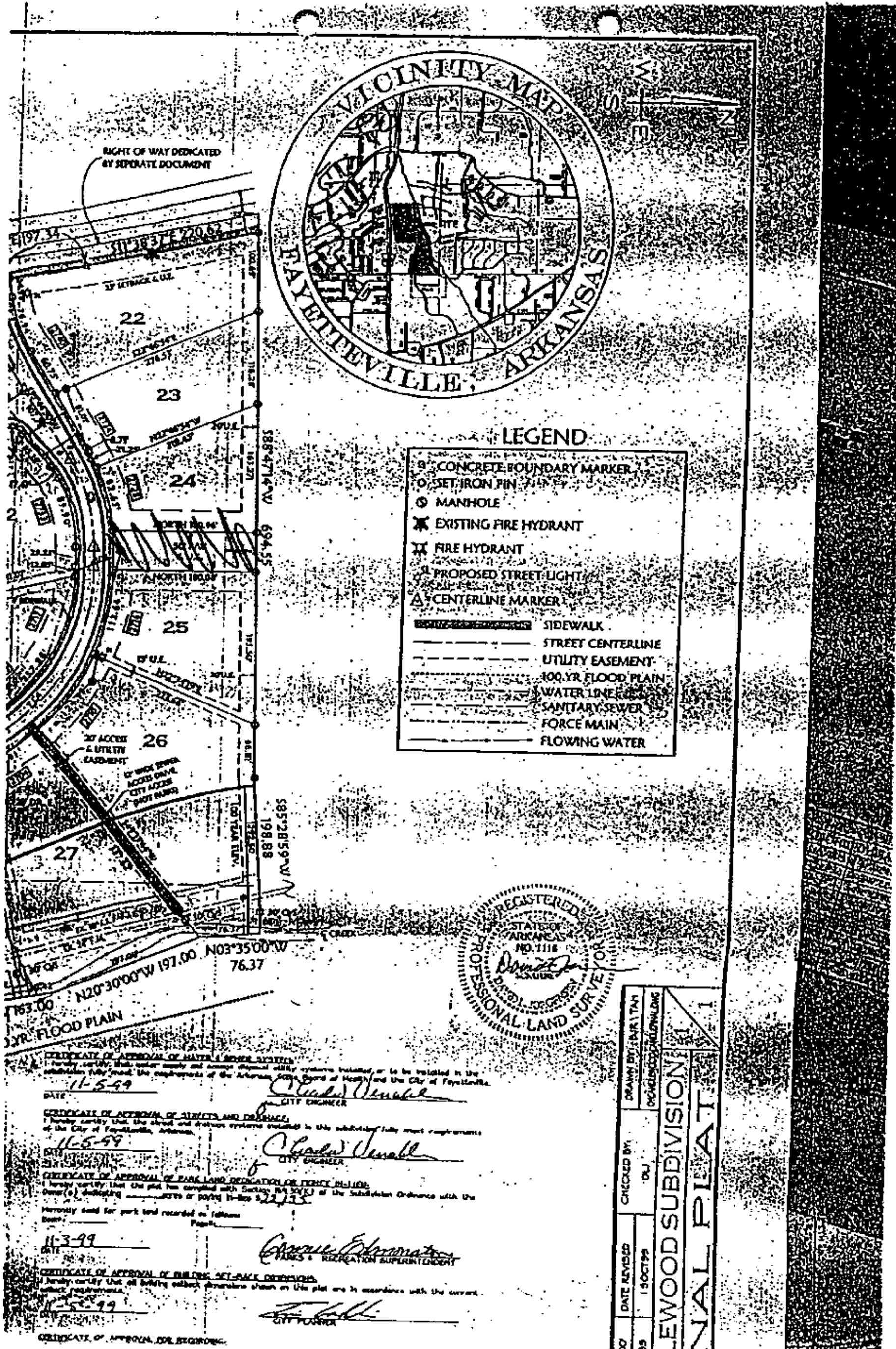
The petitioners understand that any corporate purpose would result in "funneling" more traffic through a small neighborhood with many children. The petitioners understand the development would then only have one access which, while not ideal for emergency vehicles, is also not uncommon (see Jackson Place), especially considering the low density of that particular development. If the city ever chose to improve or develop the "easement", the bad would far outweigh any potential good.

Other landowners similarly situated have been able to obtain "a vacation" of an alleyway. In addition, developments similar to the one proposed have been able to have one entrance from Highway 265. It would be very unfair to treat these adjoining landowners with the easement at issue differently when considering the very real damage this could cause to them.

05038

METES AND BOUNDS DESCRIPTION FOR RIGHT OF WAY ABANDONMENT

A tract of land located between Lot 24 and Lot 25, of Candlewood Subdivision, a subdivision to the city of Fayetteville, Arkansas; and said tract being more particularly described as follows:
Commencing at the Southeast corner of said Lot 24
thence North 00 degrees 00 minutes 00 seconds East a distance of 180.96 feet to the northeast corner of said Lot 24;
thence North 88 degrees 47 minutes 14 seconds East a distance of 50.00 feet to the northwest corner of said Lot 25;
thence South 00 degrees 00 minutes 00 seconds East a distance of 180.08 feet to the southwest corner of said Lot 25
thence South 87 degrees 46 minutes 46 seconds West a distance of 50.03 feet to the POINT OF BEGINNING, and containing 0.21 acres, more or less.
And being subject to any easements, rights of ways, covenants and restrictions of record.



PETITION

PETITION TO VACATE AN EASEMENT LOCATED IN LOTS 24 & 25 OF CANDLEWOOD SUBDIVISION, CITY OF FAYETTEVILLE, ARKANSAS

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

I, the undersigned, being one of the owners of the real estate abutting the easement hereinafter sought to be abandoned and vacated, lying in Lots 24 & 25 of Candlewood Subdivision, Fayetteville, Arkansas, a municipal corporation, petition to vacate an easement which is described as follows:

A tract of land located between Lot 24 and Lot 25, of Candlewood Subdivision, a subdivision to the City of Fayetteville, Arkansas; and said tract being more particularly described as follows:

Commencing at the Southeast corner of said Lot 24 thence North 00 degrees 00 minutes 00 seconds East a distance of 180.96 feet to the northeast corner of said Lot 24; thence North 88 degrees 47 minutes 14 seconds East a distance of 50.00 feet to the northwest corner of said Lot 25; thence South 00 degrees 00 minutes 00 seconds East a distance of 180.08 feet to the southwest corner of said Lot 25; thence South 87 degrees 46 minutes 46 seconds west a distance of 50.03 feet to the POINT OF BEGINNING, and containing 0.21 acres, more or less. And being subject to any easements, rights of ways, covenants and restrictions on record.

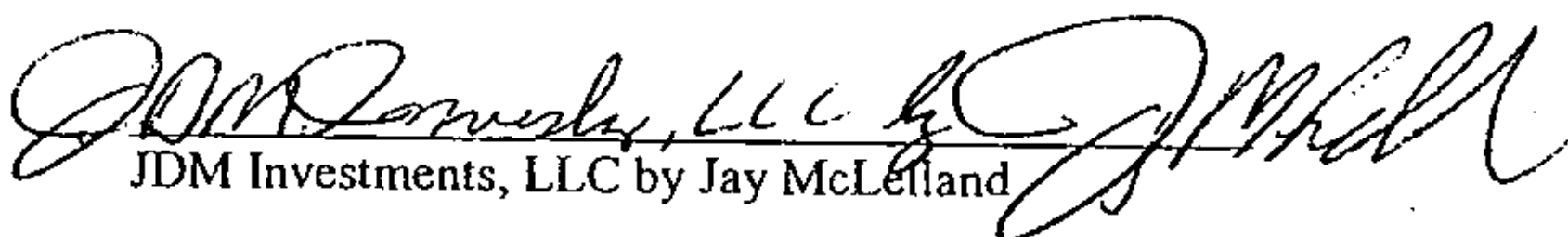
That the abutting real estate affected by said abandonment of the easement is 2806 Crossover, Addition: 31-17-29 Fayetteville Outlots, City of Fayetteville; the easement has not been used since the development of the Candlewood subdivision by the public for a period in excess of five (5) years, and that the public interest and welfare would not be adversely affected by the abandonment of the portion of the above described easement.

The petitioner prays that the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject, however, to the existing utility easements and sewer easement as required, and that the above described real estate be used for their respective benefit and purpose as now approved by law.

The petitioners further pray that the above described real estate be vested in the abutting property owners as provided by law.

WHEREFORE, the undersigned petitioner respectfully prays that the governing body of the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject to said utility and sewer easements, and that title to said real estate sought to be abandoned be vested in the abutting property owners as provided by law, and as to that particular land the owners be free from the easements of the public for the use of said alley.

Dated this 28 day of July, 2005.


JDM Investments, LLC by Jay McLelland

PETITION

**PETITION TO VACATE AN EASEMENT LOCATED IN LOTS 24 & 25 OF CANDLEWOOD
SUBDIVISION, CITY OF FAYETTEVILLE, ARKANSAS**

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

We, the undersigned, being all the owners of the real estate abutting the easement hereinafter sought to be abandoned and vacated, lying in Lots 24 & 25 of Candlewood Subdivision, Fayetteville, Arkansas, a municipal corporation, petition to vacate an easement which is described as follows:

SEE ATTACHED DESCRIPTION

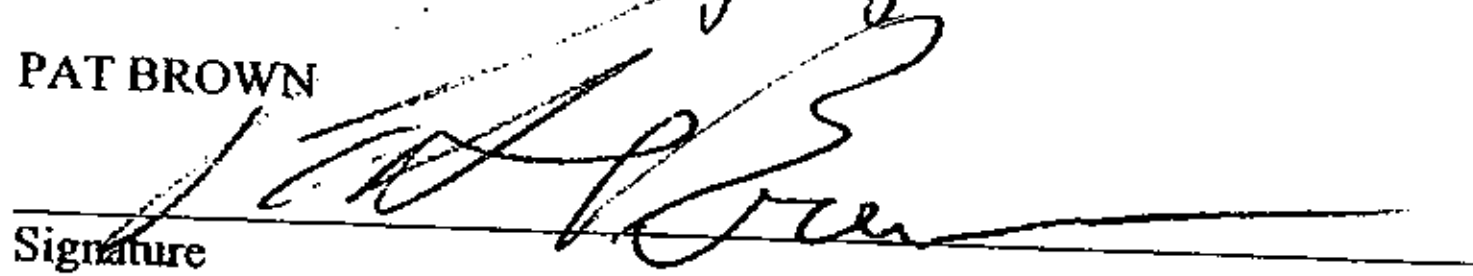
That the abutting real estate affected by said abandonment of the easement are Lots 24 & 25, Candlewood Subdivision, City of Fayetteville; the easement has not been used since the development of the subdivision by the public for a period in excess of five (5) years, and that the public interest and welfare would not be adversely affected by the abandonment of the portion of the above described easement. The citizens of the City of Fayetteville would greatly benefit from the abandonment of said easement and the Candlewood Subdivision would be harmed if this easement would ever be utilized. The adjoining property owners would incur a devastating loss if the City developed this easement. The development would result in destruction of significant attached improvements, seriously reducing property values and changing the value of the homes adjoining and nearby. Attached, see a photo of the area which would be lost if the easement were developed.

The petitioners further pray that the above describe real estate be vested in the abutting property owners as provided by law.

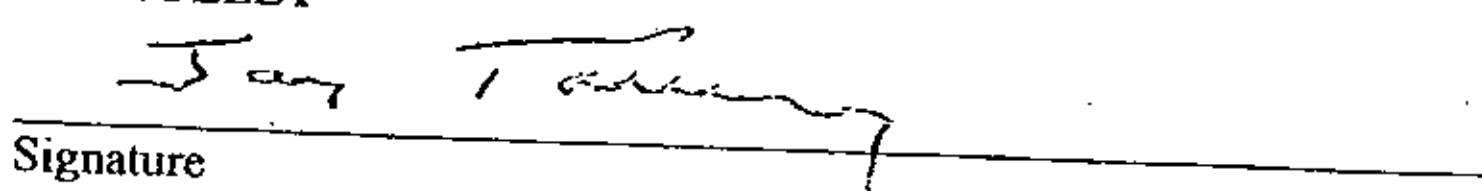
WHEREFORE, the undersigned petitioners respectfully pray that the governing body of the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject to said utility and sewer easements, and that title to said real estate sought to be abandoned be vested in the abutting property owners as provided by law, and as to the particular land the owners be free from the easements of the public for the use of said alley.

Dated this 27th day of July, 2005.

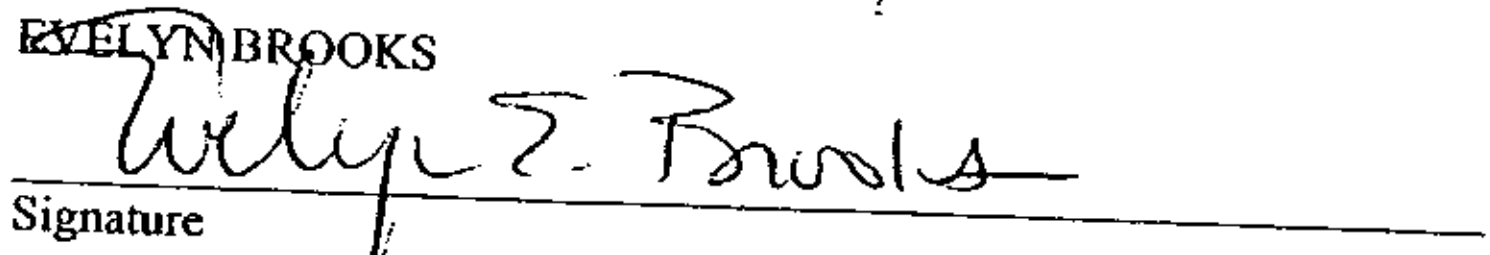
PAT BROWN


Signature

JAY TOLLEY


Signature

EVELYN BROOKS


Signature

SUPPLEMENT TO PETITION

We, Jay Tolley, Evelyn Brooks and Pat Brown, are adjoining landowners to an easement which JDM Investments, LLC has sought to have vacated.

For a variety of reasons, we not only consent but strongly encourage and seek to petition the City to vacate this easement.

Jay Tolley and Evelyn Brooks purchased their home from an individual and were unaware of the easement. If this easement were ever implemented and used by the City, and a "roadway" was placed in the easement area, it would do significant, serious damage to their property and significant loss in not only the value of the home, but the loss of improvements. In similar fashion, Pat Brown, without knowledge of the easement, had constructed, long ago, the improvements on what has now been determined to be an easement held by the City. Had the developer provided a "stub out" for this easement/road, this problem would not exist and the easement would have been obvious and already invoked. Through not fault of Pat Brown, Jay Tolley or Evelyn Brooks, this was not done and they would have had to have physically gone to review the actual plat that was filed, examine it and then satisfy themselves that the "easement" was not a mere utility easement or otherwise, but was an actual road. Few purchasers, if any, go through this process. This is one of the reasons the city now requires developers to "stub out" streets. In order to give potential property owners fair "notice" that there is a street there and it could potentially go somewhere at some point in the future.

In addition, this easement has not been used for an excess of five years, one of the criteria used under Arkansas Code Ann. §14-301-301 to give the City authority to vacate.

One other criteria typically considered before "vacating" an easement, is whether the easement, alley or road is "required for corporate purpose", pursuant to Arkansas Code Ann. §14-54-104. These property owners, along with the entire Candlewood subdivision, maintain that not only is it not "required" for corporate purpose, but it would be a very real disservice to the public if it were opened. The traffic alone will have an adverse effect on properties in the Candlewood neighborhood. Any other claim that it is "*required for a corporate purpose*" would not only be wrong, but would be pure speculation. The neighbors and the homeowners association both wish to support efforts

to vacate this road roadway, fully understanding that a utility easement of some smaller size would remain.

The traffic, which would be funneled into this new subdivision, would have extremely negative impact on property values and would pose safety concerns for the children in the neighborhood. This, when compared to any type of "benefit", would be enough to convince those reviewing the situation to vacate the easement.

There will be a very significant and severe hardship on the abutting property owners, if this easement were ever actually improved. Attached, you will find the driveways and the various improvements over which this easement lies. Both driveways would have to be completely removed, along with the different brickwork and wrought iron fencing, Cedar fencing, extensive valuable landscape. There would be left, a very short "driveway" into the garage, changing in great fashion, the looks and the appeal of the home.

It can be argued that after five years, upon the request of the property owners and the "non-use", the easement must be vacated. Even assuming for the moment there is no legal requirement that it be vacated, there is no significant "common good" this could provide the City when causing so much damage and loss to an entire neighborhood and significant damage to the above landowners who now request that this easement be vacated.

The petitioners maintain there is no reasonable corporate purpose sufficient to justify the negative impact on the neighborhood and on Pat Brown, Jay Tolley and Evelyn Brooks in not allowing vacation of this easement.

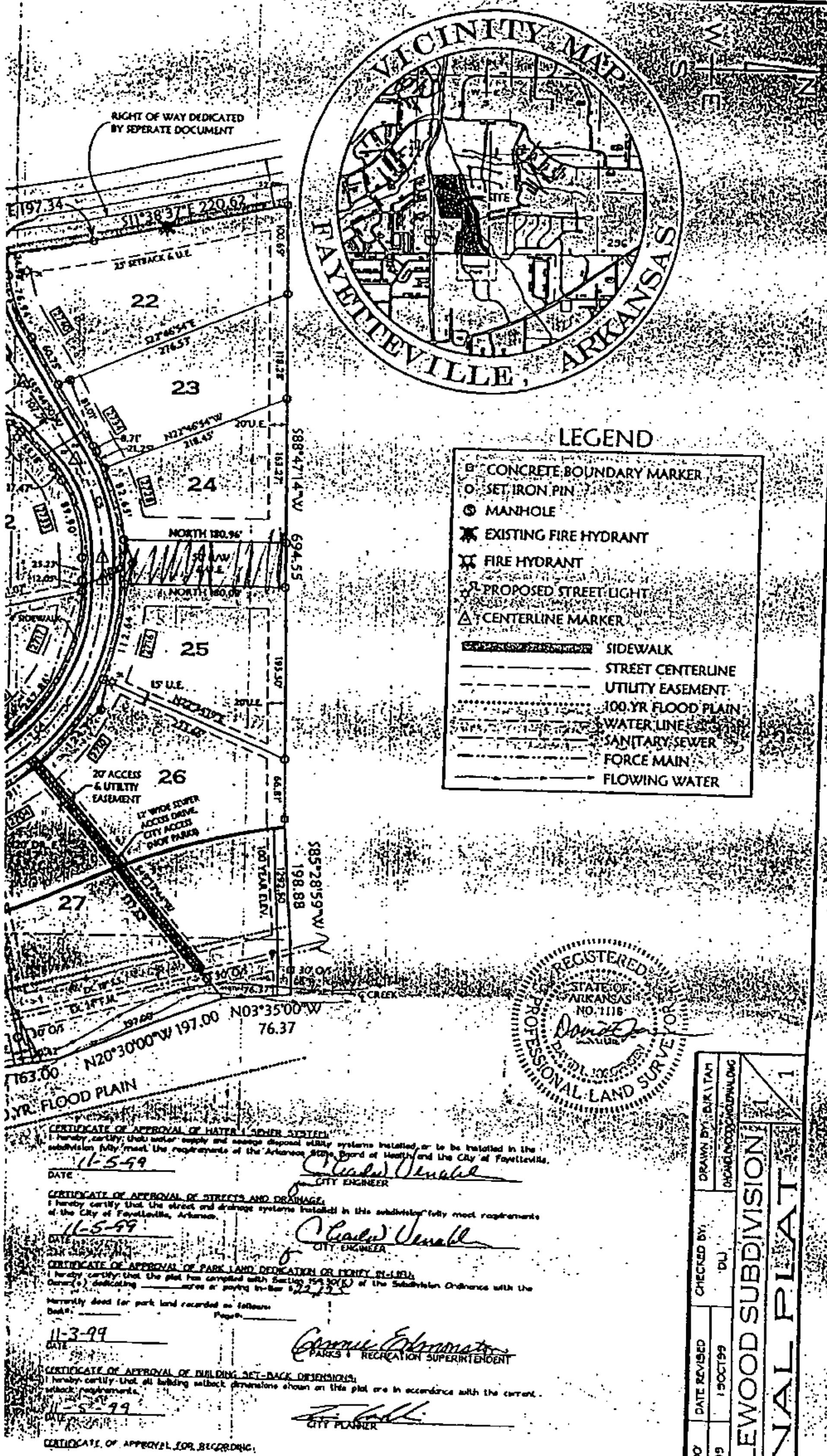
The petitioners understand that any corporate purpose would result in "funneling" more traffic through a small neighborhood with many children. The petitioners understand the development would then only have one access which, while not ideal for emergency vehicles, is also not uncommon(see Jackson Place), especially considering the low density of that particular development. If the city ever chose to improve or develop the "easement", the bad would far outweigh any potential good.

Other landowners similarly situated have been able to obtain "a vacation" of an alleyway. In addition, developments similar to the one proposed have been able to have one entrance from Highway 265. It would be very unfair to treat these adjoining landowners with the easement at issue differently when considering the very real damage this could cause to them.

05038

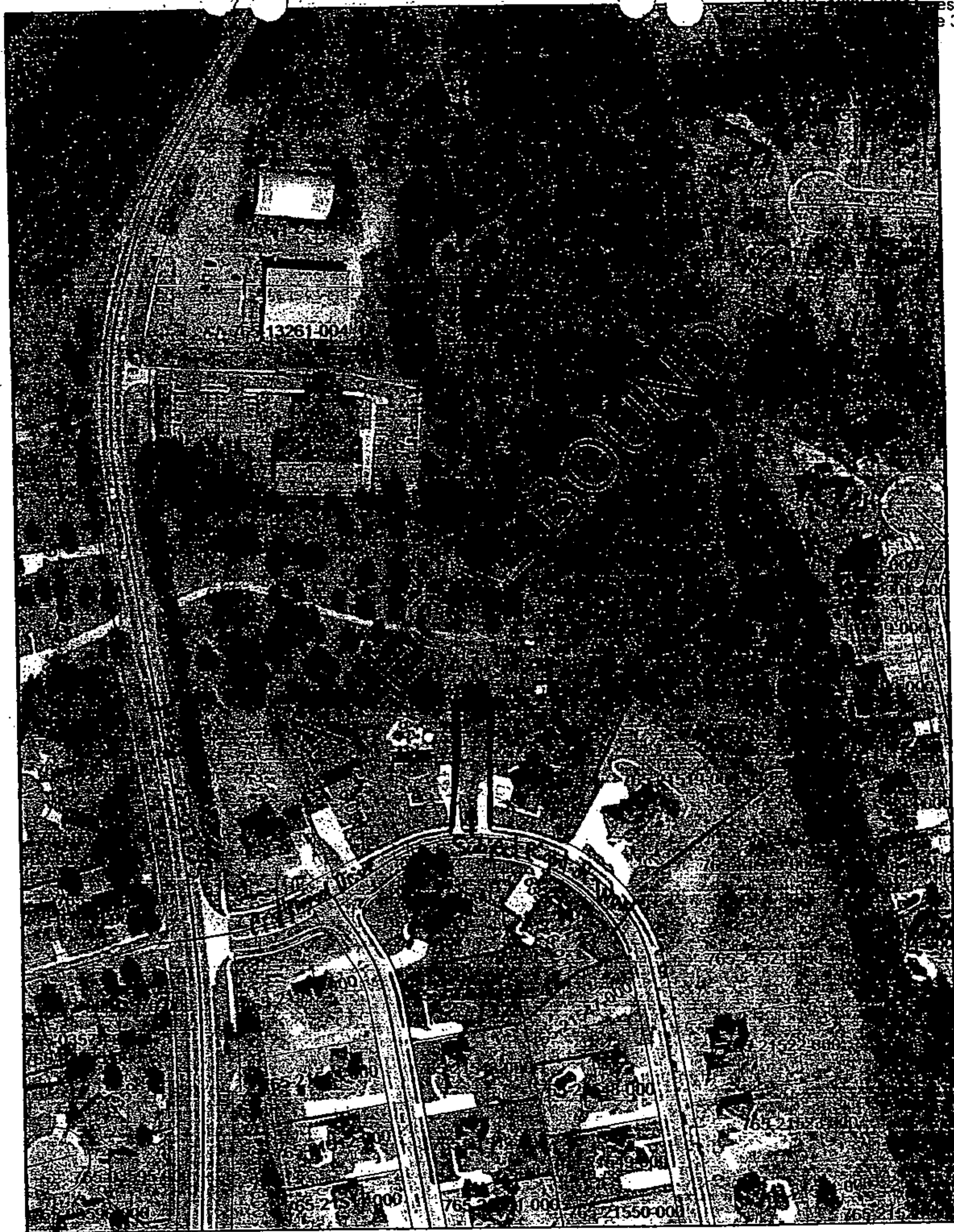
METES AND BOUNDS DESCRIPTION FOR RIGHT OF WAY ABANDONMENT

A tract of land located between Lot 24 and Lot 25, of Candlewood Subdivision, a subdivision to the city of Fayetteville, Arkansas, and said tract being more particularly described as follows:
Commencing at the Southeast corner of said Lot 24
thence North 00 degrees 00 minutes 00 seconds East a distance of 180.96 feet to the northeast corner of said Lot 24;
thence North 88 degrees 47 minutes 14 seconds East a distance of 50.00 feet to the northwest corner of said Lot 25;
thence South 00 degrees 00 minutes 00 seconds East a distance of 180.08 feet to the southwest corner of said Lot 25
thence South 87 degrees 46 minutes 46 seconds west a distance of 50.03 feet to the POINT OF BEGINNING, and containing 0.21 acres, more or less.
And being subject to any easements, rights of ways, covenants and restrictions of record.



APPENDIX D-1

PHOTO NO. 1
Aerial Photo of Subject Right-of-Way



0 170 340 680 Feet

County Disclaimer:

This map was created by Washington County using data created or acquired by its Assessor's office, Dept. of Emergency Management, and Road Department and in accordance with Arkansas Code 15-21-502 (2) (B), which states "The digital cadastre manages and provides access to cadastral information. Digital cadastre does not represent legal property boundary descriptions, nor is it suitable for boundary determination of the individual parcels included in the cadastre." and Arkansas Code 15-21-502 (6) which indicates that "Digital cadastre" means the storage and manipulation of computerized representations of parcel maps and linked databases."

This map has been developed from the best available sources. No guarantee of accuracy is granted, nor is any responsibility for reliance thereon assumed. In no event shall said Washington County be liable for direct, indirect, incidental, consequential or special damages of any kind, including, but not limited to, loss of anticipated profits or benefits arising out of use of or reliance on the map.

The parcel lines shown are considered a graphical representation of the actual boundaries. Washington County is in no way responsible for or liable for any misrepresentation or re-use of this map. Distribution of this map is intended for informational purposes and should not be considered authoritative for engineering, legal and other site-specific uses.



into No. 1 - Aerial Photo of Subject Right-of-Way

APPENDIX D-2

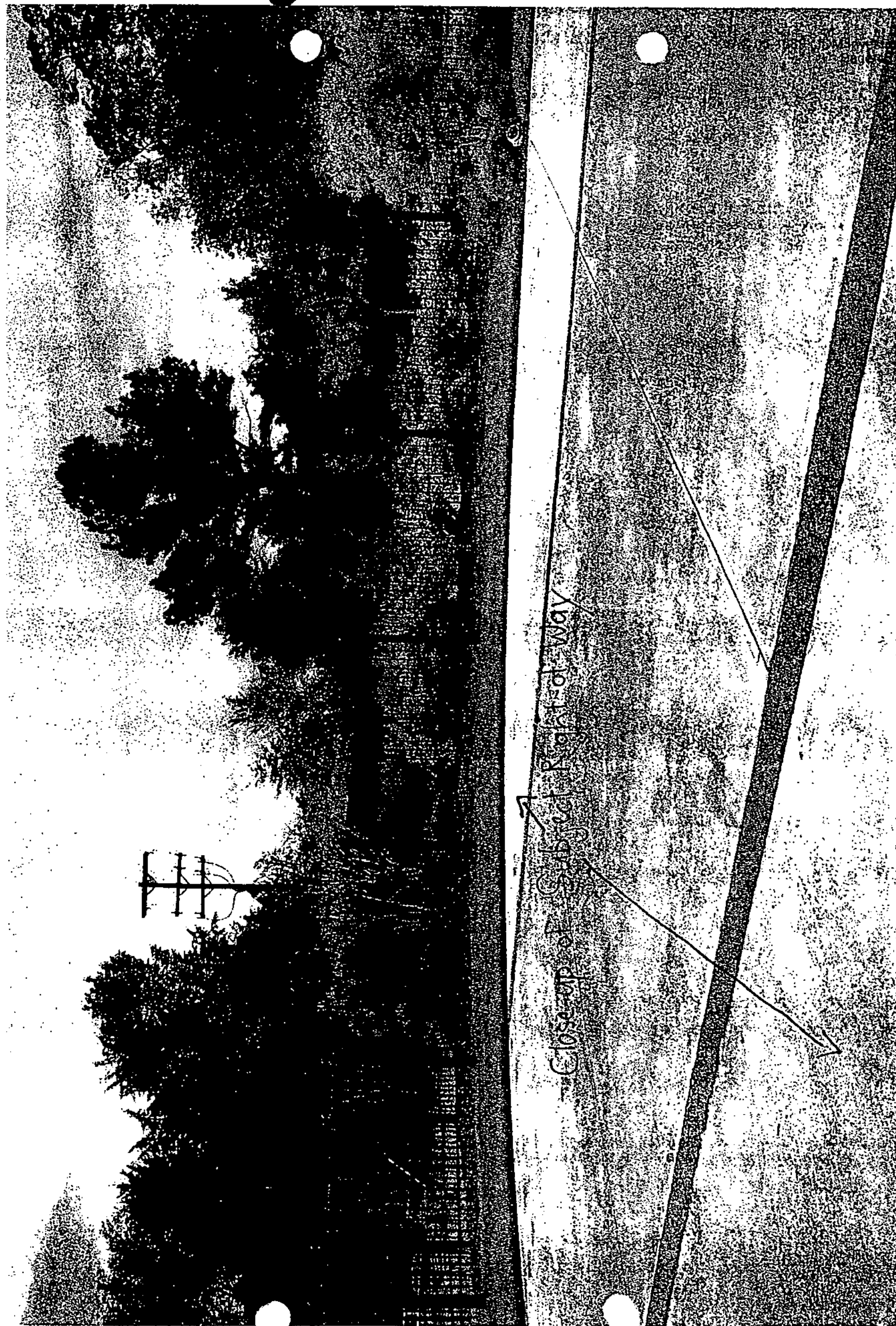
PHOTO NO. 2

View Looking North from Candlewood Drive



APPENDIX D-3

PHOTO NO. 3
Close-up View of Subject Right-of-Way



C. 12
ents)
of 72

Photo No.3: Close-up View of Subject Right-of-Way

APPENDIX E

CANDLEWOOD SUBDIVISION
1999 MEETING MINUTES

PLANNING COMMISSION AND
SUBDIVISION COMMITTEE

FAYETTEVILLE

C. 12
VAC 05-1689 (JDM Investments)
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THE CITY OF FAYETTEVILLE, ARKANSAS

February 25, 1999

David Chapman
P.O. Box 263
Springdale, AR 72765

Jorgensen & Associates
2013 Green Acres Rd.
Fayetteville, AR 72703

Gentlemen:

Enclosed please find a copy of the minutes of the Planning Commission meeting of February 22, 1999. This is your official notification that your preliminary plat was approved by the Planning Commission.

Congratulations and Good Luck,



Janet Johns
Sr. Secretary
Planning Department.

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**PP99-1: PRELIMINARY PLAT
CANDLEWOOD SUBDIVISION, pp294**

The next item was submitted by Dave Jorgensen of Jorgensen and Associates on behalf of David Chapman for property located north of Township and east of Highway 265. The property is zoned R-1, Low Density Residential, and contains approximately 45.60 acres with 60 (*amended to 59*) lots proposed.

Staff recommended approval subject to the following conditions:

1. Planning Commission determination of stub out(s) for future street connections. The Subdivision Committee recommended that right of way be dedicated for future connections to the north and south of this development without constructing the street. The applicant has revised the plans to reflect this recommendation.
2. Planning Commission determination of any additional improvements or assessments for future improvements to Hwy 265 (Crossover Rd.) (*The Planning Commission is not requesting any assessments at this time.*)
3. Prior to the submittal of construction plans, a retaining wall shall be designed along Candlewood Dr. on Lot 10 for the preservation of the double oak tree that is existing.
4. Payment of parks fees in the amount of \$22,500 (60 lots @ \$375 = \$22,500.) *Based on the fact that there are only 59 lots the revised amount of park fees is \$22,125 (59 lots @ \$375 = \$22,125.)*
5. The existing 25 feet utility easement to be vacated must be processed as a separate application prior to the approval of a final plat for this development.
6. Dedication of right of way along Highway 265 (Crossover Road) shall be by warranty deed.
7. Plat Review and Subdivision comments.
8. Staff approval of final detailed plans, specifications and calculations for grading, drainage, water, sewer, fire protection, streets, sidewalks, parking lot(s), and tree preservation. The information submitted for the plat review process was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with the City's current requirements.

Dave Jorgensen, Tom Hennelly, and David Chapman were present on behalf of the project.

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Commission Discussion

Jorgensen: I am representing the owners on this project and you mentioned it is a preliminary plat for Candlewood Subdivision. We need to correct one thing. It says 60 lots and there are actually 59. We have to take out another lot because in the process of getting this approved, we were asked to provide an easement to the north and also to the south and this rearranged the lot lines such that we had to eliminate one lot. It is true that we have 45.6 acres. Approximately 4.5 acres was added to the original farm tract to allow for a connection on the south end of Township so that it lined up with the street that leads to Vandergriff School. The original layout was somewhat to the east of that. It caused a problem with that alignment. We now have 2 ways of ingress and egress on this project. We have access to the south on Township and we have access on Highway 265. As I mentioned, we were asked to provide an access to the north and we provided a dedicated right of way to the north. Also, we provided the dedicated right of way to the south by the Runnels property. I'm not sure if these are terribly beneficial but it was worked out in the Subdivision Committee meeting. We do have the owner here to answer questions.

Public Comment

None.

Further Commission Discussion

Estes: We have a letter in our packet from Dr. Runnels that in the early stages of this project that the density was going to be 1 home on 4 acres. Is that true?

Jorgensen: I don't know how that came up. I haven't had a discussion with him and I'm not sure that the owners have either. At this particular point, as you can see, we have almost 46 acres with 59 lots which is not 1 home per 4 acres but it does have very large lots in the subdivision.

Tucker: Does the property span Mud Creek?

Jorgensen: No. It's just down the center line.

Little: Only at Lot 45.

Jorgensen: You'll notice on Lot 45, because of the original layout of the property, Mud Creek has a tributary that comes in from two different directions and Lot 45 is kind of like an island with frontage along Township.

Tucker: The reason I'm curious is that a couple of meetings ago, we had a presentation dealing with Mud Creek in the CMN area and the idea there was the opportunity to do some

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preservation and keep that as a riparian corridor. Would you be amenable to some type of special treatment to preserve the Mud Creek boundary on Lot 45?

Jorgensen: I would imagine that it would remain as is. Lot 45 is very large and we're in the process of installing a box culvert from another project which is located in the southwest corner of Lot 45. There are some improvements immediately downstream from the box culvert but for the most part it will remain as is. The building area of Lot 45 is going to be on that portion that faces Township. As far as improvements to Mud Creek all the way north, as you can see, all of those lots are so deep that the likelihood of any construction in that area -- well, there just won't be anything happening because of the flood plain and the easements and the fact that the houses are going to be located along the street.

Tucker: Between Old Wire and 45, this is a significant opportunity. It appears as if Mud Creek is unspoiled. Do we have any properties?

Little: We have Easton Park and it will now be called Covington.

Odom: Brookbury Subdivision backs up to the other side of the creek.

Little: Yes. We did receive some park land along the creek in the Brookbury plat. Regarding the access to the trail, I see that from our preliminary plat or from our plat review plat for the one that went to Subdivision Committee and now, that the 12 feet wide sewer access drive is noted as City Access - Not Parks. The Council specifically requested at the rezoning that there would be an access to the area that had been designated for trail in Brookbury. I understand that the Parks Department may not want to maintain that area but I need to make sure that it's real clear that is the access back to that other particular piece of property. Is that what that is intended to be?

Jorgensen: Yes.

Little: Just so I have it on the record in case we need it.

Jorgensen: That is what it is and they --

Little: That's between Lots 26 and 27.

Jorgensen: They just wanted to make sure that it wasn't dedicated as a Park's trail for some reason.

Little: I wanted to make sure that it was on there for access to that other property. I am satisfied.

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Jorgensen: That's one of the purposes, to access the sewer line.

Little: Thank you.

Hoffman: Did you ever decide if it was going to be asphalted?

Hennelly: We were proposing SB2 with sod on top. That is still up in the air.

Hoffman: But you are making plans for the trucks to be able to access the manholes.

Jorgensen: Tom Hennelly is from our office and has been working on this. I think he has had the latest discussions with the engineering staff on this. We're still not sure whether it should be a based with a sod on top or possibly some pavers. We weren't sure whether to make it asphalt. We do have to make it acceptable and it was also made clear to us that we needed to mark this so that everyone realizes that it is a pedestrian pathway for access down to the creek.

MOTION

Ms. Hoffman made a motion to approve PP99-1 subject to all staff comments.

Mr. Shackelford seconded the motion.

Further Discussion

Odom: Condition 4 indicates the park fees were based on 60 lots and I'm assuming this will be worked out with the applicant since that affects 59 lots.

Johnson: On condition 2, I assume that was encompassed in the motion which deals with improvements to Highway 265 and I believe at Subdivision, the staff was going to confirm that the Highway Department does not plan any improvement to that particular section of 265.

Petrie: That is correct.

Johnson: Then it seems to me that probably condition 2 should be deleted or that we should say the Planning Commission does not request assessments at this time.

Hoffman: I'll say that at this time.

Shackelford: I'll amend my second.

Roll Call

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Upon roll call, the motion passed with a unanimous vote of 8-0-0.

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Subdivision Committee
February 11, 1999
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**PP99-1: PRELIMINARY PLAT
CANDLEWOOD SUBDIVISION**

This item was submitted by Dave Jorgensen of Jorgensen and Associates on behalf of David Chapman for property located north of Township and east of Highway 265. The property is zoned R-1, Low Density Residential, and contains approximately 45.60

Conditions to Address/Discuss

1. Street connections - the applicant has requested only one connection to the north and staff originally recommended connections to the north, west and east. The most reasonable option for a connection to the east would be between lots 39 and 40.
2. Planning Commission determination of appropriate contribution towards future improvements to Hwy 265 (Crossover Road.)
3. Prior to the submittal of construction plans, a retaining wall shall be designed along Candlewood Dr. on Lot 10 for the preservation of the double oak tree that is existing.
4. *(Not Applicable)* The short street between lots 24 and 25 needs to be named. Contact Jim Johnson for approval of street name.
5. Plat Review and Subdivision comments .
6. Staff approval of final detailed plans, specifications and calculations for grading, drainage, water, sewer, fire protection, streets, sidewalks, parking lot(s) and tree preservation. The information submitted to plat review was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with the City's current requirements.
7. Payment of parks fees in the amount of \$22,500 (60 lots @ \$375 each.)
8. Sidewalk construction in accordance with current standards to include a 4 feet sidewalk with a minimum 6 feet sidewalk on both sides of Candlewood Dr., Silverton Dr., and Waxwood Dr. and 6 feet sidewalk with a minimum 10 feet green space along Township Rd. and Crossover Rd.
9. Easement to be vacated must be processed as a separate application prior to the approval of a final plat for this development.

Minutes of a meeting of the
Subdivision Committee
February 11, 1999
Page 3

10. Dedication of right of way along Highway 265 (Crossover Rd.) shall be by warranty deed.
11. Preliminary Plat approval to be valid for one calendar year.

Dave Jorgensen was present on behalf of the applicant.

Staff Recommendation

Staff recommends that the project be forwarded to the full Planning Commission with recommendation of approval contingent upon conditions.

Little: There are four items that we will need to discuss this morning. Staff had originally talked to the applicant about connections to the north, west, and east. At this time, the applicant is proposing a connection to the north only and they do request that no other connection be required. They have a letter in the packet on page 4 (a copy of which is on file in the Planning Division.) Also relating to streets, there is frontage on Highway 265 and our engineering staff had said that the applicant needed to get with the Highway Department to determine how much the contribution should be or what AHTD would have in mind for that. We don't have any information for you on that at this time. We need to discuss the retaining wall on Lot 10. Normally that would be an engineering item but in this case, the retaining wall was to protect a double oak tree that already exists. We need another street name between Lots 24 and 25 adding the name to the stub out street. Those are the major items. The rest of the items are fairly standard. We are waiting for a representative from engineering.

Public Discussion

None.

Committee Discussion

Johnson: We have no other staff comments except for engineering. We will discuss the four items which Planning has laid out for us. The first is the street connections.

Jorgensen: I am representing Dave Chapman, the owner. We have a resubmittal from our last meeting and if you will notice on the vicinity map, it shows the surrounding area better than what we had last time and hopefully we can tell where the other streets are at with respect to our project. You'll notice our project is the shaded area. Immediately to the northeast is Brookbury Woods Subdivision. You'll notice that the street, well, it's not labeled, but the street that extends through Brookbury running north and south is Brookbury Crossing. It ends at the south end of

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Brookbury with the intention to extend it eventually to the south to Township Street which is the street that is the on the south end of our project. Township is presently under construction which will tie into what is known right now as Easton Park Subdivision.

Warrick: The name of that has changed to Covington.

Jorgensen: The intention was to extend Brookbury Crossing to the south to Township extension. Immediately to the east of Brookbury is Savannah Estates. You can see there are no streets that are stubbed out or extend to the south out of Savannah. However, on the northeast corner of Easton, you can see a stubbed out street to the north which, hopefully, will extend from there north up to Skillern when that property is developed.

Johnson: This north south street that is stubbed out. What is the line on the map? Is that a stream or a street that it intersects?

Little: A stream.

Jorgensen: That is a tributary of Mud Creek.

Johnson: The vicinity map depicts the stub out street crossing the tributary?

Jorgensen: That is correct except the tributary at that point is fairly small.

Johnson: What kind of crossing is that? Is it a bridge or a low water?

Jorgensen: It would be just a culvert. It's not much.

Johnson: Nothing to concern ourselves with?

Jorgensen: Are you talking about what future crossing it might be?

Johnson: I mean what exists now?

Jorgensen: There is nothing there now. There is a private drive that goes through some property there.

Little: I don't believe there are any structure there. It is two separate pieces of property.

Johnson: This stub out street that stops in Easton Park -- it looks as if it's built just north of Easton Park. What happens from the north end of that?

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Little: It is leading into vacant property but it is leading into vacant property with one owner on one side and one on the other in case either of them decide to develop, they would have access.

Johnson: This looks like there is some kind of a road way. It doesn't presently get there.

Little: It's a lot deep.

Johnson: But it doesn't presently get to the street through there.

Little: It's a stub out. It is one lot deep. It would require a crossing.

Jorgensen: To the south of our project, Candlewood, naturally, that heavy lane that goes through Crossover Park, that leads over to Vandergriff School. It's not a designated city street but it does connect to Vandergriff and it goes out to Highway 45.

Johnson: Is there any restriction on the public using that street at any time?

Jorgensen: I have tried to go through there during the day and they have it blocked off at the school.

Little: They do block it off during playtime. Other than that, I think you can go through there.

Johnson: Did we know that when we allowed that it would be blocked off?

Little: No.

Forney: Is it a public street or a private street?

Little: Private.

Jorgensen: Immediately to the west of our project, is an area that is partially owned by Runnels and then our property abuts Highway 265 on the north end and then we have been asked to provide a connection to the north which we don't necessarily agree with but we understand the City's need for connectivity although in this situation, we're not sure that it is that beneficial because it only serves Ms. Tu's property and a small parcel immediately north of that for a total of 5 or 6 acres?

Chapman: She has 6. I think the other property belongs to the church and it's 2 or 3 acres.

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Jorgensen: Along our entire east boundary line is the tributary to the Mud Creek and as Alett mentioned, I have a letter in the packet that addresses connectivity and in this particular interest, we felt that the tributary to the Mud Creek represented such a geographic obstacle that we didn't feel it would be advantageous to go directly to the east right there. That is the reason we don't have a stub out. Concerning the Highway Department, I did contact them and they said that this stretch of Highway 265 was recently overlaid and they have no plans in the foreseeable future for any improvements there and they are not asking for any donation. The way he put it to me is they didn't want to get in the habit of writing a letter addressing this. The only thing I can do is to write a letter to the Planning Division and state that I had this conversation with them and that they didn't want any money.

Little: They would rather have the general taxpayer pay for this improvement.

Jorgensen: I guess that is what it was. That was all I could get out of them.

Johnson: The State Highway Department says this part of 265 which is north of the 45 intersection which they have three lanes already that this section has no future plan at any time in their existing plan to do anymore improvement.

Jorgensen: Right.

Johnson: So, they would have no basis to request a contribution.

Jorgensen: Right.

Johnson: And they won't write a letter to that effect.

Jorgensen: That is correct.

Johnson: Are we in a position of that individual developers make this contact and then when the higher governmental level says they would rather not write a letter then that leaves us in the position of relying on the hear say report from the developer? Or since we've learned that the State won't provide any kind of letter on it, is there a reason that staff should follow up?

Little: Engineering was the one that asked them to make that contact with the State in order to determine what improvements were planned in order that we could determine what their fair share of those improvements would be. We need to talk to Engineering about that particular issue. I don't think it's a good idea that if we know the Highway Department is not going to respond to us with definitive information in writing that they probably have that responsibility to make that contact.

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Johnson: I suggest that staff go ahead and check with the Highway Department and confirm that their policy is that they really don't have the willingness to write us a letter and once you've confirmed that then we're going to have to always ask that they follow up on that. Anything else that you have for us Dave?

Jorgensen: I think this covers the issues that we got to at our last meeting.

Little: Did you receive a copy of a letter from Dr. Runnels?

Jorgensen: No.

Chapman: I haven't.

Little: Let me read:

"I'm writing you to voice my objection to the Subdivision plan for the land adjacent to my property on two sides. As you know, some 60 lots are planned to be built on 40 acres. I was unable to attend the Planning Commission meeting due to having to see patients in my office at the time of the meeting but I think this density of housing is another example of what people are now calling 'urban sprawl.' Mr. Terminella told us that when he was first developing this and talked to several of our neighbors that he was going to put 1 house on 4 acres which we feel would be quite a good idea and it would improve the property value of our land next to him. I think having this density of homes is just further taxing our already overburden sewer system and should be rejected and that they should come back with a plan that would have lot sizes of at least 3 to 4 acres. I think to do otherwise is just going to contribute to the urban sprawl that is becoming Fayetteville.

Sincerely,

Vincent B. Runnels, M.D."

We'll put this in the file packet of information that everybody gets.

Johnson: Kim, do you have anything on this? Do you want to postpone further discussion of this until we have Engineering with us since many of these issues are Engineering?

Forney: We did have Engineering here last time. Hopefully, we would get Engineering involved before we have a motion. I think we can address street connections.

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Little: Mr. Beavers was ill yesterday and I know that Mr. Petrie has been at a seminar.

Conklin: Mr. Petrie is still at a seminar.

Little: Are we likely to have anyone from Engineering today? Can you find that out for us?

Johnson: The reason for my suggestion that we might wait, I thought all of these connections are very much driven by Engineering.

Little: They are driven by grade.

Forney: The one thing that the new vicinity map allows me to see a little bit better is the southerly connection of Brookbury Crossing to Township. It's going to have to happen in a fairly narrow condition between a tight curve and the existing creek. I just want to get some assurance that there can, in fact, be a connection made there.

Little: Here is Township. It would probably come down.

Forney: We probably would have visibility problems there.

Little: Dave, you're the engineer on all of those so could you advise us on that a little bit?

Johnson: Is this part of Township built?

Jorgensen: It's under construction now.

Johnson: You know exactly where it will be.

Jorgensen: Right. Of course, this map is 1 inch equals 2,000. The scale is small but in reality when you get out there and go around that curve, there is a long stretch between the creek and where it starts to curve in there that the visibility is not going to be a problem. The biggest problem is the fact that at this particular time, the people who own that property are not interested in that extension as you can imagine. It will be several years before that happens. The problem is overcoming the fact that the people don't want the street there. I think that might be taken care of over a period of time.

Forney: If we can be assured that is a possible connection or if it's not a possible connection, that would lead me to wonder if we need a connection out of this subdivision to the

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Subdivision Committee
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east.

Johnson: And if you think that connection can't happen in the foreseeable future, then how does that affect your position on a connection here to the east? A much less reason to do it?

Forney: I guess the question is whether this will be done anytime soon. It could be 20 years. It could be 40 years. So, I'm hard pressed to make a judgment about what kind of time frame we need.

Johnson: My question is do you feel like a connection out of this property is more important to the east if Brookbury Crossing does get built in the future.

Forney: I feel like an eastern connection is very important at Brookbury Crossing to the extent that if we are not able to connect to Township. If it is able to connect to Township in a reasonable time frame and in a safe way in conjunction with the curve and looks to me like grade associated with the stream bed. I would feel that we are not so hard pressed in need of that eastern connection because we would have access on Skillern and Township on the east side of the creek. I would hate to have that block of land developing further without two connections out. That is what I'm concerned about.

Jorgensen: May I suggest that even if Engineering was here right now, they couldn't answer that question without --

Little: It is my understanding he is on a phone call and he is trying to get off and get up here.

Jorgensen: What you might want to do is wait for their decision on this and let them report on it at Planning Commission stage.

Little: I think the Planning Commission has to be able to look at it at Planning Commission stage what they are approving and if additional stuff is to be included then I think now is the time to get those so you can get them on the plat. Otherwise, we go to Planning Commission and you have to come back to Planning Commission.

Jorgensen: X that suggestion, then.

Johnson: What other comments?

Little: Kim, would you go over the tree that's on Lot 10 for us?

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Hesse: There is the tree that comes to the street and when they grade the street, it could affect it. It's a nice looking tree and they have agreed to build a retaining wall all the way around it. They have done a great job on saving a lot of the trees that are out there.

Little: So you'll be looking for that retaining wall as the construction drawings are completed and as it's constructed.

Forney: The other question I have is on Lot 30 through 27, the shape of the area will allow building area?

Jorgensen: Yes. It is there.

Forney: What is that?

Jorgensen: We are required to have a minimum of 6,000 square feet of building area on each lot if lots are affected by the 100 year flood plain. We put that on there as the visual so you could get an idea of what 6,000 square feet looks like.

Forney: But on every one of those lots, you could build to the flood plain.

Jorgensen: Yes.

Forney: You have plenty of building area there.

Little: In fact, some of those that steep are beside the road, it's going to be better to back it up a little bit more than likely.

Forney: What is this range of acreages?

Jorgensen: That is the range of the size of the lots.

Forney: To the issue of density, they have 60 lots on 45 acres but there could be 220 lots in R-1. What is the smallest of your lots?

Chapman: 4/10ths.

Little: We might talk about what sprawl really is. Sprawl is large lots. It's the opposite of this.

Forney: These are not small lots.

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Little: If they were 4 acre lots then that definitely would be sprawl. We would still be running the same amount of waterline to be repaired and the same number of garbage truck miles to go through.

Jorgensen: How many lots can we put on R-1?

Little: 4 per acre.

Terminella: Almost 250. I'm sensitive to the issue of connectivity. Originally when we approached Dave to engineer this, we had one in and one out on Highway 265. We went to the expense of buying out a farm which basically encompassed Lot 1 through 5 which was a 4 acre tract from a lady in California. We paid substantially above market value to address the issue of multi access for subdivisions. We thought that we had the street to the south which was existing to service the school. That was a part of this original farm.

Ward: My thoughts on connectivity for the street connecting to the north, I'm not sure that will do any good. It's connecting such a little bit of property. 2 acres at a maximum. If there's a better place to put connecting streets, that would be great. But, I'm not sure that does much either. I don't want to be in a situation like we have in Park Place or Brookbury Crossing or some of those where there is one way in and one way out and there is no connectivity right now. If those people like that and they may buy it because they like security and there are numerous reasons why they are there. Connectivity because it sounds good going to the north, I'm not sure we gain anything from that.

Chapman: You're looking here at Ms. Tu's property from Crossover to the creek and she has 6 acres. Immediately north of Ms. Tu, is Lake Hills Baptist Church and that is 2 or 3 acres. These other places are residences other than the dance studio and whatever is next to it. I think along with what John was saying earlier, if there is only going to be 2 units and that is Ms. Tu's plan -- she is concerned that 20 to 30 years in the future, if she wants to develop -- from the last meeting she was lead to believe that she would not be able to develop if she only had this one way in and out. She thought you would not let her develop if there was no other way in or out.

Johnson: What is the distance between your intersection with Crossover at Ferguson Avenue? What is the distance between Ferguson Avenue to the north to whatever that other east west streets?

Little: That's Old Wire. It's 6,000 feet.

Johnson: You could say 2/5th of a mile, give or take. I'm not very persuaded by arguments of what is on the land now. That is always a temptation to think that we know what the adjacent

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land owners are going to do and that the dance studio will be there in perpetuity. Actually, we don't know what these folks will do in the future. The connectivity issues we have to deal with as if all the existing land could be developed to the maximum, I think, because it's so close in. The fact that we don't know whether that will happen in 2010 or 2090. We are not in the business of shutting connectivity doors.

Chapman: We also need to look at what the possible zonings might be and when you get up closer to that intersection, this is more of a commercial type than residential and I don't know if you would want to connect the commercial to the residential.

Little: We have already addressed that.

Chapman: We do know that for at least a minimum of 10 years, there are going to be 2 new houses built on Ms. Tu's property. That's all. Maybe they might develop it in 30 years. I have to guess whether or not they are going to.

Johnson: What is the zoning around the Old Wire and Crossover Road intersection?

Little: I believe it's A-1 at most. It is Old Wire on 1 side and Skillern on the other. We have had a rezoning for C-1 and it was rejected; for C-2 it was rejected; for R-O it was rejected; and, for R-2 it was rejected. So, it's going to be R-1 more than likely.

Terminella: The topography of this ground that lies north as you can tell by the lines on the map it is severe at best. As far as the portion of the ground that would be able to be developed out of the flood plain is minimal out of what Ms. Tu owns. Maybe 60% of her property would even be useable.

MOTION

Ms. Johnson made a motion to postpone further discussion of this project until such time in the meeting when the Engineering staff is present so we can direct those engineering questions to them.

Further Discussion

Johnson: The primary issue we are talking about now is the issue of connectivity. We wanted to have Engineering and Traffic with us. The applicant does not want to do the connection that he has shown to the north. We have been discussing potential connection to the east and really haven't yet discussed additional connection other than the one we have to the west. In the vicinity map, we have now been given the additional platted streets in 2 or 3

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subdivisions over to the east and northeast of this preliminary plat. We've talked about whether or not Brookbury Crossing in Brookbury Place, if there is any reason that we know of now that the street would never be extended south to Township. That's one thing we've looked at. We've also concerned ourselves with the wisdom and the possibility of some sort of connection out of this subdivision over to the east which means it would have to cross the tributary of Mud Creek. Now, we've had discussion as to whether the connection on the north end of this property is needed and sensible and whether there are any engineering problems with it. We understand that the one question that we asked was what the distance was between Ferguson Avenue which matches up with their connection with Skillern to the north. We're told that is about 2,000 feet.

Beavers: The extension of Brookbury to the south has no physical reason that can't occur but that will be solely dependent upon those property owners.

Johnson: No physical barriers particularly.

Beavers: Connecting to the east over the creek if required would be solely at the developer's expense and I don't know that is required because of the extension of Township which is now under construction. Township will act as the main street through there. I cannot recommend from the engineering perspective but there may be planning issues I am not aware of but I do not see the connection across Mud Creek being required.

Johnson: Do you have any engineering considerations for us on this connection to the north that is drawn but that the applicant is really opposing. Lee has said that he is not persuaded that is needed either. Any engineering considerations for that or is that just connectivity considerations?

Beavers: I'm not familiar enough with that property to say there are any barriers that you could or couldn't. I think that's a connectivity issue. I've heard that the topography falls off to the point that you could not build a street very far back into there. Dave could answer that question better than I could.

Jorgensen: That's true. By looking at the vicinity map, you can see the creeks where they diverge the two tributaries to go to Mud Creek converge right there at the northwest corner of Brookbury and you can imagine, it would be difficult to extend a street to the north to Old Wire and Skillern. The other things that could happen would be to loop back out to Highway 265 some how.

Johnson: It's still the same issue. Do we feel like for a 2/5th of a mile stretch that the property that could develop in the future will need a connection to this property.

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Little: For planning considerations, for the 6 acres there and I do know that their plans are for 2 houses right now or that is what we have been told. That equals 6 acres. There are another 4 acres and it has 5 on it. There would be that many. We could eliminate possibly, depending on what our traffic situation is on Highway 265, we could eliminate another cut to 265 if there were only a few homes, they could just come out this way and not interrupt the traffic flow on a larger highway. That is one thing. The other thing is there is less land to the north.

Johnson: You were implying that without this connection, the next development is probably looking at two connections to Highway 265.

Little: Looking at lease at one and more than likely two.

Johnson: Whereas, if we have this then they would just be looking at this as one of those connections that ultimately would get them to 265 and one other intersection with the main highway.

Little: Right. Then if you are going to compare areas and amounts, there is less to the north than there is to the east. The connection to the east is much more difficult but if a connection was made to the east then there would be another way for these people to get to 265 as opposed to having to go down to Township. There is no specific plan for there. If in the future, one is needed, there could be a street through there. Then we also talked about one to the south of this area which is to the north of Dr. Runnel's property. Dr. Runnel's owns about 10 acres which could also develop and that would be another way out for his subdivision as opposed to have an exit to Township. Those are relatively long term considerations. None of those are tomorrow type considerations.

Forney: I'm not sure what we could ask of this developer for that eastern connection. I certainly makes no sense to build half a bridge.

Little: I disagree that it would have to be 100% at the developer's expense. We haven't done that in the past. We have Brook Haven where we stubbed out and we took money for just the portions he didn't build and we didn't require any contribution for the bridge. In commercial subdivision, we're contributing to the bridge so I think it is not necessarily a given that it would have to be at this developer's expense. In fact, that is your decision.

Beavers: That is the City Council's decision.

Little: Whether it is at developer's expense is the Planning Commission decision.

Forney: We're getting a connection about a mile apart maybe a little less than a mile from

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Township to Skillern. That is the spacing between connections across Mud Creek. If that is adequate? Do we need one within a half mile of another? The pattern that we are setting up there are relatively large lots. They could be larger. I'm not sure we need that connection across that creek. Given the reality that we could get it, we're going to have to spend money to get that thing built it sounds like.

Little: That is not exact true. This developer down here is building Easton and the entire road.

Forney: That is a terrific thing and I'm very pleased about that. Obviously that on one level makes this less pressing.

Little: It made this possible.

Jorgensen: One thing that came out in the last meeting that Planning brought up is the fact that the prevailing travel patterns are in a north south direction because it is obviously that the school is to the south and you have the people in Brookbury wanting to travel to the south and so it's a north south corridor that people will want to travel. I'm not saying they don't want to travel east west but people are going to and from the school.

Johnson: You may also be aware that the people up there don't have much opportunity to travel east west. There are some other things that makes that difficult to go through unless you go to the two major highways.

Forney: If you're trying to go west of 265, you're going to end up on Township or Old Wire which is Skillern or Township. I'm not convinced that we need that connection across the creek. The north south connections, however, I am convinced that we at least need the north and I'm not sure we don't need one at the south. I understand there are some grade problems with both directions. If we don't make those connections, we're saying we're going to pick up the garbage for the 2 or 3 or 5 lots to the north and go out to 265 and turn, then go 200 feet and make another turn. That to me is a bad idea. People tell me that 265 is a heavily traveled road and will be more so in the future. It will force people, through bad planning decisions, to go back out there for a short distance and this to me seems short sighted.

Little: There is a connection to Ferguson. There is a loop street and this is the main street that goes to Township and comes out to 265. When Brookbury is extended it will come down and this is the only other thing that would make much sense to the east unless you want to utilize the low water crossings down there.

Johnson: You haven't shown the connection to the north.

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Little: Right. I didn't show the connection to the north.

Forney: We have no belief that we can connect further to the east at all. Is that right?

Little: Not through this subdivision. We don't have a stub there.

Forney: Township is the only thing we can get through over there. So that property line condition between Easton and Savannah --

Little: I really thought we got a connection there but obviously we didn't. If we had gotten that connection there we could have access with this project but we missed that.

Jorgensen: No. We've got the capability of going to the east.

Forney: This connection is only going to serve a small amount of territory. Which to me is a limited amount of territory for a lot of bridge.

Johnson: My sense is that there is not a new subdivision really to think seriously about the connection to the east for all the reasons that we have discussed. We can put that to rest unless anybody wants to spend more time on it. Is there any more discussion on giving up the drawn connection to the north?

Forney: I'm wondering whether we don't want to make a connection between 12 and 13 to the south. I understand there is a grade issue. I see about 16 feet of change in grade over about 160 feet of property. So, I would like for Mr. Beavers to give us some sense whether that's acceptably steep.

Beavers: No. Physically you could put the street through there.

Chapman: At the last meeting, we discussed that all the Runnel's property and all the other houses put together would have plenty of ins and outs if somebody put that property together without another street from ours.

Johnson: If that property is developed and we don't yet know what connections would exist at all.

Ward: The only thing I don't want to get involved in is taking property and giving stub outs that cost a lot of money, that are there forever and are not connected. That doesn't make sense.

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Little: This is the extra piece that they got to add to their subdivision so they had access to Township. This is Runnels and then there are three other tracts that do already have frontage to Crossover.

Johnson: Tell me again how much total property we are dealing with.

Little: This is about 10. Those are about 2 each, so, 18 acres.

Ward: There are houses all through there already.

Little: This one has a house and the other two don't, but I'm sure about that.

Terminella: Jerry Jones and Mr. Murphy live there. Vincent lives on the larger tract. Mr. Jones owns the property to the north. Then there is the Brown's property and they own two small rental properties in that area. That triangular shaped is the Ferguson's which is unusable.

Little: So in terms of developing vacant land that is left to be developed, there is Ms. Tu's 6 acres plus 2 acres from the church making 8 acres to the north. And there is 10 to the south.

Ward: To the north I see Mud Creek and it's not going to be developed.

Forney: I don't see an enormous problem with having a connection to Township and then ~~their own connection out here but, of course, if you're with sanitation~~

Little: They don't have a way to get there necessarily. You presume he will go through one of those or this one.

Forney: In the best case scenario, you could get a connection there but that means if you are with sanitation, you pull out on this street, you go up on 265 and you make a right back into that subdivision when we could have done it without that. In theory, this could be 40 homes.

Little: We couldn't say no.

Johnson: On the 10 acres.

Forney: That's not to say they would get one of these other properties.

Johnson: Runnels doesn't touch this subdivision?

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Little: He does right here.

Forney: To the north there are how many acres of land?

Little: There is 6 in one ownership and 2 in another. This begins the R-O zoned property which is Williams Dance and Gymnastics.

Forney: So that is 8 acres which could potentially be 30 lots.

Chapman: We know what will happen immediately. We don't know what will happen 30 or 40 years from now.

Johnson: Is either Commissioner going to try and persuade us to close the connection to the north?

Ward: The only thing I would say if there is a better connection somewhere else to the south then I would give up the north one. But if there is not, then we want connectivity. There is no doubt about that. It's just I don't want connectivity that is not going to be connected to anything. It will just be there forever and ever at a lot of cost and taking of land for no reason.

Johnson: Am I correct to read between the lines that you probably would favor either the existing connection to the north or a new connection to the south. But, you probably could not favor both.

Ward: That's right.

Forney: I'm not yet convinced that giving a connection to both the north and the south wouldn't be a good idea. I'm wondering if there might be some sense in just getting the easement and not doing the actual paving because I do think Lee is right. We aren't going to see this done soon and it looks a little strange to have a little piece of pavement like that. That would then burden the developer to the north or south to make that connection. At least we made it possible for them to do that.

Ward: I can see doing that. I just don't think we ought to be taking the land and it never being used. That doesn't make sense. That's not good business.

Little: The only thing it does and the example is Brookbury because it looks like a cul de sac, they think it is never going to be extended and we heard on Amber the realtors told them it would never be extended. So when it came time to use the right of way that had been granted to the City, there was a major neighborhood upheaval related to that. Perry has helped us out. He

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is in the process of putting out signs at the end of streets that have right of way that say this is future street right of way. Then they know that and there are no mistakes about that.

Ward: I don't think it's a bad idea to label it on the maps as well.

Little: Another one that we had that wasn't paved was Megan Drive when we did Horseshoe. Those people really thought it was their property.

Chapman: I wouldn't object too much if we just had the north exit out of there and it was an easement rather than a road.

Johnson: If we just required the easements and we required no construction, then, John, I think, said that if the property to the north developed, then that developer would pay this cost?

Little: Yes.

Johnson: So that developer would pay the cost on his property for building this part of the street.

Little: It becomes City property at that point.

Ward: But the main thing it does is it doesn't pass something forever. We don't want to get into the situation we've had at Brookbury Crossing or Park Place where we have one way in and one way out. A lot of people like that but in this subdivision we have two distinct ways in and two ways out. I think we can go totally overboard.

Johnson: I like the thought of having both the easements to allow for potential connections to the north and to the south. It looks like a way to have our cake and eat it, too. We save the developer the cost of building this little street that is one lot long on the north end and we've protected ourselves for the future if we have development to the south so we need this. It looks to me like the City comes out ahead and the developer may well save some money. Now, he has to do some work down here at 12 and 13 but that may affect 10, 11, 12, 13, 14, and 15 and the way they are configured. But that really seems like a win win situation to me for the City. Now what problems other than the developer doesn't want to give the two easements. What other problems are there with that?

Little: Nothing I'm aware of.

Terminella: Is there not a grade issue to the south of there due to the tremendous amount of fall in that area?

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Jorgensen: It makes it more difficult to do. As Jim said, there are other places that are worse. We may have to request a waiver for the intersection grade but it's a problem in dedicating a right of way for future use in that that causes your houses to have to be built and you have to abide by setbacks as if the street was actually going to be constructed. So you have a house that is really kind of a corner lot that you have to plan for. I was just thinking about the problem that poses for future construction and potential buyers are going to be posed with the problem of building a house on a corner lot that might be not really a corner lot for 10 to 15 years. How do you situate your house? We've dealt with that in the past. That has happened a lot in the City in the past.

Johnson: Do you prefer to have that problem at two spots to the north and south or do you prefer to build the street to the north?

Jorgensen: My preference would be as the plat is presented before you. Right here what we're looking at. I know the developer may not agree with me but I think that I like this layout better than I would if there was an easement or right of way dedicated through lot 12 and 13 and a right of way dedicated to the north without the street being built in either situation. I have to agree that there is merit to having the right of way north and south that gives you the capability of making that connection. I'm just saying it is a little bit of a draw back in the fact that if you don't build that street, you have somebody that has to build a house on a corner lot that may not be a corner lot for 10 years. I have to defer to the developer.

Chapman: I have to prefer the easement.

Jorgensen: What they are talking about is two easements. An easement to the north and an easement to the south and a rearrangement of lots.

Chapman: You're trying to get them to make me pave it. We're trying to do something that may or may not happen for 20 or 30 years down the road or never. I have to get back to the money part of it but there is aesthetics involved in the situation, too. It's not totally money, but it is.

Forney: That's why I prefer the easement.

Chapman: That's why I prefer the easement to the road.

Jorgensen: He prefers the easement and that's fine with me.

Chapman: I prefer one easement to the north and nothing to the south referring to the last comments made two weeks about ago but if we have changed our minds on that.

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Forney: We're all in the business of trying to predict an uncertain future. I don't see how we can get away from that one.

Johnson: The idea that we're looking 20 years in the future, we not looking 20 years in the future, we're looking as far in the future of the existence of the City of Fayetteville and as it has streets because it will never be easier to condemn houses and destroy houses. We don't have the luxury of thinking 20 years. We must think 100 years.

Little: I have a question for engineering. We've heard about the problems it would cause for the home owner to have to deal with a right of way. I would be interested in hearing the problems that the City would deal with in trying to put the street in particularly in an area where there is a grade and the homes are already there.

Johnson: You mean on either side.

Little: How does that work and how does that happen?

Beavers: With retaining walls usually.

Little: So the cost has gone up by what factor?

Beavers: 10% is a guess. Retaining walls would probably add \$10,000 which would be more than 10%.

Johnson: At each location?

Beavers: If there were any cuts. If there were fill, we would probably grade it out into people's yards but if we cut, we would have to have a retaining wall.

Little: If you graded into people's yards, you have to have a construction easement to do that?

Beavers: Yes. You have to purchase an easement to reshape their yard.

Ward: Let's say for instance, to the south if that area did develop and there really wasn't a need for a connection there, the owners of the homes could come back and petition to vacate that road right of way or easement or whatever it's going to be called? We do that quite often, too.

Johnson: When the future gets here and it's apparent what we should do, then we can

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vacate at that time. I certainly favor the idea of the two easements neither of which is built and that the right of way of the easement is dedicated and we would require a warranty deed. That make sense to me.

MOTION

Mr. Forney made a motion to forward this project to the full Commission with the plat revised to show those two easements without pavement on either one, also the City staff needs to confirm with the State Highway Department on what, if anything, will be required on Highway 265 and subject to applicable staff recommendations.

Mr. Ward seconded the motion.

Ms. Johnson concurred.

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C. 13
R-PZD 05-1543 (Vantage Center)
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4-Oct-05

City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

R-PZD 05-1543: (Vantage Center, 400): Submitted by Jerry Kelso for property located at the end of Shepard Lane adjacent to Frontage Road. The property is zoned C-1, Neighborhood Commercial and R-A, Residential Agricultural, and contains approximately 4.68 acres. The request is to approve a Residential Planned Zoning District for a mixed-use community of residential and commercial uses.

\$0.00	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

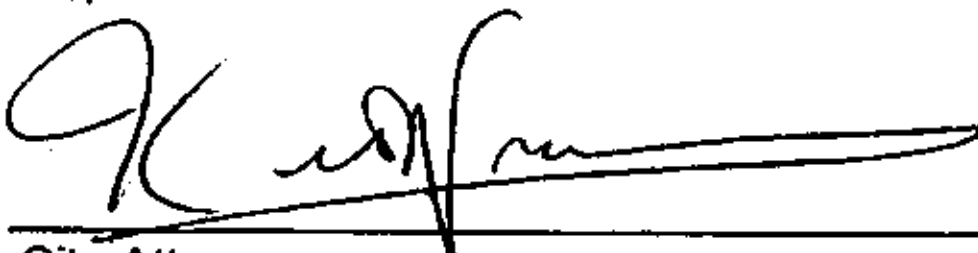

Department Director

9-15-05
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

Original Contract Number: n/a

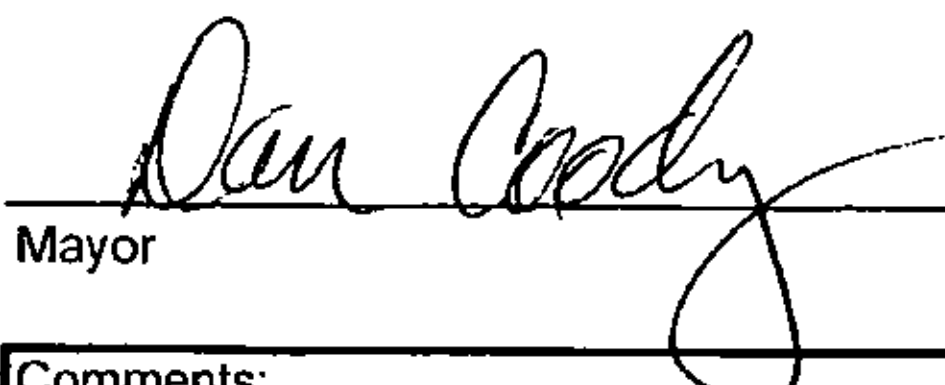

City Attorney

9-16-05
Date


Finance and Internal Service Director

9-16-05
Date

Received in City Clerk's Office



Mayor

9/16/05
Date

Received in Mayor's Office


Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning *JP*

Date: September 14, 2005

Subject: Residential Planned Zoning District for Vantage Center (R-PZD 05-1543)

RECOMMENDATION

Planning Staff recommends approval of an ordinance creating a Residential Planned Zoning District (R-PZD) for Vantage Center. This action will establish a unique zoning district for a residential subdivision on a 4.7-acre tract located at the end of Shepard Lane between Frontage Road and Stearn Street. The proposed use is for a mixed use development consisting of four buildings. Each of the buildings will contain 6,733 square feet of retail space, twelve 2-bedroom units, and seven 1-bedroom units.

BACKGROUND

The property is largely undeveloped and zoned C-1 (Thoroughfare Commercial) and R-A (Residential Agricultural), and is adjacent to a mix of commercial and residential uses. The applicant requests a rezoning and preliminary plat approval for a residential subdivision within a unique R-PZD zoning district. The development is designed to have two means of access with Shepard Lane extending east-west through the development in a "Main Street" streetscape, linking Frontage Road to the west with Stearn Street to the east. Shepard Lane would incorporate parallel parking and widened sidewalks, with the majority of parking located to the rear of the four mixed-use structures. Additionally, two greenspace areas in the center of the development would be utilized as park/gathering areas and for stormwater detention. The development is intended to create a mixed-use development where residential and commercial uses can co-exist using the same building, parking areas, and surrounding amenities.

DISCUSSION

The Planning Commission voted 7-0-0 in favor of this request on Monday, September 12, 2005. A PZD requires City Council approval as it includes zoning (land use) and preliminary plat/large scale development approval. Recommended conditions were approved by the Planning Commission and are reflected in the attached staff report.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING A RESIDENTIAL PLANNED ZONING DISTRICT TITLED R-PZD 05-1543, VANTAGE CENTER, LOCATED AT THE END OF SHEPARD LANE ADJACENT TO FRONTAGE ROAD, CONTAINING APPROXIMATELY 4.7 ACRES, MORE OR LESS; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FAYETTEVILLE; AND ADOPTING THE ASSOCIATED MASTER DEVELOPMENT PLAN.

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

Section 1: That the zone classification of the following described property is hereby changed as follows:

From C-1, Neighborhood Commercial and R-A, Residential Agricultural, to R-PZD 05-1543 as shown in Exhibit "A" attached hereto and made a part hereof.

Section 2. That the change in zoning classification is based upon the approved master development plan, development standards, and conditions of approval as submitted, determined appropriate and approved by the City Council.

Section 3. That this ordinance shall take effect and be in full force at such time as all of the requirements of the master development plan have been met.

Section 4. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this _____ day of _____, 2005.

APPROVED:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"
R-PZD 05-1543

TRACT 1 SURVEY DESCRIPTION:

PART OF THE SE 1/4 OF THE SE 1/4 OF SECTION 23, T-17-N, R-30-W,
WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED
AS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 23, THENCE
N02°47'48"E 480.38 FEET TO THE POINT OF BEGINNING, THENCE N87°17'11"W
620.79 FEET; THENCE N02°47'48"E 328.12 FEET; THENCE S87°17'11"E 620.79 FEET;
THENCE S02°47'48"W 328.12 FEET TO THE POINT OF BEGINNING, CONTAINING
4.68 ACRES, MORE OR LESS.

SUBJECT TO ALL EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

DRAFT



PC Meeting of September 12, 2005

THE CITY OF FAYETTEVILLE, ARKANSAS
PLANNING DIVISION CORRESPONDENCE

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Current Planner
Brent O'Neal, Staff Engineer
THRU: Jeremy Pate, Director of Current Planning
DATE: ~~August 30, 2005~~ September 14, 2005

R-PZD 05-1543: Residential Planned Zoning District (VANTAGE CENTER,): Submitted by JERRY KELSO for property located at THE END OF SHEPARD LANE ADJACENT TO FRONTAGE ROAD. The property is zoned C-1, NEIGHBORHOOD COMMERCIAL and R-A, RESIDENTIAL AGRICULTURAL and contains approximately 4.68 acres. The request is to approve a Residential Planned Zoning District with 26,932 square feet retail space, 124 bedrooms, and 187 parking spaces.

Property Owner: VANTAGE CENTER, LLC

Planner: ANDREW GARNER

Findings:

Background: This proposal was first heard at Technical Plat Review on June 1, 2005 and was tabled by staff due to concerns with site development plans. The revisions produced following subsequent meetings with staff are those presented before the Subdivision Committee.

Property and Setting: The site is located at the end of Shepard Lane in northern Fayetteville between Frontage Road and Stearn Street. The site is largely undeveloped with the existing Lindsey Communications residential-office building and a gravel drive located in the western portion of the site. The some stands of mature trees trending north-south through some of the eastern portions of the site. As depicted in *Table 1*, the site is surrounded by a mix of commercial and residential uses.

Table 1
Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Large-lot residential	C-1, Neighborhood Commercial
South	Undeveloped commercial lots	C-2, Thoroughfare Commercial
East	Stearn Street Apartments	R-O, Residential Office
West	Mixed-use commercial	C-2, Thoroughfare Commercial

Water and Sewer: Water and sewer lines are available to the site.

Adjacent Master Street Plan Streets: Frontage Drive (a Collector Street)

Proposal: The applicant requests a rezoning and preliminary plat approval for a residential subdivision within a unique R-PZD zoning district. The proposed use of the site is for a mixed use development consisting of four buildings. Each of the proposed buildings will contain 6,733 square feet of retail space, twelve 2-bedroom units, and seven 1-bedroom units. The proposed uses and parking are detailed in *Table 2*.

Table 2
Proposed Vantage Center Residential Planned Zoning District

Land Use	Square Feet	No. of Units	No. of Bedrooms	Parking Required
Proposal Per Building				
Commercial Retail	6,733	NA	NA	27
Multi-Family Residential 2-Bedroom	NA	12	24	24
Multi-Family Residential 1-Bedroom	NA	7	7	7
Total	6,733	19	31	58
Proposal for Entire Development (Four Buildings)				
Total	26,932	76	124	232*

* The development proposes 187 parking spaces, which is within the +/-30% allowed by ordinance.

The development is proposed to have two means of access with Shepard Lane extending east-west through the development in a "Main Street" streetscape, linking Frontage Road to the west with Stearn Street to the east. Shepard Lane would incorporate parallel parking and widened sidewalks, with the majority of parking located to the rear of the four structures. Additionally, two greenspace areas in the center of the development would be utilized for as park/gathering areas and stormwater detention. The development is intended to create a true mixed-use development consisting where residential and commercial uses can co-exist using the same building, parking areas, and surrounding amenities. The existing residential community to the east of the site as well as the proposed residential uses on the site will help support the commercial businesses planned in this development. The development is proposed to be under single ownership, with dwelling units rented and retail space leased. All interior streets, landscaping, common areas and buildings would be maintained by the developer. Zoning criteria for the proposed zoning district is depicted in *Table 3*.

Street Improvements Proposed: Improvements to Frontage Drive along the project frontage of 14' from centerline including pavement, curb and gutter, and six-foot sidewalks.

Tree Preservation:

Existing Canopy: 21%
Preserved Canopy: 5%
Mitigation Required: 88 onsite trees

Table 3
Vantage Center Zoning Criteria

Use Units Allowed	
Use Unit No.	Permitted Uses
1	City-wide uses by right
2	City-wide uses by conditional use permit
3	Public protection and utility facilities
4	Cultural and recreational facilities
5	Government facilities
12	Offices, studios and related services
13	Eating places
15	Neighborhood shopping goods
25	Professional offices
26	Multi-family dwellings
Use Unit No.	Conditional Uses
16	Shopping Goods
17	Trades and services
Setback Regulations	
Front (Along Frontage)	25'
Front (Along Shepard)	0'
Sides	8'
Rear	25'
Building Area	
Maximum 16% or 32,022 sq. ft. 20%	
Height Regulations	
Maximum 42'	

Recommendation: Staff recommends forwarding R-PZD 05-1543 with a recommendation of approval to the full Planning Commission with the following conditions:

Conditions of Approval:

1. Planning Commission determination of commercial design standards. *Staff finds that the building elevations meet the City's commercial design standards by minimizing or avoiding: unarticulated wall surfaces, square "boxlike" structures, metal siding that dominates the main facades, and large out of scale signs. Additionally, the development provides a unifying and identifiable theme and is compatible with adjacent development.*

PLANNING COMMISSION DETERMINED IN FAVOR OF THIS CONDITION

2. Planning Commission determination of a waiver request for the requirement of 40' from an intersection to a curb cut, for the westernmost curb cut along Shepard Lane that is approximately 35' from Frontage Road. *Staff is in support of the request for the proposed curb cut along Shepard Lane as the entrance fulfills the intent of providing an enhanced "Main Street" streetscape, along with providing needed parking in the "rear" to meet ordinance requirements.*

PLANNING COMMISSION DETERMINED IN FAVOR OF THIS CONDITION

3. All zoning criteria such as setbacks, protective easements, and designated lot uses (depicted in *Table 3* and elsewhere described in this report) are binding with the approval of the R-PZD. Submitted covenants and building elevations are likewise binding to the project.
4. Submit a lighting plan in conformance with the City's lighting ordinance.
5. Street improvements to Frontage Road shall include 14 feet from centerline including curb, gutter, pavement and 6-foot sidewalks through the driveway entrance. The sidewalks on Frontage Road shall connect with existing sidewalk to the north and south of the driveway. Six-foot sidewalks shall be constructed through the project to connect Stearn Street with Frontage Road.
6. No fences shall be allowed within utility easements.
7. All monument signage must comply with the sign ordinance.
8. Include the 14 notes that coordinate with the Tree Protection Fencing detail. These can be found in the Landscape Manual and should be located on the Tree Preservation sheet.
9. Mitigation will be required to replace 15,863 square feet of canopy. Using the mid-level density factor, 55 2-inch caliper trees or \$13,750 will be required. If not all trees can be located on-site then a combination of plantings and money in lieu may be approved by the Urban Forester.
10. Before approval of building permit a tree and maintenance plan must be submitted for approval to the Urban Forester.
11. All trash enclosures shall be screened from view with materials that are compatible with and complementary to the proposed buildings.
12. All utilities shall be screened with materials complementary to the proposed buildings.
13. Please modify all sheets of the drawings for consistency regarding the number of parking spaces: the cover sheet says 187 spaces, the landscape plan says 289 spaces, and the tree preservation plan says 173 spaces.
14. Dimension the size and location of proposed sidewalks on the site plan and landscape

plan.

15. Add a note to the plat that all utilities shall be installed underground and that any existing utilities over 12 kV shall be relocated underground.
16. All trash enclosures shall be screened from view with materials that are compatible with and complementary to the proposed buildings.

Standard Conditions of Approval:

17. Plat Review and Subdivision comments (to include written staff comments provided to the applicant or his representative, and all comments from utility representatives - AR Western Gas, SWBT, Ozarks, SWEPCO, Cox Communications).
18. Staff approval of final detailed plans, specifications and calculations (where applicable) for grading, drainage, water, sewer, fire protection, streets (public and private), sidewalks, parking lot(s) and tree preservation. The information submitted for the plat review process was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with the City's current requirements.
19. Payment of parks fees in the amount of \$29,868 shall be required prior to building permit. Prior to R-PZD approval, this amount shall be considered and approved by the Parks and Recreation Advisory Board and City Council to meet ordinance requirements for over 100 residential units.

Additional Conditions:

a. _____

Planning Commission Action: Required YES

Recommendation to be: X Approved Denied

Meeting Date: September 12, 2005 Clark, Myres and 7-0-0

Comments:

The "Conditions of Approval" listed in the report above are accepted in total without exception by the entity requesting approval of this development item.

Signature _____

Date _____

Findings associated with R-PZD 05-1543

Sec. 166.06. Planned Zoning Districts (PZD).

(B) Development standards, conditions and review guidelines

- (1) *Generally.* The Planning Commission shall consider a proposed PZD in light of the purpose and intent as set forth in Chapter 161 Zoning Regulations, and the development standards and review guidelines set forth herein. Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as to preserve and enhance the neighborhood. Proper planning shall involve a consideration of tree preservation, water conservation, preservation of natural site amenities, and the protection of watercourses from erosion and siltation. The Planning Commission shall determine that specific development features, including project density, building locations, common usable open space, the vehicular circulation system, parking areas, screening and landscaping, and perimeter treatment shall be combined in such a way as to further the health, safety, amenity and welfare of the community. To these ends, all applications filed pursuant to this ordinance shall be reviewed in accordance with the same general review guidelines as those utilized for zoning and subdivision applications.

FINDING: The proposed Planned Zoning District has been reviewed in light of all applicable development and zoning ordinances. Creating a unique development with a mixture of uses (residential, eating places, offices, neighborhood shopping, etc.) that are compatible with the surrounding developments, and preservation of natural features on the property has been achieved. The total density of this development is comparable to the surrounding developments, zoned C-1, C-2, and R-O. The street (Shepard Lane) within this proposed subdivision will allow for connectivity from Frontage Road and commercial development to the west with Stearn Street and the Stearn Street Apartments to the east. No connections are proposed from this development to undeveloped properties to the north and south. The proposed mixed use buildings, open space, a unique style of housing and office types, use units, building placement, and pedestrian access will benefit the health, safety, amenity and welfare of the community as a whole.

- (2) *Screening and landscaping.* In order to enhance the integrity and attractiveness of the development, and when deemed necessary to protect adjacent properties, the Planning Commission shall require landscaping and screening as part of a PZD. The screening and landscaping shall be provided as set forth in §166.09 Buffer Strips and Screening. As part of the development plan, a detailed screening and landscaping plan shall be submitted to the Planning Commission. Landscape plans shall show the general location, type and quality (size and age) of plant material. Screening plans shall include typical details of fences, berms and plant material to be used.

FINDING: Landscaping is provided around the exterior of the project in conformance with City ordinance. The landscape plan shows the location, type, and quality of plant material.

(3) *Traffic circulation.* The following traffic circulation guidelines shall apply:

- (a) The adequacy of both the internal and external street systems shall be reviewed in light of the projected future traffic volumes.
- (b) The traffic circulation system shall be comprised of a hierarchal scheme of local collector and arterial streets, each designed to accommodate its proper function and in appropriate relationship with one another.
- (c) Design of the internal street circulation system must be sensitive to such considerations as safety, convenience, separation of vehicular and pedestrian traffic, general attractiveness, access to dwelling units and the proper relationship of different land uses.
- (d) Internal collector streets shall be coordinated with the existing external street system, providing for the efficient flow of traffic into and out of the planned zoning development.
- (e) Internal local streets shall be designed to discourage through traffic within the planned zoning development and to adjacent areas.
- (f) Design provisions for ingress and egress for any site along with service drives and interior circulation shall be that required by Chapter 166 Development of this code.

FINDING: There is one internal public street (Shepard Lane) within 50' of right-of-way, with appropriate connectivity proposed to the east and west. The extension of Shepard Lane through the site is in conformance with the Master Street Plan. Parking and public driveways connect around the exterior of the development and provide a minimum of 24' drive aisles. The development is designed to create Shepard Lane in a "Main Street" streetscape, linking Frontage Road to the west with Stearn Street to the east. Shepard Lane would incorporate parallel parking and widened sidewalks, with the majority of parking located to the rear of the four structures. All proposed streets meet City design requirements. The streetscape will be a unique feature among all surrounding developments and within the subdivision itself, emphasizing a pedestrian friendly. Staff finds that the connectivity and street configuration proposed is adequate.

- (4) *Parking standards.* The off-street parking and loading standards found in Chapter 172 Parking and Loading shall apply to the specific gross usable or leasable floor areas of the respective use areas.

FINDING: The standard parking ratios for multi-family units and commercial/retail is applicable and parking is proposed in accordance with City standards.

- (5) *Perimeter treatment.* Notwithstanding any other provisions of a planned zoning district,

all uses of land or structures shall meet the open space, buffer or green strip provisions of this chapter of this code.

FINDING: The development provides public open space in the center of the four mixed use buildings in the form of detention ponds that will be landscaped and encouraged for use as passive recreation and gathering areas.

(6) *Sidewalks.* As required by §166.03.

FINDING: A minimum of six-foot sidewalks are to be constructed on both sides of the interior street (Shepard Lane) connecting sidewalks on Frontage Road to the west with sidewalks on Stearn Street to the east. Sidewalks are also proposed around the perimeter of the four buildings. Additionally, sidewalks are to be constructed through the driveway onto Frontage Road, connecting existing sidewalks to the north and south of the proposed drive on Frontage Road.

(7) *Street Lights.* As required by §166.03.

FINDING: All street lights installed shall be pursuant to the above-referenced code section, with a maximum of 300 feet spacing on all streets.

(8) *Water.* As required by §166.03.

FINDING: Public water is being provided to the project site, pursuant to city code.

(9) *Sewer.* As required by §166.03.

FINDING: Public sewer is being provided to the project site, pursuant to city code.

(10) *Streets and Drainage.* Streets within a residential PZD may be either public or private.

(a) *Public Streets.* Public streets shall be constructed according to the adopted standards of the City.

(b) *Private Streets.* Private streets within a residential PZD shall be permitted subject to the following conditions:

(i) Private streets shall be permitted for only a loop street, or street ending with a cul-de-sac. Any street connecting one or more public streets shall be constructed to existing City standards and shall be dedicated as a public street.

(ii) Private streets shall be designed and constructed to the same standards as public streets with the exceptions of width and cul-de-sacs as noted below.

- (iii) All grading and drainage within a Planned Zoning District including site drainage and drainage for private streets shall comply with the City's Grading (Physical Alteration of Land) and Drainage (Storm water management) Ordinances. Open drainage systems may be approved by the City Engineer.
- (iv) Maximum density served by a cul-de-sac shall be 40 units. Maximum density served by a loop street shall be 80 units.
- (v) The plat of the planned development shall designate each private street as a "private street."
- (vi) Maintenance of private streets shall be the responsibility of the developer or of a neighborhood property owners association (POA) and shall not be the responsibility of the City. The method for maintenance and a maintenance fund shall be established by the PZD covenants. The covenants shall expressly provide that the City is a third party beneficiary to the covenants and shall have the right to enforce the street maintenance requirements of the covenants irrespective of the vote of the other parties to the covenants.
- (vii) The covenants shall provide that in the event the private streets are not maintained as required by the covenants, the City shall have the right (but shall not be required) to maintain said streets and to charge the cost thereof to the property owners within the PZD on a pro rata basis according to assessed valuation for ad valorem tax purposes and shall have a lien on the real property within the PZD for such cost. The protective covenants shall grant the City the right to use all private streets for purposes of providing fire and police protection, sanitation service and any other of the municipal functions. The protective covenants shall provide that such covenants shall not be amended and shall not terminate without approval of the City Council.
- (viii) The width of private streets may vary according to the density served. The following standard shall be used:

Paving Width
(No On-Street Parking)

Dwelling Units	One-Way	Two-Way
1 - 20	14'	22'
21+	14'	24'

***Note:** If on-street parking is desired, 6 feet must be added to each side where parking is intended.

- (ix) All of the traffic laws prescribed by Title VII shall apply to traffic on private streets within a PZD.
- (x) There shall be no minimum building setback requirement from a private street.
- (xi) The developer shall erect at the entrance of each private street a rectangular sign, not exceeding 24 inches by 12 inches, designating the street a "private street" which shall be clearly visible to motor vehicular traffic.

FINDING: All public streets for the proposed development are indicated to be constructed according to the adopted standards of the City.

- (11) *Construction of nonresidential facilities.* Prior to issuance of more than eight building permits for any residential PZD, all approved nonresidential facilities shall be constructed. In the event the developer proposed to develop the PZD in phases, and the nonresidential facilities are not proposed in the initial phase, the developer shall enter into a contract with the City to guarantee completion of the nonresidential facilities.

FINDING: N/A

- (12) *Tree preservation.* All PZD developments shall comply with the requirements for tree preservation as set forth in Chapter 167 Tree Preservation and Protection. The location of trees shall be considered when planning the common open space, location of buildings, underground services, walks, paved areas, playgrounds, parking areas, and finished grade levels.

FINDING: Staff recommends approval of the Tree Preservation Plan, with a total of 2.5% tree canopy preserved; the site currently has 12% existing tree canopy and 15% is required to be preserved. Required mitigation trees would be planted onsite.

- (13) *Commercial design standards.* All PZD developments that contain office or commercial structures shall comply with the commercial design standards as set forth in §166.14 Site Development Standards and Construction and Appearance Design Standards for Commercial Structures.

FINDING: Staff finds that the building elevations meet the City's commercial design standards by minimizing or avoiding: unarticulated wall surfaces, square "boxlike" structures, metal siding that dominates the main facades, and large out of scale signs. Additionally, the development provides a unifying and identifiable theme and is compatible with adjacent development.

- (14) *View protection.* The Planning Commission shall have the right to establish special height and/or positioning restrictions where scenic views are involved and shall have the right to insure the perpetuation of those views through protective covenant restrictions.

FINDING: Staff finds no specific scenic views to be protected on the subject property.

(E) *Revocation.*

- (1) *Causes for revocation as enforcement action.* The Planning Commission may recommend to the City Council that any PZD approval be revoked and all building or occupancy permits be voided under the following circumstances:

- (a) *Building permit.* If no building permit has been issued within the time allowed.
- (b) *Phased development schedule.* If the applicant does not adhere to the phased development schedule as stated in the approved development plan.
- (c) *Open space and recreational facilities.* If the construction and provision of all common open spaces and public and recreational facilities which are shown on the final plan are proceeding at a substantially slower rate than other project components.

Planning staff shall report the status of each ongoing PZD at the first regular meeting of each quarter, so that the Planning Commission is able to compare the actual development accomplished with the approved development schedule. If the Planning Commission finds that the rate of construction of dwelling units or other commercial or industrial structures is substantially greater than the rate at which common open spaces and public recreational facilities have been constructed and provided, then the Planning Commission may initiate revocation action or cease to approve any additional final plans if preceding phases have not been finalized. The city may also issue a stop work order, or discontinue issuance of building or occupancy permits, or revoke those previously issued.

- (2) *Procedures.* Prior to a recommendation of revocation, notice by certified mail shall be sent to the landowner or authorized agent giving notice of the alleged default, setting a time to appear before the Planning Commission to show cause why steps should not be made to totally or partially revoke the PZD. The Planning Commission recommendation shall be forwarded to the City Council for disposition as in original approvals. In the event a PZD is revoked, the City Council shall take the appropriate action in the city clerk's office and the public zoning record duly noted.
- (3) *Effect.* In the event of revocation, any completed portions of the development or those portions for which building permits have been issued shall be treated to be a whole and effective development. After causes for revocation or enforcement have been corrected, the City Council shall expunge such record as established above and shall authorize

continued issuance of building permits.

(F) *Covenants, trusts and homeowner associations.*

- (1) *Legal entities.* The developer shall create such legal entities as appropriate to undertake and be responsible for the ownership, operation, construction, and maintenance of private roads, parking areas, common usable open space, community facilities, recreation areas, building, lighting, security measure and similar common elements in a development. The city encourages the creation of homeowner associations, funded community trusts or other nonprofit organizations implemented by agreements, private improvement district, contracts and covenants. All legal instruments setting forth a plan or manner of permanent care and maintenance of such open space, recreation areas and communally-owned facilities shall be approved by the City Attorney as to legal form and effect, and by the Planning Commission as to the suitability for the proposed use of the open areas. The aforementioned legal instruments shall be provided to the Planning Commission together with the filing of the final plan, except that the Guarantee shall be filed with the preliminary plan or at least in a preliminary form.
- (2) *Common areas.* If the common open space is deeded to a homeowner association, the developer shall file with the plat a declaration of covenants and restrictions in the Guarantee that will govern the association with the application for final plan approval. The provisions shall include, but not necessarily be limited to, the following:
 - (a) The homeowner's association must be legally established before building permits are granted.
 - (b) Membership and fees must be mandatory for each home buyer and successive buyer.
 - (c) The open space restrictions must be permanent, rather than for a period of years.
 - (d) The association must be responsible for the maintenance of recreational and other common facilities covered by the agreement and for all liability insurance, local taxes and other public assessments.
 - (e) Homeowners must pay their pro rata share of the initial cost; the maintenance assessment levied by the association must be stipulated as a potential lien on the property.

FINDING: The applicant shall comply with the above requirements, as part of the Planned Zoning District ordinance.

Sec. 161.25 Planned Zoning District

- (A) Purpose. The intent of the Planned Zoning District is to permit and encourage

comprehensively planned developments whose purpose is redevelopment, economic development, cultural enrichment or to provide a single-purpose or mixed-use planned development and to permit the combination of development and zoning review into a simultaneous process. The rezoning of property to the PZD may be deemed appropriate if the development proposed for the district can accomplish one or more of the following goals.

- (1) Flexibility. Providing for flexibility in the distribution of land uses, in the density of development and in other matters typically regulated in zoning districts.
- (2) Compatibility. Providing for compatibility with the surrounding land uses.
- (3) Harmony. Providing for an orderly and creative arrangement of land uses that are harmonious and beneficial to the community.
- (4) Variety. Providing for a variety of housing types, employment opportunities or commercial or industrial services, or any combination thereof, to achieve variety and integration of economic and redevelopment opportunities.
- (5) No negative impact. Does not have a negative effect upon the future development of the area;
- (6) Coordination. Permit coordination and planning of the land surrounding the PZD and cooperation between the city and private developers in the urbanization of new lands and in the renewal of existing deteriorating areas.
- (7) Open space. Provision of more usable and suitably located open space, recreation areas and other common facilities that would not otherwise be required under conventional land development regulations.
- (8) Natural features. Maximum enhancement and minimal disruption of existing natural features and amenities.
- (9) General Plan. Comprehensive and innovative planning and design of mixed use yet harmonious developments consistent with the guiding policies of the General Plan.
- (10) Special Features. Better utilization of sites characterized by special features of geographic location, topography, size or shape.

FINDING: The proposal best fits the flexibility and variety goals of the intent of the Planned Zoning District, while also providing a development that is compatible with surrounding commercial and residential development and providing a potential place of for recreation, eating, working, and neighborhood shopping in a true mixed-use development. The development will offer four buildings that contain 6,733 square feet of retail/office space, twelve 2-bedroom units, and seven 1-bedroom units. These four buildings are laid out in a "Main Street" feel with two open space landscaped areas central

to the development that are to be encouraged for use for passive recreation and public gathering. The building elevations depict a traditional American-style brick buildings that will provide a variety and unique feel to the development. Staff finds that the proposal is consistent with many of the guiding policies of the General Plan 2020 including:

Residential Areas:

9.8.a Utilize principles of traditional residential urban design to create compatible, livable, and accessible neighborhoods.

9.8.e Utilize more intense development patterns downtown, where appropriate, and encourage mixed uses in new developments to promote better community design, maintain human scale, and enhance pedestrian activity.

9.8.f. Site new residential areas accessible to roadways, alternative transportation modes, community amenities, infrastructure, and retail and commercial goods and services.

Neighborhood Commercial Areas:

9.12.d Provide commercial uses that are accessible for the convenience of individuals living in residential districts.

Community Character:

9.19.g. Encourage new residential development to incorporate varying lot sizes, home prices, and types of dwelling units.

(B) Rezoning. Property may be rezoned to the Planned Zoning District by the City Council in accordance with the requirements of this chapter and Chapter 166, Development. Each rezoning parcel shall be described as a separate district, with distinct boundaries and specific design and development standards. Each district shall be assigned a project number or label, along with the designation "PZD". The rezoning shall include the adoption of a specific master development plan and development standards.

FINDING: The subject described real property is proposed to be rezoned to R-PZD 05-1555. The development standards and plan approved shall be adopted with the rezoning.

(C) R - PZD, Residential Planned Zoning District.

(1) Purpose and intent. The R-PZD is intended to accommodate mixed-use or clustered residential developments and to accommodate single-use residential developments that are determined to be more appropriate for a PZD application than a general residential rezone. The legislative purposes, intent, and application of this district include, but are not limited to, the following:

(a) To encourage a variety and flexibility in land development and land use for predominately residential areas, consistent with the city's General Plan and the orderly

development of the city.

(b) To provide a framework within which an effective relationship of different land uses and activities within a single development, or when considered with abutting parcels of land, can be planned on a total basis.

(c) To provide a harmonious relationship with the surrounding development, minimizing such influences as land use incompatibilities, heavy traffic and congestion, and excessive demands on planned and existing public facilities.

(d) To provide a means of developing areas with special physical features to enhance natural beauty and other attributes.

(e) To encourage the efficient use of those public facilities required in connection with new residential development.

FINDING: The proposed Residential Planned Zoning District is a mixed used residential development that allows for residential and commercial uses to co-exist using the same building, parking areas, and surrounding amenities. The existing residential community to the east of the site as well as the proposed residential uses on the site will help support the commercial type businesses planned in the development. A general rezoning would not allow the type of development the applicant is pursuing, based on the bulk and area, and allowable use requirements of typical zoning districts; therefore a Planned Zoning District is appropriate for the proposed development. The proposed subdivision allows for a density and land use that is compatible with adjacent properties, yet also allows for a flexible site plan and layout and pedestrian and vehicular connections. A harmonious relationship with surrounding developments is achieved, while allowing for a very unique style and type of development. Public improvements provided within the development will ensure future street connectivity and extension of public services as planned in the Master Street Plan.

(2) Permitted uses.

- Unit 1 City-wide uses by right
- Unit 2 City-wide uses by conditional use permit
- Unit 3 Public protection and utility facilities
- Unit 4 Cultural and recreational facilities
- Unit 5 Government facilities
- ~~Unit 8 Single family dwellings~~
- ~~Unit 9 Two family dwellings~~
- ~~Unit 10 Three family dwellings~~
- Unit 12 Offices, studios and related services
- Unit 13 Eating places
- Unit 15 Neighborhood shopping
- ~~Unit 19 Commercial recreation, small sites~~

Unit 24—Home occupations
Unit 25 Professional offices
Unit 26 Multi-family dwellings

Conditional uses.

Unit 16 Shopping Goods
Unit 17 Trades and Services

FINDING: The proposed Use Units are permitted uses within a Residential Planned Zoning District.

(3) Condition. In no instance shall the residential use area be less than fifty-one percent (51%) of the gross floor area within the development.

FINDING: The proposed residential use area is greater than fifty-one percent of the gross floor area within the development.

***Required Findings for Rezoning Request.**

RECOMMENDATION: Staff recommends approval of the rezoning request from C-1, Neighborhood Commercial and R-A, Residential-Agricultural to R-PZD 05-1543, with the adoption of the associated preliminary plat.

LAND USE PLAN: The General Plan 2020 Future Land Use Plan designates this site as a Regional Commercial. Rezoning this property to R-PZD 05-1543, with associated Preliminary Plat, is consistent with the land use plan and compatible with surrounding land uses in the general vicinity.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The proposed rezoning of the existing C-1 and R-A property to the proposed R-PZD development for single family residential use with development of four mixed use buildings with retail and multi-family units is consistent with the General Plan 2020 that identifies this area for commercial use.

The proposed land use is unique to the area with regard to site layout and organization, meeting many of the objectives and principles of the land use plan that promotes unique forms of development. Compatibility with adjacent developments within the C-1, C-2, and R-O zoning districts has been achieved by providing a mix of commercial and residential uses on the site.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zoning is needed in order to develop a subdivision in the manner proposed with the R-PZD site plan.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The proposed zoning will not create or appreciably increase traffic danger or congestion surrounding streets. Approximately 760 average two-way vehicle trips per day from this development would be created. Access to this site will be provided from the west off of Frontage Road, a Collector Street, and Stearn Street and Vantage Street to the east. These surrounding streets are to be designed to accommodate the large volumes of traffic generated by regional commercial traffic to the west and residential traffic to the east. These roads have been improved to Master Street Plan standards.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The development proposed would create 76 additional multi-family units (124 bedrooms) for future residents in this area, thereby altering the population density in the immediate vicinity. Staff finds that an undesirable increase in load on public services would not be created as a direct result of this proposed development. The addition of population and commercial development to this area will be benefited and benefit new public services and residential development in the vicinity.

Engineering: **Water:** Public water is adjacent to the site. There is a 16" waterline that crosses the site. The developer has proposed to re-align the main to maximize the usable area of the property. The existing 35' foot wide waterline easement will need to be vacated. The waterline shall be looped between the apartment complex to the east and the waterline along Frontage Road.

Sewer: Sanitary sewer is adjacent to the site. A sewer main must be extended to and into the site to serve the property. A study of the downstream system shall be conducted by the developer prior to approval of the development.

Streets: The site has access to Frontage Street on the west and to Stearns Street to the east. Standard improvements to Frontage and Stearns will be

required along the property frontage. Off-site improvements to Frontage Street will need to be evaluated by staff at the time of Large Scale Development or building permit.

Drainage: Runoff from most of the site flows overland to the south. The runoff eventually makes its way to Kitty Creek and then Mud Creek.

Police: It is the opinion of the Fayetteville Police Department that this annexation will not substantially alter the population density or create an undesirable increase the load on police services nor will it create an appreciable increase in traffic danger and congestion in the area.

Fire: The subject property is located approximately 1.3 miles from the Ladder 4 and Engine 4 located on North Plainview and response time to the property is estimated at 4 minutes . The Fire Department does not anticipate any adverse effects on call volume or response time to this development.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

161.25 Planned Zoning District

(A) *Purpose.* The intent of the Planned Zoning District is to permit and encourage comprehensively planned developments whose purpose is redevelopment, economic development, cultural enrichment or to provide a single-purpose or mixed-use planned development and to permit the combination of development and zoning review into a simultaneous process. The rezoning of property to the PZD may be deemed appropriate if the development proposed for the district can accomplish one or more of the following goals.

- (1) *Flexibility.* Providing for flexibility in the distribution of land uses, in the density of development and in other matters typically regulated in zoning districts.
- (2) *Compatibility.* Providing for compatibility with the surrounding land uses.
- (3) *Harmony.* Providing for an orderly and creative arrangement of land uses that are harmonious and beneficial to the community.
- (4) *Variety.* Providing for a variety of housing types, employment opportunities or commercial or industrial services, or any combination thereof, to achieve variety and integration of economic and redevelopment opportunities.
- (5) *No negative impact.* Does not have a negative effect upon the future development of the area;
- (6) *Coordination.* Permit coordination and planning of the land surrounding the PZD and cooperation between

the city and private developers in the urbanization of new lands and in the renewal of existing deteriorating areas.

- (7) *Open space.* Provision of more usable and suitably located open space, recreation areas and other common facilities that would not otherwise be required under conventional land development regulations.
 - (8) *Natural features.* Maximum enhancement and minimal disruption of existing natural features and amenities.
 - (9) *General Plan.* Comprehensive and innovative planning and design of mixed use yet harmonious developments consistent with the guiding policies of the General Plan.
 - (10) *Special Features.* Better utilization of sites characterized by special features of geographic location, topography, size or shape.
- (B) *Rezoning.* Property may be rezoned to the Planned Zoning District by the City Council in accordance with the requirements of this chapter and Chapter 166, Development. Each rezoning parcel shall be described as a separate district, with distinct boundaries and specific design and development standards. Each district shall be assigned a project number or label, along with the designation "PZD". The rezoning shall include the adoption of a specific master development plan and development standards.
- (C) *R – PZD, Residential Planned Zoning District.*

(1) *Purpose and intent.* The R-PZD is intended to accommodate mixed-use or clustered residential developments and to accommodate single-use residential developments that are determined to be more appropriate for a PZD application than a general residential rezone. The legislative purposes, intent, and application of this district include, but are not limited to, the following:

- (a) To encourage a variety and flexibility in land development and land use for predominately residential areas, consistent with the city's General Plan and the orderly development of the city.
- (b) To provide a framework within which an effective relationship of different land uses and activities within a single development, or when considered with abutting parcels of land, can be planned on a total basis.
- (c) To provide a harmonious relationship with the surrounding development, minimizing such influences as land use incompatibilities, heavy traffic and congestion, and excessive demands on planned and existing public facilities.
- (d) To provide a means of developing areas with special physical features to enhance natural beauty and other attributes.
- (e) To encourage the efficient use of those public facilities required in connection with new residential development.

(2) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 12	Offices, studios and related services
Unit 13	Eating places
Unit 15	Neighborhood shopping
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Professional offices
Unit 26	Multi-family dwellings

(3) *Condition.* In no instance shall the residential use area be less than fifty-one percent (51%) of the gross floor area within the development.

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: 479-444-3469

TO: Andrew Garner, Associate Planner
FROM: Alison Jumper, Park Planner
DATE: August 30, 2005
SUBJECT: Parks & Recreation Subdivision Review Comments

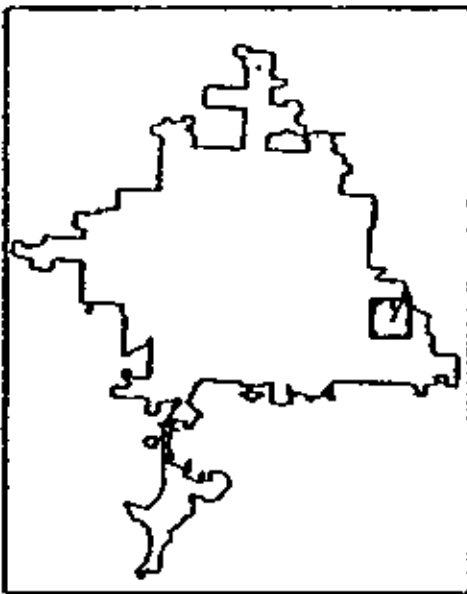
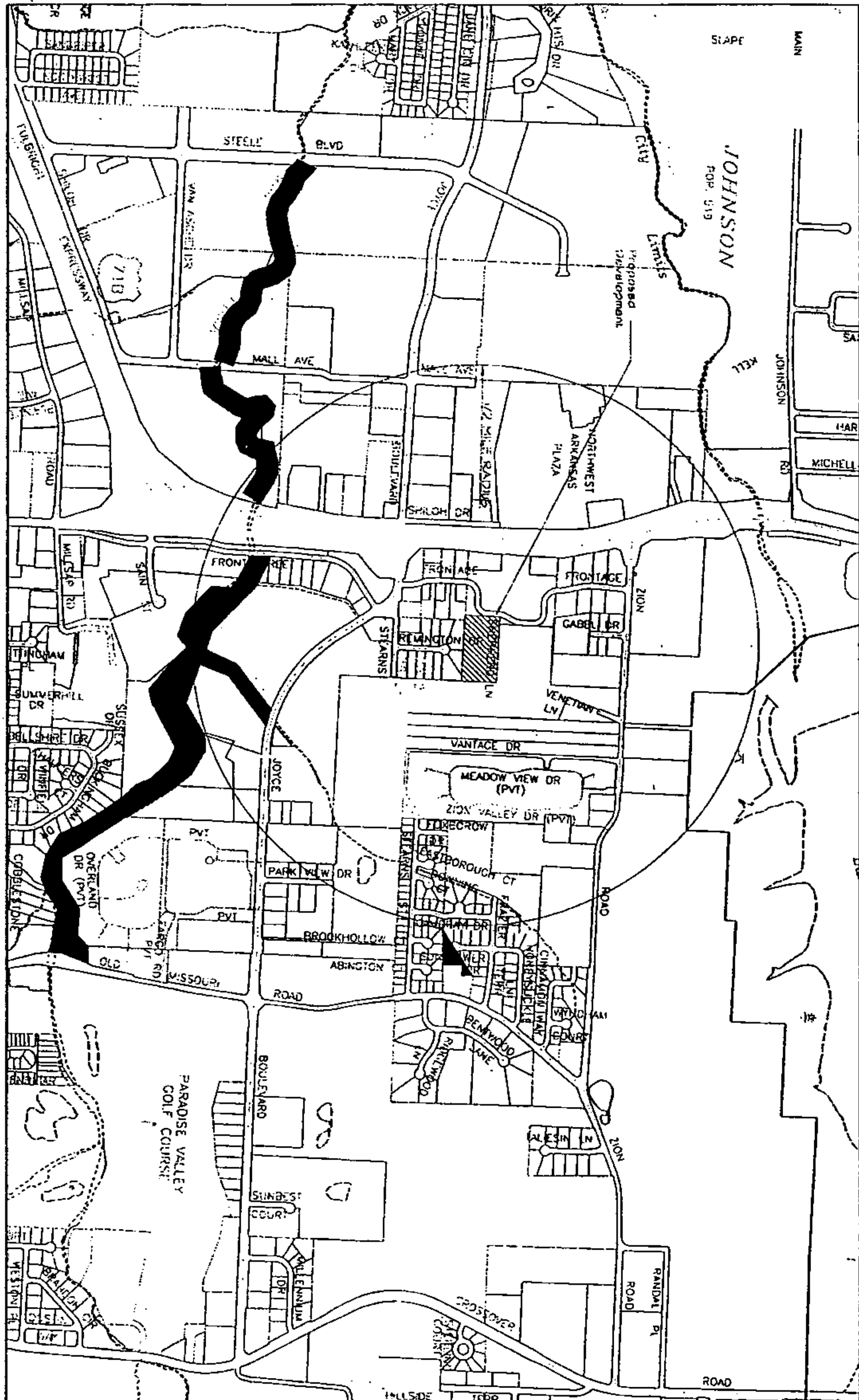
Meeting Date: September 1, 2005
Item: PZD 05-1543 Vantage Center, pp 136
Park District: NE
Zoned: R-PZD
Billing Name & Address: Vantage Center, LLC

	<u>Land Dedication Requirement</u>	<u>Money in Lieu</u>
Single Family	@ .024 acre per unit = _____ acres	@ \$555 per unit = \$ _____
Multi Family	@ .017 acre per unit = _____ acres	76 @ \$393 per unit = \$29,868
Mobile Home	@ .024 acre per unit = _____ acres	@ \$555 per unit = \$ _____
Lot Split		@ \$555 per unit = \$ _____

COMMENTS:

- Parks and Recreation Advisory Board made a recommendation of accepting money in lieu of land for this project.
- Fees are due before signing of final plat.

PROJECT PROXIMITY MAP - VANTAGE CENTER



PROXIMITY MAP	
VANTAGE CENTER	
Lindsey Management	
DATE	10/1/00
BY	LSM
CHECKED BY	LSM
APPROVED BY	LSM
SCALE	1" = 800'
PROJECT NO.	05-1543
DATE	10/1/00

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of September 12, 2005

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 444-3470

TREE PRESERVATION and PROTECTION REPORT

To: Fayetteville Planning Commission

From: Sarah K. Patterson, Urban Forester

Date: September 7, 2005

ITEM #: PZD 05-1543: Planned Zoning District (Vantage Center)

BACKGROUND:

Requirements Submitted:

T	Initial Review with the Landscape Administrator
T	Site Analysis Map Submitted
T	Site Analysis Written Report Submitted
	Complete Tree Preservation Plan Submitted

Canopy Measurements:

Total Site Area	
acres	4.68
square feet	203,860
Existing Tree Canopy	
acres	0.56
square feet	24,463
percent of site area	12%
Existing Tree Canopy Preserved	
acres	0.2
square feet	8,600
percent of total site area	2.5
Percent Minimum Canopy Required	12%

FINDINGS:

The desirability of preserving a tree or group of trees by reason of age, location, size or species.

- This site is 12% canopy covered with most consisting of oak species. There is an existing right of way and water line through the property. Canopy found within this area is not counted against the development. A large strip of smaller trees are located along the water shed area.

Whether the design incorporates the required Tree Preservation Priorities.

- No the project will reduce canopy cover from 12% to 2.5%. The design of this site only allows for tree preservation along the property boundaries. No canopy found within the lot will be preserved.

The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.

- Environmental degradation will occur on this site with the extent of canopy and green space removed. The areas now existing as tree canopy and open permeable surfaces will be replaced with structures and impermeable services.

The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or group of trees is located.

- The adjacent property to the east, Stearns Street Apartments, went to a great deal of effort to protect the trees found along the property line. These trees are established in a tree preservation easement and considered a high priority for preservation.

Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.

- It has been recommended to use a retaining wall and other methods to keep grading and other disturbance out of the area along the east property.

Whether the size or shape of the lot reduces the flexibility of the design.

- Neither lot size, shape, nor topography affects the flexibility of the design. The existing utility and right of way easement do, however, hinder design abilities.

The general health and condition of the tree or group of trees, or the presence of any disease, injury or hazard.

- The trees on-site are either rated as good condition or poor.

The placement of utilities, structures, and use of the property, in relation to the tree or group of trees.

- The placement of the structures and road ways on this site will be the sole cause of tree canopy removal.

The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.

- **Utility installation will require the removal of tree canopy.**

Whether roads and utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.

- **Roads and utilities were not routed to avoid tree canopy. The right of way for the expansion of Shepherd Lane was predetermined and had to be designed around.**

Construction requirements for On-Site and Off-Site Alternatives.

- **All precautions are to be taken on the east property line as this is a high priority tree preservation area.**

The effects of proposed On-Site Mitigation or Off-Site Alternatives.

- **Mitigation will be required to replace 15,863 square feet of canopy. Using the mid-level density factor, 55 2-inch caliper trees or \$13,750 will be required. If not all trees can be located on-site then a combination of plantings and money in lieu may be approved by the Urban Forester.**

The effect other chapters of the UDO, and departmental regulations have on the development design.

- **NA**

The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations:

- **NA**

The impact a substantial modification or rejection of the application would have on the Applicant

- **Staff recommends the approval of this Tree Preservation Plan with the following conditions.**

Conditions of Approval:

1. **Include the 14 notes that coordinate with the Tree Protection Fencing detail. These can be found in the Landscape Manual and should be located on the Tree Preservation sheet.**
2. **Mitigation will be required to replace 15,863 square feet of canopy. Using the mid-level density factor, 55 2-inch caliper trees or \$13,750 will be required. If not all trees can be located on-site then a combination of plantings and money in lieu may be approved by the Urban Forester.**
3. **Before approval of building permit a tree and maintenance plan must be submitted for approval to the Urban Forester.**



Fayetteville Fire Department

303 W. Center St. Fayetteville AR. 72701

Date: September 8, 2005

To: Suzanne Morgan, Jeremy Pate, Andrew Garner, and Jesse Fulcher

From: Dale Riggins

Subject: Re-zoning review from the Fayetteville Fire Department.

R-PZD05-1543 (Vantage Center, 136)

These 4.68 acres are covered by Ladder 4 and Engine 4 located on N. Plainview. The property is 1.3 miles from the station with an anticipated response time of 4 minutes. The Fire Department anticipates 28 calls for service (17 EMS & 11 Fire/Other) once the development is completed. We do not calculate calls for service on commercial buildings, but typically there should be no adverse effects on our call volume or response time to this development.

If you have any questions, please feel free to call or email me.

Dale Riggins
Captain
Fayetteville Fire Department



FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

POLICE DEPARTMENT

Mr. Jeremy Pate
Director of Current Planning
125 W. Mountain Street
Fayetteville, AR 72702

Dear Mr. Pate,

This document is in response to the request for a determination of whether the proposed R-PZD 05-1543 (Vantage Center) submitted by Jerry Kelso would substantially alter the population density and thereby undesirably increase the load in public services or create an appreciable increase in traffic danger and congestion.

It is the opinion of the Fayetteville Police Department this PZD will have a negligible impact on both the calls for police service and traffic congestion for that area.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Turberville".

Lieutenant Rob Turberville
Fayetteville Police Department



Crafton, Tull & Associates, Inc.

901 N. 47th Street, Suite 200, Rogers, AR 72756 479.636.4838 Fax: 479.631.6224 www.crafttull.com

C. 13
R-PZD 05-1543 (Vantage Center)
Page 33 of 38

Andrew Garner
City of Fayetteville, Planning
113 W. Mountain
Fayetteville, AR 72703

July 15, 2005

RE: Proposed PZD
Vantage Center mixed use
CTA Job No. 021131-01

Dear Andrew:

We had a meeting with Jeremy Pate and yourself a couple of weeks ago have adjusted the plans accordingly. As we discussed, we would like to be forwarded to the next subdivision committee.

Attached are 26 copies of the revised plans. The following are the main changes we did:

1. Use units are shown on the cover sheet
2. Right of way on Frontage has been adjusted and required green space is provided.
3. We moved the parking stalls that were shown in the required green space on frontage to the south of building 3. A retaining wall will be needed and is shown.
4. Please use the same elevations that are on file in your office for Southern View phase II. This building will be the same.
5. By way of this letter we are requesting a variance in the driveway location near the intersection of Shepard and Frontage.
6. Existing tree canopy calculations have been adjusted with the existing easements in place.
7. Landscape plan has been provided with this submittal.

Should you have any questions, or require any additional information, please contact us at your convenience.

Very Truly Yours,

Crafton, Tull & Associates, Inc.


Jerry Kelso, P.E.
Vice President



Crafton, Tull & Associates, Inc.

901 N. 47th Street, Suite 200, Rogers, AR 72756 479.636.4838 Fax: 479.631.6224 www.crafttull.com

C. 13
R-PZD 05-1543 (Vantage Center)
Page 34 of 38

Jeremy Pate
City of Fayetteville, Planning
113 W. Mountain
Fayetteville, AR 72703

December 22, 2003

RE: Proposed PZD
Vantage Center mixed use
CTA Job No. 021131-01

Dear Jeremy:

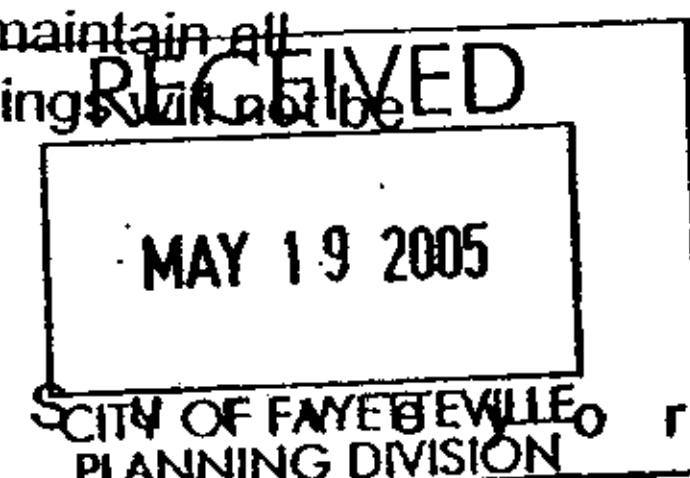
The R-PZD (Residential Planned Zoning District) is intended to provide a more appropriate means of rezoning property than a general residential/commercial rezone with a mixed-use project. The following are our reasons for rezoning this to R-PZD:

1. It is the intent to create a true mixed-use development consisting of a mixture of residential and commercial uses. The cities general plan is to provide more mixed use throughout the city.
2. This development will set up a framework in which commercial and residential development can co-exist using the same building, parking areas, and surrounding amenities. The existing residential community to the east of the site as well as the proposed residential uses on site will help feed the commercial type businesses planned in this development.
3. The commercial aspects of the development would benefit from the surrounding communities that would create more foot traffic. This in turn would alleviate traffic congestion from people needing to get in their cars and drive to restaurants, offices, and other such uses.
4. It is the intent to provide a streetscape design through the center of the development. Two park areas will be utilized for detention and gathering areas.

The proposed PZD will include 4 buildings with a mixture of commercial and multi-family dwellings. The buildings are 3 stories in height and will include 6733s.f. of leas able commercial space on the first floor including a 1 bedroom apartment to provide ADA requirements. The Second and third floors will all be residential units.

A management company will be created for this development to maintain all streets, landscaping, common areas, and the buildings. The buildings will not be

A r c h i t e c t s , E n g i n e e r s &



under separate ownership. The apartments will be rented out and the commercial area will be under a lease arrangement.

Checklist Item #6

- There is no pending sale of the project. The current ownership is under Vantage Center, ALP who will develop the property.
- This is an attempt to provide the city of Fayetteville with a true mix use development. The development is designed to mess commercial and residential into a group of 4 buildings. Commercial will be located on the bottom floor and residential will be located on the 2nd and 3rd floor.
- Water and sewer are available to the site. Access will be from Sheppard road to the east and Frontage road to the west.

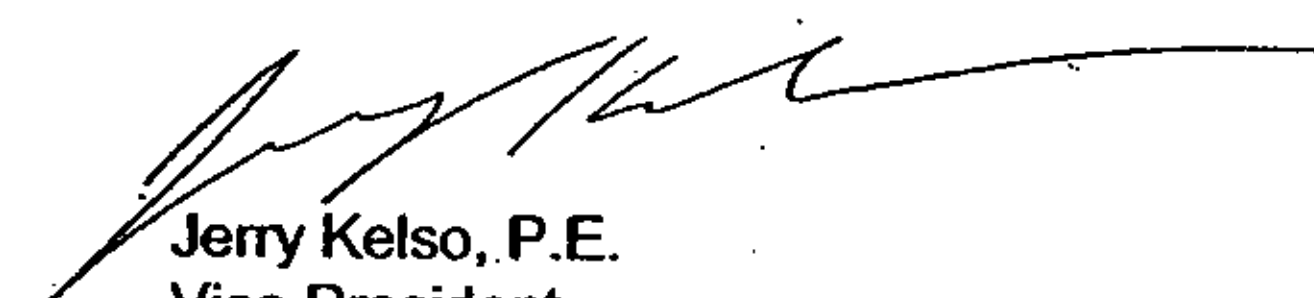
Checklist Item #7

- Parks Board has agreed to allow the money to be given in lieu of land.

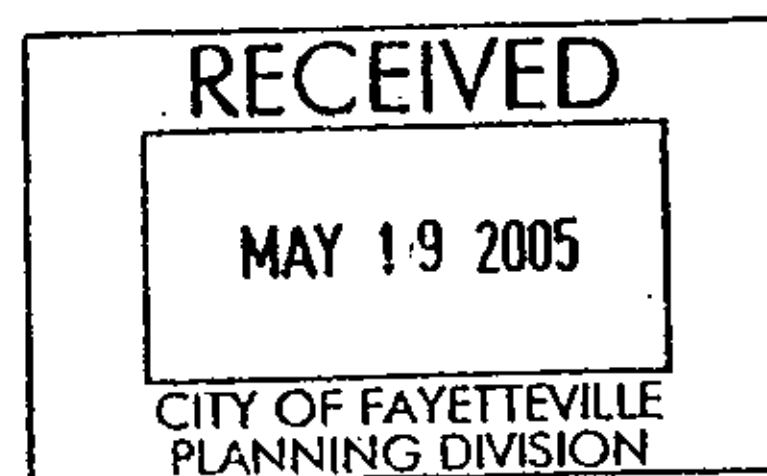
Should you have any questions, or require any additional information, please contact us at your convenience.

Very Truly Yours,

Crafton, Tull & Associates, Inc.



Jerry Kelso, P.E.
Vice President



From: Travis Dotson
To: Fulcher, Jesse; Garner, Andrew; Morgan, Suzanne; Pate, Jeremy
Date: 8/30/05 5:31PM
Subject: Subdivision Meeting for Sept. 1, 2005

Jeremy,

FPL 05-1547: Ruppel Row - if trash receptacles are placed in the alley ways, we will need to require that there be signs placed in the alley ways that indicate no parking on trash day, and we will also require that each unit have address numbering on the back of the unit as well as the front.

Andrew,

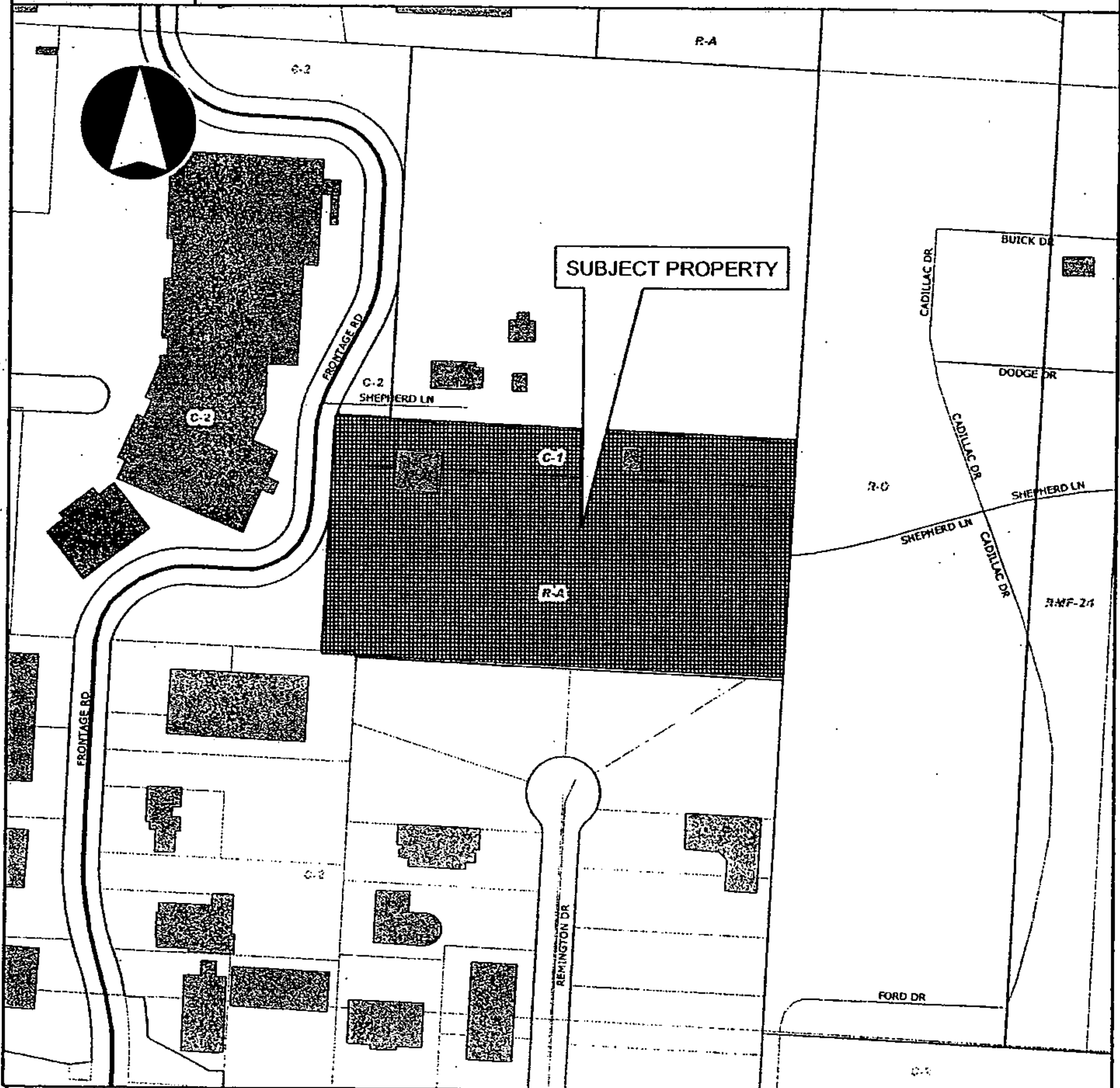
LSD 05-1668: Dixie Development - all container sites are in good locations, however if the developer decides to place more than one dumpster at each site, the container pads are not large enough. We will require at least 30' in width to house two dumpsters in each location.

PZD 05-1543: Vantage Center - Dumpster pad needs to be at least 15' in width.

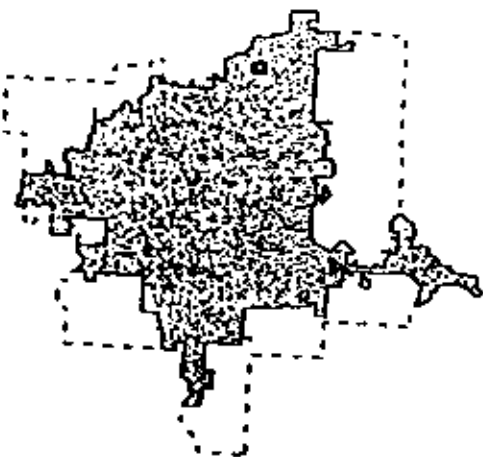
RPZD05-1543

Close Up View

VANTAGE CENTER

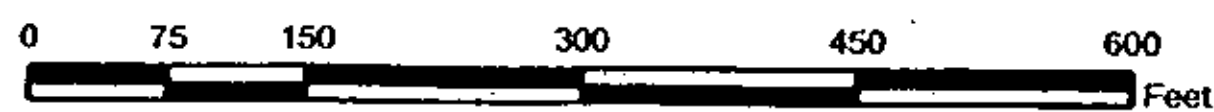


Overview

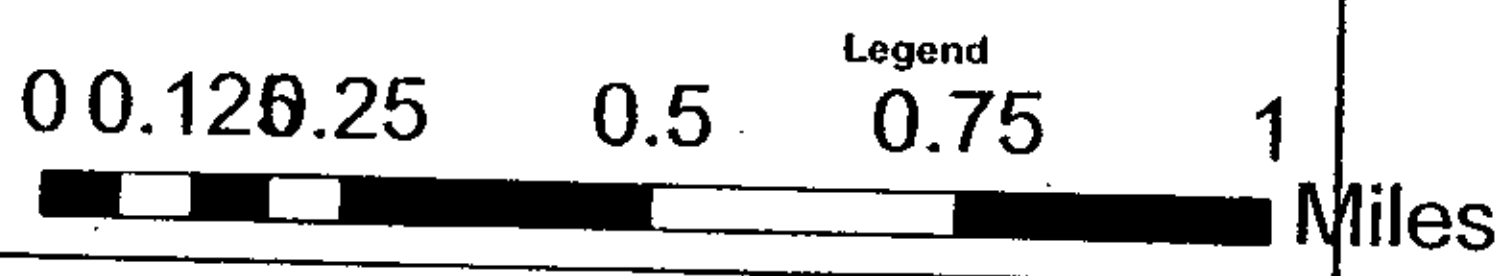


Legend

- RPZD05-1543
- Overlay District
- FLOODWAY
- 500 YEAR
- 100 YEAR
- LIMIT OF STUDY
- BaseLine Profile
- Fayetteville
- Outside City



One Mile View



City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

4-Oct-05
City Council Meeting Date

Stephen Davis

Submitted By

Division

Finance & Internal Services

Department

Action Required:

Staff recommends Council repeal §117.31 (B) and § 117.49 (B) Subsection(s) 1 and 2 and enacting new §117.31 (B) and § 117.49 (B) Subsection(s) 1 and 2.

Cost of this request

Account Number

Project Number

Category/Project Budget

Funds Used to Date

\$ -

Remaining Balance

Program Category / Project Name

Program / Project Category Name

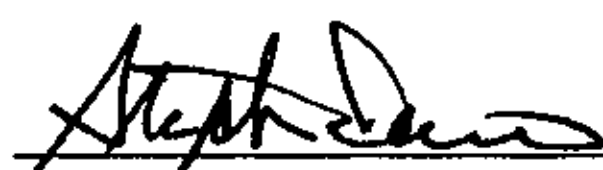
Fund Name

Budgeted Item

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Budget Adjustment Attached

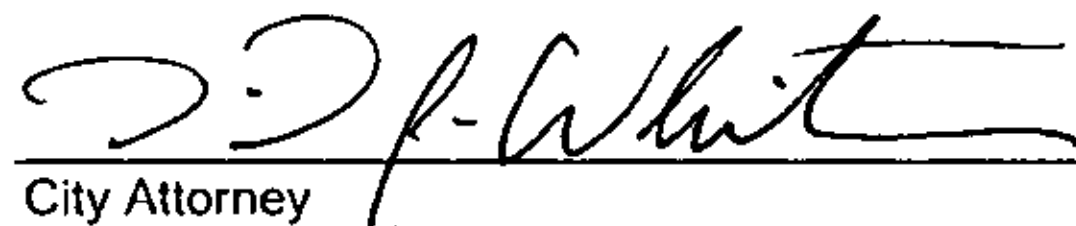
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Department Director

9-16-05
Date

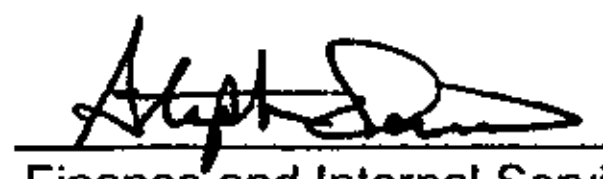
Previous Ordinance or Resolution #

Original Contract Date:


City Attorney

9/14/05
Date

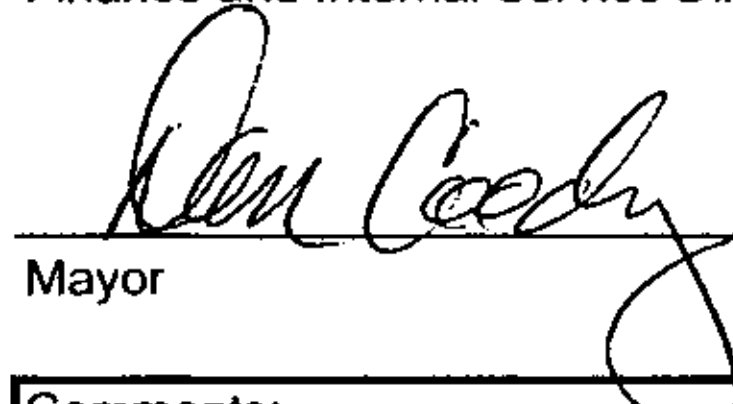
Original Contract Number:


Finance and Internal Service Director

9-16-05
Date

Received in City Clerk's Office




Mayor

9/16/05
Date

Received in Mayor's Office



Comments:

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FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

C. 14
Amend Title XI: Chapter 117
Article IV: Taxicabs
Page 2 of 10

DEPARTMENTAL CORRESPONDENCE

TO: Fayetteville City Council

THROUGH: Dan Coody, Mayor

FROM: Stephen Davis, Finance & Internal Services Director 

DATE: September 16, 2005

Subject: **Taxi-Cab Fee Adjustment – Phase 2**

Recommendation

Staff recommends City Council repeal Fayetteville Code of Ordinances §117.31 (B) and 117§ 49 (B) Subsection(s) 1 and 2 and enact a new §117.31 (B) and 117§ 49 (B) Subsection(s) 1 and 2:

Existing - Repeal

117.31 (B) The City Council shall set the maximum allowable rates for all taxicabs, consistent with the provisions of Arkansas Code Annotated § 14-57-303. The City Council shall annually review maximum allowable rates to determine if a change is needed.

117.49(B) Meter rates shall be used exclusively by all taxicabs excluding waiting time except as provided in subsection (D) below. The ceiling rates shall apply to all taxicabs operating in the city. The initial rates are set out as follows: (1) Exclusive ride. Ceiling rate, no more than a rate of:

- (a) Initial meter charge \$2.00
- (b) Charge per mile \$1.50
- (2) No more than \$1.00 per additional person shall be charged.
- (3) Waiting time ceiling rate, not to exceed \$18.00 per hour.

Proposed

117.31 (B) The City Council has the authority to establish the maximum allowable rates for all taxicabs, consistent with the provisions of Arkansas Code Annotated § 14-57-303 for the City sponsored taxi program utilizing City issued taxi coupons. The City Council shall utilize the percentage change as calculated utilizing the change, from year to year, of the rate per mile published by the Internal Revenue Service for the allowed mileage reimbursement rate for Federal Income Tax purposes. Each licensed taxi company shall, on an annual basis, submit to the Fayetteville Police Department and Fayetteville City Clerk the fare schedule the taxi company will utilize for the next twelve (12) months and each taxi company shall cause this fare schedule to posted prominently within each taxi in full view of the passenger.

117.31 (C) The maximum allowable rate effective November 1 shall be left undetermined and shall be established by City Council Ordinance at any time deemed necessary by the Fayetteville City Council.

117.31 (D) Zone A shall be bounded on the west by Razorback to Maple to Garland, on the North by Drake to Gregg Avenue to Futrell/Milsap Road, on the East by College Avenue, Rock Street to Mill Avenue to Huntsville Road to Morningside Drive and on the South by 15th Street. Zone B shall be the remaining portions of Fayetteville not incorporated in Zone A.

117.49(B) Taxi services provided to patrons utilizing City issued taxi coupons shall be based on a zone rate system with the initial meter charge, charge per mile and additional person charge incorporated into a flat rate per zone.

The Zone Rate shall be used exclusively by all taxicabs excluding waiting time except as provided in subsection (D) below. The ceiling rates shall apply to all taxicabs operating in the city. The initial zone rates are set out as follows:
Ceiling rate, no more than a rate of:

- (a) Travel within One Zone \$8.00
- (b) Travel incorporating Two Zones \$12.00
- (c) No charge for additional person
shall be charged.
- (d) Waiting time ceiling rate, not to exceed
\$10.00 per hour.

117.49(C) Taxi companies shall utilize the zone of the trip origination and zone of the trip destination for purposes of valuation for the trip.

Background

The City has existing taxi cab operators providing services to Fayetteville citizens. These taxi companies complied with the requirements for a certificate of public convenience and necessity. On September 6 Fayetteville City Council approved a \$1.00 surcharge to provide immediate relief for the licensed taxi cab operators. Staff, prior to the meeting of September 6, had stated that adjustments to the fee structure for taxi cabs would be in two parts: emergency relief to be considered on September 6 and a more permanent adjustment to be submitted after the emergency relief was acted upon by City Council.

Discussion

The City was approached on Wednesday, August 31 by Brice Curry for relief from the provisions of §117.49 (B) Subsection(s) 1 and 2 due to the rising cost of fuel. On Friday, September 2 a representative of Tony C Taxi filed a Certificate of Public Convenience & Necessity Application/Renewal with the City Clerk's office.

The rate and fee adjustment proposals submitted by Tony C Taxi and Brice Curry are listed in the table on the following page:

Fee/Rates	Existing Ordinance as amended September 6	Tony C Taxi Proposal September 2	Brice Curry Proposal August 31
Initial Meter Charge	\$2.00	\$2.50	\$3.50
Fuel Surcharge (per trip)	\$1.00	\$1.00	
Charge per mile	\$1.50	\$2.10	\$2.10
Extra Passenger	\$1.00	\$2.00	No Change
Waiting Time Ceiling	\$18.00	No Proposal Submitted	No proposal submitted

The last time City Council/City Board of Directors adjusted the initial meter charge was on June 3, 1986. In reviewing the records the City Clerk's Office charge per mile fee was initially added in October 2004 when the City revised this section of the Code to require meters. Staff contacted and/or reviewed other cities ordinances in an effort to determine what mechanism, if any, was used to adjust or establish the charge per mile. The table on the following page lists the cities contacted:

City	Charge Per Mile	Mechanism to Adjust Rates
Little Rock, AR	\$1.60	Taxi operators request an adjustment and Board of Directors makes the decision.
Springdale, AR	\$1.50	A decision is made after a public hearing.
Hot Springs, AR	Zone Rates	Taxi operators request an adjustment and Board of Directors makes the decision.
Fort Smith, AR	Zone Rates	Taxi operators request an adjustment and Board of Directors makes the decision.
Pine Bluff, AR	Not Applicable	
Tulsa, OK	Each taxi company sets their own rates.	Each taxi company must inform the City of their rates.
Springfield, MO	Each taxi company sets their own rates.	No City notification is required.

During the September 6 Council meeting, City Council requested City Staff develop a predictable method for fee/rate adjustments over time. There are numerous options available for consideration with each option generating unique issues and opportunities. The preferred option is to allow the open market to determine the charge per mile with the exception of the city sponsored taxi coupon program. The options listed below provide for transparent rate setting procedure without adding additional expense to either the taxi operator or City Staff.

Option 1 – Link the charge per mile change to the federal mileage reimbursement announcements made each year in October. The City would choose a base year for indexing purposes and allow the charge per mile to increase by the same percentage as the federal mileage reimbursement changes. For example the federal mileage reimbursement rate was \$0.375 mile in 2004 and is \$0.485/mile as of September 9, 2005 or a 29% change from 2004 to September 2005. The federal mileage reimbursement rate is established for the Internal Revenue Service by an independent contractor working under supervision of the IRS. Using this option the taxi companies could increase the maximum rate per mile by 29% or to \$1.94 for the charge per mile.

If City Council approves this approach, Staff proposes all adjustments in the charge per mile be approved by City Council annually after the federal mileage rate is announced. Staff further recommends that City Council change the City's taxi coupon program to a zone program explained below. This method is the preferred choice from a Staff perspective.

Option 2 – Remove Charge per mile from the Fayetteville Code of Ordinances and allow each taxi company to set their rates with notification to the City except for the city sponsored taxi coupon

program and the City establishes the value of each coupon.

Option 3 – Link the charge per mile to the change in fuel prices for Arkansas as published by an independent agency. The following link is an example of the data available and is maintained by AAA. <http://198.6.95.31/ARmetro.asp>

The City would choose a base year for indexing purposes and allow the charge per mile to increase by the same percentage as the average price per gallon increases. Using this option the taxi companies could increase the maximum rate per mile by 69.5% or to \$2.54 for the charge per mile.

Staff does not support this option; however, if City Council approves this approach, Staff proposes all adjustments in the charge per mile be approved by City Council annually after using the data published nearest October 1 with new rates effective on January 1 of the year following.

Other options are possible, however, each of the other options require more staff time for analysis and could become burdensome to both the taxi companies and City staff.

Other Concerns

Primarily the City Staff is concerned that any charge per mile adjustment will have a negative impact on citizens who rely on the taxi coupon program for basic transportation needs. To address this concern Staff is proposing to change the taxi coupon program from a fixed \$2.00 per coupon value to a zone-based system where the coupon has value based on the origin and destination zone. Under this type of system, the original pick-up and delivery within the same zone would be up-to \$8.00 and travel outside the original zone would add an additional \$4.00 (incorporating two zones would be a maximum of \$12.00). Staff has attached a map that shows the two proposed zones.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XI: CHAPTER 117, ARTICLE IV: TAXICABS, OF THE CODE OF FAYETTEVILLE TO PROVIDE A RATE STRUCTURE AND ZONE MAP FOR THE CITY OF FAYETTEVILLE TAXI COUPON PROGRAM.

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

Section 1. That § 117.31(B), Code of Fayetteville is hereby repealed, and the following is inserted in its stead:

(B) The City Council has the authority to establish the maximum allowable rates for all taxicabs, consistent with the provisions of Arkansas Code Annotated § 14-57-303 for the City sponsored taxi program utilizing City issued taxi coupons. The City Council shall utilize the percentage change as calculated utilizing the change, from year to year, of the rate per mile published by the Internal Revenue Service for the allowed mileage reimbursement rate for Federal Income Tax purposes. Each licensed taxi company shall, on an annual basis, submit to the Fayetteville Police Department and Fayetteville City Clerk the fare schedule the taxi company will utilize for the next twelve (12) months and each taxi company shall cause this fare schedule to be posted prominently within each taxi in full view of the passenger.

(C) The maximum allowable rate effective November 1 shall be left undetermined and shall be established by City Council Ordinance at any time deemed necessary by the Fayetteville City Council.

(D) Zone A shall be bounded on the west by Razorback to Maple to Garland, on the North by Drake to Gregg Avenue to Futrell/Milsap Road, on the East by College Avenue, Rock Street to Mill Avenue to Huntsville Road to Morningside Drive and on the South by 15th Street. Zone B shall be the remaining portions of Fayetteville not incorporated in Zone A. A Taxi Zone Map, marked Exhibit A, is attached hereto and made a part hereof.

Section 2. That §§ 117.49(B) & (C), Code of Fayetteville are hereby repealed, and the following is inserted in their stead:

(B) Taxi services provided to patrons utilizing City issued taxi coupons shall be based on a zone rate system with the initial meter charge, charge per mile and additional person charge incorporated into a flat rate per zone. The Zone Rate shall be used exclusively by all taxicabs excluding waiting time except

as provided in subsection (D) below. The ceiling rates shall apply to all taxicabs operating in the city. The initial zone rates are set out as follows:

Ceiling rate, no more than a rate of:

- (a) Travel within One Zone \$8.00
- (b) Travel incorporating Two Zones \$12.00
- (c) No charge for additional person shall be charged.
- (d) Waiting time ceiling rate, not to exceed \$10.00 per hour.

(C) Taxi companies shall utilize the zone of the trip origination and zone of the trip destination for purposes of valuation for the trip.

PASSED and APPROVED this 4th day of October, 2005.

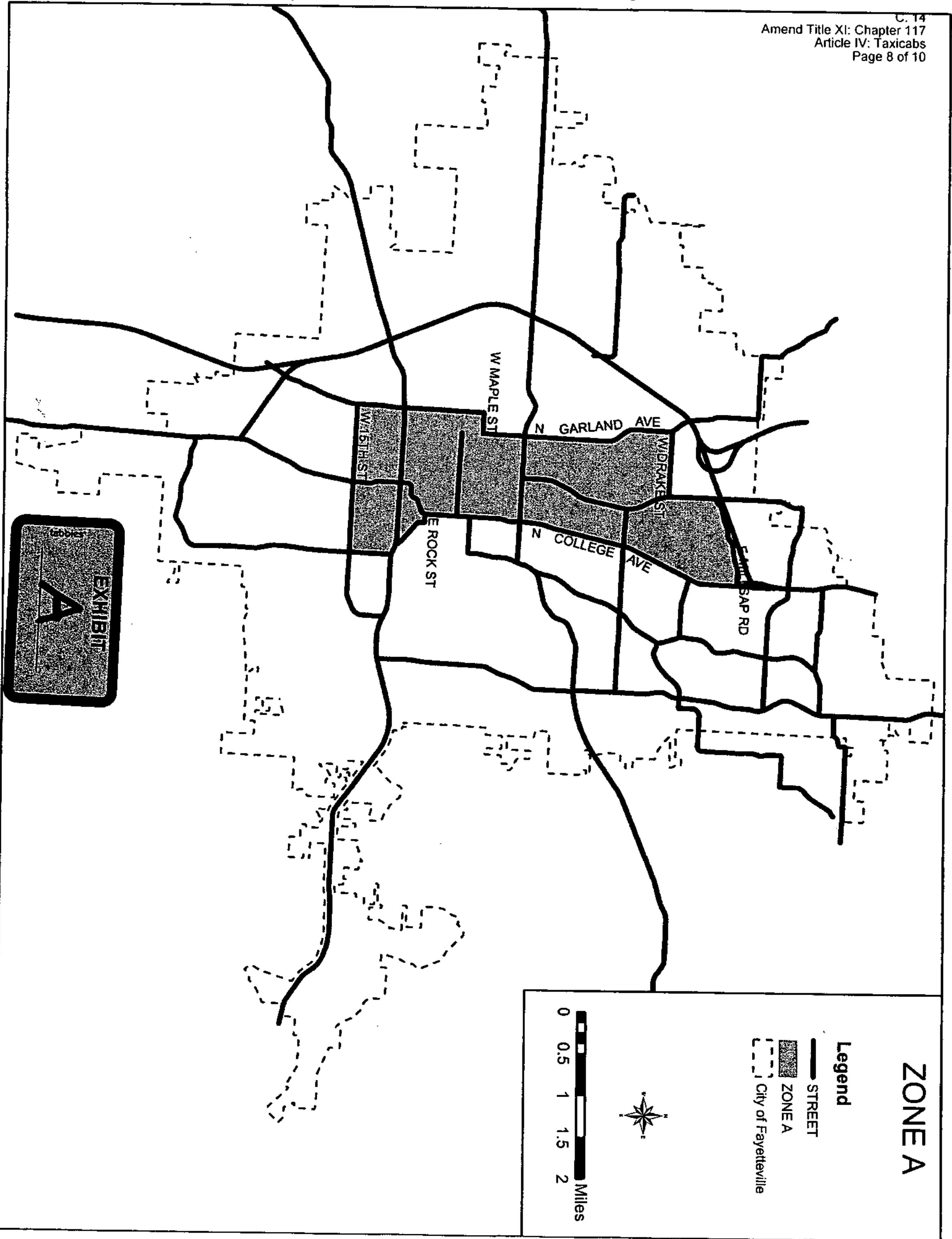
APPROVED:

By: DAN COODY Mayor

ATTEST:

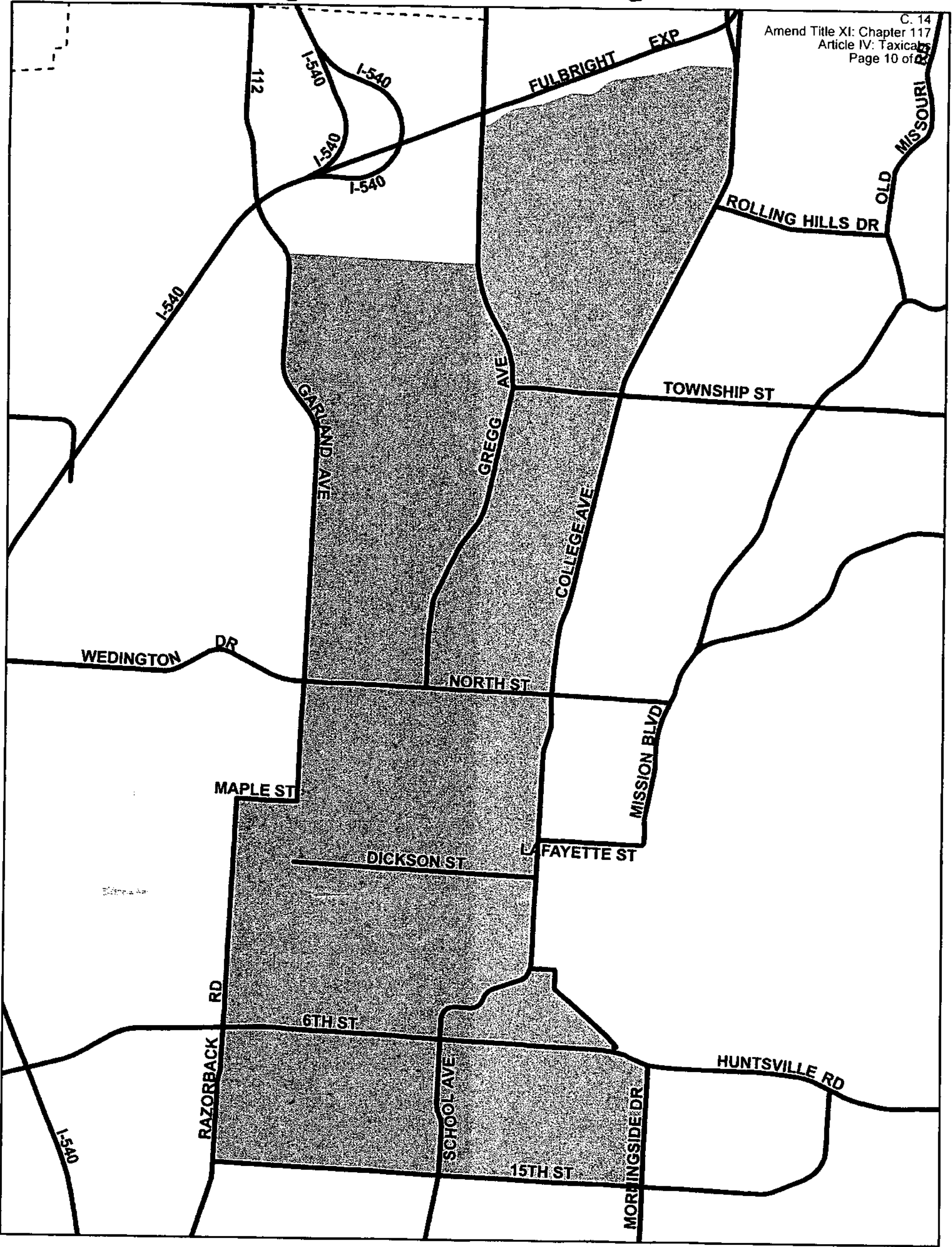
By: SONDRA SMITH City Clerk

DRAFT



ZONE A:

Bounded on the west by Razorback Road to Maple Street to Garland Avenue, on the North by Drake Street to Gregg Avenue to Futrall Drive/Millsap Road, on the East by College Avenue to Rock Street to Mill Avenue to Huntsville Road to Mashburn Avenue to Huntsville Road to Morningside Drive and on the South by 15th Street.



City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

C.15.
2005 Millage Levy
Page 1 of 8

October 4, 2005

City Council Meeting Date


Kevin Springer
Submitted By

Budget & Research
Division

Finance & Internal Services
Department

Action Required:

City Council is requested to adopt real and personal property tax rates for 2005 for the Policemen's Pension & Relief, the Firemen's Pension & Relief Funds, and the Fayetteville Public Library. The rate to be adopted for the Policemen's Pension & Relief Fund and the Firemen's Pension & Relief Fund is 0.4 mils for real property and 0.4 mils for personal property, the millage for the Fayetteville Public Library is 1.0 mil for real property and 1.0 mil for personal property.

City Council is requested to adopt real and personal property tax rates for 2005 for the City's General Fund. The rate to be adopted for the City's General Fund is 2.0 mils for real property and 2.0 mils for personal property.

Cost of this request

\$

Category / Project Budget

Program Category / Project Name

Account Number

\$

Funds Used to Date

Program / Project Category Name

Project Number

\$

Remaining Balance

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

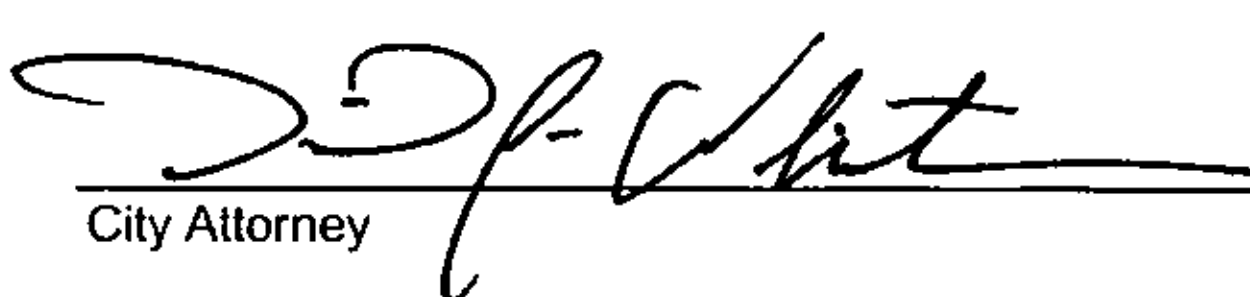

Department Director

Date

9-16-05

Previous Ordinance or Resolution #

Original Contract Date:


City Attorney

Date

9/16/05

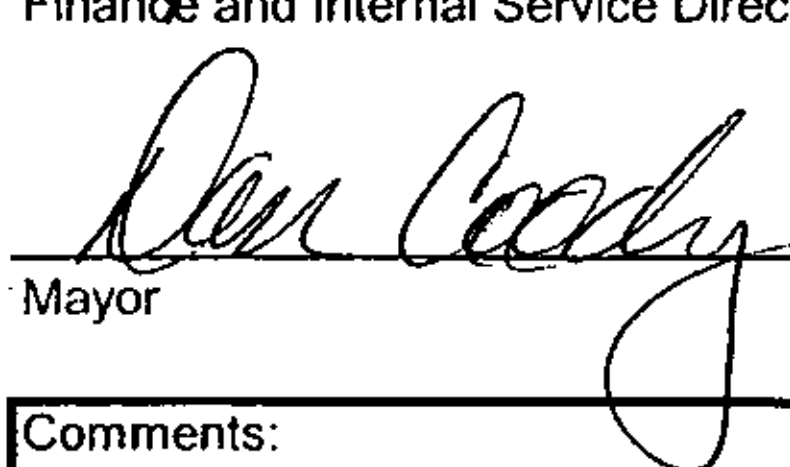
Original Contract Number:


Finance and Internal Service Director

Date

9-16-05

Received in City Clerk's Office


Mayor

Date

9/16/05

Received in Mayor's Office

ENTERED

9-16-05

Comments:



DEPARTMENTAL CORRESPONDENCE

TO: Mayor Dan Coody and Fayetteville City Council

THRU: Steve Davis, Finance & Internal Services Director

FROM: Kevin Springer, Budget Manager

DATE: September 16, 2005

SUBJECT: **2005 Millage Levy**

Recommendation:

City staff recommends that City Council approve the millage levy ordinance approving the 0.4 mils for the Policemen's Pension and Relief Fund, 0.4 mils for the Firemen's Pension and Relief Fund, and 1.0 mils for the Fayetteville Public Library.

In addition, City staff recommends that City Council consider reviewing the need for the additional 2.00 mils needed for 2006 General Fund operations. A portion of the additional 2.00 mils may not be needed during 2007/2008 should the Fayetteville Public Library seek citizen approval for additional millage in 2006.

Background:

Each year the City must approve an ordinance to renew the levy of ad valorem taxes on real and personal property within the City. This request will provide for such levy on property assessed during 2005.

The total assessed value of real and personal property located within the city limits of Fayetteville, as of October 6, 2005, is approximately \$937.5 million. The assessed valuation is before the Washington County Board of Equalization has made all the changes to the County Assessors Abstract. Based on the preliminary assessments, the growth in real estate assessments is approximately 9.13%. The change in assessed real estate value is due to newly discovered, newly constructed property 8.02%.

Discussion:

A millage levy ordinance must be approved by City Council in order for the City to continue to collect property taxes for the Policemen's Pension and Relief Fund and the Firemen's Pension and Relief Fund. The millage levy for the Policemen's Pension and Relief Fund is 0.4 mils for real property and 0.4 mils on personal property. The millage levy for the Firemen's Pension and Relief Fund is 0.4 mils for real property and 0.4 mils on personal property.

In addition, a millage levy must be approved for the operation of the Fayetteville Public Library that was approved by the voters on October 1, 2002. The millage levy for the Fayetteville Public Library is 1.0 mils for real property and 1.0 mils on personal property.

City Council has the option of approving the assessment of up to 5 mils on real and personal property. City Council may choose to exercise its option to levy some or all these discretionary 5 mils to provide a financial cushion to General Fund to offset the budget shortfalls that could be attributed to revenue or increased operating costs outside the City's control.

Based on estimated revenue and expenditures, the estimated impact on the City's General Fund, for 2006 is a budget shortfall of around \$2.2 million which equates to 2.70 mils increase. City Staff has worked to control costs and is proposing 2.00 mils be levied. The other option available to remove the need to levy this millage would be to eliminate services.

	2006 Budget Without Property Tax	Property Tax Mils Needed	2006 Budget Without Property Tax
2006 Beginning Fund Balance	\$ 11,519,929		\$ 11,519,929
Less Wilson Springs Portion	(2,614,327)		(2,614,327)
Fund Balance Available for Operations	8,905,602		8,905,602
Operating Revenues	30,895,700		30,895,700
Property Tax Revenue	0		1,782,000
Operating Expenditures	(30,682,392)		(30,682,392)
Total Operating Sources/(Uses)	\$ 213,308		\$ 1,995,308
Non-Operating Revenues/Expenditures:			
Fayetteville Public Library	\$ (1,535,970)	1.70	(1,535,970)
Outside Funding Agencies	(852,792)	1.00	(852,792)
Transfers In (Off Street Fund)	47,200		47,200
Transfers Out (Drug Enforcement Fund)	(90,000)		(90,000)
Total Non-Operating Sources/(Uses)	(2,431,562)		(2,431,562)
Total Sources/(Uses)	(2,218,254)		(436,254)
2006 Ending Fund Balance	\$ 6,687,348		\$ 8,469,348

Budget Impact:

The 0.4 mils Police and 0.4 Fire is needed to fund the Pension plans for both areas. The 1.0 mils is used to fund the operation of the Fayetteville Public Library.

Based on current adjustments and estimates, the 2006 Proposed Budget for General Fund has a shortfall of \$2,218,254. If the additional 2.00 mils are not approved, then the funding will come from General Fund reserves. The 2006 projection does not contain any additional personnel and increased costs that could be made in 2006.

Conclusion:

The millage levy must be at Washington County, November 1 to be included in their consolidated levy ordinance which will be approved at the November 10, Quorum Court meeting. The City levy will be added to the levies by Washington County, the various school districts, improvement districts and other cities within the County when the Washington County Quorum Court adopts its millage levy for 2005.

If you have any questions concerning this agenda request please contact either myself at 575-8226 or Stephen Davis at 575-8330.

ORDINANCE NO. _____

AN ORDINANCE LEVYING A TAX ON THE REAL AND PERSONAL PROPERTY WITHIN THE CITY OF FAYETTEVILLE, ARKANSAS, FOR THE YEAR 2005 FIXING THE RATE THEREOF AT 2.0 MIL FOR GENERAL FUND – OPERATIONS, 0.4 MILS FOR THE FIREMEN'S PENSION AND RELIEF FUND, 0.4 MILS FOR THE POLICEMEN'S PENSION AND RELIEF FUND AND 1.0 MIL FOR THE FAYETTEVILLE CITY LIBRARY; AND CERTIFYING THE SAME TO THE COUNTY CLERK OF WASHINGTON COUNTY, ARKANSAS

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

Section 1. That a tax is hereby levied on the real and personal property within the City of Fayetteville, Arkansas, for the year 2005, to be collected in 2006, for the following purposes at the following rates:

REAL AND PERSONAL PROPERTY

<u>Purpose</u>	<u>Levy</u>
General Fund – Operations	2.0 mils
Fayetteville City Library	1.0 mils
Policemen's Pension Fund	0.4 mils
Firemen's Pension Fund	<u>0.4 mils</u>
TOTAL	3.8 mils

Section 2. That the real and personal property tax so levied and the rates provided therefore are hereby certified to the Clerk of Washington County, Arkansas, to be placed in the tax book by the County Clerk and collected in the same manner that the county and school district taxes are collected.

Section 3. The City Clerk is hereby authorized and directed to file certified copies of this ordinance in the office of the County Recorder, County Clerk, County Assessor, and the County Tax Collector for Washington County, Arkansas.

PASSED and APPROVED this 4th day of October, 2005.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

**City of Fayetteville
Property Tax Revenue per Mil
December 31, 2005**

<u>Millage</u>	<u>Approximate Revenue</u>
0.10	\$ 89,000
0.20	\$ 178,000
0.30	\$ 267,000
0.40	\$ 356,000
0.50	\$ 445,000
0.60	\$ 534,000
0.70	\$ 623,000
0.80	\$ 712,000
0.90	\$ 802,000
1.00	\$ 891,000
1.50	\$ 1,336,000
2.00	\$ 1,781,000
2.50	\$ 2,226,000
3.00	\$ 2,672,000
3.50	\$ 3,117,000
4.00	\$ 3,562,000
4.50	\$ 4,008,000
5.00	\$ 4,453,000

The millage revenue reflected above is based on the Washington County Preliminary Summary Report of County Assessments for the Year 2005 dated August 6, 2005 and excludes real and personal property for Utilities. The City Council can approve up to 5.0 mils for operations. The table assumes a 95% collection rate. Total real and personal property assessments for 2005 amount to approximately \$909 million excluding real estate and personal property for utilities.

Property Tax Impact Illustration

	<u>Appraised Value</u>	<u>Assessed Value</u>	<u>1 Mil Tax / Year</u>
Single Family Home	\$ 75,000.00	\$ 15,000.00	\$ 15.00
Single Family Home	\$ 100,000.00	\$ 20,000.00	\$ 20.00
Single Family Home	\$ 150,000.00	\$ 30,000.00	\$ 30.00

Washington County Assessments for the Year 2005
Preliminary Summary Report

8/6/2005 0:00

	Real Estate				Personal Property				Utilities			
	2004	2005	NDP	%change	%NDP	2004	2005	%change	2004	2005	%change	
Fayetteville 010	62,139,950	69,430,647	6,675,801	12	11	10,980,746	11,704,337	7	6,356,349	6,163,764	-3	
Fayetteville 011	575,340,098	642,288,461	42,332,126	12	7	150,502,324	148,242,187	-2	26,281,105	27,428,229	4	
Johnson 012	16,418,180	23,818,459	7,176,264	45	43	4,573,492	4,012,376	-12	324,528	661,600	104	
Farmington 013	2,202,415	2,355,200	69,976	7	3	495,887	468,929	-5	41,642	41,454	0	
Elkins 014	4,458,298	5,453,686	871,094	22	19	795,995	776,365	-2	15,811	87,680	455	
Goshen 015	10,070,556	12,091,175	1,907,609	20	19	1,382,737	1,566,432	13	80,244	350,569	337	
Total	670,629,497	755,437,628	59,032,870	13	8	168,731,181	166,770,626	-1	33,099,679	34,733,296	5	
Farmington 060	34,121,142	37,665,073	2,759,059	10	8	8,512,509	9,138,431	7	1,724,035	1,523,533	-12	
Farmington 061	28,373,367	33,014,845	3,871,303	16	13	5,434,365	5,592,727	3	839,902	876,304	4	
Fayetteville 062	12,257,745	18,553,440	5,907,221	51	47	1,118,139	1,488,863	33	2,543	166,027	6,429	
Total	74,752,254	89,233,358	12,537,583	19	16	15,065,013	16,220,021	8	2,566,480	2,565,864	0	
Elkins 100	19,104,200	20,743,056	1,286,577	9	7	5,219,257	5,468,513	5	2,710,318	2,299,531	-15	
Elkins 101	8,120,643	9,089,489	840,685	12	10	1,597,163	1,759,827	10	685,090	676,435	-1	
Total	27,224,843	29,832,545	2,127,262	10	8	6,816,420	7,228,340	6	3,395,408	2,975,966	-12	
Winslow 200	5,294,896	5,640,260	210,721	7	4	1,471,637	1,472,169	0	2,285,704	0	-100	
Winslow 201	1,974,435	2,058,436	53,645	4	3	431,963	408,674	-5	162,242	469,476	189	
Total	7,269,331	7,698,696	264,366	6	4	1,903,600	1,880,843	-1	2,447,946	469,476	-81	
Benton County 210	7,002,855	7,471,805	503,047	7	7	1,615,421	1,662,315	3	736,438	452,063	-39	
Total	7,002,855	7,471,805	503,047	7	7	1,615,421	1,662,315	3	736,438	452,063	-39	
Prairie Grove 230	28,835,487	34,837,507	5,550,743	21	19	7,635,511	8,453,502	11	3,097,750	2,649,558	-14	
Prairie Grove 231	22,110,833	25,422,391	2,692,375	15	12	4,554,947	4,715,984	4	1,163,839	1,446,788	24	
Total	50,946,320	60,259,898	8,243,119	18	16	12,190,458	13,169,486	8	4,261,589	4,096,346	-4	
West Fork 410	16,156,204	17,517,289	1,006,608	8	6	5,250,815	5,209,263	-1	2,425,014	2,564,167	6	
West Fork 411	11,861,459	12,491,354	332,290	5	3	2,645,752	2,782,688	5	690,236	911,672	32	
Total	28,017,663	30,008,643	1,338,897	7	5	7,896,567	7,991,951	1	3,115,250	3,475,839	12	
Lincoln 480	25,805,202	27,888,848	1,766,621	8	7	7,916,415	7,977,409	1	2,568,907	2,505,702	-2	
Lincoln 481	12,005,873	12,600,273	424,157	5	3	2,990,945	3,076,449	3	449,295	616,471	37	
Total	37,811,075	40,489,121	2,190,777	7	6	10,907,360	11,053,858	1	3,018,202	3,122,173	3	
Springdale 500	82,759,731	81,220,491	7,552,983	-2	10	20,309,402	21,253,772	5	7,869,229	5,946,413	-24	
Springdale 501	457,370,486	513,268,894	37,890,606	12	8	163,831,003	171,679,365	5	14,906,280	13,865,771	-7	
Elm Springs 502	10,840,641	14,430,019	3,197,651	33	28	1,629,521	1,937,030	19	407,828	474,601	16	
Tontitown 503	18,175,803	31,949,888	2,933,934	76	10	5,944,597	6,558,429	10	1,195,112	1,205,991	1	
Fayetteville 504	58,909,803	67,694,936	8,470,514	15	14	22,417,028	19,697,657	-12	199,791	355,235	78	
Johnson 505	13,435,165	14,669,884	613,153	9	4	2,054,631	2,170,481	6	644,914	642,673	0	
Goshen 506	1,504,447	1,731,648	194,925	15	13	155,935	180,759	16	0	0	0	
Total	642,996,076	724,965,760	60,853,765	13	9	216,342,117	223,477,493	3	25,223,154	22,490,684	-11	
Greenland 950	15,800,649	17,599,048	1,324,794	11	8	4,191,416	4,455,103	6	1,631,928	3,331,426	104	
Greenland 951	6,836,206	7,930,771	855,244	16	12	1,365,972	1,334,504	-2	683,374	637,819	-7	
Fayetteville 952	2,854,174	3,350,536	401,340	17	14	9,065,211	8,077,436	-11	89,877	104,941	17	
West Fork 953	1,500,042	1,759,359	220,852	17	14	289,499	334,114	15	1,922	2,529	32	
Total	26,991,071	30,639,714	2,802,230	14	10	14,912,098	14,201,157	-5	2,407,101	4,076,715	69	
All Districts	1,573,640,985	1,776,037,168	149,893,918	13	9	456,380,235	463,656,090	2	80,271,247	78,458,422	-2	

School District Totals

	2004	2005	NDP	%change	%NDP
Benton County	9,354,714	9,586,183	503,047	2.47	6.73
Elkins	37,436,671	40,036,851	2,127,262	6.95	7.13
Farmington	92,383,747	108,019,243	12,537,583	16.92	14.05
Fayetteville	872,460,357	956,941,550	59,032,870	9.68	7.81
Greenland	44,310,270	48,917,586	2,802,230	10.40	9.15
Lincoln	51,736,637	54,665,152	2,190,777	5.66	5.41
Prairie Grove	67,398,367	77,525,730	8,243,119	15.03	13.68
Springdale	884,561,347	970,933,937	60,853,765	9.76	8.39
West Fork	39,029,480	41,476,433	1,338,897	6.27	4.46
Winslow	11,620,877	10,049,015	264,366	-13.53	3.43
Grand Total	2,110,292,467	2,318,151,680	149,893,918	9.85	8.44

City Totals

	2004	2005	NDP	%change	%NDP
Elkins	15,673,000	17,843,482	1,723,940	13.85	11.85
Elm Springs	12,877,990	16,841,650	3,294,841	30.78	22.83
Farmington	37,387,578	42,349,459	3,948,419	13.27	11.16
Fayetteville	859,037,838	937,447,948	58,672,540	9.13	8.02
Goshen	13,193,919	15,920,583	2,102,534	20.67	15.21
Greenland	8,885,552	9,903,094	893,924	11.45	11.27
Johnson	37,450,910	45,975,473	7,789,417	22.76	20.24
Lincoln	15,446,113	16,293,193	441,377	5.48	3.50
Prairie Grove	27,829,619	31,585,163	2,720,315	13.49	10.70
Springdale	636,107,769	698,814,030	38,773,696	9.86	7.55
Tontitown	25,315,512	39,714,308	16,330,744	56.88	51.11
West Fork	16,988,910	18,281,716	553,142	7.61	3.88
Winslow	2,568,640	2,936,586	53,645	14.32	2.61

- DISCLAIMER -

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BUYING A BUSINESS

CHECKLIST: DUE DILIGENCE

So you have decided to purchase an existing business. Regardless of whether the deal is structured as an asset transaction, a stock transaction or a merger, make sure you know what you are getting into by requiring detailed information from the seller regarding its business operations and finances. The following is a checklist of information and documents you should review:

A. *Organization and Good Standing.*

- The Company's Articles of Incorporation, and all amendments thereto.
- The Company's Bylaws, and all amendments thereto.
- The Company's minute book, including all minutes and resolutions of shareholders and directors, executive committees, and other governing groups.
- The Company's organizational chart.
- The Company's list of shareholders and number of shares held by each.
- Copies of agreements relating to options, voting trusts, warrants, puts, calls, subscriptions, and convertible securities.
- A Certificate of Good Standing from the Secretary of State of the state where the Company is incorporated.
- Copies of active status reports in the state of incorporation for the last three years.
- A list of all states where the Company is authorized to do business and annual reports for the last three years.
- A list of all states, provinces, or countries where the Company owns or leases property, maintains employees, or conducts business.
- A list of all of the Company's assumed names and copies of registrations thereof.

B. *Financial Information.*

- Audited financial statements for three years, together with Auditor's Reports.
- The most recent unaudited statements, with comparable statements to the prior year.
- Auditor's letters and replies for the past five years.
- The Company's credit report, if available.
- Any projections, capital budgets and strategic plans.
- Analyst reports, if available.
- A schedule of all indebtedness and contingent liabilities.
- A schedule of inventory.
- A schedule of accounts receivable.
- A schedule of accounts payable.
- A description of depreciation and amortization methods and changes in accounting methods over the past five years.
- Any analysis of fixed and variable expenses.
- Any analysis of gross margins.
- The Company's general ledger.

- A description of the Company's internal control procedures.

C. *Physical Assets.*

- A schedule of fixed assets and the locations thereof.
- All U.C.C. filings.
- All leases of equipment.
- A schedule of sales and purchases of major capital equipment during last three years.

D. *Real Estate.*

- A schedule of the Company's business locations.
- Copies of all real estate leases, deeds, mortgages, title policies, surveys, zoning approvals, variances or use permits.

E. *Intellectual Property.*

- A schedule of domestic and foreign patents and patent applications.
- A schedule of trademark and trade names.
- A schedule of copyrights.
- A description of important technical know-how.
- A description of methods used to protect trade secrets and know-how.
- Any "work for hire" agreements.
- A schedule and copies of all consulting agreements, agreements regarding inventions, and licenses or assignments of intellectual property to or from the Company.
- Any patent clearance documents.
- A schedule and summary of any claims or threatened claims by or against the Company regarding intellectual property.

F. *Employees and Employee Benefits.*

- A list of employees including positions, current salaries, salaries and bonuses paid during last three years, and years of service.
- All employment, consulting, nondisclosure, nonsolicitation or noncompetition agreements between the Company and any of its employees.
- Resumes of key employees.
- The Company's personnel handbook and a schedule of all employee benefits and holiday, vacation, and sick leave policies.
- Summary plan descriptions of qualified and non-qualified retirement plans.
- Copies of collective bargaining agreements, if any.
- A description of all employee problems within the last three years, including alleged wrongful termination, harassment, and discrimination.
- A description of any labor disputes, requests for arbitration, or grievance procedures currently pending or settled within the last three years.
- A list and description of benefits of all employee health and welfare insurance policies or self-funded arrangements.
- A description of worker's compensation claim history.
- A description of unemployment insurance claims history.
- Copies of all stock option and stock purchase plans and a schedule of grants thereunder.

G. *Licenses and Permits.*

- Copies of any governmental licenses, permits or consents.
- Any correspondence or documents relating to any proceedings of any regulatory agency.

H. *Environmental Issues.*

- Environmental audits, if any, for each property leased by the Company.
- A listing of hazardous substances used in the Company's operations.
- A description of the Company's disposal methods.
- A list of environmental permits and licenses.
- Copies of all correspondence, notices and files related to EPA, state, or local regulatory agencies.
- A list identifying and describing any environmental litigation or investigations.
- A list identifying and describing any known superfund exposure.
- A list identifying and describing any contingent environmental liabilities or continuing indemnification obligations.

I. *Taxes.*

- Federal, state, local, and foreign income tax returns for the last three years.
- States sales tax returns for the last three years.
- Any audit and revenue agency reports.
- Any tax settlement documents for the last three years.
- Employment tax filings for three years.
- Excise tax filings for three years.
- Any tax liens.

J. *Material Contracts.*

- A schedule of all subsidiary, partnership, or joint venture relationships and obligations, with copies of all related agreements.
- Copies of all contracts between the Company and any officers, directors, 5-percent shareholders or affiliates.
- All loan agreements, bank financing arrangements, line of credit, or promissory notes to which the Company is a party.
- All security agreements, mortgages, indentures, collateral pledges, and similar agreements.
- All guaranties to which the Company is a party.
- Any installment sale agreements.
- Any distribution agreements, sales representative agreements, marketing agreements, and supply agreements.
- Any letters of intent, contracts, and closing transcripts from any mergers, acquisitions, or divestitures within last five years.
- Any options and stock purchase agreements involving interests in other companies.
- The Company's standard quote, purchase order, invoice and warranty forms.
- All nondisclosure or noncompetition agreements to which the Company is a party.
- All other material contracts.

K. *Product or Service Lines.*

- A list of all existing products or services and products or services under development.
- Copies of all correspondence and reports related to any regulatory approvals or disapprovals of any Company's products or services.
- A summary of all complaints or warranty claims.
- A summary of results of all tests, evaluations, studies, surveys, and other data regarding existing products or services and products or services under development.

L. *Customer Information.*

- A schedule of the Company's twelve largest customers in terms of sales thereto and a description of sales thereto over a period of two years.
- Any supply or service agreements.
- A description or copy of the Company's purchasing policies.
- A description or copy of the Company's credit policy.
- A schedule of unfilled orders.
- A list and explanation for any major customers lost over the last two years.
- All surveys and market research reports relevant to the Company or its products or services.
- The Company's current advertising programs, marketing plans and budgets, and printed marketing materials.
- A description of the Company's major competitors.

M. *Litigation.*

- A schedule of all pending litigation.
- A description of any threatened litigation.
- Copies of insurance policies possibly providing coverage as to pending or threatened litigation.
- Documents relating to any injunctions, consent decrees, or settlements to which the Company is a party.
- A list of unsatisfied judgments.

N. *Insurance Coverage.*

- A schedule and copies of the Company's general liability, personal and real property, product liability, errors and omissions, key-man, directors and officers, worker's compensation, and other insurance.
- A schedule of the Company's insurance claims history for past three years.

O. *Professionals.*

- A schedule of all law firms, accounting firms, consulting firms, and similar professionals engaged by the Company during past five years.

P. *Articles and Publicity.*

- Copies of all articles and press releases relating to the Company within the past three years.

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BEING ACQUIRED

CHECKLIST: DUE DILIGENCE

So you have been approached by a potential acquirer of your business. Regardless of whether the deal is structured as an asset transaction, a stock transaction, or a merger, you can expect that the acquirer will want to conduct a detailed "due diligence investigation" of your company's finances and operations. The following is a checklist of information and documents you can expect the acquirer will want to review.

A. *Organization and Good Standing.*

- ✓ The Company's Articles of Incorporation, and all amendments
- ✓ The Company's Bylaws, and all amendments
- ✓ The Company's minute book, including all minutes and resolutions of shareholders and directors, executive committees, and other governing groups
- ✓ The Company's organizational chart
- ✓ The Company's list of shareholders and number of shares held by each
- ✓ Copies of agreements relating to options, voting trusts, warrants, puts, calls, subscriptions, and convertible securities
- ✓ A Certificate of Good Standing from the Secretary of State of the state where the Company is incorporated
- ✓ Copies of active status reports in the state of incorporation for the last three years
- ✓ A list of all states where the Company is authorized to do business and annual reports for the last three years
- ✓ A list of all states, provinces, or countries where the Company owns or leases property, maintains employees, or conducts business
- ✓ A list of all of the Company's assumed names and copies of registrations

B. *Financial Information.*

- ✓ Audited financial statements for three years, together with Auditor's Reports
- ✓ The most recent unaudited statements, with comparable statements to the prior year
- ✓ Auditor's letters and replies for the past five years
- ✓ The Company's credit report, if available
- ✓ Any projections, capital budgets, and strategic plans

- ✓ Analyst reports, if available
- ✓ A schedule of all indebtedness and contingent liabilities
- ✓ A schedule of inventory
- ✓ A schedule of accounts receivable
- ✓ A schedule of accounts payable
- ✓ A description of depreciation and amortization methods and changes in accounting methods over the past five years
- ✓ Any analysis of fixed and variable expenses
- ✓ Any analysis of gross margins
- ✓ The Company's general ledger
- ✓ A description of the Company's internal control procedures

D. *Physical Assets.*

- ✓ A schedule of fixed assets and their locations
- ✓ All U.C.C. filings
- ✓ All leases of equipment
- ✓ A schedule of sales and purchases of major capital equipment during the last three years

E. *Real Estate.*

- ✓ A schedule of the Company's business locations
- ✓ Copies of all real estate leases, deeds, mortgages, title policies, surveys, zoning approvals, variances, or use permits

F. *Intellectual Property.*

- ✓ A schedule of domestic and foreign patents and patent applications
- ✓ A schedule of trademark and trade names
- ✓ A schedule of copyrights
- ✓ A description of important technical know-how
- ✓ A description of methods used to protect trade secrets and know-how
- ✓ Any "work for hire" agreements
- ✓ A schedule and copies of all consulting agreements, agreements regarding inventions, licenses, or assignments of intellectual property to or from the Company
- ✓ Any patent clearance documents
- ✓ A schedule and summary of any claims or threatened claims by or against the Company regarding intellectual property

G. *Employees and Employee Benefits.*

- ✓ A list of employees including positions, current salaries, salaries, and bonuses paid during last three years, and years of service
- ✓ All employment, consulting, nondisclosure, nonsolicitation, or noncompetition agreements between the Company and any of its employees
- ✓ Resumes of key employees
- ✓ The Company's personnel handbook and a schedule of all employee benefits and holiday, vacation, and sick leave policies
- ✓ Summary plan descriptions of qualified and nonqualified retirement plans
- ✓ Copies of collective bargaining agreements, if any
- ✓ A description of all employee problems within the last three years, including alleged wrongful termination, harassment, and discrimination
- ✓ A description of any labor disputes, requests for arbitration, or grievance procedures currently pending or settled within the last three years
- ✓ A list and description of benefits of all employee health and welfare insurance policies or self-funded arrangements
- ✓ A description of worker's compensation claim history
- ✓ A description of unemployment insurance claims history
- ✓ Copies of all stock option and stock purchase plans and a schedule of grants

H. *Licenses and Permits.*

- ✓ Copies of any governmental licenses, permits, or consents
- ✓ Any correspondence or documents relating to any proceedings of any regulatory agency

I. *Environmental Issues.*

- ✓ Environmental audits, if any, for each property leased by the Company
- ✓ A listing of hazardous substances used in the Company's operations
- ✓ A description of the Company's disposal methods
- ✓ A list of environmental permits and licenses
- ✓ Copies of all correspondence, notices, and files related to EPA, state, or local regulatory agencies
- ✓ A list identifying and describing any environmental litigation or investigations
- ✓ A list identifying and describing any known Superfund exposure
- ✓ A list identifying and describing any contingent environmental liabilities or continuing indemnification obligations

J. Taxes.

- ✓ Federal, state, local, and foreign income tax returns for the last three years
- ✓ States sales tax returns for the last three years
- ✓ Any audit and revenue agency reports
- ✓ Any tax settlement documents for the last three years
- ✓ Employment tax filings for three years
- ✓ Excise tax filings for three years
- ✓ Any tax liens

K. Material Contracts.

- ✓ A schedule of all subsidiary, partnership, or joint venture relationships and obligations, with copies of all related agreements
- ✓ Copies of all contracts between the Company and any officers, directors, five-percent shareholders, or affiliates
- ✓ All loan agreements, bank financing arrangements, line of credit, or promissory notes to which the Company is a party
- ✓ All security agreements, mortgages, indentures, collateral pledges, and similar agreements, including guaranties to which the Company is a party, and any installment sale agreements
- ✓ Any distribution agreements, sales representative agreements, marketing agreements, and supply agreements
- ✓ Any letters of intent, contracts, and closing transcripts from any mergers, acquisitions, or divestitures within last five years
- ✓ Any options and stock purchase agreements involving interests in other companies
- ✓ The Company's standard quote, purchase order, invoice, and warranty forms
- ✓ All nondisclosure or noncompetition agreements to which the Company is a party
- ✓ All other material contracts

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- ✓ A list of all existing products or services and products or services under development
- ✓ Copies of all correspondence and reports related to any regulatory approvals or disapprovals of any Company's products or services
- ✓ A summary of all complaints or warranty claims
- ✓ A summary of results of all tests, evaluations, studies, surveys, and other data regarding existing products or services and products or services under development

M. *Customer Information.*

- ✓ A schedule of the Company's twelve largest customers in terms of sales thereto and a description of sales thereto over a period of two years
- ✓ Any supply or service agreements
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- ✓ A description or copy of the Company's credit policy
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- ✓ The Company's current advertising programs, marketing plans, and budgets, and printed marketing materials
- ✓ A description of the Company's major competitors

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- ✓ A schedule of all pending litigation
- ✓ A description of any threatened litigation
- ✓ Copies of insurance policies possibly providing coverage as to pending or threatened litigation
- ✓ Documents relating to any injunctions, consent decrees, or settlements to which the Company is a party
- ✓ A list of unsatisfied judgments

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- ✓ A schedule and copies of the Company's general liability, personal and real property, product liability, errors and omissions, key-man, directors and officers, worker's compensation, and other insurance
- ✓ A schedule of the Company's insurance claims history for past three years

P. *Professionals.*

- ✓ A schedule of all law firms, accounting firms, consulting firms, and similar professionals engaged by the Company during past five years

Q. *Articles and Publicity.*

- ✓ Copies of all articles and press releases relating to the Company within the past three years

● *Sandra* ●

Agenda Session

Aldermen

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 - Robert Reynolds
Ward 1 Position 2 - Brenda Thiel
Ward 2 Position 1 - Kyle B. Cook
Ward 2 Position 2 - Don Marr
Ward 3 Position 1 - Robert K. Rhoads
Ward 3 Position 2 - Robert Ferrell
Ward 4 Position 1 - Shirley Lucas
Ward 4 Position 2 - Lioneld Jordan

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
October 4, 2005**

A meeting of the Fayetteville City Council will be held on October 4, 2005 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Call to Order
Roll Call
Pledge of Allegiance**

Rebecca Garner, Garrison Financial Corporation Report on the City's Investment Portfolio. *Agenda Session Only.*

A. CONSENT:

- 1. Approval of the September 6, 2005 City Council meeting minutes.**
- 2. Arkansas Parks & Tourism Grant – Botanical Gardens:** A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in the amount of \$250,000.00 for the construction of Phase 1A of the Botanical Gardens.

B. UNFINISHED BUSINESS:

- 1. ANX 05-1488 (Collins/Kinghorn, 533/534):** An ordinance annexing that property described in annexation petition ANX 05-1488 for property located at 6102 and 6110 Lake Sequoyah Drive, containing 17.33 acres. *This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.*

- ✓
2. **Planning Commission Appeal: Collins/Kinghorn Rezoning:** An ordinance rezoning that property described in rezoning petition RZN 05-1489 for approximately 17.64 acres located at 6102 and 6110 Lake Sequoyah Drive from R-A, Residential Agricultural, to RSF-4, Residential Single Family, 4 units per acre. *This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.*
 3. **C-PZD 05-1670 (Pratt Place Inn, 481):** An ordinance establishing a Commercial Planned Zoning District titled C-PZD 05-1670, Pratt Place Inn, located at the west end of Markham Road, containing approximately 72 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.*
 4. **R-PZD 05-1636 (Wellspring):** An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1636, Wellspring, located at Ruppel Road and Highway 16, containing approximately 152 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.*

C. NEW BUSINESS:

1. **Fayetteville Municipal Property Owners' Improvement District #9 – Biella:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 9 – Biella.

- Move to Oct. 18, 2005 Per Jim McCord* **2. Fayetteville Municipal Property Owners' Improvement District #10 – Wellspring:** *Withdraw totally.* An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 10 – Wellspring.

3. **Southwestern Bell Telephone Service Agreement:** An ordinance waiving the requirements of formal competitive bidding and approving a five-year renewal of the service agreement with Southwestern Bell Telephone, L.P. in the amount of \$69,000.00 to provide Plexar Custom Telecommunications Service.
4. **Fayetteville Depot, LLC Lease Agreement:** A resolution approving a lease agreement with Fayetteville Depot, LLC for property located at the northwest corner of Dickson Street and West Avenue to provide parking enforcement and revenue collection services for a proposed parking lot.
5. **Associated Time & Parking Controls, Inc.:** An ordinance waiving the requirements of formal competitive bidding and approving the purchase of Parking Revenue Collection Equipment from Associated Time and Parking Controls, Inc. in the amount of \$46,805.10; approving a 10% contingency in the amount of \$4,408.50; and approving a budget adjustment in the amount of \$51,213.60.
6. **Parking Management Division Position:** A resolution authorizing the addition of one (1) full-time position in the Parking Management Division; and approving a budget adjustment in the amount of \$3,282.00.

7. **RZN-05-1687 (Hopmann):** An ordinance rezoning that property described in rezoning petition RZN 05-1687 for approximately 0.18 acres located at 935 North College Avenue from R-O Residential-Office to C-1, Neighborhood Commercial.
8. **RZN-05-1688 (JDM Investments):** An ordinance rezoning that property described in rezoning petition RZN 05-1688 for approximately 6.34 acres located at 2806 Crossover, north boundary of Candle Wood Subdivision from R-A Residential-Agricultural to RSF-4, Residential Single Family, 4 units per acre.
9. **RZN-05-1711 (Mathias):** An ordinance rezoning that property described in rezoning petition RZN 05-1711 for approximately 1.25 acres located at Highway 62 West from R-A, Residential-Agricultural to C-1, Neighborhood Commercial.
10. **VAC 05-1632 (East Square Development):** An ordinance approving VAC 05-1632 submitted by Bob Kohler for an alley located on the City Block between East Avenue and College Avenue and Center Street and Mountain Street, as indicated on the attached map and legal description.
11. **VAC 05-1686 (Schultz):** An ordinance approving VAC 05-1686 submitted by N. Arthur Scott for property located at 1921 South Vale Avenue, vacating a portion of the right of way as indicated on the attached map and legal description.
12. **VAC 05-1689 (JDM Investments):** An ordinance approving VAC 05-1689 submitted by Roger Trotter for property located between 2716 and 2728 North Candlewood Drive, vacating a right of way as indicated on the attached map and legal description.
13. **R-PZD 05-1543 (Vantage Center):** An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1543, Vantage Center, located at the end of Shepard Lane adjacent to Frontage Road, containing approximately 4.7 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan.
14. **Amend Title XI: Chapter 117, Article IV: Taxicabs:** An ordinance amending Title XI: Chapter 117, Article IV: Taxicabs, of the Code of Fayetteville to provide a Rate Structure and Zone Map for the City of Fayetteville Taxi Coupon Program.
15. **2005 Millage Levy:** An ordinance levying a tax on the Real and Personal Property within the City of Fayetteville, Arkansas, for the year 2005 fixing the rate thereof at 2.0 mils for General Fund – Operations, 0.4 mils for the Firemen's Pension and Relief Fund, 0.4 mils for the Policemen's Pension and Relief Fund and 1.0 mil for the Fayetteville City Library; and certifying the same to the County Clerk of Washington County, Arkansas.

D. INFORMATIONAL:

Council Tour: October 3, 2005 – 4:30 PM

*add! Consent: State Tribal Assistance Grant A. 3.
South Fayetteville Community Dev. Corp. - Waiver Fees A. 4*

*Draft
Tentative*
Aldermen

Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith



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Ward 1 Position 2 - Brenda Thiel
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15. **2005 Millage Levy:** An ordinance levying a tax on the Real and Personal Property within the City of Fayetteville, Arkansas, for the year 2005 fixing the rate thereof at 2.0 mils for General Fund – Operations, 0.4 mils for the Firemen's Pension and Relief Fund, 0.4 mils for the Policemen's Pension and Relief Fund and 1.0 mil for the Fayetteville City Library; and certifying the same to the County Clerk of Washington County, Arkansas.

D. INFORMATIONAL:

Council Tour: September 19, 2005 – 4:30 PM

• Steve Davis •

Aldermen

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 - Robert Reynolds
Ward 1 Position 2 - Brenda Thiel
Ward 2 Position 1 - Kyle B. Cook
Ward 2 Position 2 - Don Marr
Ward 3 Position 1 - Robert K. Rhoads
Ward 3 Position 2 - Robert Ferrell
Ward 4 Position 1 - Shirley Lucas
Ward 4 Position 2 - Lioneld Jordan

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
October 4, 2005**

A meeting of the Fayetteville City Council will be held on October 4, 2005 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Call to Order
Roll Call
Pledge of Allegiance**

Rebecca Garner, Garrison Financial Corporation Report on the City's Investment Portfolio. *Agenda Session Only.*

A. CONSENT:

1. Approval of the September 6, 2005 City Council meeting minutes.

B. UNFINISHED BUSINESS:

C. NEW BUSINESS:

- ~~1. Addition of Two Full Time Police Officers: A resolution authorizing the addition of two (2) full-time officer positions to the Fayetteville Police Department; and approving a budget adjustment in the amount of \$44,900.00.~~
2. Arkansas Parks & Tourism Grant – Botanical Gardens: A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in the amount of \$250,000.00 for the construction of Phase 1A of the Botanical Gardens.

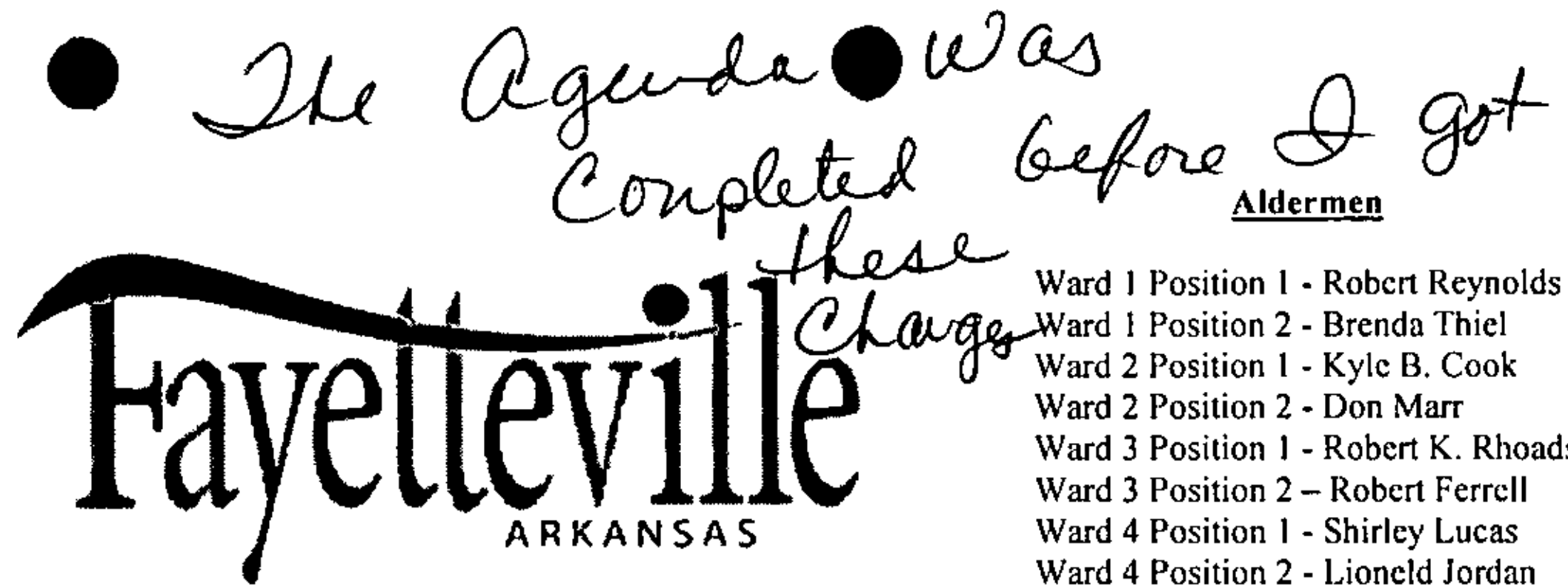
3. **Fayetteville Municipal Property Owners' Improvement District #9 – Biella:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 9 – Biella.
4. **Fayetteville Municipal Property Owners' Improvement District #10 – Wellspring:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 10 – Wellspring.
5. **Southwestern Bell Telephone Service Agreement:** An ordinance waiving the requirements of formal competitive bidding and approving a five-year renewal of the service agreement with Southwestern Bell Telephone, L.P. in the amount of \$69,000.00 to provide Plexar Custom Telecommunications Service.
6. **Fayetteville Depot, LLC Lease Agreement:** A resolution approving a lease agreement with Fayetteville Depot, LLC for property located at the northwest corner of Dickson Street and West Avenue to provide parking enforcement and revenue collection services for a proposed parking lot.
7. **Associated Time & Parking Controls, Inc.:** An ordinance waiving the requirements of formal competitive bidding and approving the purchase of Parking Revenue Collection Equipment from Associated Time and Parking Controls, Inc. in the amount of \$46,805.10; approving a 10% contingency in the amount of \$4,408.50; and approving a budget adjustment in the amount of \$51,213.60.
8. **Parking Management Division Position:** A resolution authorizing the addition of one (1) full-time position in the Parking Management Division; and approving a budget adjustment in the amount of \$3,282.00.
9. **RZN-05-1687 (Hopmann):** An ordinance rezoning that property described in rezoning petition RZN 05-1687 for approximately 0.18 acres located at 935 North College Avenue from R-O Residential-Office to C-1, Neighborhood Commercial.
10. **RZN-05-1688 (JDM Investments):** An ordinance rezoning that property described in rezoning petition RZN 05-1688 for approximately 6.34 acres located at 2806 Crossover, north boundary of Candle Wood Subdivision from R-A Residential-Agricultural to RSF-4, Residential Single Family, 4 units per acre.
11. **RZN-05-1711 (Mathias):** An ordinance rezoning that property described in rezoning petition RZN 05-1711 for approximately 1.25 acres located at Highway 62 West from R-A, Residential-Agricultural to C-1, Neighborhood Commercial.
12. **VAC 05-1632 (East Square Development):** An ordinance approving VAC 05-1632 submitted by Bob Kohler for an alley located on the City Block between East Avenue and College Avenue and Center Street and Mountain Street, as indicated on the attached map and legal description.
13. **VAC 05-1686 (Schultz):** An ordinance approving VAC 05-1686 submitted by N. Arthur Scott for property located at 1921 South Vale Avenue, vacating a portion of the right of way as indicated on the attached map and legal description.

- **14. VAC 05-1689 (JDM Investments):** An ordinance approving VAC 05-1689 submitted by Roger Trotter for property located between 2716 and 2728 North Candlewood Drive, vacating a right of way as indicated on the attached map and legal description.
- 15. R-PZD 05-1543 (Vantage Center):** An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1543, Vantage Center, located at the end of Shepard Lane adjacent to Frontage Road, containing approximately 4.7 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan.
- 16. Amend Title XI: Chapter 117, Article IV: Taxicabs:** An ordinance amending Title XI: Chapter 117, Article IV: Taxicabs, of the Code of Fayetteville to provide a Rate Structure and Zone Map for the City of Fayetteville Taxi Coupon Program.

D. INFORMATIONAL:

Council Tour: September 19, 2005 – 4:30 PM

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
October 4, 2005**

A meeting of the Fayetteville City Council will be held on October 4, 2005 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Call to Order
Roll Call
Pledge of Allegiance**

Rebecca Garner, Garrison Financial Corporation Report on the City's Investment Portfolio. Agenda Session Only.

A. CONSENT:

1. Approval of the September 6, 2005 City Council meeting minutes.

B. UNFINISHED BUSINESS:

Bond Ordinance

C. NEW BUSINESS:

New #1

1. ~~Addition of Two Full-Time Police Officers:~~ A resolution authorizing the addition of two (2) full-time officer positions to the Fayetteville Police Department; and approving a budget adjustment in the amount of \$44,900.00.

2. **Arkansas Parks & Tourism Grant - Botanical Gardens:** A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in the amount of \$250,000.00 for the construction of Phase 1A of the Botanical Gardens.

Move #14 to #2

"Northwest Arkansas' Most Widely Read Newspaper"

AFFIDAVIT OF PUBLICATION

I, Erin Emis, do solemnly swear that I am the 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:

Jim Asunda was inserted in the regular editions on October 3, 2005.

PO# _____

** Publication Charge: \$ 334.80

Subscribed and sworn to before me this

3 day of October, 2005.

Sharlene D. Williams
Notary Public

Sharlene D. Williams

Notary Public

State of Arkansas

My Commission Expires

My Commission Expires: _____

October 18, 2014

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

RECEIVED

OCT 10 2005

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

**FINAL AGENDA
CITY OF FAYETTEVILLE ARKANSAS
CITY COUNCIL MEETING
OCTOBER 4, 2005**



A meeting of the Fayetteville City Council will be held on October 4, 2005 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Call to Order
Roll Call
Pledge of Allegiance**

Introduction of the 2005 Citizen's Police Academy Graduates

A. CONSENT:

1. Approval of the August 26, 2005 Special City Council meeting minutes and the September 6, 2005 City Council meeting minutes.

2. Arkansas Parks & Tourism Grant - Botanical Gardens: A resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in the amount of \$250,000.00 for the construction of Phase 1A of the Botanical Gardens.

3. State and Tribal Assistance Grant (STAG) - Sanitary Sewer System Improvements: A resolution authorizing the Mayor to apply for and accept a State and Tribal Assistance Grant (STAG) from the U.S. Environmental Protection Agency for Sanitary Sewer System Improvements; designating the Mayor as the City's authorized representative in all matters relating to the procurement and administration of said grant; and approving a budget adjustment recognizing \$481,200.00 in Grant Revenue.

4. South Fayetteville Community Development Corporation - Waiving of Fees: A resolution to waive the Building Permit Fee and other developmental fees for South Fayetteville Community Development Corporation.

B. UNFINISHED BUSINESS:

1. ANX 05-1488 (Collins/Kinghorn, 533/534): An ordinance annexing that property described in annexation petition ANX 05-1488 for property located at 6102 and 6110 Lake Sequoyah Drive, containing 17.33 acres. This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.

2. Planning Commission Appeal: Collins/Kinghorn Rezoning: An ordinance rezoning that property described in rezoning petition RZN 05-1489 for approximately 17.64 acres located at 6102 and 6110 Lake Sequoyah Drive from R-A, Residential Agricultural, to RSF-4, Residential Single Family, 4 units per acre. This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.

3. C-PZD 05-1670 (Prait Place Inn, 481): An ordinance establishing a Commercial Planned Zoning District titled C-PZD 05-1670, Prait Place Inn, located at the west end of Markham Road, containing approximately 72 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.

4. R-PZD 05-1636 (Wellspring): An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1636, Wellspring, located at Ruppel Road and Highway 16, containing approximately 152 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. This ordinance was left on the First Reading at the September 20, 2005 City Council meeting.

C. NEW BUSINESS:

1. Sales and Use Tax Refunding and Capital Improvement Bonds, Series 2005A - Wastewater Treatment: An ordinance authorizing the issuance and sale of the City's not to exceed

(1) \$27,000,000 of Sales and Use Tax Refunding and Capital Improvement Bonds, Series 2005A, and (2) \$85,000,000 of Sales and Use Tax Capital Improvement Bonds, Series 2005B, for the purpose of refunding the City's outstanding Sales and Use Tax Capital Improvement Bonds, Series 2004, and financing a portion of the cost of improvements to the City's Wastewater Treatment Sewerage and related facilities; authorizing the execution and delivery of a Trust Indenture pursuant to which the Series 2005 Bonds will be issued and secured; authorizing the execution and delivery of an Official Statement pursuant to which the Series 2005 Bonds will be offered; authorizing the execution and delivery of a Bond Purchase Agreement providing for the sale of the Series 2005 Bonds; authorizing the execution and delivery of a Continuing Disclosure Agreement; authorizing the execution and delivery of an Escrow Deposit Agreement providing for the Defeasance and Redemption of the Series 2004 Bonds; and prescribing other matters relating thereto.

2. EPA and Audubon Arkansas Cost Share: An ordinance waiving the requirements of formal competitive bidding and approving a cost share in the amount of \$25,000.00 with the U.S. Environmental Protection Agency (EPA) and Audubon Arkansas to fund the collection of Water Quality Data along College Branch in the City of Fayetteville to assist staff with storm water ordinance revisions in compliance with Federal MS4 Storm Water Regulations.

3. Fayetteville Municipal Property Owners' Improvement District #9 - Blalla: An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 9 - Blalla.

4. Southwestern Bell Telephone Service Agreement: An ordinance waiving the requirements of formal competitive bidding and approving a five-year renewal of the service agreement with Southwestern Bell Telephone, L.P. in the amount of \$89,000.00 to provide Plexar Custom Telecommunications Service.

5. Fayetteville Depot, LLC Lease Agreement: A resolution approving a lease agreement with Fayetteville Depot, LLC for property located at the northwest corner of Dickson Street and West Avenue to provide parking enforcement and revenue collection services for a proposed parking lot.

6. Associated Time & Parking Controls, Inc.: An ordinance waiving the requirements of formal competitive bidding and approving the purchase of Parking Revenue Collection Equipment from Associated Time and Parking Controls, Inc. in the amount of \$46,805.10; approving a 10% contingency in the amount of \$4,408.50; and approving a budget adjustment in the amount of \$51,213.60.

7. Parking Management Division Position: A resolution authorizing the addition of one (1) full-time position in the Parking Management Division; and approving a budget adjustment in the amount of \$3,282.00.

8. RZN 05-1687 (Hopmann): An ordinance rezoning that property described in rezoning petition RZN 05-1687 for approximately 0.18 acres located at 935 North College Avenue from R-O Residential-Office to C-1, Neighborhood Commercial.

9. RZN 05-1688 (JDM Investments): An ordinance rezoning that property described in rezoning petition RZN 05-1688 for approximately 6.34 acres located at 2808 Crossover, north boundary of Candlewood Subdivision from R-A Residential-Agricultural to RSF-4, Residential Single Family, 4 units per acre.

10. RZN 05-1711 (Mathias): An ordinance rezoning that property described in rezoning petition RZN 05-1711 for approximately 1.25 acres located at Highway 62 West from R-A, Residential-Agricultural to C-1, Neighborhood Commercial.

11. VAC 05-1632 (East Square Development): An ordinance approving VAC 05-1632 submitted by Bob Kohler for an alley located on the City Block between East Avenue and College Avenue and Center Street and Mountain Street, as indicated on the attached map and legal description.

12. VAC 05-1686 (Schultz): An ordinance approving VAC 05-1686 submitted by N. Arthur Scott for property located at 1921 South Vale Avenue, vacating a portion of the right of way as indicated on the attached map and legal description.

13. VAC 05-1689 (JDM Investments): An ordinance approving VAC 05-1689 submitted by Roger Trotter for property located between 2718 and 2728 North Candlewood Drive, vacating a right of way as indicated on the attached map and legal description.

14. R-PZD 05-1543 (Vantage Center): An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1543, Vantage Center, located at the end of Shepard Lane adjacent to Frontage Road, containing approximately 4.7 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan.

15. Amend Title XI: Chapter 117, Article IV: Taxicabs: An ordinance amending Title XI: Chapter 117, Article IV: Taxicabs, of the Code of Fayetteville to provide a Rate Structure and Zone Map for the City of Fayetteville Taxi Coupon Program.

16. 2005 Millage Levy: An ordinance levying a tax on the Real and Personal Property within the City of Fayetteville, Arkansas, for the year 2005 fixing the rate thereof at 2.0 mills for General Fund - Operations, 0.4 mills for the Firemen's Pension and Relief Fund, 0.4 mills for the Policemen's Pension and Relief Fund and 1.0 mill for the Fayetteville City Library; and certifying the same to the County Clerk of Washington County, Arkansas.

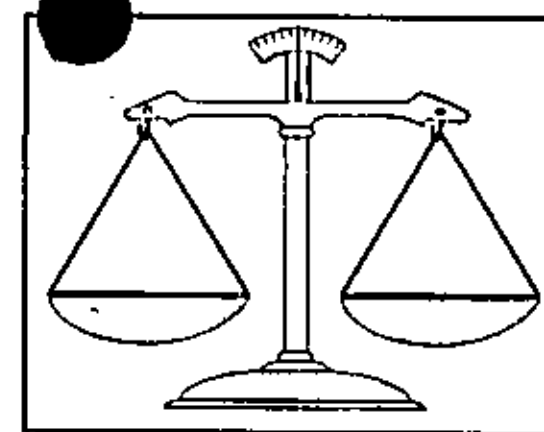
D. INFORMATIONAL:

Council Tour: October 3, 2005 - 4:30 PM

3. **Fayetteville Municipal Property Owners' Improvement District #9 – Biella:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 9 – Biella.
4. **Fayetteville Municipal Property Owners' Improvement District #10 – Wellspring:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 10 – Wellspring.
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6. **Fayetteville Depot, LLC Lease Agreement:** A resolution approving a lease agreement with Fayetteville Depot, LLC for property located at the northwest corner of Dickson Street and West Avenue to provide parking enforcement and revenue collection services for a proposed parking lot.
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8. **Parking Management Division Position:** A resolution authorizing the addition of one (1) full-time position in the Parking Management Division; and approving a budget adjustment in the amount of \$3,282.00.
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13. **VAC 05-1686 (Schultz):** An ordinance approving VAC 05-1686 submitted by N. Arthur Scott for property located at 1921 South Vale Avenue, vacating a portion of the right of way as indicated on the attached map and legal description.

off
Put in
Millage

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**

A handwritten signature in black ink, appearing to read 'Kit Williams', written over a horizontal line.

DATE: **October 5, 2005**

RE: **Passed Ordinances and Resolutions from City Council meeting
of October 4, 2005**

1. **Arkansas Parks & Tourism Grant – Botanical Gardens:** Resolution authorizing the Mayor to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in the amount of \$250,000.00 for the construction of Phase 1A of the Botanical Gardens;

2. **State and Tribal Assistance Grant – Sanitary Sewer System Improvements:** Resolution authorizing the Mayor to apply for and accept a State and Tribal Assistance Grant (STAG) from the U. S. Environmental Protection Agency for sanitary sewer system improvements; designating the Mayor as the City's Authorized Representative in all matters relating to the procurement and administration of said grant; and approving a budget adjustment recognizing \$481,200.00 in grant revenue;

3. **South Fayetteville Community Development Corporation – Waiving of Fees:** Resolution to waive the Building Permit Fee and other developmental fees for South Fayetteville Community Development Corporation;

4. **Sales and Use Tax Refunding and Capital Improvement Bonds, Series 2005A:** An Ordinance authorizing the issuance and sale of the City's not to exceed (1) \$27,000,000 of Sales and Use Tax Refunding and Capital Improvement Bonds, Series 2005A, and (2) \$65,000,000 of Sales and Use Tax Capital Improvement Bonds, Series 2005B, for the purpose of refunding the City's outstanding Sales and Use Tax Capital Improvement Bonds, Series 2004, and financing a portion of the cost of improvements to the City's wastewater

treatment, sewerage and related facilities; authorizing the execution and delivery of a Trust Indenture pursuant to which the Series 2005 Bonds will be issued and secured; authorizing the execution and delivery of an Official Statement pursuant to which the Series 2005 Bonds will be offered; authorizing the execution and delivery of a Bond Purchase Agreement providing for the sale of the Series 2005 Bonds; authorizing the execution and delivery of a Continuing Disclosure Agreement; authorizing the execution and delivery of an Escrow Deposit Agreement providing for the defeasance and redemption of the Series 2004 Bonds; and prescribing other matters relating thereto;

5. Washington County and Audubon Arkansas Cost Share: An Ordinance waiving the requirements of formal competitive bidding and approving a cost share in the amount of \$25,000.00 with Washington County and Audubon Arkansas to fund the collection of Water Quality Data along College Branch in the City of Fayetteville to assist staff with storm water ordinance revisions in compliance with Federal MS4 Storm Water Regulations;

6. Fayetteville Municipal Property Owners' Improvement District No. 9- Biella: An Ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 9- Biella;

7. Southwestern Bell Telephone Service Agreement: An Ordinance waiving the requirements of formal competitive bidding and approving a Five-year renewal of the Service Agreement with Southwestern Bell Telephone, L.P. in the amount of \$69,000.00 to provide PLEXAR Custom Telecommunications Services;

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12. **VAC 05-1689 (JDM Investments):** An Ordinance approving VAC 05-1689 submitted by Roger Trotter for property located between 2716 and 2728 North Candlewood Drive, vacating a right of way as indicated on the attached map and legal description;

13. **R-PZD 05-1543 (Vantage Center):** An Ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1543, Vantage Center, located at the end of Shepard Lane adjacent to Frontage Road, containing approximately 4.7 acres, amending the Official Zoning Map of the City of Fayetteville; and adopting the associated Master Development Plan;

14. **Amend Title XI: Chapter 117, Article IV: Taxicabs:** An Ordinance amending Title XI: Chapter 117, Article IV: Taxicabs, of the Code of Fayetteville to provide a Rate Structure and Zone Map for the City of Fayetteville Taxi Coupon Program;

15. **Purchase of Skid Steer Loader, LB75B Backhoe and F550 4x4 Cab and Chassis with Dump Body:** A Resolution authorizing the purchase of one (1) Skid Steer Loader and one (1) LB75B Backhoe from William's Tractor in the amount of \$77,192.41; and the purchase of one (1) F550 4x4 Cab and Chassis with Dump Body from Landers Ford in the amount of \$38,243.00 for use at the Fayetteville Municipal Airport; and approving a budget adjustment in the amount of \$115,435.00.

14. **VAC 05-1689 (JDM Investments):** An ordinance approving VAC 05-1689 submitted by Roger Trotter for property located between 2716 and 2728 North Candlewood Drive, vacating a right of way as indicated on the attached map and legal description.
15. **R-PZD 05-1543 (Vantage Center):** An ordinance establishing a Residential Planned Zoning District titled R-PZD 05-1543, Vantage Center, located at the end of Shepard Lane adjacent to Frontage Road, containing approximately 4.7 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan.
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D. INFORMATIONAL:

Council Tour: September 19, 2005 – 4:30 PM