

Aldermen

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Nancy Allen
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
Special City Council Meeting
January 8, 2008**

A special meeting of the Fayetteville City Council will be held on January 8, 2008 at 4:30 PM in Room 326 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

A. New Business:

- 1. Commonwealth-Ghosen Theatre Corporation Settlement Agreement:** A resolution to approve a settlement agreement with Commonwealth-Ghosen Theatre Corporation to purchase a construction easement and a permanent sewer main easement for the West Side Sewer Improvement Project for a total monetary consideration of \$100,000.00 plus other considerations.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 08-08.

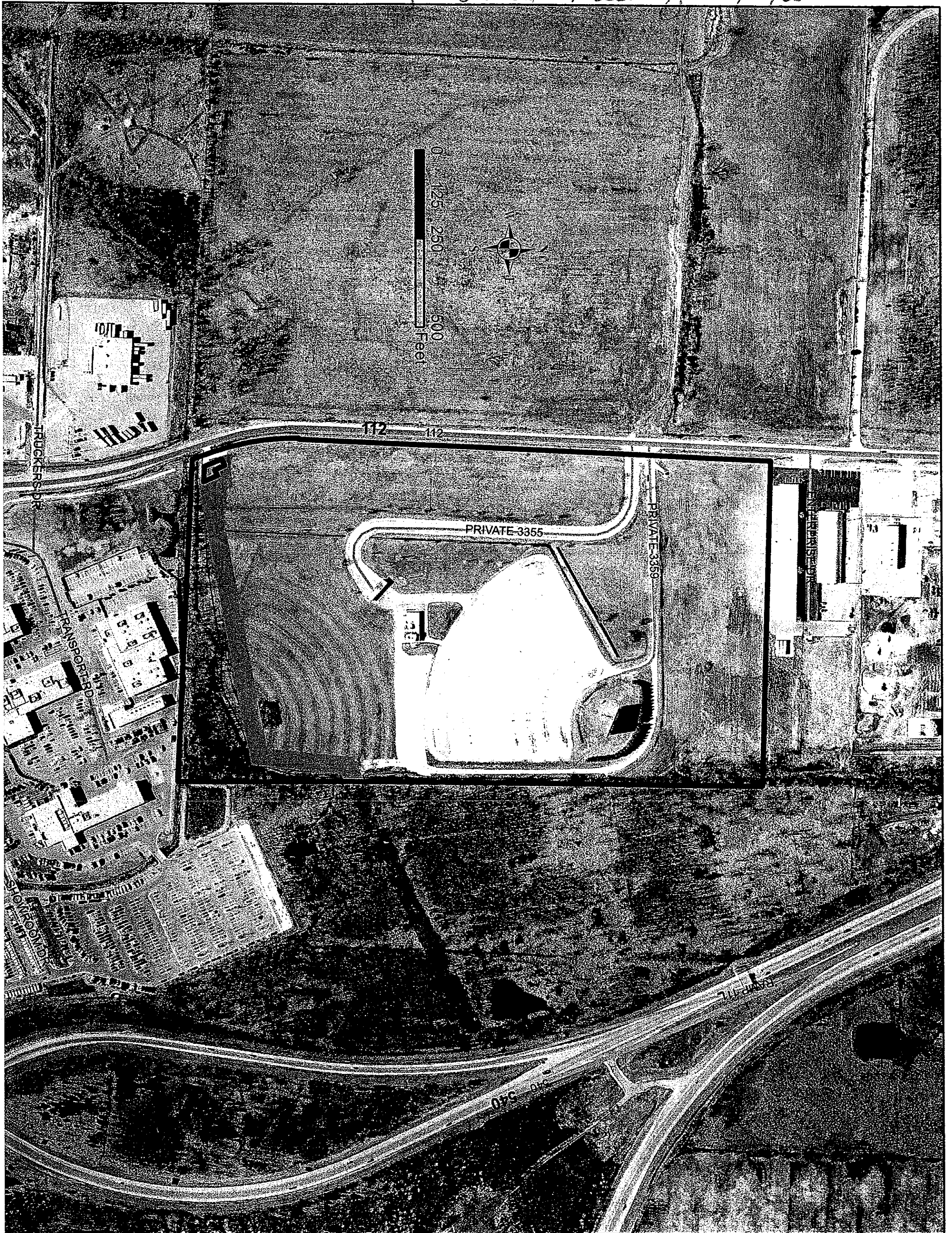
Announcements: None

Adjournment: Meeting adjourned at 4:45 p.m.

Adjourn 4:45 PM

Subject: <i>Roll</i>					
Motion To:					
Motion By:					
Seconded:					
	Allen	✓			
	Rhoads	<i>Absent</i>			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				

Subject: <i>Commonwealth - Chosen Theatre Corp. Settlement</i>					
Motion To:		<i>Approve</i>			<i>Agreement</i>
Motion By:		<i>Ferrell</i>			
Seconded:		<i>Lucas</i>			
<i>A.I. New Business Passed 08-08</i>	Allen	✓			
	Rhoads	<i>Absent</i>			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Mayor Coody				



Aldermen

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Nancy Allen
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
Special City Council Meeting
January 8, 2008**

A special meeting of the Fayetteville City Council will be held on January 8, 2008 at 4:30 PM in Room 326 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

A. New Business:

- 1. Commonwealth-Ghosen Theatre Corporation Settlement Agreement:** A resolution to approve a settlement agreement with Commonwealth-Ghosen Theatre Corporation to purchase a construction easement and a permanent sewer main easement for the West Side Sewer Improvement Project for a total monetary consideration of \$100,00.00 plus other considerations.

Announcements:

Adjournment:

CITY ATTORNEY AGENDA REQUEST

FOR: SPECIAL CITY COUNCIL MEETING OF JANUARY 8, 2008

FROM:

KIT WILLIAMS, CITY ATTORNEY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A Resolution To Approve A Settlement Agreement With Commonwealth-Ghosen Theatre Corporation To Purchase A Construction Easement And A Permanent Sewer Main Easement For The West Side Sewer Improvement Project For A Total Monetary Consideration Of \$100,000.00 Plus Other Considerations

APPROVED FOR AGENDA:



City Attorney

1-8-08

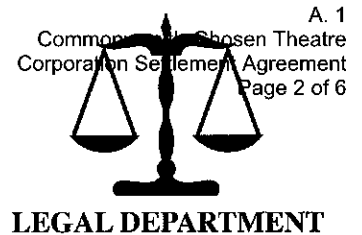
Date

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

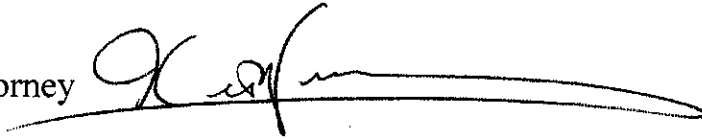
KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



TO: **Dan Coody, Mayor**
City Council

FROM: **Kit Williams, City Attorney**



DATE: **January 8, 2008**

RE: **Proposed Settlement of Condemnation Case of
Commonwealth-Ghosen Theatre Corporation**

Yesterday I filed a Motion To Dismiss in the Bohot v. City of Fayetteville case. Most cases I have defended for the City of Fayetteville have been dismissed in the City's favor after hearings or trials. Rarely do I recommend settling a case, but I do recommend settlement of this condemnation case.

Initially the landowner demanded \$825,600.00 based upon his appraiser's valuation of the construction and permanent sewer easement needed by the City to complete the largest and longest sewer main for the West Side Treatment Plant. After I deposed the appraiser and slightly modified our sewer easement language, the landowner reduced its demand to \$335,600.00. The landowner's attorney also seeks attorney's fees which "could possibly exceed one hundred thousand (\$100,000.00) dollars," according to his letter. We do not believe attorney fees are allowed under current state law, but this could be an issue if the case is not settled and ends up in front of the Supreme Court.

It is always difficult to predict exactly what a jury will decide when listening to conflicting testimony about the value of the easements needed by the City so I inquired about settlement possibilities and presented the top figure I could recommend to the City Council. Commonwealth has agreed to that figure if we agree to a few other minor concessions outlined in the Settlement Agreement. I recommend approval of this Settlement Agreement with all terms as stated therein.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A SETTLEMENT AGREEMENT WITH COMMONWEALTH-GHOSEN THEATRE CORPORATION TO PURCHASE A CONSTRUCTION EASEMENT AND A PERMANENT SEWER MAIN EASEMENT FOR THE WEST SIDE SEWER IMPROVEMENT PROJECT FOR A TOTAL MONETARY CONSIDERATION OF \$100,000.00 PLUS OTHER CONSIDERATIONS

WHEREAS, the City of Fayetteville needed to obtain a sewer easement and a construction easement to build the sewer main and manholes across a thirty-six acre parcel of land commonly known as the Highway 112 Drive-Inn; and

WHEREAS, the City obtained an Order of Possession on July 31, 2006 and an amended Order of Possession on August 14, 2007, and eventually paid in to Circuit Court the amount of \$36,550.00 as estimated compensation for the easements; and

WHEREAS, Commonwealth-Ghosen Theatre Corporation hired its own real estate appraiser who estimated the value of the easements initially at \$825,600.00; and

WHEREAS, tentative negotiations between the attorneys for the parties have resulted in a proposed settlement offer in which the City would raise its total offered compensation for both easements to \$100,000.00 and agree to four other items as noted on Exhibit A.

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

Section 1: The City Council of the City of Fayetteville, Arkansas hereby agrees to the proposed settlement of the condemnation case with Commonwealth-Ghosen Theatre Corporation and approves the additional payment of \$63,450.00 to Commonwealth-Ghosen Theatre Corporation to bring its total monetary compensation to \$100,000.00.

Section 2: The City Council of the City of Fayetteville, Arkansas hereby approves the additional terms of the proposed Settlement Agreement as shown on Exhibit A, and authorizes Mayor Coody to sign it, and agrees to do all things necessary to fulfill those terms when necessary in the future.

PASSED and APPROVED this 8th day of January, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

EXHIBIT "A"

SETTLEMENT AGREEMENT

The City of Fayetteville and the Commonwealth-Ghosen Theatre Corporation (hereinafter "Commonwealth") agree to fully and finally settle the pending condemnation case (No. CV 06-987-2) in the Washington County Circuit Court pursuant to the following terms, conditions, and promises:

1. Commonwealth-Ghosen Theatre Corporation **shall convey to the City of Fayetteville the easement deeds** (construction and permanent) attached to the Third Amended Complaint for the following consideration:

A. The City of Fayetteville shall pay an additional \$63,450.00 to combine with the \$36,550.00 already paid to commonwealth for a **total monetary consideration of \$100,000.00.**

B. The City will agree to waive the sewer tap connection fee for two sewer taps off of the sewer main along Highway 112 for the owner of the southern 15 acre parcel. The City will agree to waive the water tap connection fee for two water taps off of the water main along Highway 112 for the owner of the southern 15 acre parcel.

C. The City agrees to permit at least one additional two or three lane curb cut access for the Highway 112 Drive-In property along and to serve the southern 15 acre parcel.

D. The City agrees that it will acknowledge receipt of the easements for the amount paid, plus whatever amount Commonwealth-Ghosen Theatre Corporation's appraiser can establish to the IRS's satisfaction as a partial donation.

E. The City shall bear the cost of installing risers for the manholes on the 15 acre southern parcel up to two feet above the originally installed level upon the landowner raising the

surrounding surface to match the manholes' new level. This manhole raising agreement shall expire if not exercised by the owner within ten years from this date.

2. Upon payment of the additional \$63,450.00 by the City of Fayetteville to Commonwealth and the receipt of the properly executed and acknowledged easement deeds from Commonwealth, **the City shall dismiss its condemnation case with prejudice.**

3. **Both parties acknowledge that any and all possible claims against each other are resolved and settled by this agreement and hereby release each other fully from any existing or possible claims.** The four additional considerations promised by the City in paragraphs, B, C, D, and E are not released by the foregoing language and shall remain in full force according to their own terms.

IN AGREEMENT, with all the terms, conditions and promises recited above and with full authority to bind our respective parties, we sign below.

**COMMONWEALTH-GHOSEN
THEATRE CORPORATION**

By: _____
JANE DUNN-RANKIN
Corporate Officer and Shareholder

Witness:

By: _____

Name and Title

**CITY OF FAYETTEVILLE,
ARKANSAS**

By: _____
DAN COODY
Mayor

ATTEST:

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY

DAVID WHITAKER, ASST. CITY ATTORNEY



DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **Dan Coody**, Mayor

THRU: **Sondra Smith**, City Clerk

FROM: **Kit Williams**, City Attorney

DATE: **January 9, 2008**

A handwritten signature in black ink, appearing to be 'Kit Williams', written over a horizontal line.

RE: **Resolution prepared by the City Attorney's Office and passed at the Special City Council meeting of January 8, 2008**

1. **Settlement Agreement with Commonwealth-Ghosen Theatre Corp.:** A resolution to approve a Settlement Agreement with Commonwealth-Ghosen Theatre Corporation to purchase a construction easement and a permanent sewer main easement for the West Side Sewer Improvement Project for a total monetary consideration of \$100,000.00 plus other considerations.