FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA
CITY COUNCIL
SEPTEMBER 4, 2001

A meeting of the Fayetteville City Council will be held on September 4, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

– **CADIS GROUP:** Presentation from CADIS Group.

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:** Approval of the minutes from the August 21, 2001 meeting.

2. **SFCDC:** A resolution approving the transfer of the property located at 1035 S. Washington Avenue from the City of Fayetteville to the South Fayetteville Community Development Corporation. The funding source for this property purchase was the 2001 HUD Community Development Block Grant.

3. **ARVEST BANK:** A resolution accepting a proposal from Arvest Bank to provide banking services for the City of Fayetteville for one year, renewable for four years.

4. **GRANT ACCEPTANCE:** A resolution accepting 2001 Local Law Enforcement Block Grant Award and agreement to the assurances and certifications and the approval of a budget adjustment.

5. **AIRFIELD PAVEMENT REHABILITATION:** A resolution accepting the low bid of $2,555,442.65 from McClinton-Anchor for the Airfield Pavement Rehabilitation Project. A 5% contingency fee is also included in the total cost of the project. The total project cost is $2,849,608; and approval of a budget adjustment.

B. OLD BUSINESS

1. **CONDITIONAL USE APPEAL:** An ordinance amending Chapter 155, Appeals, to allow an appeal by three aldermen of a decision by the Planning Commission to approve or deny a conditional use. The ordinance was tabled on the third reading at the July 17, 2001 meeting until the Attorney General's opinion was received.

113 WEST MOUNTAIN 72701 501 521-7700
FAX 501 575-8257

C. NEW BUSINESS

1. **RZN 01-14.00:** An ordinance approving rezoning request RZN 01-14.00 submitted by Donna Treat on behalf of Greg and April Robinson for property located at 1245 N. 51 Street. The property is zoned A-1, Agricultural and contains approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential.

2. **VA 01-6.00:** An ordinance approving vacation request VA 01-6.00 submitted by Andy Feinstein on behalf of Marriott Courtyard for property located on Lot 17 CMN Business Park Phase I. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on Lot 17 of CMN Business Park.

3. **VA 01-7.00:** An ordinance approving vacation request VA 01-7.00 for property located at 2483-2485 Jeremiah Place, Lot 7, Coyote Trail Subdivision. The request is to vacate a portion of a 25' wide utility easement.

4. **BID WAIVER:** An ordinance establishing a formal process to allow the purchase of used equipment. The ordinance waives competitive bidding on equipment types. Passenger vehicles, pick-up trucks and vans are excluded.

5. **TREE ORDINANCE:** An ordinance amending Title XV, Unified Development Ordinance of the Code of Fayetteville, to provide amendments to and clarification of various provisions concerning tree preservation and protection.

6. **TOWN CENTER DECK:** A resolution approving an agreement between the City of Fayetteville and the Fayetteville A&P Commission for the City to operate and manage the Town Center Deck in exchange for forty parking spaces.

Meeting of September 4, 2001

RZ LQ.

	Roll.		Consent		
REYNOLDS	✓		✓		
THIEL	✓		✓		
YOUNG	✓		✓		
ZURCHER	✓		✓		
TRUMBO	✓		✓		
~~DAVIS~~	Absent.		—		
SANTOS	✓		✓		
JORDAN	✓		✓		
COODY	✓				

CU appeal — RZ amend KS. 3 dwelling units per acre. 2 units offered by Petitioner.

			Pass		
REYNOLDS	✓		✓		
THIEL	✓		—		
YOUNG	—		✓		
ZURCHER	—		✓		
TRUMBO	✓		✓		
~~DAVIS~~					
SANTOS	✓		✓		
JORDAN	✓		✓		
COODY					
	6-1-0.		6-1-0		

Meeting of September 4, 2001

RZN 01-14 BY RR 2ND KS LD. 3RD PASS					
REYNOLDS	✓	✓	✓		
THIEL	✓	✓	✓		
YOUNG	✓	✓	✓		
ZURCHER	✓	✓	✓		
TRUMBO	✓	✓	✓		
~~DAVIS~~					
SANTOS	✓	✓	✓		
JORDAN	✓	✓	✓		
COODY					
	7-0.	7-0.	7-0.		

VA 01-6 KS LD 2ND LJ KS. 3RD PASS					
REYNOLDS	✓	✓	✓		
THIEL	✓	✓	✓		
YOUNG	✓	✓	✓		
ZURCHER	✓	✓	✓		
TRUMBO	✓	✓	✓		
~~DAVIS~~					
SANTOS	✓	✓	✓		
JORDAN	✓	✓	✓		
COODY					
	7-0.				

Meeting of September 4, 2001

VA01-7	KS LD 2ND	CJ 2ED. ICS.	PASS		
REYNOLDS	✓	✓	✓		
THIEL	✓	✓	✓		
YOUNG	✓	✓	✓		
ZURCHER	✓	✓	✓		
TRUMBO	✓	✓	✓		
~~DAVIS~~					
SANTOS	✓	✓	✓		
JORDAN	✓	✓	✓		
COODY					

Bidwains					
REYNOLDS					
THIEL					
YOUNG					
ZURCHER					
TRUMBO					
~~DAVIS~~					
SANTOS					
JORDAN					
COODY					

TRUMBO	left on 1st rnds				
~~DAVIS~~					
SANTOS					
JORDAN					
COODY					

Meeting of September 4, 2001

Excused.					
REYNOLDS					
THIEL					
YOUNG					
ZURCHER					
TRUMBO					
DAVIS					
SANTOS					
JORDAN					
COODY					

8:35 arrived →

Pawn certificate. RP BD.					
REYNOLDS	✓				
THIEL	✓				
YOUNG	✓				
ZURCHER	✓				
TRUMBO	✓				
DAVIS	✓				
SANTOS	✓				
JORDAN	✓				
COODY					

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3. **ARVEST BANK:** A resolution accepting a proposal from Arvest Bank to provide banking services for the City of Fayetteville for one year, renewable for four years.

4. **GRANT ACCEPTANCE:** A resolution accepting 2001 Local Law Enforcement Block Grant Award and agreement to the assurances and certifications and the approval of a budget adjustment.

5. **AIRFIELD PAVEMENT REHABILITATION:** A resolution accepting the low bid of $2,555,442.65 from McClinton-Anchor for the Airfield Pavement Rehabilitation Project. A 5% contingency fee is also included in the total cost of the project. The total project cost is $2,849,608; and approval of a budget adjustment.

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3 aldermen can appeal

113 WEST MOUNTAIN 72701 501 521-7700
FAX 501 575-8257

C. **NEW BUSINESS**

PASS 4335

1. **RZN 01-14.00:** An ordinance approving rezoning request RZN 01-14.00 submitted by Donna Treat on behalf of Greg and April Robinson for property located at 1245 N. 51 Street. The property is zoned A-1, Agricultural and contains approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential.

PASS 4336

2. **VA 01-6.00:** An ordinance approving vacation request VA 01-6.00 submitted by Andy Feinstein on behalf of Marriott Courtyard for property located on Lot 17 CMN Business Park Phase I. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on Lot 17 of CMN Business Park.

PASS 4337

3. **VA 01-7.00:** An ordinance approving vacation request VA 01-7.00 for property located at 2483-2485 Jeremiah Place, Lot 7, Coyote Trail Subdivision. The request is to vacate a portion of a 25' wide utility easement.

left on 1st reading

4. **BID WAIVER:** An ordinance establishing a formal process to allow the purchase of used equipment. The ordinance waives competitive bidding on equipment types. Passenger vehicles, pick-up trucks and vans are excluded.

left on 1st reading

5. **TREE ORDINANCE:** An ordinance amending Title XV, Unified Development Ordinance of the Code of Fayetteville, to provide amendments to and clarification of various provisions concerning tree preservation and protection.

PASS 12-4-01

6. **TOWN CENTER DECK:** A resolution approving an agreement between the City of Fayetteville and the Fayetteville A&P Commission for the City to operate [redacted] the Town Center Deck in exchange for forty parking spaces.

MINUTES OF A MEETING
OF THE
CITY COUNCIL
SEPTEMBER 4, 2001

A meeting of the Fayetteville City Council was held on September 4, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

ROLLCALL: Mayor Coody, Aldermen Thiel, Young, Zurcher, Trumbo, Davis, Santos, Jordan, and Reynolds, City Attorney Kit Williams, City Clerk Heather Woodruff, Staff, Press, and Audience.

CADIS GROUP: Presentation from CADIS Group.

Mr. John Lewis, Bank of Fayetteville, stated they had started this about four years ago when they started analyzing the economy of Northwest Arkansas. They first tried to analyze the economy that they had to create the economy of the future. They had used Michael Porter's book, *The Competitive Advantage*, to start the analysis. Michael Porter concluded in his book that there was a competitive advantage of regions based on unique skills and talents found in that region. Based on convergence of unusual elements that come about to create dynamic economies in specific locations. Those elements were the genius of the entrepreneur that were found in that area, the productivity of the work force, the competitiveness locally, and the ability of the companies to upgrade their talents and skills. They could see those elements converging in trucking, poultry and retail for residents in their area. The median family income from 1990 to 2001 increased sixty-three percent. To keep that momentum going they need an information technology segment of their economy. They had looked at a specific area where they thought they had a sustainable competitive advantage. One of our unique skills that we have is the Center of Advanced Spacial Technology at the University of Arkansas. A partnership had been formed between CASS, and several other municipal entities in two counties and some private interest. They had received international acclaim in Rome for last year's project. They thought what they were doing had merit. He introduced Malcomb Williams as the mentor and guide for the program.

Mr. Williams introduced the five students who worked on the projects. Mr. Frasier and Mr. Johns presented a power point presentation of their projects for the year. In summary their main objectives were a population growth model for the City of Fayetteville, and a survey study of the Downtown Dickson Enhancement Project or the DDEP Project. In addition to the required projects they completed a several other projects.

Mr. John Goddard, Information Technology Division, stated this was definitely worthy of continuing in the future.

Mr. Conklin, City Planner, stated the kids had done an excellent job on the existing land use study. This was the first step in understanding of where they had residential and nonresidential mixed use. From here they were going to take a look at their ordinances and work with neighborhood organizations and residents within these areas to come up with a working set of regulations that will

protect and preserve what they had downtown.

Mrs. Bootsie Ackerman, DDEP, stated she hoped that they could use this information to overlay with the earlier data that they had when the stated the project to see how far that they had come in five years and help them plan the next five years.

CONSENT AGENDA

APPROVAL OF THE MINUTES: Approval of the minutes from the August 21, 2001 meeting.

SFCDC: A resolution approving the transfer of the property located at 1035 S. Washington Avenue from the City of Fayetteville to the South Fayetteville Community Development Corporation. The funding source for this property purchase was the 2001 HUD Community Development Block Grant.

RESOLUTION 120-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ARVEST BANK: A resolution accepting a proposal from Arvest Bank to provide banking services for the City of Fayetteville for one year, renewable for four years.

RESOLUTION 121-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

GRANT ACCEPTANCE: A resolution accepting 2001 Local Law Enforcement Block Grant Award and agreement to the assurances and certifications and the approval of a budget adjustment.

RESOLUTION 122-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

AIRFIELD PAVEMENT REHABILITATION: A resolution accepting the low bid of $2,555,442.65 from McClinton-Anchor for the Airfield Pavement Rehabilitation Project. A 5% contingency fee is also included in the total cost of the project. The total project cost is $2,849,608; and approval of a budget adjustment.

RESOLUTION 123-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Zurcher moved to approve the consent agenda. Alderman Jordan seconded. Upon roll call the motion carried unanimously.

OLD BUSINESS

CONDITIONAL USE APPEAL: An ordinance amending Chapter 155, Appeals, to allow an appeal by three aldermen of a decision by the Planning Commission to approve or deny a conditional

use. The ordinance was tabled on the third reading at the July 17, 2001 meeting until the Attorney General's opinion was received.

Alderman Young stated there were two sides to this. His opinion and the majority of the people that he had spoken with believed that it would be best to have a recourse to the City Council.

Alderman Santos stated the only real complaint that he had heard was for the appeals to be based on specific finding by the Planning Commission. The way it had been explained to him was that it had to be a de novo appeal. They did not really consider anything that happened at the Planning Commission level.

Mr. Williams stated the other appeal to them were primarily were de novo, when they looked at the other three things that were allowed to be appealed. He thought they could set up the appeals any way they wanted to.

Alderman Young stated for practicality they probably needed to spell out the reasons for appeal.

Mr. Williams stated the Planning Commission had specific guidelines for Conditional uses. They could identify the ones that they disagreed with.

Ms. Paula Marinoni, an area resident, stated she had requested the Attorney General's opinion through State Representative Jan Judy. She stated this had always been presented that this was the law and never before had there been an uproar because someone had been affected by it. She had seen this as an affront on those people who had been adversely affected by this in the past. Her original issue was that she felt it was inappropriate for two alderman from an outside ward to try and change the law because it affected one particular group when this had never been an issue before. Now that the opinion had come back in the favor that this is possible, she was glad. It should be possible for a citizen to appeal to the council and not have to go to Circuit Court. The nature of a conditional use, they were asking for a use in a ward or zone that is not normally accepted in that zoned. The people most likely affected are the people who would not have the means to go to Circuit Court. If they would consider at time the request for three aldermen to bring it forward. She did not want to see this being away to get around the Planning Commission. She suggested the aldermen appealing the conditional use should be from the ward affected, at the very least one person from that ward.

Alderman Zurcher moved to amend the ordinance requiring two of the three aldermen be from the Ward affected. Alderman Santos seconded.

Alderman Thiel stated she wanted to make this difficult. She had a lot of concerns and reservations about doing this. She did like the idea of requiring two aldermen from the ward affected.

Alderman Young stated there was a danger in making it to difficult.

Alderman Thiel stated the only reason she was supporting it was because she had seen where neighborhoods had been affect and they did not have the means to hire an attorney and fight. If they did not make it difficult, they would have every conditional use appeal. She felt this was taking power away from the Planning Commission.

Mr. Hugh Ernest, Urban Development Director, stated he had called Little Rock and asked them to check the number of appeals of conditional uses. Over a year period there had been twelve and fourteen. The majority of them were manufactured housing. It was a singular right of the applicant to make the appeal with no requirement to secure votes from any aldermen or active Board of Directors. He pointed out the use of appeal was not that common. If the Planning Commission did their job and followed the technical conditions that were required for a conditional use, it was usually apparent to the applicant that it was going to stand on its merit.

Alderman Santos stated he supported this because it made the City Council more responsive. It give the people more of a chance. It made them more accountable to the people and having the two alderman from the ward appeal the conditional use made them more accountable to the people of their ward. He added supporting this appeal did not mean that he would vote for it when it came before council. He was willing to listen.

Mayor Coody asked shall the amendment pass. Upon roll call the motion carried by a vote of 6-1-0. Trumbo voting nay.

Mr. Feinstein, an area resident, asked if they had an establishment that was moving from one area to another who would be the affected area.

Alderman Young stated it would be the land.

Mr. Feinstein asked why they were limiting it to only conditional uses.

Alderman Zurcher stated other appeals were allowed.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 6-1-0. Trumbo voting nay.

ORDINANCE 4334 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

RZN 01-14.00: An ordinance approving rezoning request RZN 01-14.00 submitted by Donna Treat on behalf of Greg and April Robinson for property located at 1245 N. 51st Street. The property is zoned A-1, Agricultural and contains approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential.

Mr. Williams read the ordinance for the first time.

Alderman Thiel stated the Planning Commission and staff had recommended this rezoning. It would enable the applicant to build a single family home.

Mr. Conklin, City Planner, stated there was currently one single family home on this tract. They intended to divide the property and build one additional single family home.

Alderman Zurcher asked if they had any lower density zoning.

Mr. Conklin stated there were other zonings, however, those required additional street frontage. It would be difficult to use the other zonings. They tried to encourage applicants to apply for zonings that they intended to use the property for. In this case they were limited on the amount of frontage. It was long and narrow. The other zoning districts would not work in this situation. Zoning regulated the lot area and lot width. They made sure that each lot had the proper area.

Alderman Thiel moved to suspend the rules and move to the second reading. Alderman Jordan seconded. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the second time.

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

Mr. Williams read the ordinance for the third and final time.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously, 7-0.

ORDINANCE 4335 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

VA 01-6.00: An ordinance approving vacation request VA 01-6.00 submitted by Andy Feinstein on behalf of Marriott Courtyard for property located on Lot 17 CMN Business Park Phase I. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on Lot 17 of CMN Business Park.

Mr. Williams read the ordinance for the first time.

Mr. Feinstein stated the new easements would be on the easement plat.

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

Mr. Williams read the ordinance for the second time.

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

Mr. Williams read the ordinance for the third and final time.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously, 7-0.

ORDINANCE 4336 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

VA 01-7.00: An ordinance approving vacation request VA 01-7.00 for property located at 2483-2485 Jeremiah Place, Lot 7, Coyote Trail Subdivision. The request is to vacate a portion of a 25' wide utility easement.

Mr. Williams read the ordinance for the first time.

Mr. Greg Brachman, applicant, explained they had provided the city with a site plan for their building permit. He had hired a draftman to draw the site plan. This particular lot was located on a cul-de-sac which was at an angle. He had three straight boundries. They had used the site plan to lay out the footings. Those all matched. When they completed the project and had the property surveyed, at that time. They discovered the draftsman had made an error on the front of the property which had a curve.

Alderman Thiel stated this was an honest mistake.

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

Mr. Williams read the ordinance for the second time.

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

Mr. Williams read the ordinance for the third and final time.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously, 7-0.

ORDINANCE 4337 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BID WAIVER: An ordinance establishing a formal process to allow the purchase of used equipment. The ordinance waives competitive bidding on equipment types. Passenger vehicles, pick-up trucks and vans are excluded.

Mr. Williams read the ordinance for the first time.

Alderman Young questioned the last section. He asked if this ordinance would cease to exist.

Mr. Williams stated he would say that it would be automatically repealed at that time. In fact, any renewal would have to change the years it was effective for any way. It was only effective for 2001 and 2002. They would have to rework the ordinance in order to continue the same practice.

Mayor Coody stated the main reason they wanted to do this was to build in some flexibility to make sure that this system worked for them. If it did not work well, then they would be able to modify it.

Mr. Williams stated he thought it was legal to put in a sunset clause where something becomes out of date at a certain time.

Mr. Boettcher, Public Works Director, stated they thought this was a nominal dollar value to select right now and to see where their used equipment market is. It may not be enough or it might be more than enough. In that case they could adjust it based on actual history.

Alderman Thiel clarified that from hereon out that the Council would not be required to approve these purchase, where now they are asked to approve the purchases.

Mr. Boettcher stated in the past they had came in with emergency readings and those other measures to try and purchase used equipment that was setting there, which would go to the first offer. This will give them a mechanism to convene the Equipment Committee and secure their approval and the mayor's approval on any equipment. Typically they solicited multiple quotes whenever possible.

Alderman Thiel asked if this was going to require the Equipment Committee's approval.

Mr. Boettcher replied absolutely.

Mr. Williams stated there had been several ordinances brought to them and they all had emergency clauses on them. He was concerned that in fact it was not a good enough emergency, if someone were to challenge one of these. He thought it would be better to have a procedure set in place, where the Equipment Committee would look at this and have established procedures and then they could amend this at any time. He felt uncomfortable writing ordinances with emergency clause just to save money. That was not one of the provisions that the Supreme Court recognized as an emergency.

Alderman Reynolds stated the best process was the bidding process. He question section two, establishing procedures.

Mr. Ted Webber, Administrative Services Director, stated he had drafted a form to tract the accumulative amount, with the names and dates of the committee members that vote on each piece of equipment rather than vote on a list of equipment. They had envisioned some tight controls over this process.

Alderman Reynolds stated they were already on a tight budget. He was not in favor. He thought they needed to leave it as it is.

Alderman Santos asked if anyone could remember the Council turning down an Equipment Committee recommendation. As far as he could member the Council had always passed the Equipment Committee's recommendation.

ORDINANCE LEFT ON THE FIRST READING.

TREE ORDINANCE: An ordinance amending Title XV, Unified Development Ordinance of the Code of Fayetteville, to provide amendments to and clarification of various provisions concerning tree preservation and protection.

Mr. Williams read the ordinance for the first time.

Ms. Kim Hesse, Landscape Administrator, presented the main revisions to the Tree Ordinance. In the Purpose section they added Principles. The main reasons for adding those principles was to clarify the intent of the ordinance. Preservation will be the first, best, and standard approach. If they could not preserve, there were other options. They did not want to eliminate those options. The rest

of these were alternatives to preservation, in order of preference. The current ordinance covered residential and non-residential subdivisions, large scale development, building permits for non-residential construction only, grading permits for one acre or more and parking lot permits. The only changes on the proposed ordinance was two items: all grading permits, although, they had asked for the exclusion of single family and duplexes, but all other grading permits and building permits of multi-family construction composted of three units or more, unless they were large enough to go through the Planning Process. Tree Preservation Criteria, this clarified the process of recommendation to Planning Commission, City Council and to the public. The criteria was a list based on sound responsible design practices. It provided a consistent review between development and landscape administrators. This was based on sound urban forestry practices as well as planning. The canopy percentages have not changed at all. What has been a point of confusion was that these percentages were off of the entire site. The square footage of the entire site. They were not taking fifteen percent of the existing canopy. They were asking for fifteen percent of the entire site in existing canopy. One thing that had been added was that twenty-five percent minimum canopy requirements be added for non-agricultural uses in A-1. They got a lot of conditional use request where they were putting a commercial or industrial use on agricultural site. Prior Tree Removed basically remained the same. A lot of the public felt that this was not a strict enough aspect of the ordinance. It was difficult to prove the reasons behind prior tree removal. She thought their current clause was substantial enough. What changes this and makes it more substantial was that they had to mitigate. The replacement requirements were much stricter with the proposed ordinance. They had to replace the trees on the site at a higher level, so that it did impact the development that they were proposing for the site. The higher quality canopy that was lost, required a higher number of trees for replacement. Canopy shall be preserved based on three categories and prioritized. The ordinance required the high priority trees should be preserved above others and through a series of submittal plans they could prove that they could not save a high priority, if they could prove that then they would have to save as much of the mid-level or low level as possible. Tree Preservation Requirements for subdivisions had not really changed. The intent is to leave undisturbed as many trees as possible. Tree preservation for non-residential subdivisions they had brought in two separate options. One, for the preservation of the entire subdivision. The other was preservation of infrastructure only. Basically, the entire subdivision was what they had now. The developer has the option of finding the tree preservation that works with his development and to put that in a protective easement as future lots are sold and developed. The other option, was for infrastructure only. What this developer would do was give them a tree preservation for only the areas of the property that were impacted by construction for infrastructure. With this ordinance they looked at the amount of land affected by putting in the roads and utilities and factor in the square footage and then mitigate for what they had to remove. The idea was to work with only the area that they had to in order to get their roads and utilities in and to completely stay off the rest of the lot. Not speculative grading for future lot. The only grading was what was needed for drainage. Each individual lot owner as they made improvement met their percentage as they developed their lot. Submittal of Plans, they had added a couple of tools for design and recommendations for tree preservation. Those were site

analysis and analysis report. Those were required only of large scale development and subdivisions. The larger projects went through their full review process to the Planning Commission. Building Permits and Grading Permits, all they needed was an abbreviated tree preservation. The site analysis was a graphic depiction of the natural and manmade elements that impact the developments design. What they were asking that they use the natural features to help drive the design, specifically tree canopy. The analysis report puts in writing. This allowed them a tool to explain why they were doing what they were. It also allowed the city to have on file the reasons why a recommendation was made for or against the preservation of a tree. Mitigation Option has been changed. Mitigation would be requested on the pretense that on-site preservation had been prevented. Those trees which are replaced must be a native species to North America and planted in locations that were most environmentally beneficial and be given the space needed to thrive. The trees required to be planted in compliance with other development requirements shall not be counted towards forestation. On a commercial subdivision if they had to replace canopy they could not count the tree that they were required to put in for their parking lot requirement or commercial design standard requirement. Often, if they counted those trees they would meet and exceed replacement requirement. There was no incentive to preserve, because they could meet their replacement by meeting their other landscape requirement. The idea is to first and foremost preserve, then if they could not preserve that they mitigate on their site. If this was not possible they may preserve off site. If all those options failed, then there was the tree escrow account which was held by the city. The tree escrow account would allow them to plant trees in the rights-of-way or within the limits of the city. She added they were also asking for a tree establishment bond. It took most trees three years to be on their own after that they should have enough of a root system to handle less care. All plans requesting on site mitigation or off site forestation shall include a maintenance plan which would be supported by some type of bond or letter of credit. After three years the bond can be released. The Landscape Administrator's recommendation will be backed up by a standard form which would state if it was approved, disapproved or approved with conditions. The form would include a statement about the appeal process, that is to appeal an administrative decision. There was no other outline for that. She was the final say. There was not a standardize system to appeal that decision. Now they were establishing that, and it was included on the form. Continued preservation and protection of the tree preservation plan, no person shall damage, destroy, transplant or remove any tree or group of trees once preserved or planted under an approved tree preservation without expressed approval by the City Council. This provided assurance that the trees will remain under preservation. They would show this on an easement plat or final plat, which was filed with the county or the city. They would also put it on our GIS System to cross reference. These changes were written in the spirit of the original ordinance to make it more valid and more clear and easier to enforce.

Alderman Davis arrived for the meeting.

Mr. Whitaker, Assistant City Attorney, stated when the term "chapter" is used it means Chapter 167.

Alderman Young asked if they were going to exempt single family and duplexes from the entire chapter.

Mr. Whitaker replied yes.

Alderman Young expressed concern about the wording regarding "through the actions of a third party".

Mr. Whitaker replied they would not require a developer to replace a tree that had been protected, if it had been damaged by an automobile accident or by vandalism by a third party. They did not feel is was fair to hold them accountable for third party forces.

Alderman Young stated he was worried about the developer who would get a third party to go out there and take the trees out.

Alderman Thiel questioned having "nut tree" under the definition "relic orchard." This concerned her because she did believe nut trees could be considered low priority.

Mr. Whitaker stated it was a procedural matter. The memo suggested that change.

Alderman Young asked in a commercial subdivision if they had to meet certain tree canopy preservation. It was sliced into lots and approved. When each individual lot was developed, what would happen to those lots.

Mr. Whitaker stated it was based on which of the options was approved for the non-residential subdivision. Preservation of the entire site, was 15% would be designated and set aside up front.

Alderman Young asked what would happen to that 15% when each lot was developed.

Mr. Whitaker stated the entire required percentage was preserved under that option, that became the tree preservation plan for the entire site and the individual lots do not submit new preservation plans at large scale development. They were bound by what the subdivider did. The second option, infrastructure only option, the idea is to reduce initial disturbance. The actual disturbance of land was for roads, utilities, etc. Under that approach the developer is only liable for those trees in the path of the streets and utilities. Nothing can be done to any of the other trees during the subdivision process. They could only take out the trees needed for the infrastructure under this option. The rest of the trees were protected until the large scale development. The large scale development would then be required to submit a tree preservation plan for their lot.

Alderman Young asked where the successor in interest came in.

Mr. Whittaker stated the particular language was eliminated because it had become such a legal nightmare. Its best descendent was under continued preservation and protection of approved tree preservation plan. There was a suttle legal shift here. Where the old successor and interest clause only allowed enforcement of tree preservation based on your relationship to the original developer, what they attempted here was to no longer tie enforcement to their relationship to the original developer. It basically said that no person shall remove trees from the area. The closest thing to successors and interest was "as to notice only" it was an opportunity for subsequent purchasers to be put on notice that a tree preservation area existed there. Enforcement was not tied to the particular relationship.

Alderman Davis expressed concern about "prior tree removal". It looked like there would be a problem with agricultural land. He wanted to make sure that they did not get themselves into a lawsuit. If someone was growing crops or whatever and the property came into the city and all of a sudden they were giving them a penalty. The way the ordinance read that was a possibility.

Mr. Whitaker stated that it was a possibility. The original wording of the agricultural exemption gave far to much unfettered discretion to the Landscape Administrator. It was probably unconstitutionally vague that it did not specifically define either agriculture or legitimate agricultural purpose. He recommended it be deleted. There already existed within the regulatory regime the opportunity to seek a variance and appeal, rather than have a specific appellant right based on this one subsection of the ordinance.

Alderman Davis stated he want to see something in here to exclude residential lots.

Mr. Whitaker stated that should not be a concern, because that was not how a residential subdivision was addressed under the new subdivision. Basically when homes are built trees were either removed or damaged during construction. The provisions of this ordinance would provide that the trees are planted after the subdivision is built out. And those would be trees that would be planted with the tree escrow account.

Alderman Davis stated that was why he wanted single family and duplexes excluded. He questioned high priority canopy.

Ms. Hesse explained basically a large tree equates to about eight replacement trees.

Alderman Davis asked if the landscape administrator determined where the trees would be planted in the tree escrow account.

Mr. Whitaker replied she would be part of the process. It would be based on the recurring tree inventory.

Alderman Zurcher asked what the penalty would be to cut a tree in a preserved area.
Mr. Whitaker stated the penalty remained the same. The state limited the amount of fines classified as misdemeanor.

Mr. Williams stated he did not believe that removing a tree destroyed a tree protection area. The tree protection area would remain. They still could not build on that.

Alderman Davis stated a copy of the certificate would be hard to enforce. It was difficult to get that for general liability and workman's compensation. He did not know how they were going to get it for tree pruning.

Ms. Hesse stated that was part of the current ordinance. She received a lot of comments on that. They were requesting the public to be the watch dog. If someone was pruning their tree, they needed to ask if they had liability. The idea is to protect the home owner, but they were not out.

Alderman Davis stated just because they asked, did not mean that they were going to receive a copy. It was hard for them to get that.

Alderman Trumbo asked what the criteria was to determine if a tree was diseased.

Ms. Hesse stated she brought in professionals to assess the hazards of it.

Bob Jordan, an area resident, stated there was one big problem with the ordinance which had to do with residential development. Builders were a problem when it came to tree preservation. The developer can do what the city requires, knowing full well that the builder was going to come right behind him and cut down trees that were preserved. He did not understand why the builders were separate from the developers. They were not the land owners, they were temporary owners, but they were given full property rights. Builders needed to be brought into this ordinance the same as developers. People were buying wooded lots that the trees died within three years, because the builder did not know what they were doing. Builders should have some schooling on how not to damage trees. He would like to see a requirement for trees to be left outside the footprint plus ten feet. Builders needed to be educated so they were not damaging trees. Huge trees were being transplanted. He thought they needed to look at that as an option. Tree size should not be the only criteria for determining a significant tree. He thought it was also important for them to look at fines. He would like to see them increased to get the attention of developers.

Ms. Frances Langham, an area resident, stated she was concerned about the home owners. People wanted trees. She was concerned about the results of the ordinance on the home owner. She asked if single family was exempted.

Alderman Young replied they were planning on changing it.

Ms. Langham asked how this would affect property that had not been platted. What would be the requirements for the single family property owner? It should be made clear. She asked if she could tell her clients if they could do what they wanted with their property.

Mr. Williams stated they did not need to file a tree preservation plan unless they were required to file for one of these permits. They apply for all non-residential construction and the construction of multifamily residential construction, specifically leaving out any requirements for a permit for a single-family home or for duplexes. He believed that had already been taken care of by the committee. It was possible if they did a lot of grading on their property that they might have to do any abbreviated plan.

Ms. Hesse stated that they never intend to include single family.

Ms. Langham stated it was then her observation that this did not apply to a lot that had been developed and plated prior to this. This appeared to be a new detailed regulation.

Mr. Butch Green, an area resident, stated he would encourage them to pass the amendment to exempt single-family residents. Under the abbreviated tree preservation plan, he encouraged the city attorney to look into the laws for the
State of Arkansas dealing with professionals that were required for certain items. If this was a commercial development that was not following under large scale development. They city could be violating state law if they were exempting having professionals involved in parts of this.

Mr. Williams stated if State law required it, then State law would do it regardless of what their law said.

Mr. Green stated there could be some people who could get into some deep water at times, if they had people without professional credential. They could end up before one of the State Boards with some large fines from the stand point of following city ordinances rather than state.

Mr. Williams stated he was sure the professionals knew the requirements of the state law that they had to operate under.

Mr. Green stated that he would be surprised. On agricultural, the timber that was on the property is an agricultural product and commodity. If someone bought the land of harvesting that commodity and then turning it into a commercial subdivision, if that land was zoned agricultural it was a commodity.

Mr. Gary Combs, an area developer, stated he had a sign posted on his property which read no trespassing, no hunting, no fishing and no tree hugging. As a developer he understood that he had preserve as many trees as possible. There were people who wanted to take control of his land and their land. This was called a tree ordinance, but it was setting aside land as taking land and their property rights. If they passed this ordinance and they wanted to come on his land, he was going to suggest that they buy it and then they could set aside as much of land as they wanted at its appraised value, then they could set aside as much of it as they wanted. He would challenge them if they tried to enforce this ordinance on his property. He would give them the law suit they were looking for.

Mr. John DuVal, an area resident, stated this was not a new law or ordinances. There were very few new differences. The differences involve enforcement. The percentage levels have not been raised. He had suggested an alteration. He felt the intention was not clear when they offered the option for the development for meeting the requirements of the ordinance. His suggestion for 167.4F. Non-residential subdivisions, In order to maximize the preservation of tree canopy and to save cost to the developer, two options are available for establishing a tree preservation plan for the development of non-residential subdivisions. The plan that will potentially preserved the largest amount of canopy shall be encouraged. And the Tree and Landscape Administrator shall base their recommendation on one option over the other on the tree preservation criteria listed on 167.04 of this ordinance.

Mr. Pete Hinsleman, an area resident, stated under option B for non-residential development the developer had to replace tree he removed to put in roads and easements. The remaining property was then divided into lot and then each lot owner would apply for the tree preservation requirement for each separate lot. One of the difficulties that could arise from this option was that they could loose the fifteen percent of preservation.

Mr. Bill Dollar, chairman of the Tree and Landscape Advisory Committee, reiterated their support for the passage of the revisions for this ordinance. He read a letter from the committee.

Mr. Dale Holland, an area resident, stated he believed they had their priorities confused in Fayetteville, he believed a tree program should be one of their highest priorities. Planting trees and landscaping would make Fayetteville the garden spot of Arkansas and improve their quality of life and help continue their income economic prosperity. Instead of a tree program they were presented with a divisive tree ordinance and enforced by police power they would guarantee a continued feud in the future. They should be working together to preserve and plant trees. They needed to stop the madness and throw the ordinance out and develop a tree program. If each citizen in Fayetteville planted one tree each year they would have fifty thousand new trees annually.

Ms. Colleen Gaston, an area resident, stated she basically supported this ordinance and the proposed revisions. The second option for non-residential subdivision, she stated the language in the passage

was a little confusing. It was not clear to her if someone was allowed to proceed under that option and had to do mitigation, how and when did the mitigation occur? Her other concern was the provision regarding continuing preservation and protection. There was no longer a requirement or suggestion of a filing of a document at the court house showing the areas were preserved. Her concern was that when individual lots were being sold or developed people were not going to look at large scale development. She suggested they require some permanent record filed at the court house that would show what areas have been preserved for trees. She suggested some sort of reference on the deed description that referred to the tree preservation plan that applied to non-residential lots within a subdivision.

Mr. Robert Farrell, an area resident, asked the council to consider the average citizen and home builder and the possible effects this could have. It needed to be more user friendly. They did not want to drive people to the outside. He thought they needed to stop that. They needed to be reasonable. In reading it he felt it was overly restrictive. He asked them to look at it and make it more user friendly.

ORDINANCE LEFT ON THE FIRST READING.

TOWN CENTER DECK: A resolution approving an agreement between the City of Fayetteville and the Fayetteville A&P Commission for the City to operate and manage the Town Center Deck in exchange for forty parking spaces.

Alderman Reynolds moved to approve the resolution. Alderman Davis seconded.

Mr. Bemis, an area resident, stated if congratulated the presentation earlier and added if they could get to that level with their parking and all the other design principles, they would have really come a long way.

Mr. Jeff Erf, an area resident, asked where the city employees parked before the Town Center was built.

Mr. Dumas, Utilities Director, replied they had parked in several dirt lots near the Town Center. They were leased lots.
Mr. Erf asked if this was a fair exchange for the city.

Mr. Dumas stated they were not managing the parking center, they were operating it for the A&P Commission. Their purpose was to do only minor repairs to the gates, keep the garage clean and to collect revenues daily and to operate the publicly lease spaces. They were not a manager, they were only the operator.

Alderman Davis stated forty spaces equaled between sixteen hundred and two thousand dollars per month.

Mayor Coody stated Ms. Crosson would be operating it, her rational was that if they let the A&P Commission operate the parking deck, then there would be two parking authorities downtown and it might be confusing to people.

Mr. Erf asked if the forty parking spaces were permeant parking spaces. If there was an exhibit or convention at the town center would they have to park somewhere else.

Alderman Davis stated this was a six month contract at this point.

Mr. Dumas stated if there was an event in the Town Center and it required the use of all the parking spaces, then they would move for that day. The plan now was that they would move to the top of the Hilton Deck and the A&P Commission would pay the three dollar rate there.

Alderman Jordan asked who would get the forty spaces.

Mr. Dumas stated they would be assigned by Ms. Crosson. The primary purpose was to get the second sift police officers, that was when they had the duel use of spaces around City Hall. It would not be first come first serve.

Alderman Jordan stated he was concerned that they would have forty parking spaces with one hundred people who bought a sticker.

Mr. Dumas stated the City would have forty passes.

Upon roll call the motion carried unanimously.

RESOLUTION 124-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Meeting adjourned 10:20 p.m.

MINUTES OF A MEETING
OF THE
CITY COUNCIL
AUGUST 21, 2001

A meeting of the Fayetteville City Council was held on August 21, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Mayor Coody, Aldermen Jordan, Reynolds, Thiel, Young, Zurcher, Trumbo, and Davis, City Attorney Kit Williams, City Clerk Heather Woodruff, Staff, Press, and Audience.

Mayor Coody stated he wanted to explain some of the options regarding the Wastewater Treatment Project. There were basically three options, the three-quarter percent sales tax, sewer rate increase, and the third option was to go to the open market. With any of the three scenarios they would see, in the year 2004-2205, approximately a twenty-nine percent rate increase with their sewer bills because the one hundred and twenty-five million dollar bond issue will pay for the construction of the new system. One-third of which is the new plant, two-thirds was rebuilding their aging infrastructure. The rates will be increased for maintenance. The bond issue will build the new system, but it will not operate it. If they approved the sales tax, the total interest that would be accrued will be twenty and one half million dollars. With the State Revolving loan at twenty years the interest will be just under forty-seven million dollars. If they had to go conventional, the interest payment would be seventy-two million dollars. There would be a meeting August 23 at the Continuing Education Building at 6:30 p.m. regarding the environmental assessment. There was a lot of information that they needed to get out. This was the biggest issue facing Fayetteville. He wanted all the citizens to be clear in regards to this matter.

CONSENT AGENDA

APPROVAL OF MINUTES: Approval of the minutes from the July 31 and August 7, 2001 meetings.

STEPHENS INC.: A resolution authorizing additional continuing services from Stephens Inc. to provide continuing financial advisory services on the Wastewater System Improvements project financing. The rate per hour is $225.00 and is restricted to certain identified individuals. The authorization requested is not to exceed $15,000 and will be paid from the project budget.

RESOLUTION 114-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BLACK & VEATCH: A resolution authorizing additional continuing services from Black & Veatch to provide continuing system rate analysis services for the City in conjunction with the Wastewater System Improvements Project. The authorization requested is not to exceed $20,000.00 and will be paid from the project budget.

RESOLUTION 115-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

GRANT AGREEMENT: A resolution approving a sub-recipient grant agreement to the Project for Victims of Family Violence.

RESOLUTION 116-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SFCDC: A resolution approving a sub-recipient grant agreement with the South Fayetteville Community Development Corporation.

RESOLUTION 117-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Zurcher moved to approve the consent agenda. Alderman Jordan seconded the motion. Upon roll call the motion carried unanimously.

OLD BUSINESS

SHEWMAKER: A resolution approving a budget adjustment in the amount of $76,436.00 to pay for the City Council's counter offer made at the Special City Council Meeting on July 31, 2001 to settle the Shewmaker case which has been accepted.

Mr. Williams stated that he had received formal notification from the Shewmakers accepting the counter offer which had been presented at the Special City Council Meeting on July 31, 2001. Therefore, they had a contract with the Shewmakers to settle the case. The city council needed to approve the budget adjustment so that this contract could be carried out.

Alderman Young asked what would be the ramifications if they failed to pass this budget adjustment.

Mr. Williams stated they would be breaching a contract. Once there has been an offer and an acceptance then they had a contract. The contract is enforceable by either party. If they tried to back out they would go to court, the city would lose and would have to pay.

Alderman Trumbo stated it had been Mr. Williams advice to not accept the settlement offer.

Mr. Williams stated that he had advised the council that this case should not settle, but that did not make any difference. They had not always followed his advice. They had a contract, which must be paid. The decision on whether or not to settle was a judgement call. He did not argue with the council not making the settlement offer, after all it was only fifteen percent of the original claim. In response to questions from Alderman Trumbo, Mr. Williams estimated it would have cost Fayetteville ten thousand dollars to try the case for expert witnesses. The settlement insured them that they would not have any larger judgement facing them. He did not recommend this settlement, but he did not think that it was a bad offer.

Alderman Zurcher moved to approve the resolution. Alderman Jordan seconded. Upon roll call the motion carried by a vote of 5-2-0. Reynolds and Trumbo voting nay.

RESOLUTION 118-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ANX 01-2.00: An ordinance approving annexation request ANX 01-2.00 for property located east of Sunshine Road and South of Mount Comfort. The property is in the planning area and contains approximately 14.47 acres. The request is to annex the subject property into the City of Fayetteville. The ordinance was left on the first reading at the August 7, 2001 City Council meeting.

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

Mr. Williams read the ordinance for the second time.

Alderman Jordan stated he would like to have explained to him how they could have a sewer treatment plant that was over taxed and yet they continue to develop at a very rapid rate. What concerned him was the fact that every development that they put on was like driving a nail in the coffin of the sewer treatment plant and that concerned him. In this city he thought they had come to a point where they develop smart growth here. It has come time for the business people and citizens and the pro-growth and the anti-growth people to sit down at the table and decide which way we were going to go in this city. They could not have it both ways. They could not say they had a problem with the sewer system and continue to develop at a rapid rate. He asked the developer if they were going to develop this property if they annexed or not?

Mr. Bill Helmer stated they would develop the land. This property adjoined other property which had already been annexed and the preliminary plat had been approved. This would be an extension to that parcel. It was adjacent to the Bridgeport Subdivision.

Alderman Jordan stated if the city did not annex this land and put it under city regulation, that they would develop under county regulation, which was basically none. It concerned him on where this would stop. He asked for someone to address his concerns.

Alderman Trumbo stated legally they could only impose a moratorium for a certain period of time.

Mr. Williams stated they were not under any requirement to annex land. If they had a moratorium on rezoning or development it had to be a fix amount of time. There also had to be a reason behind it. They had to be working on a solution or have some reason why they had to have a moratorium. If no new plant was authorized or built then they would be facing a moratorium. The EPA would require them to have one. There was no requirement for them to take land in that was a call that this council made.

Alderman Trumbo stated he had been under the impression that with the existing Noland Plant it was not a certain gage that said they could not take any more. It was a best guess effort based on calculations and flows. There was not a gage which stated they could not take any more. They receive fines for overflows.

Alderman Young stated the city had looked at what could be developed. They knew the capacity of the plant, so what they have been doing is monitoring each of one of these subdivisions. As a subdivision came in they would reduce the number of units. They kept a running total of the how much capacity is left at the plant. There was still some capacity at the plant now. It kept shrinking. They also had a safety factor built into their numbers. It was only an engineering guess.

Mr. Bill Helmer stated the existing Fayetteville infrastructure was on the property. There had been a condemnation across this property to provide sewer. The existing sewer for Bridgeport and Field Stone and some of the other area, the line that supported it ran across this property. Those easements were controlled by the city. There was not a void of infrastructure for this area. In addition, requirements had been made to stub into this property. He was sure that the reason those requirements had been made was because of the presence of existing infrastructure. The city had planned many years ago for this line to go to the lift station.

Alderman Thiel stated that was real important. This whole development has been planned. This was not a new area that they were annexing. This had been planned. It concerned her that they would develop the property whether or not it was annexed. They did not want to see septic tanks out there.

Alderman Jordan asked where it would stop.

Alderman Thiel stated in this area it all tied together. It was something that has been planned. Another point was that the park land dedication that this development would add would fill in some links in this area. She was in favor of this annexation, even though she did agree with a lot of his points.

Alderman Jordan stated he was not anti-growth, but he did believe that growth could be contained.

Alderman Thiel stated she believed this was smart growth.

Alderman Davis stated every person who came through with a subdivision that there was no guarantee that they will be allowed to hook up.

Alderman Zurcher stated there was a difference between smart growth and planned sprawl. Just because it was planned did not mean that it was smart. The infrastructure was there when it comes to the pipe, but the infrastructure they were really talking about was the capacity. He thought they should really consider this annexation and what the impact was really going to be.

Mr. Conklin stated the Assistant Public Works Director did calculate every year the remaining capacity of the plant based on what the Planning Commission had approved. They were keeping track of what was approved at Planning Commission and the excess capacity they were planning for. There was a 500,000 gallon safety amount which was being held back also. Last January, it had been estimated that there were two years left based on the current growth that they were seeing in Fayetteville. They were making sure developers signed a form stating that the city could not guarantee sewer capacity in the future. They were keeping track of those numbers.

Alderman Thiel asked if the estimates were based on estimated growth.

Mr. Conklin stated they were based on everything approved by Planning Commission, plus growth that occurred on in-fill situations. They were backing out everything that the Planning Commission approved. There was capacity left for what they were approving currently, but at some point they would need to discuss what happened when they reached the number. They were trying to keep a close eye on things.

Mr. Earnest stated one of the things that they hoped they could get to as a public dialogue beginning September 11, 2001 was a discussion about smart growth. There was a lot of misconceptions about it. One reality was that it was not no growth. It was reasoned reasonable growth or sustainable development. Was it development that they could sustain over time without spending to much public money. That was part of the issue when they talked about sprawl is that could they continue to sustain leap frog development. The other reality, though, for any city in America is that those cities that did not capture their growth begin to die. Those cities that did not capture their growth by some mechanism began to wither and die. There was not an easy answer. The reason they had planning areas was so that they could control the growth that they reasonable expect to annex. In earlier years many cities in Arkansas were surrounded by substandard streets and sewers. What they had here was a way to capture it. The question was what inducements and encouragements could they put in place as a public body to encourage people to come back in and do things like in-fill and revitalization of the downtown areas. Most cities since WWII have declined in density and have moved out. The challenge was to make people want to come back in live in a closer relation to each other. The city was bringing in Mayor Brent Coles, Bois, Idaho, to talk about smart growth.

Alderman Trumbo moved to suspend the rules and move to the third and final reading. Alderman Thiel seconded. Upon roll call the motion carried 6-1-0, Zurcher voting nay.

Mr. Williams read the ordinance for the third and final time.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 5-2-0. Jordan and Zurcher voting nay.

ORDINANCE 4331 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 01-11.00: An ordinance approving rezoning request RZN 01-11.00 submitted by Phillip Humbard of Engineering Services on behalf of Cross Creek Subdivision for property located east of Sunshine Road and South of Mount Comfort Road. The property is zoned A-1, Agricultural, and contains approximately 14.47 acres. The request is to rezone to R-1, Low Density Residential. The ordinance was left on the first reading at the August 7, 2001 City Council meeting.

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

Mr. Williams read the ordinance for the second time.

Alderman Davis moved to suspend the rules and move to the third and final reading. Alderman Trumbo seconded. Upon roll call the motion carried by a vote of 6-1-0. Zurcher voting nay.

Mr. Williams read the ordinance for the third and final time.

Alderman Zurcher stated he believed this to be urban sprawl and what they had done now was annex it to the city and they were getting ready to put it to, what he considered to be, a non-beneficial use to the city, which was dense development on the edge of town. He would be voting against it.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 5-2-0. Jordan and Zurcher voting nay.

ORDINANCE 4332 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

BOYS & GIRLS CLUB: A resolution approving an agreement with Fayetteville Youth Center Inc. d/b/a Fayetteville Boys & Girls, Inc. of Washington County.

Alderman Trumbo stated he would like to thank Tom Stockland and Kevin Renner because when they applied for this money this was a project where they were looking at only spending ten cents on the dollar of public funds to provide what is the most state of the art Boys and Girls Club facilities in the United States. This project would not have been possible without the donations from the Reynolds Foundation. Only seven of the three thousand projects which were submitted were funded.

Mr. Mike Hill stated it was a three page agreement. The basic understanding was that the city would be providing funding for the development and the improvements on this property, which primarily had to do with two game type fields, lights, bleachers, parking, drainage swell. There would be a

walking trail around the perimeter, which would put some of the property in the easement areas around the edge of the property. All this would be available to the public. They would have outside bathrooms during the hours they were open. They planned on being open seven days a week. They will be responsible for maintaining that property and paying the utilities and scheduling the use of the property.

Alderman Trumbo asked other than the million one of city dollars toward the infrastructure, there was not other tax or taxing mechanisms that would be used for this project.

Mr. Hill stated they had received correspondence from the Reynolds Foundation.

Mr. Tom Stockland stated they had received word from the Reynolds Foundation that upon execution of the agreement that the council was considering tonight, preconstruction funding for the Donald W. Reynolds Boys and Girls Club will be reinstated as soon as that executed document can get signed by the principle parties and sent to Las Vegas.

Mr. Williams stated they have had this agreement in principle for a long time. The only thing that they had to do was get it in writing.

Mr. Earnest stated that as a fiscal responsibility the city has and will make some considerable changes in its 2002 and 2003 CIP Program. It was a correct change in their expenditure pattern. They were spending $680,000 that had been programed for other areas. He thought they were going to get an excellent facility for the amount of money they were putting in.

Alderman Davis moved to approve the resolution. Alderman Jordan seconded. Upon roll call the motion carried unanimously.

RESOLUTION 119-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 01-13.00 An ordinance approving rezoning request RZN 01-13.00 submitted by Kirk Elsass on behalf of HCL Properties for property located south of Zion Road in HARB-CO Subdivision. The property is zoned R-O, Residential Office and contains approximately 1.4 acres. The request is to rezone to C-1, Neighborhood Commercial.

Mr. Williams read the ordinance for the first time.

Mr. Kirk Elsass stated this was going to be a baseball batting facility on the east side of town. He thought that it would be a great compliment to the area.

Alderman Davis stated the Planning Commission had approved this 6-0. He thought it would be a great addition to the community.

Alderman Trumbo moved to suspend the rules and move to the second reading. Alderman Reynold seconded. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the second time.

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

Mr. Williams read the ordinance for the third and final time.

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

ORDINANCE 4333 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

The meeting adjourned at 7:20 p.m.

CC 9/4/01
FILE

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September 4, 2001
Delivered by Hand

Planning Commission
City of Fayetteville
113 W. Mountain St.
Fayetteville, AR 72701

RE: Proposed Revision of the Tree Protection and Preservation Ordinance

Dear Sirs and Madams:

I would like to again express my gratitude to the committee members who spent many long hours working on the proposed revision of the Tree Protection and Preservation Ordinance and to the members of the Planning Commission for their efforts in consideration of the proposed revisions. I also appreciate the opportunity to submit to the City Council the following comments on the proposed revised ordinance. These comments supplement the written comments I submitted to the Planning Commission on August 20, 2001, regarding a prior version of the proposed revisions:

1. UDO § 167.02 provides in part that "The Landscape Administrator . . . shall promulgate and periodically revise forms, procedures, and regulations to implement this chapter, . . ." (Emphasis added). I do not believe that the Landscape Administrator has the legal authority to promulgate regulations.

2. UDO § 167.04 F.2.b.

This "second option" for establishing a Tree Preservation Plan for the development of non-residential subdivisions provides for a preservation plan for "infrastructure only". The third and fourth sentences of this provision state:

> "This option shall not allow the removal of trees during the grading of individual lots, unless shown by the developer to be essential to the project's engineering design. The developer will be required to mitigate the canopy removed from this defined area at the percentage requirement for the applicable zone."

I find these two sentences confusing and substantively troubling. Is tree removal only prohibited for "grading of individual lots" or also for the construction or installation of infrastructure? For something to be "essential to the project's engineering design" does it have to be a part of the infrastructure? And why should mitigation for the removal of trees where shown to be essential to the project's engineering design be at the "percentage requirement for the applicable zone" instead of full replacement? Because the individual lots under this option will require separate preservation plans, mitigation for example at fifteen percent for a commercial development could then be reduced another fifteen percent when the individual lots are developed.

A clause should be added for clarification to the final sentence of §167.04F.2.b. to provide that the individual lots shall require separate Tree Preservation Plans "which protect the canopy to be preserved pursuant to §167.04(L) below." See also comment 5 below.

3. UDO § 167.04 I.

I believe that the test for allowing on-site mitigation should be clarified to provide that the Applicant must demonstrate to the Landscape Administrator's satisfaction that a site's physical or spacial constraints prevent <u>any development</u> of the property that would preserve the Percent Minimum Canopy.

4. UDO § 167.04 J

I recommend that this option for off-site alternatives also require demonstration that the property could not in any way be developed and also meet the Percent Minimum Canopy.

5. UDO § 167.04 L.3

This provision regarding continuing preservation and protection should include language similar to what was contemplated in the first revised version of § 167.04 F.2.a. that required the filing of a Tree Protection Easement or other recorded device. Without such a requirement there is no guaranteed permanent record to put future owners of the property on notice of the protection afforded under the ordinance.

Thank you for your consideration of these suggestions.

Sincerely,

Colene Gaston

Colene Gaston

1946 Fox Hunter Rd.
Fayetteville, AR 72701
Sept. 4, 2001

To: Mayor Dan Coody and
Aldermen Young, Reynolds, Thiel,
Trumbo, Davis, Santos, Jordan,
and Zurcher

Dear Mayor and Council,

As a member of the ad hoc committee to develop the proposed tree ordinance before you now, I would like to make two comments at this point in the discussion about different aspects of the ordinance.

First, it is my opinion that in the priority categories for tree preservation that "nut trees" be removed from the lowest priority ranking and placed in the highest priority. This is because, although sometimes planted for agricultural reasons, many nut trees in this region serve the additional function of being large, long-lived, and significant shade providers. For example, walnuts, pecans, and chestnuts are all trees which can serve a multitude of uses on a site and can be quite hardy if cared for properly. We discussed removing nut trees from this category in committee, and I do not recall a discussion when we ever decided to leave them in this low priority. I may be wrong, but I think it was a mistake that they were not removed from this priority.

Secondly, I have heard from four citizens specifically concerned with the option choices in determining where and what percentage of tree canopy is left after all construction is completed on a lot. There remains a fear that we still have not clarified that the option is not simply a choice for a developer to make, but one that is coordinated with the landscape administrator. Certain canopy coverage on different sites will lend itself to different priorities, etc. and simply strongly encouraging developers to choose the best tree option is a bit weak. Options must be justifiable. The concern of citizens who discussed this with me is that we may find ourselves left yet again in a "15% of 15%" entanglement.

If this option is unclear to new eyes reading it, it needs to be rewritten to better outline just what the intent of the option is so that we do not wind up back in an "interpretation" nightmare.

We worked very hard on this ordinance, but realize that all our discussions and changes may have left some things not fully explained. It is the purpose of public input and analysis to find the needed repairs. Overall, however, I do hope you find the ordinance a logical process for tree preservation in Fayetteville, a practice which is directly related to the health of the community.

That's all for now! Thanks.

Sincerely,

Fran Alexander

STAFF REVIEW FORM

X Agenda Request
___ Contract Review
___ Grant Review

For the Fayetteville City Council meeting of August 22, 2001

FROM:

Greg Boettcher	**Fleet**	**Public Works**
Name	Division	Department

ACTION REQUIRED: Review and approve attached ordinance which establishes a formal process to allow the purchase of used heavy equipment. This ordinance waives competitive bidding on aforementioned equipment types. Passenger vehicles, pick-up trucks and vans are excluded.

COST TO CITY:

$ NTE $200,000.00	$ 3,678,259	
Cost of this Request	Category/Project Budget	Category/Project Name
9700-1920-5802-00	$ 588,252	Capital
Account Number	Funds Used to Date	Program Name
Various	$ 3,090,007	Shop
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ___Budgeted Item ___Budget Adjustment Attached

Budget Manager — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**_____

Marsha Fawkins 8/15/01
Accounting Manager — Date

ADA Coordinator — Date

D.J. Hutchison 8/16/01
City Attorney — Date

Danny Smith 8/15/01
Internal Auditor — Date

Purchasing Officer — Date

STAFF RECOMMENDATION: Approval of the ordinance.

Division Head — Date

Sy Boettcher 08-15-01
Department Director — Date

Cross Reference

New Item: **Yes** **No**

D.J. Hutchison 8/16/01
Administrative Services Director — Date

Prev Ord/Res #:_____

Dan Coody 8/21/01
Mayor — Date

Orig Contract Date:_____

STAFF REVIEW FORM

Description_____ Meeting Date_____

Comments:

Reference Comments:

Budget Coordinator

Accounting Manager

City Attorney

I have attached an amended version -gw

Purchasing Officer

ADA Coordinator

Internal Auditor

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE FORMAL COMPETITIVE BIDDING REQUIREMENTS FOR THE PURCHASE OF USED EQUIPMENT FOR AN AMOUNT NOT TO EXCEED TWO HUNDRED THOUSAND DOLLARS ($200,000.00) PER ANNUM FOR CALENDAR YEARS 2001 AND 2002; SUBJECTING SUCH PURCHASES TO THE REVIEW AND APPROVAL OF THE EQUIPMENT COMMITTEE; AND AUTHORIZING THE MAYOR OR HIS REPRESENTATIVE TO SIGN THE AGREEMENTS REQUIRED TO COMPLETE AN APPROVED PURCHASE.

WHEREAS, the City of Fayetteville has an ongoing need to purchase equipment; and

WHEREAS, significant savings of taxpayer dollars can be achieved through the purchase of used equipment; and,

WHEREAS, used equipment purchases take place on the "spot market" with the sale going to the first offeror; and,

WHEREAS, taking the time necessary to seek individual bid waivers for each and every proposed used equipment purchase can cause the City to miss out on such opportunities; and,

WHEREAS, the City Council finds that such circumstances constitute an exceptional situation where competitive bidding is not feasible or practical.

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

Section 1. That the City Council hereby waives the formal competitive bidding requirements for the purchase of used equipment for an amount not to exceed Two Hundred Thousand Dollars ($200,000.00) per annum for calendar years 2001 and 2002.

Section 2. That the Equipment Committee is hereby authorized and empowered to establish procedures for the review of used equipment purchase requests, and to approve or disapprove such purchases as it deems reasonable and prudent.

Section 3. That the City Council hereby authorizes the Mayor or his duly authorized representative to sign any agreements required to complete an approved purchase.

Section 4. That this ordinance shall remain in effect until midnight on December 31, 2002, at which time it shall be repealed unless previously renewed by an affirmative vote of the City Council .

PASSED AND APPROVED this _____ day of _____, 2001.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
HEATHER WOODRUFF, City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

DATE: August 14, 2001

TO: The Mayor and Council

FROM: Hugh Earnest
Urban Development Director

SUBJECT: Property Transfer, 1035 South Washington Avenue

Background

The South Fayetteville Community Development Corporation (SFCDC) is a non-profit organization and was created to construct affordable Housing in South Fayetteville. The City of Fayetteville, Community Development Division has partnered with the SFCDC to acquire dilapidated property in South Fayetteville. The Bank of Fayetteville has partnered with the SFCDC to provide funding to construct the Housing. This is the second piece of property the city has purchased and will donate to the SFCDC for affordable housing. Construction is ready to begin on the first piece of property.

Current Status

Funding source for this property purchase was the 2001 HUD Community Development Block Grant (CDBG). All funds used by this division are federal funds received as part of the CDBG Entitlement funding which is received on a annual basis. The property is being transferred to the South Fayetteville Community Development Corporation (SFCDC). The new Warranty Deed is transferring the property from the City to the SFCDC. The SFCDC will construct a new house on the property for a family with an income of 50% - 80% of the median, adjusted for family size.

Recommendation

The staff recommends approval of this resolution.

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE THE MAYOR TO SIGN A WARRANTY DEED TRANSFERRING OWNERSHIP OF LOTS 37 AND 38 IN BLOCK 2 OF GLENWOOD PARK ADDITION WHICH HAD BEEN OBTAINED THROUGH COMMUNITY BLOCK GRANT FUNDS TO THE SOUTH FAYETTEVILLE COMMUNITY DEVELOPMENT CORPORATION

WHEREAS, the City of Fayetteville received from the United States Department of Housing and Urban Development a Community Block Grant to purchase run down or derelict housing and transfer it to a non-profit corporation for rehabilitation and improvement of blighted housing; and

WHEREAS, the City of Fayetteville purchased such property and desires to transfer it to the South Fayetteville Community Development Corporation (a non-profit corporation) for repair, rehabilitation and construction of affordable housing.

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 agrees to transfer by warranty deed lots numbered 37 and 38 in Block Number Two in Glenwood Park Addition of the City of Fayetteville to the South Fayetteville Community Development Corporation pursuant to its agreement to rehabilitate, repair and/or construct affordable housing.

Section 2. That the City Council of the City of Fayetteville, Arkansas authorizes Mayor Dan Coody to sign said Warranty Deed transferring this property.

PASSED and **APPROVED** this the _____ day of September, 2001.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

DATE: August 14, 2001

TO: The Mayor and Council

FROM: Hugh Earnest
Urban Development Director

SUBJECT: Property Transfer, 1035 South Washington Avenue

Background

The South Fayetteville Community Development Corporation (SFCDC) is a non-profit organization and was created to construct affordable Housing in South Fayetteville. The City of Fayetteville, Community Development Division has partnered with the SFCDC to acquire dilapidated property in South Fayetteville. The Bank of Fayetteville has partnered with the SFCDC to provide funding to construct the Housing. This is the second piece of property the city has purchased and donated to the SFCDC for affordable housing. Construction is ready to begin on the first piece of property.

Current Status

Attached is a Warranty Deed to a piece of property the City of Fayetteville, Community Development Division purchased. The property is being donated to the South Fayetteville Community Development Corporation (SFCDC). A new Warranty Deed is required from the City transferring the property to the SFCDC. The SFCDC will construct a new house on the property for a family with an income of 50% - 80% of the median, adjusted for family size.

Recommendation

The staff recommends approval of this resolution.

STAFF REVIEW FORM

_____ AGENDA REQUEST
_____ CONTRACT REVIEW
_____ GRANT REVIEW

For the Fayetteville City Council meeting of_____

FROM:

Yolanda Fields (Name) | Community Development (Division) | Urban Development (Department)

ACTION REQUIRED: Approval of the transfer of the property located at 1035 S. Washington Avenue to the South Fayetteville Community Development Corporation.

COST TO CITY:

$-0- (Cost of this Request) | _____ (Category/Project Budget) | _____ (Category/Project Name)

_____ (Account Number) | _____ (Funds Used To Date) | _____ (Program Name)

_____ (Project Number) | _____ (Remaining Balance) | _____ (Fund)

BUDGET REVIEW: _____ Budgeted Item ____ Budget Adjustment Attached

Budget Manager | Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:** _____

Accounting Manager — 8/14/01 (Date) — Internal Auditor — 8/14/01 (Date)

City Attorney — 8/14/01 (Date) — ADA Coordinator — _____ (Date)

Purchasing Officer — 8-14-01 (Date) — Grants Coordinator — _____ (Date)

STAFF RECOMMENDATION: Approval of this agreement.

Division Head — 8-14-01 (Date)

Department Director — 8-14-01 (Date)

Administrative Services Director — 8/14/01 (Date)

Mayor — _____ (Date)

Cross Reference

New Item: **YES**

Prev Ord/Res

Orig Contract Date:

STAFF REVIEW FORM

Description: Approval of property transfer

Meeting Date _____

Comments:

Reference Comments:

Budget Manager

_____ _____

_____ _____

Accounting Manager

_____ _____

_____ _____

City Attorney

_____ _____

_____ _____

Purchasing Manager

_____ _____

_____ _____

Internal Auditor

_____ _____

_____ _____

ADA Coordinator

_____ _____

_____ _____

Grants Coordinator

_____ _____

_____ _____

CITY OF FAYETTEVILLE
Community Development Division
113 West Mountain Street
Fayetteville, Arkansas 72701

AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 2001 between the City of Fayetteville, hereinafter known as the "City" and the **South Fayetteville Community Development Corporation** hereinafter known as the **SFCDC.**

WHEREAS, the **SFCDC** is an Arkansas private non-profit corporation that develops and constructs housing that is affordable to lower income citizens of Fayetteville, and

WHEREAS, the City encourages neighborhood revitalization through improvements to housing, infrastructure ans associated improvements for South Fayetteville citizens, and

NOW, THEREFORE, in consideration of the benefits to be derived from programs and services described herein, the parties agree as follows;

1. The City through its Community Development Division, has obtained title to the real property generally located at **1035 S. Washington Avenue, Fayetteville, Arkansas 72701** more particularly described as; **Lots Numbered Thirty-Seven and Thirty-eight (37-38) in Block Number Two (2) in Glenwood Park Addition to the City of Fayetteville, Arkansas, as the same are known and designated upon the recorded Plat of said Addition now of record in the office of the Recorder of Washington County, Arkansas (said Plat is recorded on page "91" in Plat Book and shows Addition is laid out in the Wets Half of the Northwest Quarter of the Northwest Quarter of Section Twenty-Two (22) in Township Sixteen (16) North, Range Thirty (30) West, and being situated in the County of Washington ands State of Arkansas.**

2. The real property described above was acquired by the City of Fayetteville with Community Development Block Grant Funds awarded to the city by the U.S. Department of Housing & Urban Development. The purposes of the acquisition was to eliminate slums and blight on a spot basis.

3. The City will convey the real property described above to the SFCDC for the sum of One Dollar ($1.00) and other good and valuable consideration.

4. The City will furnish title insurance in the amount of $7,500.00.

5. Each party will be responsible for payment of property taxes, if any, on the conveyed property, prorated as of the date of closing.

6. In accordance with U.S. Department of Housing & Urban Development regulations governing the Community Development Block Grant Program, the SFCDC specifically agrees to construct housing on the conveyed property that is affordable to persons in the low to moderate income levels. Construction completion date to be one (1) year from the date of this agreement.

IN WITNESS WHEREOF, the City and the SFCDC have executed this agreement on or as of the date first written above.

CITY OF FAYETTEVILLE

_____
Dan Coody, Mayor

ATTEST:

_____
Heather Woodruff, City Clerk

S. Fayetteville Community Development Corporation (SFCDC)

Cherry Pearson President
_____
Cherry Pearson, President (SFCDC)

ATTEST:

_____
Yolanda Fields, C.D. Coordinator

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT The City of Fayetteville, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar ($1.00) and other valuable consideration, paid by South Fayetteville Community Development Corporation (SFCDC) the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto South Fayetteville Community Development Corporation hereinafter called GRANTEE, and unto its heirs and assigns forever, the following lands lying in Washington County, Arkansas, to-wit:

Lots Numbered Thirty-Seven and Thirty-Eight (37-38) in Block Number Two (2) in Glenwood Park Addition to the City of Fayetteville, Arkansas, as the same are known and designated upon the recorded Plat of said Addition now of record in the office of the Recorder of Washington County, Arkansas (said Plat is recorded on page 91 in Plat Book and shows said Addition is laid out in the West Half of the Northwest Quarter of the Northwest Quarter of Section Twenty-two (22) in Township Sixteen (16) North, Range Thirty (30) West, and being situated in the County of Washington and State of Arkansas. (Subject to easements and restrictions, if any.)

TO HAVE AND TO HOLD the same unto the said GRANTEE SFCDC and unto his heirs and assigns forever, with all appurtenances thereunto belonging.

And The City of Fayetteville hereby covenants with said South Fayetteville Community Development Corporation, that the City of Fayetteville will forever warrant and defend the title to said lands against all lawful claims whatever.

WITNESS my hand and seal on this _____ day of _____, 2001.

_____
DAN COODY, Mayor

ACKNOWLEDGMENT

STATE OF ARKANSAS
COUNTY OF WASHINGTON

BE IT REMEMBERED, that on this day came before me, the undersigned, a Notary Public within and for the county aforesaid, duly commissioned and acting, the Mayor of the City of Fayetteville, to me well known as the grantor in the foregoing Deed, and acknowledged that he had executed the same on behalf of the City for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public on this ___ day of _____, 2001.

My Commission Expires: _____

_____
Notary Public

'01 AUG 6 AM 11 01

WASHINGTON CO. ARK.
B. STAMPS

City

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That Lewis P. Johnson and Christine E. Johnson, trustees of The Johnson Trust dated December 19, 1996, hereinafter referred to as Grantors, for and in consideration of the sum of One Dollar ($1.00) and other valuable consideration in hand paid by The City of Fayetteville, Arkansas, a municipal corporation, hereinafter referred to as Grantee, the receipt of which is hereby acknowledged, do hereby grant, bargain and sell unto said Grantee, and unto its successor or assigns, forever, the following lands lying in Washington County, Arkansas, to-wit

Lots Numbered Thirty Seven and Thirty Eight (37-38) in Block Number Two (2) in Glenwood Park Addition to the City of Fayetteville, Arkansas, as the same are known and designated upon the recorded Plat of said Addition now of record in the office of the Recorder of Washington County, Arkansas (said Plat is recorded on page "91" in Plat Book and shows said Addition is laid out in the West Half of the Northwest Quarter of the Northwest Quarter of Section Twenty-two (22) in Township Sixteen (16) North, Range Thirty (30) West, and being situated in the County of Washington and State of Arkansas.

TO HAVE AND TO HOLD the same unto the said Grantee and its successor or assigns, forever. And the said Grantors hereby covenant that they are lawfully seized of said land and premises, that the same is unencumbered, and that they will forever warrant and defend the title to said lands against all legal claims.

WITNESS our hands and seals this 31st day of July 2001.

City 2

South Fayetteville Community Development Corporation

THE JOHNSON TRUST dated
December 19, 1996

by: _____ Trustee
Trustee

by Christine E Johnson, Trustee
Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS }
} ss.
COUNTY OF WASHINGTON }

Be it remembered that on this 31st day of July 2001, before me a notary public duly commissioned and acting in and for the county and state aforesaid, personally appeared Lewis P. Johnson and Christine E. Johnson, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they had executed the same for the purposes therein set forth.

Lela R. Davis

Lela R. Davis
NOTARY PUBLIC

My commission expires:

Notary Public, State of Arkansas
Washington County
My Commission Expires 03/27/05

SFCDC
A. 2. Page 8

2001092987

FILED FOR RECORD

'01 AUG 6 AM 11 01

WASHINGTON CO.,ARK.
B. STAMPS

SFCDC
A. 2. Page 9

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That Lewis P. Johnson and Christine E. Johnson, trustees of The Johnson Trust dated December 19, 1996, hereinafter referred to as Grantors, for and in consideration of the sum of One Dollar ($1.00) and other valuable consideration in hand paid by The City of Fayetteville, Arkansas, a municipal corporation, hereinafter referred to as Grantee, the receipt of which is hereby acknowledged, do hereby grant, bargain and sell unto said Grantee, and unto its successor or assigns, forever, the following lands lying in Washington County, Arkansas, to-wit

Lots Numbered Thirty Seven and Thirty Eight (37-38) in Block Number Two (2) in Glenwood Park Addition to the City of Fayetteville, Arkansas, as the same are known and designated upon the recorded Plat of said Addition now of record in the office of the Recorder of Washington County, Arkansas (said Plat is recorded on page "91" in Plat Book and shows said Addition is laid out in the West Half of the Northwest Quarter of the Northwest Quarter of Section Twenty-two (22) in Township Sixteen (16) North, Range Thirty (30) West, and being situated in the County of Washington and State of Arkansas.

TO HAVE AND TO HOLD the same unto the said Grantee and its successor or assigns, forever. And the said Grantors hereby covenant that they are lawfully seized of said land and premises, that the same is unencumbered, and that they will forever warrant and defend the title to said lands against all legal claims.

WITNESS our hands and seals this 31st day of July 2001.

THE JOHNSON TRUST dated
December 19, 1996

by: _____ Trustee
Trustee

by: _____ Trustee
Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS }
} ss.
COUNTY OF WASHINGTON }

Be it remembered that on this 31st day of July 2001, before me a notary public duly commissioned and acting in and for the county and state aforesaid, personally appeared Lewis P. Johnson and Christine E. Johnson, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they had executed the same for the purposes therein set forth.

_____ _____
Lela R Davis NOTARY PUBLIC

FILED FOR RECORD

'01 AUG 6 AM 1

WASHINGTON CO. AR

B. STAMPS

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That Lewis P. Johnson and Christine E. Johnson, trustees of The Johnson Trust dated December 19, 1996, hereinafter referred to as Grantors, for and in consideration of the sum of One Dollar ($1.00) and other valuable consideration in hand paid by The City of Fayetteville, Arkansas, a municipal corporation, hereinafter referred to as Grantee, the receipt of which is hereby acknowledged, do hereby grant, bargain and sell unto said Grantee, and unto its successor or assigns, forever, the following lands lying in Washington County, Arkansas, to-wit

Lots Numbered Thirty Seven and Thirty Eight (37-38) in Block Number Two (2) in Glenwood Park Addition to the City of Fayetteville, Arkansas, as the same are known and designated upon the recorded Plat of said Addition now of record in the office of the Recorder of Washington County, Arkansas (said Plat is recorded on page "91" in Plat Book and shows said Addition is laid out in the West Half of the Northwest Quarter of the Northwest Quarter of Section Twenty-two (22) in Township Sixteen (16) North, Range Thirty (30) West, and being situated in the County of Washington and State of Arkansas.

TO HAVE AND TO HOLD the same unto the said Grantee and its successor or assigns, forever. And the said Grantors hereby covenant that they are lawfully seized of said land and premises, that the same is unencumbered, and that they will forever warrant and defend the title to said lands against all legal claims.

WITNESS our hands and seals this 31st day of July 2001.

THE JOHNSON TRUST dated
December 19, 1996

by: Lewis P Johnson TRUSTEE
Trustee

by Christine E Johnson, Trustee
Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS }
} ss.
COUNTY OF WASHINGTON }

Be it remembered that on this 31st day of July 2001, before me a notary public duly commissioned and acting in and for the county and state aforesaid, personally appeared Lewis P. Johnson and Christine E. Johnson, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they had executed the same for the purposes therein set forth.

Lela R. Davis
NOTARY PUBLIC

6-01-107 11

SFCDC
A. 2. Page 10

RESOLUTION NO. _____

A RESOLUTION TO ACCEPT A PROPOSAL AND ENTER INTO A CONTRACT WITH ARVEST BANK TO PROVIDE BANKING SERVICES FOR THE CITY OF FAYETTEVILLE, ARKANSAS

WHEREAS, the City of Fayetteville solicited proposals from several qualified banking institutions to provide primary banking services for the City and selected Arvest Bank as the best provider.

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 agrees to enter into a Contract for banking services with Arvest Bank of One McIlroy Plaza, Fayetteville, Arkansas (attached as Exhibit "A") and authorizes Mayor Dan Coody to sign said contract.

PASSED and **APPROVED** this the _____ day of September, 2001.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

STAFF REVIEW FORM

___x___ AGENDA REQUEST
___x___ CONTRACT REVIEW
_____ GRANT REVIEW
_____ ORDINANCE REVIEW

For the Fayetteville City Council meeting of September 4, 2001

FROM:

Marsha Farthing	Accounting	Admin. Services
Name	Division	Department

ACTION REQUIRED: Approval of a resolution accepting a proposal from ARVEST Bank to provide banking services for the City of Fayetteville for one year, renewable for four years.

COST TO CITY: Estimated annual fees of $10,000 are expected to be offset by increased interest earnings.

$0		
Cost of this Request	Category/Project Budget	Category/Project Name
Account Number	Funds Used To Date	Program Name
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ___ Budgeted Item ____ Budget Adjustment Attached

Budget Manager	Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**

Marsha Farthing	8/15/01		
Accounting Manager	Date	ADA Coordinator	Date
D.J. White	8/17/01	Danny Smith	8/15/01
City Attorney	Date	Internal Auditor	Date

Purchasing Officer	Date

STAFF RECOMMENDATION:
Staff recommends approval.

Marsha Farthing	8/15/01
Division Head	Date
Department Director	Date
	8/16/01
Administrative Services Director	Date
Dan Coody	8/17/01
Mayor	Date

Cross Reference

New Item:

Prev Ord/Res #:

Orig Contract Date:

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: Mayor Dan Coody and City Council

From: Ted Webber, Administrative Services Director

Date: August 13, 2001

Subject: Contract with Arvest Bank

Background

The City of Fayetteville solicited proposals from qualified banking institutions in June 2001, to provide primary banking services for the City. The three banks that returned proposals were Bank of America, Bank of Arkansas, and Arvest Bank. Arvest was chosen by the selection committee.

Recommendation

Staff is requesting City Council's approval of a contract with Arvest Bank to provide primary banking services for the City. The contract is for a one year period, renewable for four additional years by annual action of the council.

CONTRACT

THIS CONTRACT, made and entered into the _____day of August 2001, by and between the City of Fayetteville, Arkansas, Party of the First Part, hereinafter termed "CITY" and Arvest Bank of the City of Fayetteville, Arkansas, Party of the Second Part, hereinafter termed the "BANK",

WITNESSETH:

SECTION 1. BASIC SERVICES: The CITY hereby engages the BANK to provide certain banking services for the CITY'S operating funds. The BANK shall furnish and supervise all necessary personnel, materials, equipment, and any and all other items necessary for the conduct of these services. The banking services shall be accomplished in accordance with the terms and conditions as stated in the the CITY'S RFP specifications, and printed or written explanatory matter thereof, the BANK'S Proposal (as accepted by the CITY) and this Agreement, all of which are hereby made a part thereof and collectively evident and constitute the entire agreement. In case of any conflict between the CITY'S RFP, the BANK'S Proposal (Appendix A) and this Agreement, the order of procedure shall be 1) Agreement, 2) CITY'S RFP, and 3) BANK'S Proposal.

SECTION 2. CONTRACT PERIOD: This Contract shall be in effect from the date of execution until August 31, 2002, provided, however, that this Contract may at the option of the CITY, be extended for four additional one year terms by annual action of the City Council.

SECTION 3. QUALITY OF WORK: All material, workmanship and equipment shall be subject to the inspection and approval of the CITY. All work or service unsatisfactorily performed shall be promptly corrected and made acceptable to the CITY using standard acceptable banking practices.

SECTION 4. CONTRACT CHANGES: Occasionally, during the course of the contract period, it may become necessary to effect certain changes and/or modifications in the contract. All such changes shall be justified in writing by the party desiring the change and forwarded to the other party. All such changes will be negotiated by the parties hereto and shall not be effective until accepted in writing by both the BANK and the CITY.

SECTION 5. THIRD PARTY CONTRACTS: Unless otherwise authorized in writing by the CITY, the BANK shall not assign this contract, or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this contract.

SECTION 6. TERMINATION:

a. Termination for Convenience. The CITY or BANK may terminate this contract, in whole or in part, at any time by ninety (90) days written notice to the other party. If the BANK has any property, reports or materials in its possession belonging to the CITY, the BANK will account for the same, and surrender to the CITY or dispose of it in such a manner as the CITY directs.

b. Termination for Default. If the BANK fails to comply with any provisions of the contract including, but not limited to, the timely performance, the CITY may terminate this contract for default. Termination shall be effected by serving a notice of termination on the BANK, setting forth the manner in which the BANK is in default. The BANK will only be paid for services performed in accordance with the manner of performance set forth in this contract. If it is later determined by the CITY that the BANK had an excusable reason for not performing, such as a strike, fire or flood, events which are not the fault of, or are beyond the control of the BANK, the CITY may allow the BANK to continue work or treat the termination as a termination for convenience.

c. Mutual Agreement. By mutual agreement and consent of the parties thereto, this contract may be terminated with ninety (90) days written notice.

d. Contract Expiration. Upon expiration of the contract period, however, the term of the contract may be extended by mutual consent of the parties hereto.

SECTION 7. GOVERNING RULE AND REGULATIONS. The BANK will comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the order and decrees of any court or administrative bodies or tribunals in any nature affecting the performance of this contract, including without limitation, banking law and regulations, workers' compensation laws, minimum and maximum salary and wage statues. When required, the BANK shall furnish the CITY with satisfactory proof of its compliance therewith.

SECTION 8. COVENANT AGAINST CONTINGENT FEES. The BANK warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for the BANK, to solicit or secure this contract, and that it has not paid or agreed to pay any company or persons, other than a bona fide employee working solely for the BANK, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the CITY shall have the right to annul this contract without liability, or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

SECTION 9. COVENANT AGAINST GRATUITIES. The BANK warrants that no person or selling agency has offered or given gratuities (in the form of entertainment, gifts or otherwise) to any official or employee of the CITY with a view toward securing favorable treatment in the awarding, amending or evaluation performance of the contract.

SECTION 10. EQUAL EMPLOYMENT OPPORTUNITY. In connection with the execution of this contract, the BANK shall comply with EEOC rules and regulations.

SECTION 11. HOLD HARMLESS CLAUSE. The BANK shall save harmless the CITY from all claims and liabilities due to its negligent acts or omissions or the negligent acts or omissions of its agents or employees.

SECTION 12. INSURANCE. The BANK shall take out and maintain, during the period of work comtemplated under this agreement, such workers' compensation, public liability property damage and professional liability insurance as shall protect the BANK performing work covered by this agreement.

SECTION 13. INDEPENDENT CONTRACTOR. The BANK will perform the duties of an independent contractor and not as an agent or employee of the CITY.

SECTION 14. COLLATERAL AGREEMENT. The BANK agrees to collateralize all CITY deposits, in excess of FDIC Insurance, at the rate of 102% and to honor all other provisions of the existing collateral agreement.

SECTION 15. PAYMENT OF FEES. Fees will be paid monthly based on an analysis of the account volumes and services rendered. A statement of analysis will be furnished to the CITY by the 15th of each month for the previous month.

SECTION 16. AGENT FOR SERVICE. The agent for service relative to all matters pertaining to this contract and delivery of project products shall be as follows:

a. For the CITY
Ted H. Webber, Administrative Services Director
City of Fayetteville, Arkansas
113 West Mountain
Fayetteville, AR 72701

b. For the BANK
Michael Wingo, Vice President
Commercial Services
Arvest Bank
One McIlroy Plaza
Fayetteville, AR 72701

IN WITNESS WHEREOF, THE PARTIES TO THESE PRESENTS HAVE EXECUTED THIS AGREEMENT, CONSISTING OF 16 SECTIONS AND FOUR TYPEWRITTEN PAGES, IN THE YEAR AND DAY FIRST ABOVE WRITTEN.

CITY OF FAYETTEVILLE, ARKANSAS
PARTY OF THE FIRST PART

By:_____
Dan Coody, Mayor

ATTEST:

By:_____

ARVEST BANK
PARTY OF THE SECOND PART

By:_____
Gary Head, CEO Arvest Bank, Fayetteville

ATTEST:

By:_____

OFFICIAL SEAL
MICHAEL WINGO
NOTARY PUBLIC - ARKANSAS
WASHINGTON COUNTY
EXPIRES: 01/01/2006

ARVEST

McIlroy Bank Member FDIC

Appendix A

Checks Posted	$0.14
Deposits Posted	0.15
Deposit Items Posted	
a. "On-Us" items	0.06
b. Clearing House Items	0.10
c. Electronic Items	0.10
Cash Deposited	0.15
Coin Counting and Bagging	N/C
Stop Payments / Domestic Wires	7.50
ACH Items on other Banks	0.10
Account Maintenance	8.00
Additional Bank Bags	N/C
Deposit Slips	N/C
Returned Items	4.00

Rate Information

The following rate indexes apply only to those accounts which the city would rather be billed for the services used, and earn a rate of interest on the entire investable balance. The rates are determined as follows:

Balance	IBC 7 Day Simple Yield (Donahue)
$0 -- 24,999	Minus 175 Basis Points
$25,000 -- $99,9999	Minus 150 Basis Points
$100,000 -- $499,999	Minus 125 Basis Points
Above $500,000	Minus 100 Basis Points

At the end of each day, the average investable balance in the account accrues interest at the rate which corresponds to the proper tier. This accrued interest is credited to the account at the end of each month less any service charge which may apply.

A family of banks.
A world of possibilities.

II. SERVICES TO BE PERFORMED

A. Required Services:

1. Deposit Services

   All Arvest branches will provide same day ledger balances for deposits received before 5:00 p.m. CST.

2. Electronic Payment / Deposit Services

   Arvest has the systems and the capacity within those systems to handle all of the expressed deposit and investment needs of the city. We are a fully functioning ACH originating and receiving bank. Through our cash management service, all wires both incoming and outgoing will be posted and made available to the customer on the same business day. We also have a fax back service. A fax is sent to a designated location notifying your office of any wires the same day they are received.

3. Direct Deposit Services

   As a fully functioning ACH originator, we are capable of processing balanced NACHA formatted files. This process starts with a certification process through which our corporate services team assists your office so that a deliverable file is generated. The method of file delivery will be through a phone transmission to our processing facility at Lowell, AR.

4. Counting and Depositing Parking Meter Coins

   Our vault is equipped with fully functioning coin and currency counters. The processing and depositing of all coins delivered to the vault will be deposited on the same business day. The deposit will be listed on the statement as well as an imaged copy of the actual item.

5. Checks / Deposit Slips

   As a standard practice, Arvest does prefer a trail run of proposed checks. The process requires a representative sample batch of check stock so that they may be run through our reader/sorter. This will ensure the items can be read and the images meet our minimum standard of clarity. Under this agreement, we will furnish deposit slips for the City.

6. Paper Bank Drafts

Arvest will continue the process already in place for processing the paper drafts the City currently employs. It is our understanding that an ACH module for the water/sewer billing is being researched at this time, and our expertise may be needed in this area. We will provide the City any help the we reasonably can in order to expedite this project. This includes but is not limited to the certification of test files sent to our processing center.

7. Credit Card Services

Arvest is also a fully functioning credit card processor and issuer. Any normal needs the City has regarding the processing of cards, and or the need for its own credit cards, should not pose a problem.

8. Detailed Account Information

Any debit or credit initiated by the bank will have supporting information. This documentation is retrievable the next business day after the transaction has posted. Our imaging capabilities enable us to provide these items in timely manner and may even be emailed or faxed to a designated address or location.

9. Monthly Statements

It is preferred that we provided the City with a monthly statement in the form of a CD-Rom. This will enable for the ease of sorting, storage, and all general research which may be necessary. Each CD will contain the software required to view the items and the statement. The CD is labeled with the name of the month and customer's name. It is probable that all of the cities accounts will be contained on one CD.

10. Resource Personnel

Arvest has the staff to handle any need, which the City may have with regard to all aspects of our relationship. We have a fully staffed customer service area that already works with City personnel on existing accounts. This type of service will be available on any service which you may employ from our list of services. We have also begun the process of forming a corporate services call center which is staffed with trained experts on specific area such as ACH origination, cash management, remittance processing, reconciliation, and positive pay.

11. Access to Records and Cooperation

Arvest will cooperate fully with all legal inquiries and make available all records pertaining to the City's relationship.

12. New Accounts

Arvest will provide any additional accounts and services as needed.

13. Return Check Account

Our returned check procedures will accommodate the City's needs.

14. Optional Banking Services

As a commercial bank, Arvest has a fully staffed remittance processing team capable of handling most processing needs. In order to determine exactly what type of processing the City needs, we will need to establish processing criteria and protocol. A full proposal in this area is the most common approach.

CITY OF FAYETTEVILLE, ARKANSAS
REQUEST FOR PROPOSALS
FOR GENERAL BANKING SERVICES

RFP 01-06
JUNE 1, 2001

I. INTRODUCTION

The City of Fayetteville, Arkansas, (City) is soliciting sealed proposals from qualified local banking institutions (bank) to provide the City's primary general banking services with the highest quality of service at the most reasonable cost, while maintaining sufficient liquidity and protection of public funds.

The City anticipates maintaining approximately ten to fifteen demand deposit accounts, including one pooled cash account for the majority of the City's operations and a separate payroll account. The annual receipts and expenditures are estimated to be $86,800,000 and 86,300,000 respectively. Approximately 34,000 checks are expected to be processed annually.

A non-exclusive banking services contract will be executed with the successful bidder which will include, at a minimum, the pooled cash account and the payroll account. The City reserves the right to maintain accounts at other banks. The City also requires a Depository Agreement and a Collateral Agreement with any bank that holds City funds.

II. SERVICES TO BE PERFORMED

A. Required Services. (In addition to accepting deposits and processing checks and other withdrawals. Please address each service in numerical order in proposal.)

1. Deposit Services

The bank shall give all deposits received by (5:00) p.m. credit as good ledger balance funds for the same day. The bank shall similarly identify the time and branch(es) where a final daily deposit(s) will be accepted.

2. Electronic Payment/ Deposit Services

The bank must have the capability to accommodate a wide range of electronic payment and deposit services for investment purchases or sales and other transactions with authorized institutions. Wire service credit and debit notices must be mailed or faxed to the City's Accounting and Audit Division on the same day of the transaction and be included in the monthly statement.

3. Direct Deposit Services

The bank shall provide direct deposit services for employee payroll amounts (currently approximately 600 employees) to elected accounts with institutions which participate in the system for ACH/direct deposit transfers. The bank must be capable of accepting data transmissions via telephone lines, tapes, diskettes, or EFT. The bank shall provide direct deposit services for grant funds and other transactions from state and federal programs received by the City.

4. Counting and Depositing Parking Meter Coins

Bank shall provide coin counting and bagging services for parking meter collections. Coins will be delivered to the successful proposer in eight (8) bags and or two (2) lock-boxes twice a month and average $8,000 per month. The bank will count the coins separately for each bag or box and will indicate on the deposit slip the amount deposited for each. All revenues will be deposited to an account designated by the City and the deposit slip will be provided to the City's Accounting and Audit Division.

5. Checks/Deposit Slips

The City does not require that the bank provide checks. The bank will cooperate with the City and the City's vendors to insure that checks meet the bank's specifications. The bank will furnish encoded deposit slips to the City as needed.

6. Paper Bank Drafts

The City Water Department currently uses paper drafts to direct draft customer accounts for monthly water bills. The City currently drafts an estimated 3,800 accounts monthly. The bank will need the ability to process the paper drafts.

7. Credit Card Services

The City currently accepts credit cards for payment of services. The bank must be able to provide an electronic payment system which will accommodate credit card payments to the City in accordance with State laws.

8. Detailed Account Information

The bank will provide to the City, detailed backup for any debits and

credits, initiated by the bank, to the City's accounts.

9. Monthly Statements

Monthly statements for all accounts must be provided to the Accounting & Audit Division, with documentation supporting all entries on the statement, within five (5) business days after the last calendar day of each month. Canceled checks shall be sorted in numerical order and returned in boxes suitable for storage. The statements shall have checks listed in numerical order with any breaks in the order noted.

10. Resource Personnel

The bank shall identify personnel in its operations department who are available to answer questions pertaining to transactions which require more detailed explanation.

11. Access to Records and Cooperation

The bank shall, upon authorization from the Administrative Services Director, allow reasonable access to bank records by the City's Accounting Manager, the City's independent auditors, and where state or federal assistance is involved, to state and federal auditors, to examine records relating to the use of City funds. The bank shall cooperate in any prosecution for the misuse of checks and misappropriation of funds.

12. New Accounts

If the City develops a need for additional accounts or services during the life of the Banking Services Agreement, those new accounts or services shall be provided with the same conditions as apply to accounts existing at the time. If the Federal Reserve, Depository Institutions Deregulation Committee or other regulatory bodies provide for the establishment of new accounts or other regulations which are favorable to the City, the bank shall make those new services available to the City

13. Return Check Account

Deposit items returned for non-sufficient funds must be automatically redeposited. If an item is returned a second time, it should be charged to the City's Returned Check account and returned to a designated City contact. The City processes approximately 1,800 return items per year.

B. Optional Banking Services

In addition to the basic services described in the "Description of the System and Services to be Performed," the City requests proposals for the following optional services:

1. LOCK BOX COLLECTION

2. COURIER SERVICE

The Bank shall provide courier services to pick up deposits at the City Administration Building at 113 West Mountain Street between 2:00 and 2:30 p.m. each banking day. (This does not include coins from the parking system which are addressed elsewhere in this document.) The courier will also deliver the prior day's deposit slips, canceled checks and statements at the end of each month, and other miscellaneous items. The City will be supplied with sufficient lock-able deposit bags.

3. GROUP BENEFITS

The bank may propose additional services available to large employee groups. These benefits could include, but not be limited to, group discounts on health services, travel, telephone services, and insurance.

4. OTHER SERVICES

A proposer may, under separate cover, submit optional proposals for other services that the proposer feels would be in the best interest of the City. Any optional service proposal will be considered separately from the basic service proposal. Each proposal is to be separate, so that each can be considered as a complete entity.

III. COMPENSATION

A. General Information

1. Net Interest

A bank may agree to provide required services at no cost to the City and bid a net interest rate that will be paid on daily account balances.

2 Fee Based

A bank may agree to charge the City fees for specified services and pay a quoted interest rate on daily account balances. (See Appendix A)

Bidders may also propose to provide additional services to the City at no cost or for a specified fee. These additional services will be considered by the City in the evaluation of the bids if their economic benefit can be quantified.

IV. MINIMUM QUALIFICATIONS TO BID

A. Location Within the City Limits

A proposer must be a federally or State of Arkansas chartered banking institution with banking facilities located within the City limits of the City of Fayetteville. If the headquarters of the proposer is not located within the City limits, a branch bank of the proposer located within the City must be able to offer the full range of banking services required by this RFP. Any question as to whether a proposer meets this qualifying condition may be submitted to the Administrative Services Director in writing prior to submission of a proposal.

B. Designated Depository

A proposer must be designated as a qualified depository for public funds pursuant to Arkansas Code Annotated 19-8-105. Currently, depositories are not allowed to receive deposits of public funds in excess of twenty-five percent (25%) of their total general deposits, exclusive of public funds.

C. Report of Capital and Surplus

A proposer shall have on file with the Administrative Services Director and the City Council the affidavit of one of its officers of the amount of its capital stock and surplus. The bank selected to perform banking services shall maintain a capital structure equal to or greater than the amount of the City deposits.

D. Required Financial Information

Each proposer shall submit, with their proposal, copies of their quarterly call reports for the past two (2) years and their annual financial reports for the past three (3) years. These reports will be used by the City to determine the financial strength of the proposer. The successful proposer shall, during the duration of this contract, continue to furnish to the City updated issues of each report in a timely manner.

V. BIDDING INSTRUCTIONS

1. Sealed proposals must be received no later than 5:00 P.M. on **June 18, 2001.**

2. Sealed proposals must be submitted or mailed to: Peggy Vice, Purchasing Manager, Room 306, 113 West Mountain, Fayetteville, AR 72701.

3. Eight (8) copies of the proposal must be provided in the submission.

4. The sealed proposals should be clearly labeled **RFP 01-06** on the outside of the envelope.

5. All proposals submitted shall be binding for ninety (90) calendar days following the above due date for receipt of proposals.

To facilitate the clarification of requirements, proposers are requested, if possible, to submit questions in writing by **June 11, 2001**. Please submit your questions to:

John Maguire
Administrative Services Director
City of Fayetteville
113 West Mountain
Fayetteville, Arkansas 72701
Telephone (501) 575-8330.

VI. RFP EVALUATION/SELECTION CRITERIA

The City will utilize the Professional Selection Policy & Procedure of the City (PUR-13) to choose the selected firm(s). A copy of the professional selection policy and procedure is attached for informational purposes.

The proposals will be reviewed by a committee consisting of representatives of the Mayor, City Council, City staff, and community leaders. The selection committee will select the most qualified firm for the job by grading the firms based on the following point structure:

(1) Availability of services (both basic and optional) within the RFP, completeness of proposal and staff qualifications 20%
(2) Financial Strength and capacity of the bank 20%
(3) Proposed method (procedures, staff assigned, proximity, convenience) 10%
(4) Past record of performance, familiarity with similar businesses, references . . 30%
(5) Cost 20%

Responsiveness to the criteria will be measured as follows:

A check will be made to ensure that a proposer is qualified under Arkansas Code Annotated 19-8-105 as a designated depository; that the submitted proposal forms are complete and that the required financial data has been attached. Financial strength and capacity evaluation will be based upon the information contained in the annual financial reports and call reports as required. Tests on these reports shall include but not be limited to the following:

- Gross loans, as a percentage of total assets
- Loan loss reserves, as a percentage of gross loans
- Core deposits, as a percentage of total assets
- Borrowed funds, as a percentage of total assets
- Equity capital as a percentage of total assets
- Equity growth.
- Return on assets
- Equity growth in relation to asset and deposit growth

All proposals from qualified public depositories that pass the completeness test and financial strength/capacity tests and provide a satisfactory service level will then be ranked based upon past performance (or references) and then upon least total cost to the City. Least total cost to the City is defined as the lowest combination of projected monthly service costs, float factor, highest earnings factor specified in the bank's proposal and the resulting compensation balance or direct fee basis.

The basic required service proposal will be evaluated separately from any optional service proposal. Please make each proposal separate, so that each can be evaluated on its individual completeness and cost criteria.

Standard Terms and Conditions Relating to the City's RFP Process:

1. The City reserves the right to reject any or all proposals, the right in its sole discretion to accept the proposal which it considers most favorable to the City's interest, and the right to waive any minor irregularity or technicality in proposals received.

2. Failure to observe any of the instructions or conditions in this Request for Proposal may constitute grounds for rejection.

3. The City will not be liable for any costs incurred in the preparation of proposals.

4. The City reserves the right to request an interview with any proposer to determine service capabilities in greater detail and to clarify any unclear areas in the proposal. This may include a site visit to the proposer's facilities.

5. In the event the proposer to whom the contract is awarded does not execute a contract within 45 days of such award, the City may give notice to such proposer of intent to award the contract to the next ranked proposer, or to call for new proposals.

6. By submitting a proposal, the proposer certifies that the appropriate bank officer has read and fully understands this RFP and has full knowledge of the scope, nature, quantity, and quality of work to be performed; the detailed requirements of the services to be provided; and the conditions under which the services are to be performed.

7. The City reserves the right to accept or reject any item or combination of items within a proposal.

8. The City reserves the right to conduct pre-contract negotiations with any or all proposers.

9. The proposer shall furnish such additional information as the City may reasonably require. The City reserves the right to make investigations of the qualifications of the proposer as it deems appropriate.

10. The City reserves the right to invest any or all funds in accordance with applicable statutes, City ordinances, and bond covenants.

11. This RFP contains an anticipated number of transactions. Although this is the City's best estimate of expected volumes, the City cannot guarantee that such will be the actual transaction volumes.

12. All proposals will become the property of the City of Fayetteville when received and, as such, will be subject to Arkansas' Freedom of Information Act.

VII. CONTRACT TERMS

1. *Contract Period* - The selected bank shall be designated as the City's primary bank for an initial 1 year term. The banking services contract shall contain an automatic renewal clause which may be used for the following 4 year(s) under the same terms and conditions, thereby providing for 5 years of banking services.

2. *Cancellation of Contract* - The banking services contract shall provide that the City reserves the right to cancel any agreement at any time upon 90 days prior written notice of its intent to terminate any agreement. The designated depository shall provide the City at least 90 days prior written notice of its intent to terminate any agreement. A decision by the City to terminate the banking services contract may not be as a result of an offering of a lower price from another bank during the contract period.

John Maguire
Administrative Services Director
City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

Dear Mr. Maguire:

We have read the Banking Services RFP and fully understand its intent. We certify that we have adequate personnel, equipment, and facilities to fulfill the requirements thereto. We understand that our ability to meet the criteria and provide the required services shall be judged solely by the Banking Services Selection Committee.

We have attached the following:

1. Call reports for the past two years.
2. Annual financial reports for the past three years.

We further certify that we have filed with the Administrative Services Director the affidavit of one of our officers of the amount of this institution's capital stock and surplus in the manner prescribed in Arkansas Code Annotated 19-8-105.

It is understood the above information will be used as evidence of our ability to meet the capital structure requirements necessary to service this account.

It is further understood that all information included in, attached to, or required by this Request for Proposal shall become public record upon their delivery to the Administrative Services Director.

Submitted by:

_____
(Bank)

_____
(Authorized Signature) (Title)

_____
(Authorized Signature) (Title)

_____
(Telephone)

_____
(Date)

Appendix A

We agree to furnish such required services to the Administrative Services Director's Office with the following prices:

Checks Posted . . . . . $_____ each
Deposits Posted . . . . . $_____ each
Deposit Items Posted
a. "On us" items . . . . . $_____ each
b. Clearing House items . . . . . $_____ each
c. Electronic items . . . . . $_____ each
Cash Deposited . . . . . $_____ each
Coin Counting and Bagging . . . . . $_____ per hundred
Stop Payments . . . . . $_____ each
Wire Transfers . . . . . $_____ each
ACH Items on Other Banks . . . . . $_____ each
Account Maintenance . . . . . $_____ monthly
Additional Bank Bags:
12" x 15" Locking . . . . . $_____ each
8" x 11" Locking . . . . . $_____ each
6" x 11 1/2" Zippered . . . . . $_____ each
Deposit slips . . . . . $_____each
Returned items . . . . . $_____ each

Other Costs:

Description	Amount
1.	$_____ each
2.	$_____ each
3.	$_____ each
4.	$_____ each

RESOLUTION NO. _____

A RESOLUTION ACCEPTING A LOCAL LAW ENFORCEMENT BLOCK GRANT (LLEBG) IN THE AMOUNT OF THIRTY-SIX THOUSAND FIFTY-EIGHT DOLLARS ($36,058.00) FOR THE PURPOSE OF UPGRADING AND MODERNIZING HARDWARE AND SOFTWARE FOR THE MOBILE COMPUTER TERMINALS IN FAYETTEVILLE POLICE DEPARTMENT PATROL CARS AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF FOUR THOUSAND SEVEN DOLLARS ($4,007.00) FOR SAME.

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

Section 1. That the City Council hereby Accepts a Local Law Enforcement Block Grant (LLEBG) in the amount of Thirty-Six Thousand Fifty-Eight Dollars ($36,058.00) for the purpose of upgrading and modernizing hardware and software for the Mobile Computer Terminals in Fayetteville Police Department patrol cars.

Section 2. That the City Council hereby Approves a budget adjustment in the amount of Four Thousand Seven Dollars ($4,007.00) for same.

PASSED AND APPROVED this _____ day of September, 2001.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
HEATHER WOODRUFF, City Clerk

STAFF REVIEW FORM

___ AGENDA REQUEST
_X_ CONTRACT REVIEW
___ GRANT REVIEW
For the Fayetteville City Council meeting of September 4, 2001

FROM:

Dale Frederick-Airport Marketing	Airport	Environmental Services
Name	Division	Department

ACTION REQUIRED: Request acceptance of the low bid of $2,555,442.65 from McClinton-Anchor for the Airfield Pavement Rehabilitation Project. A 5 % contingency fee is also included in the total cost of the project. Total project cost is $ ~~2,852,177~~ ~~2,849,796~~ 2,849,608. Request approval of a budget adjustment for the project.

COST TO CITY:
~~2,713,557~~ 2,713,913
~~135,678~~ proj contingency 135,696
(2,442,201)FAA Grant
$ ~~(135,806)~~ State Grant (135,696).

$ ~~(135,806)~~ (135,696)	$ 877,000.00	Airfield Pavement Rehabilitation
Cost of this Request	Category/Project Budget	Category/Project Name
5550-3960-7820.29	$ 138,620.00	Capital
Account Number	Funds used to date	Program Name
00029	$ 738,380	Airport
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ___ Budgeted Item ___ Budget Adjustment Attached

[signature] 8/28/01		[signature]
Budget Manager Date	Administrative Services Dir.	Date

CONTRACT/GRANT/LEASE REVIEW:

Melba Featherly 8/28/01	Nancy Smith 8/28/01	FAA 90%/State5%/City5%
Accounting Manager Date	Internal Auditor Date	**GRANTING AGENCY**
[signature] 8/28/01		
City Attorney Date	ADA Coordinator	Date
[signature] 8/28/01	Nancy Smith 8/28/01	
Purchasing Officer Date	Grants Coordinator	Date

STAFF RECOMMENDATION: **Staff recommends approval of this lease.**

[signature]	8-27-01	
Division Head	Date	Cross Reference
[signature]	8-27-01	
Department Director	Date	New Item: (Yes) No
		Prev. Ord/Res#:
Administrative Services Director	Date	Orig Cont. Date:
		Orig Cont #:
Mayor	Date	

x 718
7646.

5. That within 30 days of receipt of an approved payment request, the Owner shall make partial payments to the Contractor on the basis of a duly certified and approved estimate of work performed during the preceding calendar month by the Contractor, LESS the retainage provided in the General Conditions, which is to be withheld by the Owner until all work within a particular part has been performed strictly in accordance with this Agreement and until such work has been accepted by the Owner.

6. That upon submission by the Contractor of evidence satisfactory to the Owner that all payrolls, material bills, and other costs incurred by the Contractor in connection with the construction of the work have been paid in full, final payment on account of this Agreement shall be made within 60 days after the completion by the Contractor of all work covered by this Agreement and the acceptance of such work by the Owner.

7. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the Surety Bond hereto attached for its faithful performance and payment, the Owner shall deem the Surety or Sureties upon such bond to be unsatisfactory or if, for any reason such bond ceases to be adequate to cover the performance of the work, the Contractor shall, at his expense, within 5 days after the receipt of notice from the Owner, furnish an additional bond or bonds in such form and amount and with such Surety or Sureties as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.

8. No additional work or extras shall be done unless the same shall be duly authorized by appropriate action by the Owner in writing.

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

SEAL:

APAC-Arkansas, Inc.,
McClinton-Anchor Division

WITNESSES:

By James A. Cole

Admin. Vice President
Title

ATTEST:

CITY OF FAYETTEVILLE

_____

By _____
Dan Coody, Mayor

DOCUMENT 00500

CONTRACT

THIS AGREEMENT, made and entered into on the___ day of September, 2001, by and between APAC-Arkansas, Inc., McClinton-Anchor Division herein called the Contractor, and the City of Fayetteville, hereinafter called the Owner:

W I T N E S S E T H:

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

1. That the Contractor shall furnish all the materials, and perform all of the work in manner and form as provided by the following enumerated Specifications, and Documents, which are attached hereto and made a part hereof, as if fully contained herein and are entitled Airfield Pavement Rehabilitation and Taxiway Widening and Strengthening.

Advertisement for Bids	Payment Bond
Instructions to Bidders	General Conditions
Bid and acceptance thereof	Supplemental Conditions
Performance Bond	Specifications

2. That the Owner hereby agrees to pay to the Contractor for the faithful performance of this Agreement, subject to additions and deductions as provided in the Specifications or Bid, in lawful money of the United States, the amount of: Two Million Five Hundred Fifty Five Thousand Four Hundred Forty Two and 65/100 Dollars ($2,555,442.65).

3. The Work will be completed and ready for final payment in accordance with the General Conditions within **150** days after the date when the Contract Time commences to run, as provided in the Notice to Proceed.

4. Liquidated Damages: Owner and Contractor recognize that time is of the essence of this Agreement and the Owner will suffer financial loss if the Work is not completed within the times specified in above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner **Four Hundred** Dollars (**$400.00**) for each day that expires after the time specified in Paragraph 3 for completion and readiness for final payment.

ATTORNEY GENERAL OF ARKANSAS
Mark Pryor

Opinion No. 2001-198

August 15, 2001

The Honorable Janice A. Judy
State Representative
202 West Maple Street
Fayetteville, AR 72701-4132

Dear Representative Judy:

I am writing in response to your request for an opinion on the following question:

> Can the City of Fayetteville, by ordinance, provide for an appeal of decisions by the city's planning commission granting or denying a conditional-use permit to the city's governing body?

RESPONSE

It is my opinion that the answer to this question is "yes."

You mention in your correspondence that you believe A.C.A. § 14-56-416 (b) (2) (B) (i) (c) is the basis for the so-called "conditional-use permits" being issued under municipal zoning ordinances. Section 14-56-416 (b) (2) (B) (i) (c) provides that "[t]he board [of zoning adjustment] may impose conditions in the granting of a variance to insure compliance and to protect adjacent property." You also state that "[a]ccording to subdivision (b) (2) (B) (ii), the board of zoning adjustment decision regarding a variance or a conditional-use permit is subject to appeal 'to a court of record having jurisdiction.'" You note, however, that several Arkansas cities allow appeals to the governing body of decisions regarding conditional-use permits. You apparently question this in light of § 14-56-416 (b) (2) (B) (ii).

Section 14-56-416 (b) (2) (B) (ii) provides in full that "[d]ecisions of the board [of adjustment] in respect to the above shall be subject to appeal only to a court of record having jurisdiction." It seems clear that the "[d]ecisions of the board in

respect to the above" are those decisions pertaining to requests for variances in accordance with § 14-56-416 (b) (2) (B), which pertains only to variances. This would include conditional variances, which are authorized under § 14-56-416 (b) (2) (B) (i) (c). The phrase "[d]ecisions of the board in respect to the above" does not, however, in my opinion, encompass so-called "conditional uses." It is my opinion that the legislature did not have such conditional uses in mind when it authorized conditional variances under § 14-56-416 (b) (2) (B) (i) (c). In accordance with A.C.A. § 14-56-416 (b) (2) (B) (i) (b), a board of adjustment "shall not permit, as a variance, any use in a zone that is not permitted under the [zoning] ordinance." As reflected by this provision, a variance involves a use that is permitted in the particular zone. As a general matter, in the zoning process a "conditional use" is not the same as a "variance" from a use that is permitted in a particular zone. As noted by one authority on zoning matters, the "conditional use permit situation" involves "certain uses which are not permitted as a matter of right in particular use districts...." *See* R. Wright, *Zoning Law in Arkansas: A Comparative Analysis,* 3 UALR Law Journal 421, 452. The use may be "permitted conditionally when the end result will not adversely affect the comprehensive plan for the area and is not incompatible with the permitted uses." *Id. See also Rolling Pines v. City of Little Rock,* 73 Ark. App. 97, 100, __ S.W.3d __ (2001) (involving an application for a conditional use permit with regard to manufactured homes under the City of Little Rock's zoning code which, as stated by the court, "do[es] not allow manufactured homes to be placed in an R-2 district as a matter of right[,]" but which "does allow them as a conditional use, provided certain criteria are met.")

I must therefore conclude that you are incorrect in your belief that A.C.A. § 14-56-416 (b) (2) (B) (i) (c), which authorizes conditional variances, is the basis for the so-called "conditional-use permits" being issued under municipal zoning ordinances. The conditional use permit is a distinct device that has been developed in the municipal zoning process. *See generally* Wright, *Zoning Law in Arkansas, supra.* It thus follows that A.C.A. § 14-56-416 (b) (2) (B) (ii), requiring appeals to courts of record of decisions in respect to variances, is inapplicable.

A review of the pertinent City of Fayetteville ordinances reflects this distinction between a "variance" and a "conditional use." According to information submitted to this office by the Fayetteville City Attorney, conditional uses in Fayetteville are decided by the Planning Commission. It appears that the process is similar to that under Little Rock's zoning ordinances, as reflected in *Rolling Pines, supra.* In *Rolling Pines*, the Little Rock Planning Commission denied the manufactured home conditional use permit application. The applicant appealed the Commission's decision to the Little Rock City Board of Directors pursuant to

the zoning code. 73 Ark. App. at 101. There is no indication in the reported decision that this process was questioned or challenged.

It is my opinion that there is no prohibition against a city providing for an appeal of its planning commission's decisions regarding conditional use permits to the city's governing body. The provisions of A.C.A. § 14-56-416 (b) (2) do not, in my opinion, address the conditional use permit. In accordance with § 14-56-416 (a) (3) (C), the zoning ordinance may provide for "compatible uses" and for "elimination of uses" and it may provide for "such other matters as are necessary to the health, safety, and general welfare of the municipality." The ordinance shall also "include provisions for administration and enforcement." *Id.* at subsection (a) (3) (D). In my opinion, these provisions afford ample basis for such an appeal process involving conditional use permits.

Assistant Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

MARK PRYOR
Attorney General

MP:EAW/cyh

Airfield Pavement Rehabilitation Project

- FAA AIP Grant #3-05-0020-2901

	Total	Federal (90%)	State (5%)	City (5%)
2001 Current Project Budget	$ 877,000.00	$ 789,300.00	$ 43,850.00	$ 43,850.00
2001 Current Expenses				
McClelland Engineering	138,620.00	124,758.00	6,931.00	6,931.00
Remaining Budget	738,380.00	664,542.00	36,919.00	36,919.00
Proposed Construction Contract:				
McClinton-Anchor Contract	2,555,442.65	2,299,898.39	127,772.13	127,772.13
McClelland Engineering:				
Engineering Fees	75,070.00	67,563.00	3,753.50	3,753.50
Construction Observation	76,700.00	69,030.00	3,835.00	3,835.00
Testing	5,500.00	4,950.00	275.00	275.00
Administrative Costs *	1,200.00	760.00	60.00	700.00
Total Contract Costs	2,713,912.65	2,442,201.39	135,695.63	136,015.63
5% Project Contingency	135,695.63	0.00	0.00	135,695.63
Total Costs w/Contingency	$ 2,849,608.28	$ 2,442,201.39	$ 135,695.63	$ 271,711.26
Budget Needed for Contract	$ 2,111,228.00	$ 1,777,659.00	$ 98,777.00	$ 234,792.00

* Changed by $320 to have Airport grant amount reflect the authorized award.

City of Fayetteville, Arkansas
Budget Adjustment Form

Airfield Rehab
A. 4. Page 5

Budget Year	Department:	Environmental Services	Date Requested	Adjustment #
2001	Division:	Airport	09/04/2001	
	Program:	Airport Capital		

Project or Item Requested:

$2,111,228 is requested in the Pavement Rehabilitation and Maintenance capital project.

Project or Item Deleted:

To recognize $1,777,659 in additional Federal Grant Revenue.

To recognize $98,777 in additional State Grant Revenue.

$234,792 from the Airport Use of Fund Balance account.

Justification of this Increase:

The additional funding is required for the construction contract on the airport pavement project.

Justification of this Decrease:

The Federal Aviation Administration is providing 90% of the project cost as a grant.

The Arkansas Department of Aeronautics is providing 5% of the project cost as a grant.

Sufficient funding remains to comply with City Policy

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number					Project Number	
Pavement Maintenance & Rehab	2,111,228	5550	3960		7820	29	00029	1

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number					Project Number	
Federal Grant - Pavement #29	1,777,659	5550	0955		6820	29		
State Grants on Federal Projects	98,777	5550	0955		6803	00		
Use of Fund Balance	234,792	5550	0955		4999	99		

Approval Signatures

Requested By	Date
Budget Manager	8-30-01 Date
Department Director	Date
n. Services Director	Date
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 _____ _____

Blue Copy: Budget & Research / Yellow Copy: Requester

RESOLUTION NO. _____

A RESOLUTION AWARDING A CONSTRUCTION CONTRACT TO McCLINTON-ANCHOR, INC. IN THE AMOUNT OF TWO MILLION SEVEN HUNDRED THIRTEEN THOUSAND NINE HUNDRED TWELVE DOLLARS AND SIXTY-FIVE CENTS ($2,713,912.65) FOR AIRFIELD PAVEMENT REHABILITATION; APPROVING A FIFTEEN PERCENT (15%) PROJECT CONTINGENCY OF ONE HUNDRED THIRTY-FIVE THOUSAND SIX HUNDRED NINETY-FIVE DOLLARS AND SIXTY-THREE CENTS ($135,695.63); AND APPROVING A BUDGET ADJUSTMENT OF TWO MILLION ONE HUNDRED ELEVEN THOUSAND TWO HUNDRED TWENTY-EIGHT DOLLARS ($2,111,228.00) FOR SAME.

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

Section 1. That the City Council hereby awards a construction contract to McClinton-Anchor, Inc. in the amount of Two Million Seven Hundred Thirteen Thousand Nine Hundred Twelve Dollars and Sixty-Five Cents ($2,713,912.65) for airfield pavement rehabilitation.

Section 2. That the City Council hereby approves a Fifteen Percent (15%) project contingency of One Hundred Thirty-Five Thousand Six Hundred Ninety-Five Dollars and Sixty-Three Cents ($135,695.63).

Section 3. That the City Council hereby approves a budget adjustment of Two Million One Hundred Eleven Thousand Two Hundred Twenty-Eight Dollars ($2,111,228) for same.

Section 4. That the City Council hereby authorizes the Mayor to sign such a contract with McClinton-Anchor, Inc.

PASSED AND APPROVED this _____ day of September, 2001.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
HEATHER WOODRUFF, City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Mayor Dan Coody
FROM: Hugh Earnest, Urban Development Director
DATE: August 13, 2001

BACKGROUND:

RZN 01-14.00: Rezoning was submitted by Donna Treat of Coldwell Banker Faucette on behalf of Greg & April Robinson for property located at 1245 N. 51st Street. The property is zoned A-1, Agricultural contains approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential. The subject property is located immediately south of the City Limits on the west side of Sunshine Road (51st Street), north of Wedington Drive and west of the Fieldstone Subdivision. Properties surrounding the subject tract are developed primarily as single family homes. The Fayetteville City Limit line divides the property with a strip of land approximately 50' wide lying within Washington County. The portion of the property within Washington County is not included in the description of property to be rezoned.

The applicant is seeking approval of a lot split in order to divide this property to create a new lot for a single family home. The lot split cannot occur without rezoning approval since minimum lot requirements in the A-1 zoning district call for a 2 acre tract with at least 200' of lot width. In the requested R-1 district, a lot must have 8,000 s.f. of area and at least 70' of width.

This rezoning may only create one additional lot and development is restricted to one single family home. This will be a minimal increase in density in this area. The proposed rezoning is in keeping with the character and general development patterns of this area.

CURRENT STATUS

Staff recommended the rezoning and the Planning Commission voted 8-0-0 to recommend approval to the City Council.

RECOMMENDATION

Staff recommends approval of the requested rezoning.

STAFF REVIEW FORM

_X_ Agenda Request
____ Contract Review
____ Grant Review

For the Fayetteville City Council meeting of September 4, 2001.

FROM:

Tim Conklin	Planning	Public Works
Name	Division	Department

ACTION REQUESTED: To approve an ordinance for RZN 01-14.00 submitted by Donna Treat of Coldwell Banker Faucette on behalf of Greg & April Robinson for property located at 1245 N. 51st Street. The property is zoned A-1, Agricultural containing approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential.

COST TO CITY:

$0 Cost of this request	Category/Project Budget	Category/Project Name
Account Number	Funds used to date	Program Name
Project Number	Remaining balance	Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

Budget Coordinator — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**_____

Accounting Manager	Date	ADA Coordinator	Date
City Attorney	Date	Internal Auditor	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended approval and Planning Commission voted 8-0-0 to recommend and forward the rezoning to the City Council.

Division Head	8-15-01 Date	**Cross Reference**
Department Director	Date	New Item: **Yes** **No**
Administrative Services Director	8/21/01 Date	Prev Ord/Res#:_____
Mayor	8/23/01 Date	Orig Contract Date: _____

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 01-14.00 FOR A PARCEL CONTAINING APPROXIMATELY 2.26 ACRES FOR PROPERTY LOCATED AT 1245 N. 51ST , AS SUBMITTED BY DONNA TREAT OF COLDWELL BANKER FAUCETTE ON BEHALF OF GREG & APRIL ROBINSON.

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

Section 1: That the zone classification of the following described property is hereby changed as follows:

From A-1, Agricultural to R-1, Low Density Residential described in Exhibit "A" attached hereto and made a part hereof.

Section 2. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this _____ day of _____, 2001.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

EXHIBIT "A"
RZN 01-14.00

PART OF LOT 8 (IN FAYETTEVILLE CITY LIMITS)
PART OF LOT NUMBER 8 IN HAMESTRING SOUTH ADDITION, AS PER PLAT ON FILE IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF WASHINGTON COUNTY, ARKANSAS. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:
BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT AND RUNNING THENCE N00°31'02"W 148.96 FEET, THENCE N89°32'26"E 648.64 FEET, THENCE S00°18'00"E 154.16 FEET, THENCE WEST 648.08 FEET TO THE POINT OF BEGINNING CONTAINING 2.26 ACRES MORE OR LESS.

RZN 01-14.00: Rezoning (Robinson, pp 398) was submitted by Donna Treat of Coldwell Banker Faucette on behalf of Greg & April Robinson for property located at 1245 N. 51st Street. The property is zoned A-1, Agricultural contains approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential.

Estes: The next item to come before your Commission is a rezoning request 01-14.00 submitted by Donna Treat of Coldwell Banker Faucette on behalf of Greg & April Robinson for property located at 1245 N. 51st Street. The property is zoned A-1, Agricultural contains approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential. Staff recommends approval of the requested rezoning based on the findings included as a part of your report. Is the applicant present?

Treat: My name is Donna Treat with Coldwell Banker Faucette Real Estate and I represent Greg and April Robinson, the owners.

Estes: Donna, do you have any presentation that you would like to make to us or would you like to just be available to answer questions from the Commission?

Treat: I have no presentation.

Estes: Commissioners, do you have any questions of Ms. Treat regarding this rezoning request?

PUBLIC COMMENT:

Estes: Seeing none, is there any member of the audience who would like to provide comment regarding this rezoning request?

COMMISSION DISCUSSION:

Estes: Seeing none, I'll bring it back to the Commission for motions, comments or any questions of the applicant.

MOTION:

Marr: I would like to move for approval of rezoning 01-14.00 to recommend to City Council.

Shackelford: I'll second.

Planning Commission
August 13, 2001
Page 9

Estes: We have a motion by Commissioner Marr and second by Commissioner Shackelford to approve RZN 01-14.00, is there any discussion or comments? Sheri, would you call the roll?

ROLL CALL:

Upon roll call RZN 01-14.00 is approved by a unanimous vote of 8-0-0 and will be forwarded on to the City Council for their determination.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Dawn T. Warrick, Planner
THRU: Tim Conklin, A.I.C.P., City Planner
Hugh Earnest, Urban Development Director
Kit Williams, City Attorney
DATE: August 13, 2001

RZN 01-14.00: Rezoning (Robinson, pp 398) was submitted by Donna Treat of Coldwell Banker Faucette on behalf of Greg & April Robinson for property located at 1245 N. 51st Street. The property is zoned A-1, Agricultural contains approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential.

RECOMMENDATION:

Staff recommends approval of the requested rezoning based on the findings included as part of this report.

PLANNING COMMISSION ACTION: **Required** **YES**
O Approved **O Denied**

Date: **August 13, 2001**

CITY COUNCIL ACTION: **Required** **YES**
O Approved **O Denied**

Date: **September 4, 2001 (first reading)**

Comments: _____

_____

_____

BACKGROUND:

The subject property is located immediately south of the City Limits on the west side of Sunshine Road (51st Street), north of Wedington Drive and west of the Fieldstone Subdivision. Properties surrounding the subject tract are developed primarily as single family homes. The Fayetteville City Limit line divides the property with a strip of land approximately 50' wide lying within Washington County. The portion of the property within Washington County is not included in the description of property to be rezoned.

The applicant is seeking approval of a lot split in order to divide this property to create a new lot for a single family home. The lot split cannot occur without rezoning approval since minimum lot requirements in the A-1 zoning district call for a 2 acre tract with at least 200' of lot width. In the requested R-1 district, a lot must have 8,000 s.f. of area and at least 70' of width.

This rezoning may only create one additional lot and development is restricted to one single family home. This will be a minimal increase in density in this area. The proposed rezoning is in keeping with the character and general development patterns of this area.

SURROUNDING LAND USE AND ZONING

North:	Single family home, Washington County
South:	Single family home, A-1
East:	Single family home, R-1
West:	Single family home, A-1

INFRASTRUCTURE:

Sunshine Road (51st Street) is located along the eastern property line and runs north from Wedington Drive to Mt. Comfort Road. In this location, the street is paved but does not have curb, gutter or storm drains. Further north, this street is a county road and is unpaved. The street, north of this project site is designated as a principal arterial on the Master Street Plan which will carry traffic from Hwy 62 north towards Tontitown (see maps included in agenda packet).

Water and sewer both run along the west side of the street right-of-way adjacent to this property.

LAND USE PLAN: General Plan 2020 designates this site **Residential**. Rezoning this property to R-1, Low Density Residential is consistent with the land use plan and compatible with surrounding land uses in the area.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: **The proposed zoning is consistent with the City's adopted General Plan 2020 which designates this area as Residential. Adjacent properties are developed with single family homes.**

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 at this time. The applicant seeks to divide the property into two lots and to build a second single family home north of the existing structure.**

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 appreciable increase traffic danger or congestion.**

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: **The proposed zoning will alter the population density slightly, however this increase will not undesirably increase the load on public services. If this property remains in the A-1 zoning district, the existing single family home is the maximum density that would be permitted based on lot area requirements in that district. The proposed zoning of R-1 will only permit the creation of one additional lot which will allow for one new single family home on the 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**

§ 161.04 DISTRICT R-1: LOW DENSITY RESIDENTIAL.

A. Purpose. The Low Density Residential District is designed to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

B. Uses.

1. Permitted Uses.

Unit 1	City-Wide Uses by Right
Unit 26	Single-Family Dwelling

2.

Uses Permissible on Appeal to the Planning Commission.

Unit 2	City-Wide Uses by Conditional Use Permit
Unit 3	Public Protection and Utility Facilities
Unit 4	Cultural and Recreational Facilities
Unit 8	Single-Family and Two-Family Dwellings

C. Density.

SINGLE-FAMILY DWELLINGS	TWO FAMILY DWELLINGS
4 or Less Families Per Acre	7 or Less Families Per Acre

D. Bulk and Area Regulations.

	Single-Family	Two-Family
Lot Minimum Width	70 ft.	80 ft.
Lot Area Minimum	8,000 sq. ft.	12,000 sq.ft.
Land Area Per Dwelling Unit	8,000 sq. ft.	6,000 sq. ft.

E. Yard Requirements (feet).

FRONT YARD	SIDE YARD	REAR YARD
25	8	20

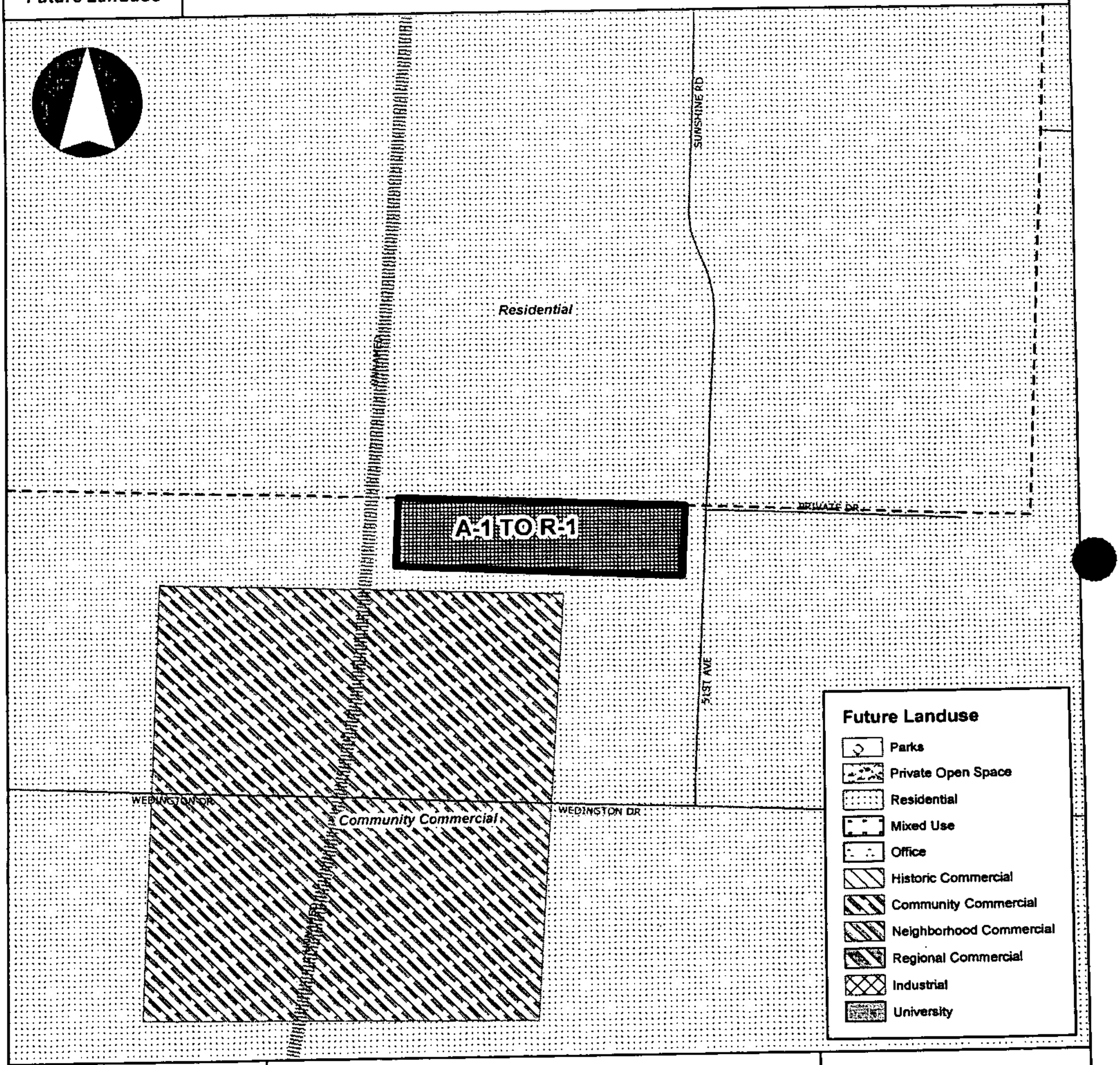
F. Building Area. On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

(Code 1991, §160.031)

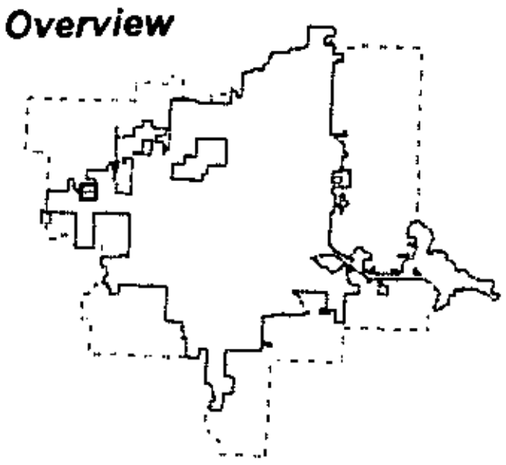
RZN01-14.00

Future Landuse

ROBINSON



Overview



Legend

Subject Property
RZN01-14.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits

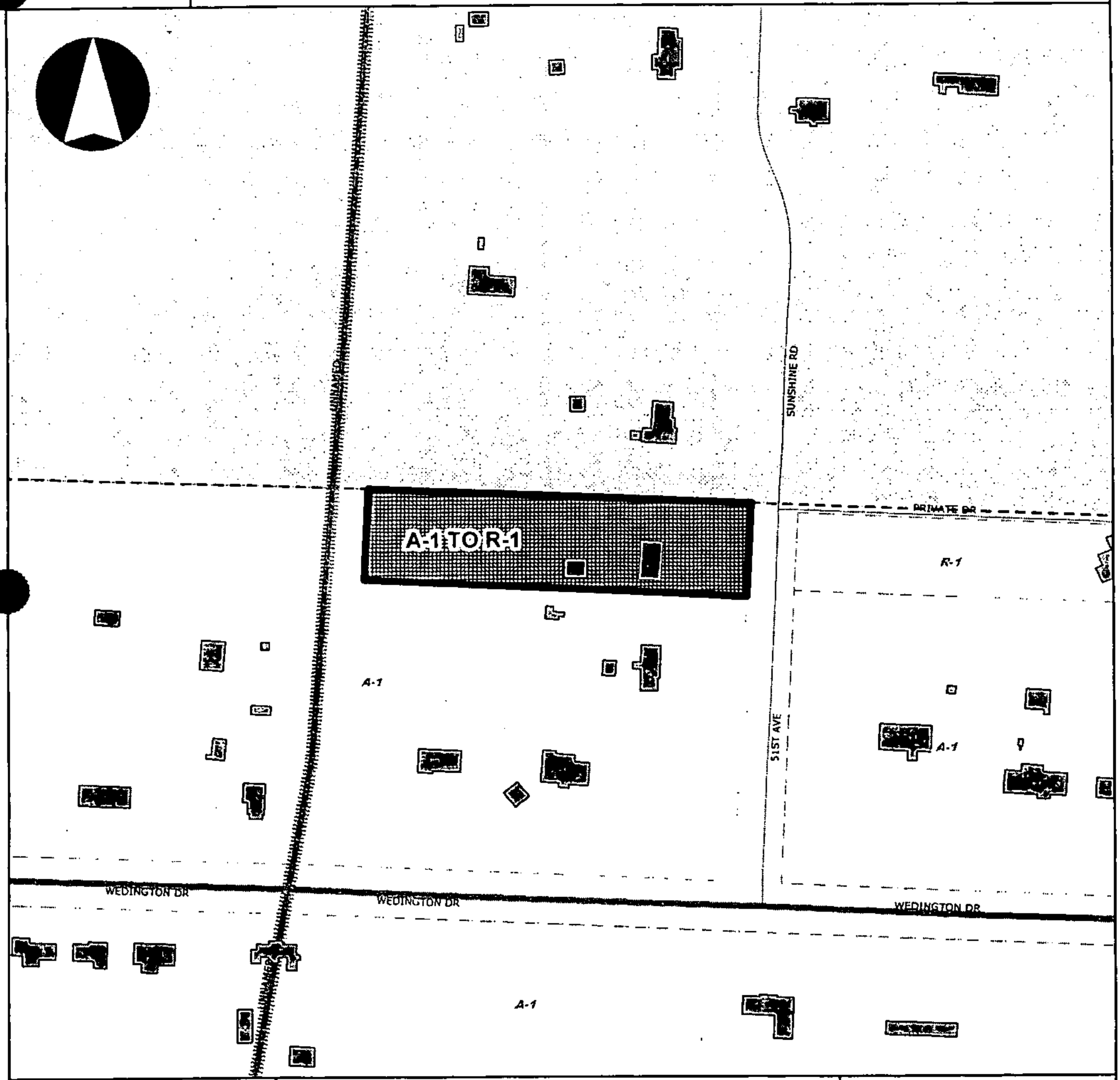
0 100 200 400
Feet

CITY OF FAYETTEVILLE ARKANSAS

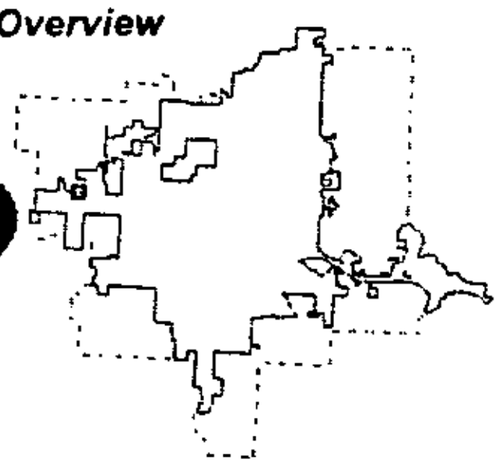
RZN01-14.00

Close Up View

ROBINSON



Overview



Legend

Subject Property
RZN01-14.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

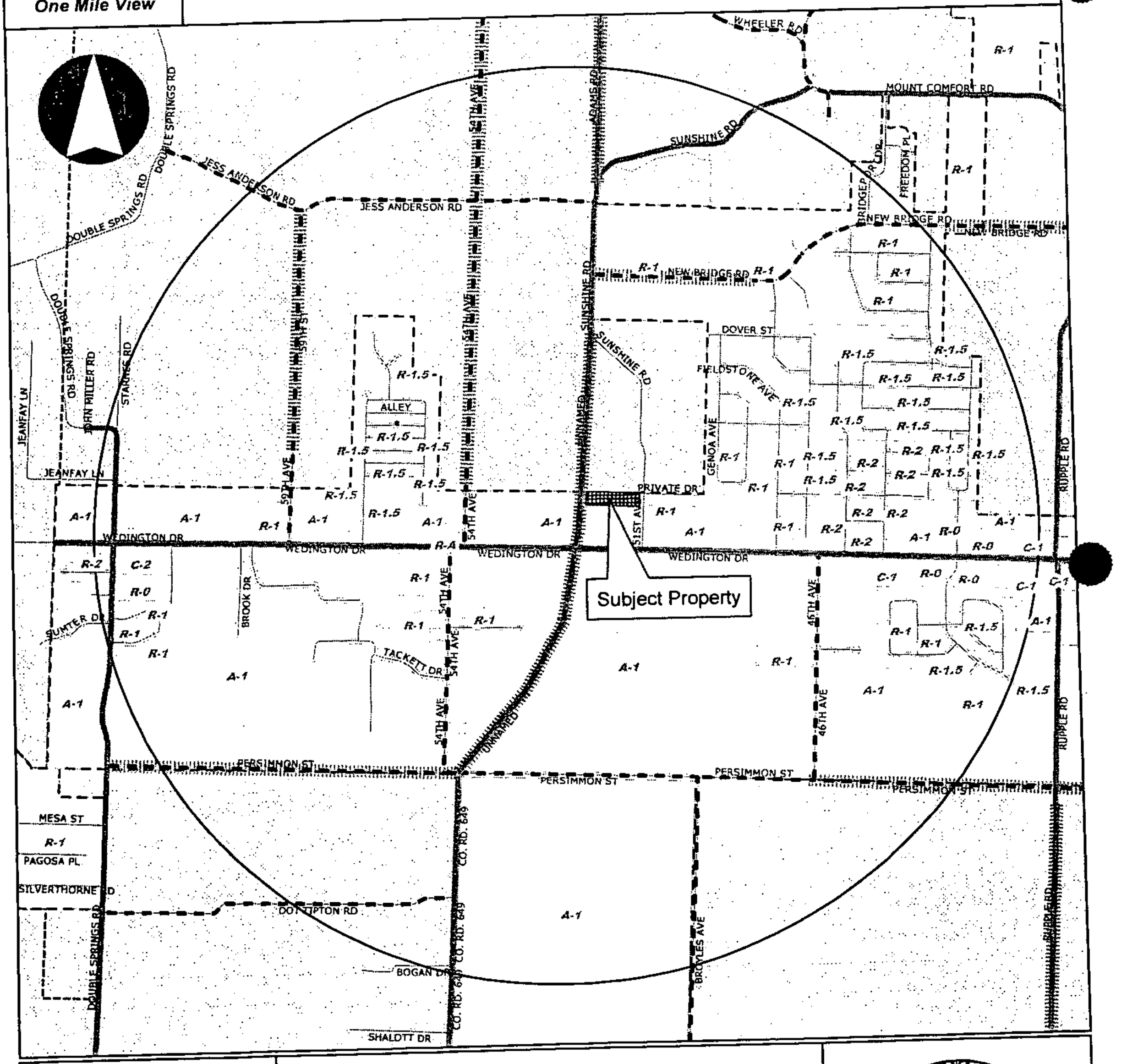
0 100 200
Feet

CITY OF FAYETTEVILLE ARKANSAS

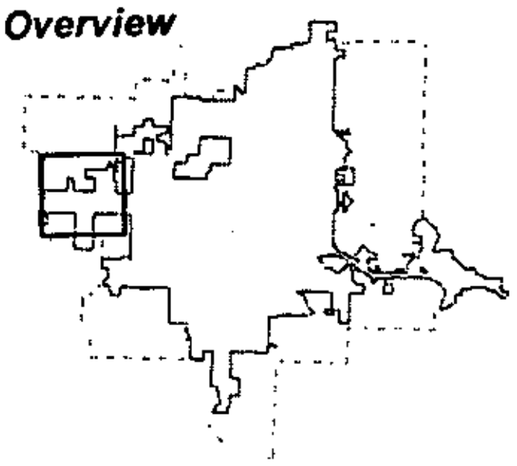
RZN01-14.00

One Mile View

ROBINSON



Overview



Legend

Subject Property
RZN01-14.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

0 0.125 0.25 0.5
Miles

CITY OF FAYETTEVILLE ARKANSAS

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
113 W. Mountain St.
Fayetteville, AR 72701

Easement Vacation
Marriot Courtyard

TO: Mayor Dan Coody
Fayetteville City Council
FROM: Hugh Earnest, Urban Development Director
DATE: August 21, 2001

BACKGROUND

VAC 01-6.00: Vacation was submitted by Andy Feinstein of Engineering Design Assoc. on behalf of Marriott Courtyard for property located on lot 17 CMN Business Park. The property is zoned C-2, Thoroughfare Commercial and contains approximately 1.95 acres. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on lot 17 of CMN Business Park Phase I..

The applicant is requesting to replace a portion of the existing easements on the south & east of this lot to the north & west sides of the lot. All existing utility lines effected within these portions of the easements are proposed to be relocated to the new easements in order to construct a Courtyard by Marriot hotel on the property.

CURRENT STATUS

Staff recommended approval and the Planning Commission voted 7-0-0 to approve the vaction request.

RECOMMENDATION

Approval of the proposed easement vacations with the condition that a 25' utility easement be dedicated along the northern and western sides of Lot 7 as part of the easement plat for the large scale development.

STAFF REVIEW FORM

_X_ Agenda Request
____ Contract Review
____ Grant Review

For the Fayetteville City Council meeting of September 4, 2001.

FROM:

Tim Conklin	Planning	Public Works
Name	Division	Department

ACTION REQUESTED: To approve an ordinance for VA01-6, submitted by Andy Feinstein of Engineering Design Assoc. on behalf of Marriott Courtyard for property located on lot 17 CMN Business Park Phase I, The property is zoned C-2, Thoroughfare Commercial and contains approximately 1.95 acres. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on lot 17 of CMN Business Park Phase I.

COST TO CITY:

$0		
Cost of this request	Category/Project Budget	Category/Project Name
Account Number	Funds used to date	Program Name
Project Number	Remaining balance	Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

Budget Coordinator — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:_____

Accounting Manager	Date	ADA Coordinator	Date
City Attorney	9/12/01 Date	Internal Auditor	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended approval and Planning Commission unanimously voted 8-0-0 to recommend and forward the vacation to the City Council.

Division Head	8-15-01 Date	**Cross Reference**
Department Director	8-17-01 Date	New Item: **Yes** **No**
Administrative Services Director	8/23/01 Date	Prev Ord/Res#:_____
Mayor	8/23/01 Date	Orig Contract Date: _____

ORDINANCE NO. _____

AN ORDINANCE APPROVING VA01-6.00 TO VACATE AND ABANDON A 15' WATER AND SEWER EASEMENT AND ALSO A PORTION OF A 20' GENERAL UTILITY EASEMENT ON LOT 17 OF CMN BUSINESS PARK PHASE I AS REQUEST BY ANDY FEINSTEIN OF ENGINEERING DESIGN ASSOCIATES ON BEHALF OF MARRIOTT COURTYARD.

WHEREAS, the City Council has the authority under A.C.A. §14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes, and

WHEREAS, the City Council has determined that the following described right-of-way is not required for corporate purposes.

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

Section 1. That the City of Fayetteville, Arkansas hereby vacates and abandons all of its rights together with the rights of the public generally, in and to the following described right-of-way:

See Exhibit "A" attached hereto and made a part hereof.

Section 2. That a copy of this Ordinance duly certified by the City Clerk shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

Section 3. That the above is contingent upon receiving the following: Dedication of a 25' utility easement along the northern and western sides of Lot 7.

PASSED AND APPROVED this _____ day of _____, 2001.

APPROVED:

By_____
Dan Coody, Mayor

ATTEST:

By_____
Heather Woodruff, City Clerk

EXHIBIT "A"

Description of Water, Sewer Easement and General Utility

A PERMANENT 15' WATER AND SEWER EASEMENT AS DESCRIBED IN DEED BOOK 2001 AT PAGE 58565 SITUATED ALONG AND CONTIGUOUS TO A 25' PERMANENT DRAINAGE & UTILITY EASEMENT WHICH IS LOCATED ALONG AND CONTIGUOUS TO THE EAST BOUNDARY OF LOT NO. 17 CMN BUSINESS PARK, CITY OF FAYETTEVILLE, ARKANSAS EXCLUDING THE NORTHERNMOST 10'. ALSO THE NORTHERNMOST 15' OF THE 20' GENERAL UTILITY EASEMENT ALONG AND CONTIGUOUS TO THE SOUTHERN LINE EXCLUDING THE WESTERNMOST 10' OF SAID LOT NO. 17 LOCATED IN THE NORTHWEST QUARTER (NW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 26, TOWNSHIP 17 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS AS SUCH UTILITY EASEMENTS ARE MORE PARTICULARLY SHOWN ON THE PLAT OF SAID LOT FILED FOR RECORD OCTOBER 8, 1993 IN BOOK 12, PAGE 92, IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF WASHINGTON COUNTY ARKANSAS

Consent Agenda:

VAC 01-6.00: Vacation (Marriott Courtyard, pp 213) was submitted by Andy Feinstein of Engineering Design Assoc. on behalf of Marriott Courtyard for property located on lot 17 CMN Business Park. The property is zoned C-2, Thoroughfare Commercial and contains approximately 1.95 acres. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on lot 17 of CMN Business Park Phase I.

VAC 01-7.00: Vacation (Greg Brockman, pp 286) was submitted by Greg Brockman for property located at 2483-2485 Jeremiah. The property is zoned R-2. Medium Density Residential and contains approximately 0.12 acres. The request is to vacate a portion of the utility easement located along the front property line adjacent to Jeremiah Court

Estes: The next item of business to come before your Commission is the Consent Agenda. Vacation 01-6.00 for Marriott Courtyard submitted by Andy Feinstein of Engineering Design Assoc. on behalf of Marriott Courtyard for property located on lot 17 CMN Business Park. The property is zoned C-2, Thoroughfare Commercial and contains approximately 1.95 acres. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on lot 17 of CMN Business Park Phase I. The second item on the consent agenda is also a Vacation request submitted by Greg Brockman for property located at 2483-2485 Jeremiah. The property is zoned R-2. Medium Density Residential and contains approximately 0.12 acres. The request is to vacate a portion of the utility easement located along the front property line adjacent to Jeremiah Court. Either one of these items that are on the consent agenda may be pulled by any member of the Commission or by anyone in attendance in the audience this evening. Does anyone wish to pull either of these two items from the Consent Agenda? Seeing that no one desires to pull these items, would you call the roll Sheri?

ROLL CALL:

Upon roll call the Consent Agenda is approved by a vote of 7-0-0.

PC Meeting of 13 Aug. 01

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
113 W. Mountain St.
Fayetteville, AR 72701

Easement Vacation
Marriot Courtyard

TO: Fayetteville Planning Commission Members
THRU: Tim Conklin, City Planner
FROM: Ron Petrie, Staff Engineer
DATE: August 9, 2001

Project: **VAC 01-6.00: Vacation (Marriott Courtyard, pp 213)** was submitted by Andy Feinstein of Engineering Design Assoc. on behalf of Marriott Courtyard for property located on lot 17 CMN Business Park. The property is zoned C-2, Thoroughfare Commercial and contains approximately 1.95 acres. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on lot 17 of CMN Business Park Phase I..

The applicant is requesting to replace a portion of the existing easements on the south & east of this lot to the north & west sides of the lot. All existing utility lines effected within these portions of the easements are proposed to be relocated to the new easements in order to construct a Courtyard by Marriot hotel on the property.

The applicant has submitted the required notification forms to the utility companies and to the City. The results are as follows:

Ozarks Electric - Not applicable.
Southwestern Electric Power Company - No objections provided that a 5' utility easement is retained along the southern lot line and a 15' utility easement is retained along the eastern lot line.
Arkansas Western Gas - No objections provided that a 25' utility easement is retained on the west side of the property.
SW Bell - No objections provided that "all SWBT plant is to be moved at the owners/developers expense, charges are to be paid in full prior to job start, if relocations are necessary a minimum of eight weeks is required, and additional easements will need to be dedicated to replace those being vacated."
Cox Communications - No objections provided the same easements and considerations are given to them as the Electric Company.

City of Fayetteville:
Water/Sewer - No objections provided that a 25' utility easement is dedicated along the north and west sides of the lot.
Street Department - No objections.
Solid Waste - No objections.

Recommendation: Approval of the proposed easement vacations with the condition that a 25' utility easement be dedicated along the northern and western sides of Lot 7.

PLANNING COMMISSION ACTION: __yes__Required
_____Approved _____Denied

Date: __/__/__

Comments:

_____
_____
_____

CITY COUNCIL ACTION: __yes__Required
_____Approved _____Denied

Date: __/__/__

PETITION TO VACATE EASEMENTS LOCATED IN LOT 17, CMN BUSINESS PARK, CITY OF FAYETTEVILLE, ARKANSAS

TO: The Fayetteville, City Planning Commission and
The Fayetteville City Council

We the undersigned, being the owner of the real estate containing the easements hereinafter sought to be abandoned and vacated, lying totally within Lot 17, CMN Business Park, City of Fayetteville, Arkansas, a municiple corporation, petition to vacate the easements which are described as follows:

A permanent 15' Water and Sewer Easement as described in Deed Book 2001 at Page 58565 situated along and contiguous to a 25' permanent drainage & utility easement which is located along and contiguous to the east boundary of Lot No. 17 CMN Business Park, City of Fayetteville, Arkansas excluding the northernmost 10'. Also the northernmost 15' of the 20' General Utility Easement along and contiguous to the southern line excluding the westernmost 10' of said Lot No. 17 located in the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of Section 26, Township 17 North, Range 30 West, Washington County, Arkansas as such utility easements are more particularly shown on the plat of said lot filed for record October 8, 1993 in Book 12, Page 92, in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County Arkansas

That the real estate affected by said abandonment of the easement are indicated on the attached Exhibit "A", 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 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 granting of new easements as required, and that the above described real estate be used for their respective benefit and purpose as now approved 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 granting of new utility easements and that title to said real estate sought to be abandoned be vested in the propoerty owner as provided by law, and as to that particular land owner be free from the easements of the public for the use of said easements.

Dated this 9 day of Aug 2001

millsap Real Estate Co. LLC + 755 millsap LLC

Henry Kelley Jr
printed name

Henry Kelley Jr member
signature

LOTS 18 & 19 (PROCTOR & GAMBLE)

10' U.E. (EXISTING TO REMAIN)

25' U.E. (PROPOSED) ACTUAL WIDTH TO BE DETERMINED AT TECHNICAL REVIEW FOR LSD

LOT 17, CMN BUSINESS PARK

EASEMENTS ON EAST & SOUTH TO BE VACATED AND REPLACED WITH EASEMENTS ON NORTH AND WEST SIDES OF LOT.

SOUTH EASEMENT CONTAINS GAS AND UNDERGROUND TELEPHONE. EAST EASEMENT CONTAINS GAS, UNDERGROUND TELEPHONE, AND OVERHEAD ELECTRIC. THE DEVELOPER PROPOSES TO RELOCATE ALL UTILITIES AT HIS EXPENSE.

PLAINVIEW ROAD

10' U.E. (EXISTING TO REMAIN)

25' U.E. (PROPOSED) ACTUAL WIDTH TO BE DETERMINED AT TECH. REVIEW FOR LSD

CONC DRAINANGE SWALE

15' WATER & SEWER EASEMENT TO BE VACATED

25' U.E. & D.E. TO REMAIN

15' WATER & SEWER EASEMENT (DB 2001 PG 58565) TO BE VACATED

NORTHERN 15' OF 20' U.E. (PLAT BOOK 12, PAGE 92) TO BE VACATED

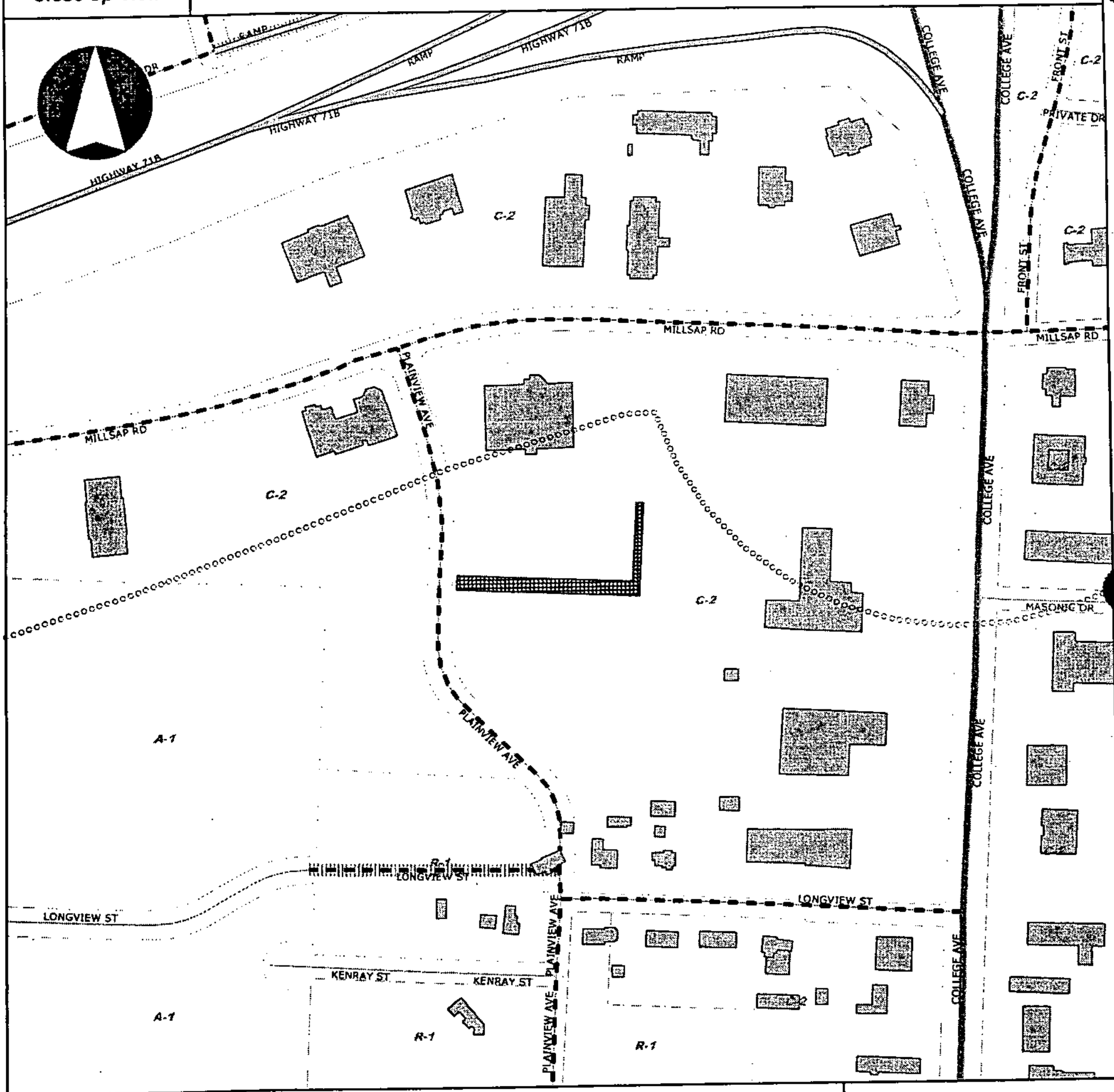
10' U.E. TO REMAIN (OFF SITE)

VAC01-6

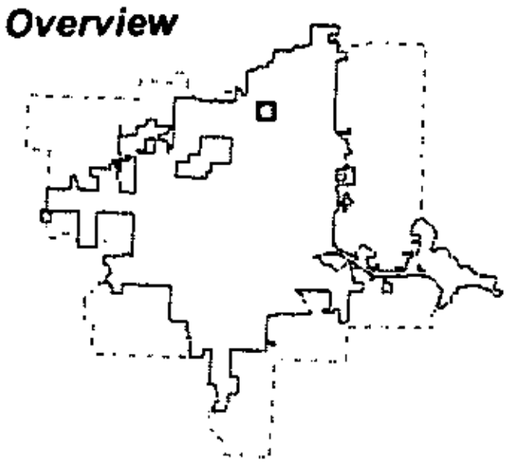
VAC01-06.00

Close Up View

MARRIOTT



Overview



Legend

Subject Property
VAC01-06.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

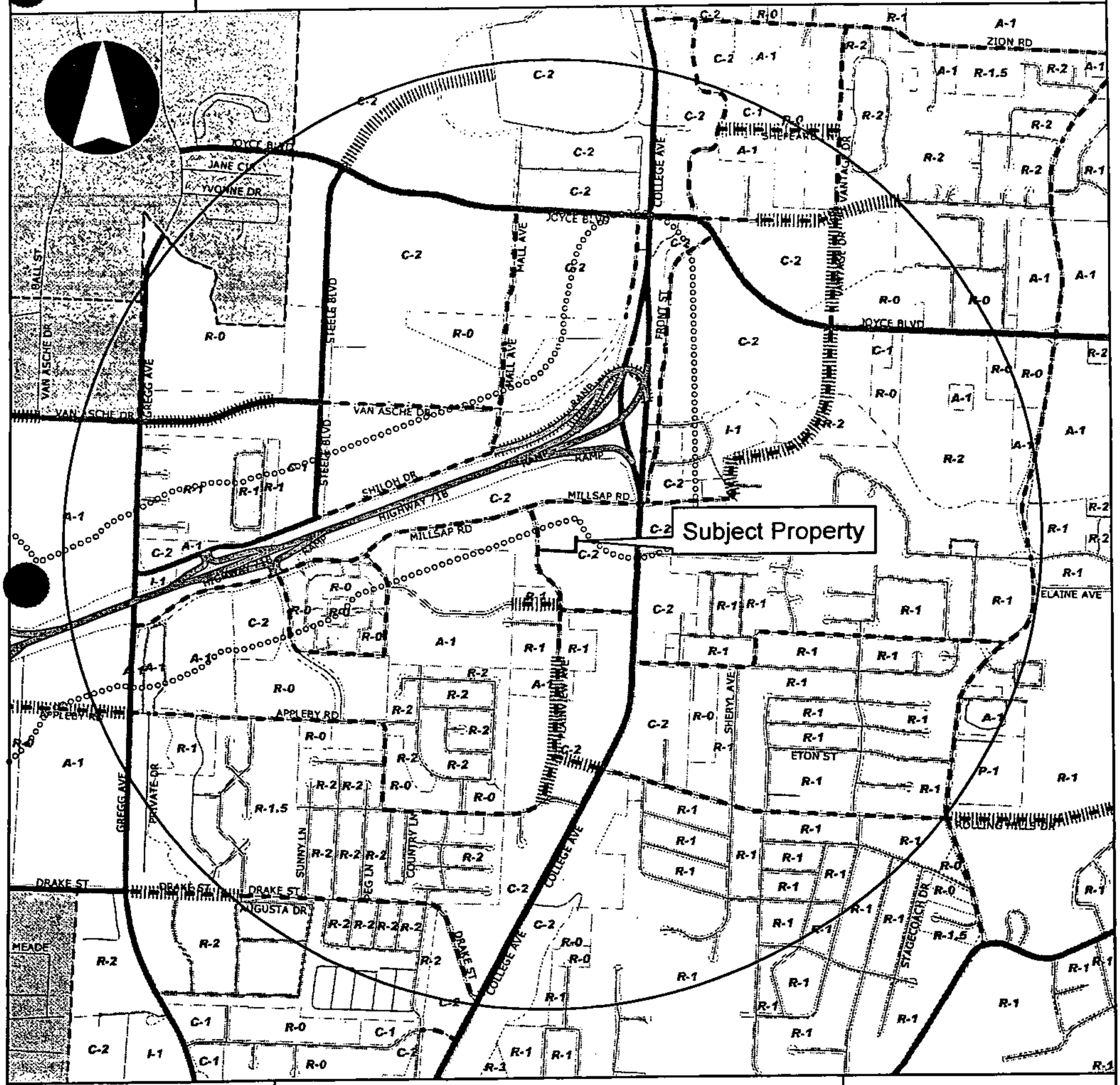
0 100 200 400 600
Feet

CITY OF FAYETTEVILLE ARKANSAS

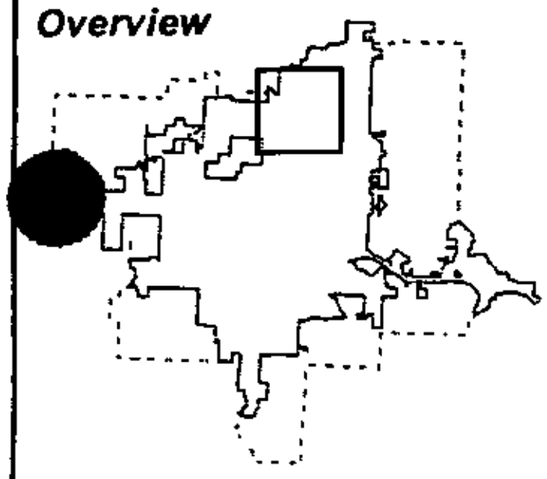
VAC01-06.00

One Mile View

MARRIOTT



Overview



Legend

Subject Property
- VAC01-06.00

Streets
- Existing
- Planned

Boundary
- Planning Area
- Overlay District
- City Limits
- Outside City

Master Street Plan
- Freeway/Expressway
- Principal Arterial
- Minor Arterial
- Collector
- Historic Collector

0 0.125 0.25 0.5 0.75 1 Miles

CITY OF FAYETTEVILLE ARKANSAS

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
113 W. Mountain St.
Fayetteville, AR 72701

Easement Vacation
Brock's Incorporated

TO: Mayor Dan Coody
FROM: Hugh Earnest, Urban Development Director
DATE: August 21, 2001

BACKGROUND

VA 01-07.00: Vacation was submitted by Greg Brockman of Brock's, Inc. for property located at 2483-2485 Jeremiah Place, Lot 7, Coyote Trail Subdivision. The request is to vacate a portion of a 25'wide utility easement adjacent to Jeremiah Place as shown and described on the attached maps and legal descriptions.

The requested easement vacation is due to an error in drafting which caused the duplex to be constructed within the existing 25'utility easement and required front yard. The Board of Adjustment, at the July 2, 2001 meeting approved a variance for the portion of the building located within the 25' required front building setback contingent upon the approval of a vacation of the encroached area of the easement. Only the portion of the easement in which the building encroachment has occurred is being requested to be vacated. There are no existing utilities located within this portion of the easement.

CURRENT STATUS

Staff recommended the vacation and the Planning Commission approved the request by a 7-0-0 vote.

RECOMMENDATION

Approval of the proposed easement vacation.

STAFF REVIEW FORM

_X_ **Agenda Request**
____ **Contract Review**
____ **Grant Review**

For the Fayetteville City Council meeting of September 4, 2001.

FROM:

Tim Conklin	Planning	Public Works
Name	Division	Department

ACTION REQUESTED: To approve an ordinance for VA01-7, submitted by Greg Brockman of Brock's Inc. for property located at 2483-2485 Jeremiah Place, Lot 7, Coyote Trail Subdivision. The request is to vacate a portion of a 25' wide utility easement adjacent to Jeremiah Place as shown and described on the attached maps and legal descriptions.

COST TO CITY:

$0		
Cost of this request	Category/Project Budget	Category/Project Name
Account Number	Funds used to date	Program Name
Project Number	Remaining balance	Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

Budget Coordinator — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**_____

Accounting Manager	Date	ADA Coordinator	Date
City Attorney	8/17/01 Date	Internal Auditor	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended approval and Planning Commission unanimously voted 8-0-0 to recommend and forward the vacation to the City Council.

Division Head	8-15-01 Date	**Cross Reference**
Department Director	8.22 Date	New Item: **Yes** **No**
Administrative Services Director	8/21/01 Date	Prev Ord/Res#:_____
Mayor	8/23/01 Date	Orig Contract Date: _____

ORDINANCE NO. _____

AN ORDINANCE APPROVING VA01-7.00 TO VACATE AND ABANDON A PORTION OF A 25' WIDE UTILITY EASEMENT ADJACENT TO JEREMIAH PLACE AS SHOWN AND DESCRIBED ON THE ATTACHED MAPS AND LEGAL DESCRIPTIONS AS REQUESTED BY GREG BROCKMAN.

WHEREAS, the City Council has the authority under A.C.A. §14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes, and

WHEREAS, the City Council has determined that the following described right-of-way is not required for corporate purposes.

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

Section 1. That the City of Fayetteville, Arkansas hereby vacates and abandons all of its rights together with the rights of the public generally, in and to the following described right-of-way:

See Exhibit "A" attached hereto and made a part hereof.

Section 2. That a copy of this Ordinance duly certified by the City Clerk shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

PASSED AND APPROVED this _____ day of _____, 2001.

APPROVED:

By_____
Dan Coody, Mayor

ATTEST:

By_____
Heather Woodruff, City Clerk

EXHIBIT "A"

Utility Easement Description

A PART OF LOT NUMBERED SEVEN (7) OF THE COYOTE TRAIL SUBDIVISION, CITY OF FAYETTEVILLE, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT THAT IS N87°03'18"W 33.1 FEET AND S3°10'W 15.4 FEET FROM THE NORTHEAST CORNER OF SAID LOT 7, SAID POINT OF BEGINNING BEING THE NORTHEAST CORNER OF THE ENCROACHING DUPLEX, AND RUNNING THENCE SOUTHERLY ALONG THE EAST SIDE OF SAID DUPLEX THE FOLLOWING: S3°10'W 9.0 FEET, S86°50'E 4.7 FEET, S3°10'W 37.5 FEET, N86°50'W 2.4 FEET TO THE 25 FOOT BUILDING SET-BACK AND UTILITY EASEMENT LINE; THENCE LEAVING SAID EAST SIDE AND RUNNING NORTHERLY 46.7 FEET ALONG A CURVE TO THE RIGHT (DELTA 36°17'12", RADIUS 75 FEET) ALONG SAID BUILDING SET-BACK AND UTILITY EASEMENT LINE TO THE NORTH SIDE OF SAID DUPLEX; THENCE LEAVING SAID BUILDING SET-BACK LINE AND RUNNING S86°50'E 1.85 FEET TO THE POINT OF BEGINNING, CONTAINING 0.0065 ACRES, MORE OR LESS.

Consent Agenda:

VAC 01-6.00: Vacation (Marriott Courtyard, pp 213) was submitted by Andy Feinstein of Engineering Design Assoc. on behalf of Marriott Courtyard for property located on lot 17 CMN Business Park. The property is zoned C-2, Thoroughfare Commercial and contains approximately 1.95 acres. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on lot 17 of CMN Business Park Phase I.

VAC 01-7.00: Vacation (Greg Brockman, pp 286) was submitted by Greg Brockman for property located at 2483-2485 Jeremiah. The property is zoned R-2. Medium Density Residential and contains approximately 0.12 acres. The request is to vacate a portion of the utility easement located along the front property line adjacent to Jeremiah Court

Estes: The next item of business to come before your Commission is the Consent Agenda. Vacation 01-6.00 for Marriott Courtyard submitted by Andy Feinstein of Engineering Design Assoc. on behalf of Marriott Courtyard for property located on lot 17 CMN Business Park. The property is zoned C-2, Thoroughfare Commercial and contains approximately 1.95 acres. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on lot 17 of CMN Business Park Phase I. The second item on the consent agenda is also a Vacation request submitted by Greg Brockman for property located at 2483-2485 Jeremiah. The property is zoned R-2. Medium Density Residential and contains approximately 0.12 acres. The request is to vacate a portion of the utility easement located along the front property line adjacent to Jeremiah Court. Either one of these items that are on the consent agenda may be pulled by any member of the Commission or by anyone in attendance in the audience this evening. Does anyone wish to pull either of these two items from the Consent Agenda? Seeing that no one desires to pull these items, would you call the roll Sheri?

ROLL CALL:

Upon roll call the Consent Agenda is approved by a vote of 7-0-0.

PC Meeting of 13 Aug. 01

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
113 W. Mountain St.
Fayetteville, AR 72701

Easement Vacation
Brock's Incorporated

TO: Fayetteville Planning Commission Members
THRU: Tim Conklin, City Planner
FROM: Ron Petrie, Staff Engineer
DATE: August 9, 2001

Project: **VA 01-07.00: Vacation (Brock's Incorporated, pp 286)** was submitted by Greg Brockman of Brock's, Inc. for property located at 2483-2485 Jeremiah Place, Lot 7, Coyote Trail Subdivision. The request is to vacate a portion of a 25'wide utility easement adjacent to Jeremiah Place as shown and described on the attached maps and legal descriptions.

The requested easement vacation is due to an error in drafting which caused the duplex to be constructed within the existing 25'utility easement and required front yard. The Board of Adjustment, at the July 2, 2001 meeting approved a variance for the portion of the building located within the 25' required front building setback contingent upon the approval of a vacation of the encroached area of the easement. Only the portion of the easement in which the building encroachment has occurred is being requested to be vacated. There are no existing utilities located within this portion of the easement.

The applicant has submitted the required notification forms to the utility companies and to the City. The results are as follows:

Ozarks Electric - No objections.
Southwestern Electric Power Company - Not Applicable.
Arkansas Western Gas - No objections.
SW Bell - No objections.
Cox Communications - No objections.

City of Fayetteville:
Water/Sewer - No objections provided that the vacation is only for the area of the building footprint including eaves, foundations, and all visible structure.
Street Department - No objections.
Solid Waste - No objections.

Recommendation: Approval of the proposed easement vacation.

PLANNING COMMISSION ACTION: **__yes__Required**
_____Approved _____Denied

Date: ___/___/___

Comments:

_____
_____
_____
_____

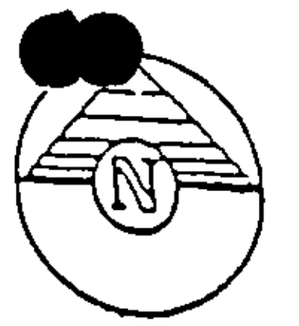
CITY COUNCIL ACTION: **__yes__Required**
_____Approved _____Denied

Date: ___/___/___

PL[redacted] SURVEY FOR

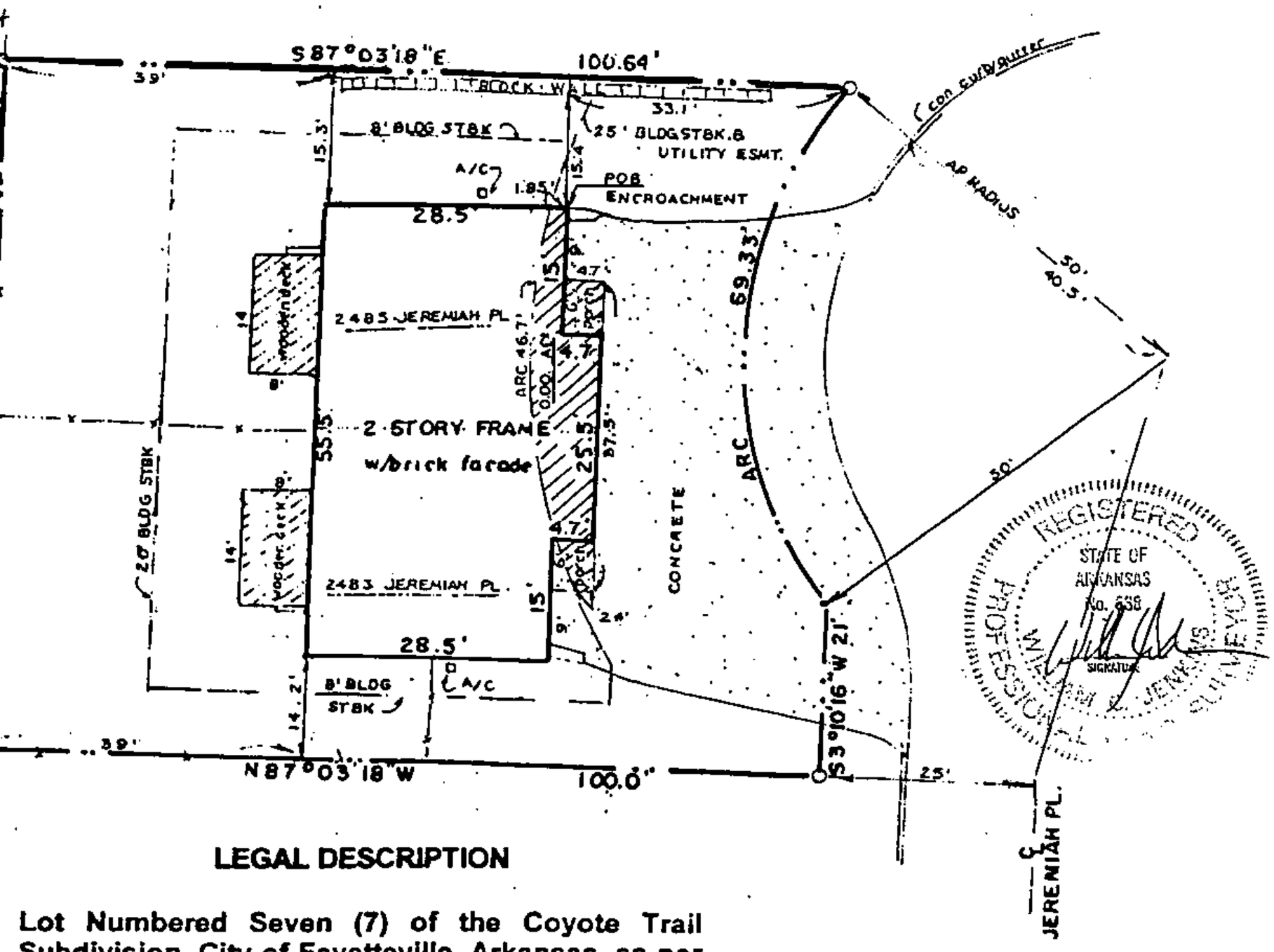
BROCK'S Inc.

RECEIVED
AUG 06 2001
PLANNING DIV.



LEGEND
PROPERTY LINE
FOUND IRON PIN
SET IRON PIN
FENCE

LOT 7
COYOTE TRAIL
SUBD.



LEGAL DESCRIPTION

Lot Numbered Seven (7) of the Coyote Trail Subdivision, City of Fayetteville, Arkansas, as per plat of said Addition on file in the Office of the Circuit Clerk and Ex-Officio Recorder, Washington County, Arkansas.

LEGAL DESCRIPTION
BUILDING SET-BACK & UTILITY EASEMENT ENCROACHMENT

A part of Lot Numbered Seven (7) of the Coyote Trail Subdivision, City of Fayetteville, Arkansas, being more particularly described as follows:
Beginning at a point that is N87°03'18"W 33.1 feet and S3°10'W 15.4 feet from the Northeast corner of said Lot 7, said point of beginning being the Northeast corner of the encroaching duplex, and running thence Southerly along the East side of said duplex the following: S3°10'W 9.0 feet, S86°50'E 4.7 feet, S3°10'W 37.5 feet, N86°50'W 2.4 feet to the 25 foot building set-back and utility easement line; thence leaving said East side and running Northerly 46.7 feet along a curve to the right (Delta 36°17'12", Radius 75 feet) along said building set-back and utility easement line to the North side of said duplex; thence leaving said building set-back line and running S86°50'E 1.85 feet to the point of beginning, containing 0.0065 acres, more or less.

FLOOD CERTIFICATION: The herein described tract is in a non-flooded area and not within the 100 year flood plain. Per FIRM Map No. 05143C 0085C, dated 9-18-91.

SURVEYOR'S CERTIFICATION: I hereby certify that I have surveyed the herein described tract and that the property lines and corner monuments are, to the best of my knowledge and ability, correctly established as shown. Also, any easements and/or encroachments revealed by said survey are shown hereon.

WILLIAM C. JENKINS PLS No. 688 AR

REVISED: 8/3/01 REVISED: 8/27/01

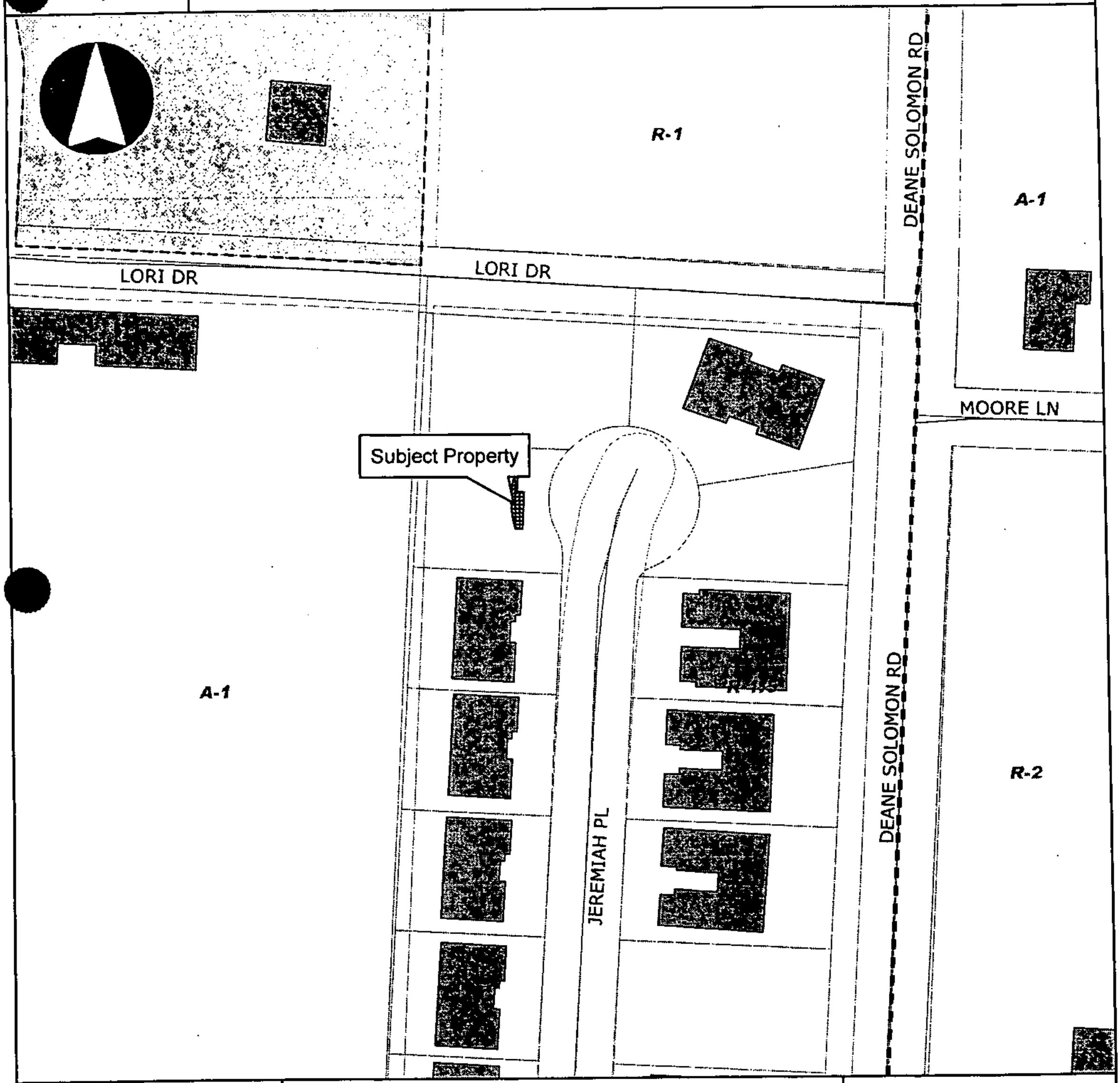
JENKINS SURVEYING, INC.
1552 CEDAR ST.
FAYETTEVILLE AR 72703
(501) 521-5231

DATE:	5/14/01
DRAWN BY:	WCJ
FIELD BOOK:	842
JOB NO:	01-89

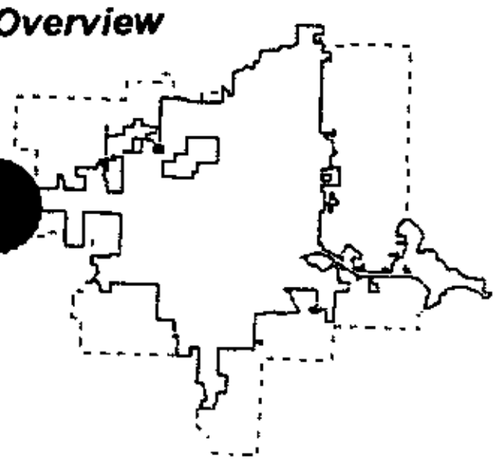
VAC01-07.00

Close Up View

BROCKMAN



Overview



Legend

Subject Property
VAC01-07.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

0 25 50 100 150 200 250 Feet

CITY OF FAYETTEVILLE ARKANSAS

VAC-01.07.00

One Mile View

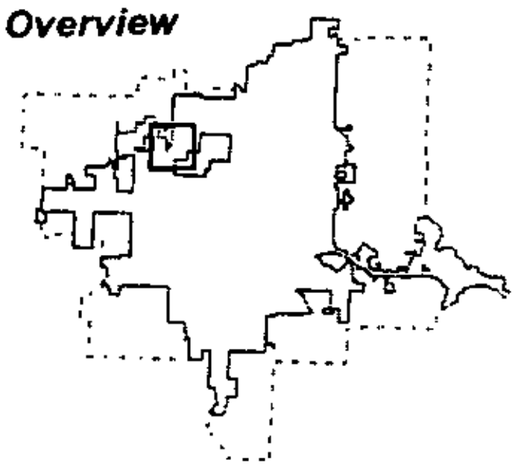
BROCKMAN

Subject Property

P-1 R-1 R-2 R-0 A-1 I-1 R-1.5 C-2

DEANE SOLOMON RD
DOUBLE TREE DR
RAVEN LN
ORI DR
JEREMIAH PL
EMIL D
MOORE LN
SHILOH DR
RED TIP DR
QUAIL DR
DOVE DR
MEADOWLARK DR
WOODLARK LN
GOOSEBERRY LN
PRIVATE DR
MOUNT COMFORT RD
ALPINE AVE
KNAPP DR
ROBERT SMITH
OMER MCCONNELL
RAMP
I-540
PORTER RD

Overview



Legend

Subject Property
- VAC01-07.00

Streets
- Existing
- Planned

Boundary
- Planning Area
- Overlay District
- City Limits
- Outside City

Master Street Plan
- Freeway/Expressway
- Principal Arterial
- Minor Arterial
- Collector
- Historic Collector

0 0.125 0.25 0.5 Miles

STAFF REVIEW FORM

X Agenda Request
___ Contract Review
___ Grant Review

the Fayetteville City Council meeting of August 22, 2001

FROM:

Greg Boettcher	Fleet	Public Works
Name	Division	Department

ACTION REQUIRED: Review and approve attached ordinance which establishes a formal process to allow the purchase of used heavy equipment. This ordinance waives competitive bidding on aforementioned equipment types. Passenger vehicles, pick-up trucks and vans are excluded.

COST TO CITY:

$: NTE $200,000.00	$ 3,678,259	
Cost of this Request	Category/Project Budget	Category/Project Name
9700-1920-5802-00	$ 588,252	Capital
Account Number	Funds Used to Date	Program Name
Various	$ 3,090,007	Shop
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ___Budgeted Item ___Budget Adjustment Attached

Budget Manager — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**

Marsha Tarkington	8/15/01		
Accounting Manager	Date	ADA Coordinator	Date
[signature]	8/16/01	Danny Smith	8/15/01
City Attorney	Date	Internal Auditor	Date

Purchasing Officer — Date

STAFF RECOMMENDATION: Approval of the ordinance.

		Cross Reference
Division Head	Date	
[signature]	08-15-01	
Department Director	Date	New Item: **Yes** **No**
[signature]	8/16/01	
Administrative Services Director	Date	Prev Ord/Res #:
[signature]	8/20/01	
Mayor	Date	Orig Contract Date:

STAFF REVIEW FORM

Description_____ Meeting Date_____

Comments: Reference Comments:

Budget Coordinator

Accounting Manager

City Attorney

I have attached an amended version for

Purchasing Officer

ADA Coordinator

Internal Auditor

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE FORMAL COMPETITIVE BIDDING REQUIREMENTS FOR THE PURCHASE OF USED EQUIPMENT FOR AN AMOUNT NOT TO EXCEED TWO HUNDRED THOUSAND DOLLARS ($200,000.00) PER ANNUM FOR CALENDAR YEARS 2001 AND 2002; SUBJECTING SUCH PURCHASES TO THE REVIEW AND APPROVAL OF THE EQUIPMENT COMMITTEE; AND AUTHORIZING THE MAYOR OR HIS REPRESENTATIVE TO SIGN THE AGREEMENTS REQUIRED TO COMPLETE AN APPROVED PURCHASE.

WHEREAS, the City of Fayetteville has an ongoing need to purchase equipment; and

WHEREAS, significant savings of taxpayer dollars can be achieved through the purchase of used equipment; and,

WHEREAS, used equipment purchases take place on the "spot market" with the sale going to the first offeror; and,

WHEREAS, taking the time necessary to seek individual bid waivers for each and every proposed used equipment purchase can cause the City to miss out on such opportunities; and,

WHEREAS, the City Council finds that such circumstances constitute an exceptional situation where competitive bidding is not feasible or practical.

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

Section 1. That the City Council hereby waives the formal competitive bidding requirements for the purchase of used equipment for an amount not to exceed Two Hundred Thousand Dollars ($200,000.00) per annum for calendar years 2001 and 2002.

Section 2. That the Equipment Committee is hereby authorized and empowered to establish procedures for the review of used equipment purchase requests, and to approve or disapprove such purchases as it deems reasonable and prudent.

Section 3. That the City Council hereby authorizes the Mayor or his duly authorized representative to sign any agreements required to complete an approved purchase.

Section 4. That this ordinance shall remain in effect until midnight on December 31, 2002, at which time it shall be repealed unless previously renewed by an affirmative vote of the City Council .

PASSED AND APPROVED this _____ day of _____, 2001.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
HEATHER WOODRUFF, City Clerk

STAFF REVIEW FORM

_X_ **Agenda Request**
____ **Contract Review**
____ **Grant Review**

For the Fayetteville City Council meeting of September 4, 2001.

FROM:

Tim Conklin	Planning	Public Works
Name	Division	Department

ACTION REQUESTED: To adopt an ordinance amending Title XV: Unified Development Ordinance of the Code of Fayetteville , to provide amendments to and clarification of various provisions concerning tree preservation and protection.

COST TO CITY:

$0		
Cost of this request	Category/Project Budget	Category/Project Name
Account Number	Funds used to date	Program Name
Project Number	Remaining balance	Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

Budget Coordinator — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**_____

Accounting Manager	Date	ADA Coordinator	Date
City Attorney	8/24/01 Date	Internal Auditor	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended approval and Planning Commission unanimously voted 7-0-0 to recommend and forward the amended ordinance to the City Council.

Division Head	8-24-01 Date	**Cross Reference**
Department Director	Date	New Item: **Yes** **No**
Administrative Services Director	Date	Prev Ord/Res#:_____
Mayor	8/24/01 Date	Orig Contract Date: _____

STAFF REVIEW FORM

Description: _____ **Meeting Date:** _____

Comments:

Reference Comments:

Budget Coordinator:

Accounting Manager:

City Attorney:
Please see the attached Memo. JN

Purchasing Officer:

ADA Coordinator:

Internal Auditor:

ce

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT ORDINANCE, OF THE CODE OF FAYETTEVILLE, TO PROVIDE AMENDMENTS TO AND CLARIFICATION OF VARIOUS PROVISIONS CONCERNING TREE PRESERVATION AND PROTECTION.

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

Section 1. That Chapter 151: Definitions, Unified Development Ordinance, Code of Fayetteville is hereby Amended by deleting the following definitions: **Development** (Tree Protection and Preservation); **Landmark Tree; Mature Canopy Area; Rare Tree;** and **Tree Preservation Area;** and in its stead, is inserted Exhibit "A" attached hereto and made a part hereof.

Section 2. That Sections 152(H) and 153.02(A) Unified Development Ordinance, Code of Fayetteville are hereby Amended by deleting the subheadings **"Tree Protection and Preservation,"** and inserting "Tree Preservation and Protection" in their stead, and as to 153.02(A) only, striking the phrase "landmark and rare" and inserting the term "significant" in its stead.

Section 3. That Section 155.05(A), Unified Development Ordinance, Code of Fayetteville is hereby Amended by inserting the following:

§155.05 APPEALS FROM PLANNING COMMISSION DECISIONS.

A. Appeals To City Council.

7. Tree Preservation Plan. Owners of record or any member of the City Council wishing to contest a Tree Preservation Plan must appeal the decision to deny or approve the preliminary subdivision plat or large scale development according to the procedures set forth in subsection (A)(2) above.

Section 4. That Section 156.03(C), Unified Development Ordinance, Code of Fayetteville is hereby Amended by inserting the following:

§156.03 DEVELOPMENT.

C. Consideration By The Planning Commission.

6. Tree Preservation Plan. A developer may petition the Planning Commission for a variance from the requirements of Chapter 167: Tree Preservation and Protection, in those cases where its strict application would work an injustice due to the unique characteristics of the subject real property; provided that such variance shall not

have the effect of nullifying the intent and purpose of the chapter. The Planning Commission's approval of said variance must be affirmed by the City Council to become effective, and a denial of the requested variance may be appealed to the City Council.

Section 5. That Chapter 167: Tree Protection and Preservation, Unified Development Ordinance, Code of Fayetteville is hereby repealed, and Exhibit "B" attached hereto and made a part hereof, is inserted in its stead.

PASSED AND APPROVED this _____ day of _____, 2001.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

EXHIBIT "A"

To be inserted at Chapter 151: Definitions:

Abbreviated Tree Preservation Plan. (Tree Preservation and Protection) A shorter, less formal Tree Preservation Plan required of Applicants seeking Building, Grading or Parking Lot Permits, but who are not subject to the requirements for Large Scale Developments or Subdivisions.

Administrative Determination. (Tree Preservation and Protection) Final action by the Landscape Administrator to either approve, conditionally approve or disapprove a Tree Preservation Plan. Administrative determinations apply only to those projects which do not require Planning Commission approval.

Analysis Report. (Tree Preservation and Protection) A report, which among other things, sets forth any alternative designs the Applicant considered in arriving at the proposed design.

Applicant. (Tree Preservation and Protection) Any person, party, partnership, corporation or other business entity seeking the City's approval of a proposed Tree Preservation Plan.

Base Density. (Tree Preservation and Protection) The number of trees an Applicant must plant based upon the quality and number of the trees proposed to be removed per acre.

Caliper. (Tree Preservation and Protection) The diameter of a young tree (those with a diameter of 4" or less) measured 6" above ground level.

Canopied Slopes. (Tree Preservation and Protection) Any land with a slope of 15% or greater containing trees, woody shrubs and herbaceous plants that serve the function of sustaining the structural integrity of the soil, thus reducing the likelihood of erosion, slide, or slump.

Canopy. (Tree Preservation and Protection) The combined crowns of all trees on a tract of land.

Conservation Easement. (Tree Preservation and Protection) A formal, legally binding agreement between parties, usually a landowner and a private or public entity, providing for the preservation of land in its natural state.

Contiguous Woodlands. (Tree Preservation and Protection) A portion of canopy existing on the site of proposed development, which is a part of a larger, unbroken forest, whether or not it extends onto adjacent lots.

Development. (Tree Preservation and Protection) The process of changing the use or appearance of land, including, but not limited to, the construction, demolition or

EXHIBIT "A"

movement of structures, the division of land into two (2) or more parcels, the removal of trees or woody shrubs, or the grading, removal or addition of any debris, fill, or soil.

Forestation. (Tree Preservation and Protection) The act of planting trees.

Invasive Species. (Tree Preservation and Protection) Any species not indigenous to a region, which becomes established and displaces native species.

Landscape Establishment Guarantee. (Tree Preservation and Protection) A bond, irrevocable letter of credit, or other surety held by the City until the satisfactory conclusion of the three-year landscape establishment period.

Less Desirable Species. (Tree Preservation and Protection) Low-Priority trees or other woody shrubs listed in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

Mitigation. (Tree Preservation and Protection) The planting of trees on-site in an effort to lessen the environmental damage caused by the injury or removal of trees during development.

Native Woodlands. (Tree Preservation and Protection) A biological community dominated by trees and woody shrubs native to the Ozark Plateau, covering an area of 10,000 square feet or greater. A list of species native to the Ozark Plateau may be found in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

Non-native Woodlands. (Tree Preservation and Protection) A biological community of trees and woody shrubs, covering an area of 10,000 square feet or greater, descended from non-native species brought to the area during urban settlement. A list of typical non-native species may be found in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

Percent Minimum Canopy. (Tree Preservation and Protection) The amount of existing tree canopy an Applicant must preserve based on the zoning designation of the land to be developed.

Relic Orchard. (Tree Preservation and Protection) Groups of fruit or nut trees originally planted for agricultural purposes, but since taken out of production.

Riparian. (Tree Preservation and Protection) Of, relating to, or located on the bank of a river or stream.

Riparian Buffer. (Tree Preservation and Protection) A biological community consisting of trees, woody shrubs and groundcover that exists along the banks of rivers, creeks or intermittent and perennial streams.

EXHIBIT "A"

Significant Tree. (Tree Preservation and Protection) A tree with a diameter at breast height (DBH) of 24" or more for Fast Growth Species, 18" or more for Slow and Moderate Growth Species, and 8" or more for Understory Species, as set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual. A tree may also be considered significant because of advanced age for its species, or because it represents an uncommon or endangered species, or due to its location on a site designated as historic by local, state or federal authorities.

Tree Preservation Area. (Tree Preservation and Protection) Those areas designated for the protection of both preserved and planted trees depicted on a Tree Preservation Plan, Abbreviated Tree Preservation Plan, Preliminary Plat, Large Scale Development, or Site Plan.

Use Buffer. (Tree Preservation and Protection) Trees or other woody shrubs that serve to screen incompatible land uses, unwanted light, or noise.

EXHIBIT "B"

CHAPTER 167:
TREE PRESERVATION AND PROTECTION

§167.01 PURPOSE.

It is the purpose of this chapter to protect and promote the health, safety, and general welfare and preserve and enhance the natural beauty of Fayetteville by providing for regulation of the preservation, planting, maintenance, and removal of trees within the city, in order to accomplish the following objectives:

A. Objectives.

1. To preserve existing tree canopy.

2. To create a healthful environment for Fayetteville residents, businesses and industries.

3. To moderate the harmful effects of sun, wind and temperature changes.

4. To buffer noise, air and visual pollution.

5. To filter pollutants from the air and assist in the generation of oxygen.

6. To reduce stormwater runoff and the potential damage it may create.

7. To stabilize soil and prevent erosion, with an emphasis on maintaining tree canopy on hillsides defined as Canopied Slopes in §151.

8. To provide habitat for birds and other wildlife.

9. To preserve riparian banks and beds, and prevent sedimentation.

10. To screen incompatible land uses.

11. To promote energy conservation.

12. To protect and enhance property values.

B. Principles. This chapter shall be enforced according to the following principles:

1. Preservation shall be the first, best, and standard approach.

2. If preservation cannot be achieved, On-Site Mitigation shall next be pursued.

3. If On-Site Mitigation cannot be achieved, Off-Site Preservation shall be pursued.

4. If Off-Site Preservation cannot be achieved, Off-Site Forestation shall be pursued.

5. If none of the above approaches can be achieved, payment shall be made to the Tree Escrow Account.

EXHIBIT "B"

§167.02 CITY OF FAYETTEVILLE TREE PRESERVATION, PROTECTION, AND LANDSCAPE MANUAL.

The Landscape Administrator, in cooperation with other members of City Staff, shall promulgate and periodically revise forms, procedures and regulations to implement this chapter, and publish this information in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

A. Copies of the Tree Preservation, Protection, and Landscape Manual are to be made readily available to the public and shall include, but need not be limited to:

1. Specific criteria for gaining City approval of Tree Preservation Plans;

2. The format and content of reports and plans the Applicant must submit to the City pursuant to this chapter;

3. Tree protection during construction;

4. A glossary of important terms used in this chapter;

5. Size and species requirements for trees planted for On-Site Mitigation or Off-Site Forestation;

6. Maintenance of trees (including but not limited to pruning, irrigation, and protection from disease).

B. The Tree and Landscape Advisory Committee shall review and may recommend revisions to the Tree Preservation, Protection, and Landscape Manual at least every three (3) years to reflect changes in arboricultural and horticultural practices, lists of preferred tree species, City policies or the content of this chapter.

§167.03 TREE REGISTRY.

A. Trees or groups of trees which are documented to be of historic merit, of an uncommon or endangered species, or are of extraordinary value due to their age, size, or type, may be registered in the City of Fayetteville's Tree Registry. It shall be the duty of the Landscape Administrator to maintain and keep this Registry on file in the Administrator's office.

B. Registration of trees shall be voluntary and may be done by the owner(s) of the property on which the tree is located. Registration shall not run with the land, unless the property owner wishes to use an express trust to transfer a benefit in the tree or groups of trees to the City. Registered tree owners are entitled to consultation with the Tree and Landscape Advisory Committee and/or the Landscape Administrator concerning proper care and protection of the tree, as well as an evaluation of the tree's condition.

§167.04 TREE PRESERVATION AND PROTECTION DURING DEVELOPMENT.

A. Applicability. The provisions of this section shall apply to proposed Subdivisions, Large Scale Developments, and developments required by other chapters

EXHIBIT "B"

of the Unified Development Ordinance to go through the City's permitting process.

1. Subdivisions and Large Scale Developments. Applicants seeking approval of proposed Subdivisions and Large Scale Developments shall submit a Site Analysis Plan, Analysis Report, and Tree Preservation Plan with the Preliminary Plat or Site Plan. There shall be no land disturbance, grading or tree removal until a Tree Preservation Plan has been submitted and approved, and the tree protection measures at the site inspected.

2. Grading Permits. An Abbreviated Tree Preservation Plan, as set forth in §167.04(H)(3), shall be submitted with the application for Grading Permits on projects that are not required to go through the Subdivision or Large Scale Development process. There shall be no land disturbance, grading or tree removal until an Abbreviated Tree Preservation Plan has been submitted and approved, and the tree protection measures at the site inspected.

3. Building Permits. Tree preservation requirements apply to all permit applications for non-residential construction, and the construction of multi-family residential buildings composed of three (3) or more dwelling units. An Abbreviated Tree Preservation Plan, as set forth in §167.04(H)(3), shall be submitted with the application for Building Permits on projects that are not required to go through the Subdivision or Large Scale Development process. There shall be no land disturbance, grading or tree removal until an Abbreviated Tree Preservation Plan has been submitted and approved, and the tree protection measures at the site inspected.

4. Parking Lots. Tree preservation requirements apply to all permit applications for the construction of parking lots with five (5) or more spaces. An Abbreviated Tree Preservation Plan, as set forth in §167.04(H)(3), shall be submitted with the application for permits on projects that are not required to go through the Subdivision or Large Scale Development process. There shall be no land disturbance, grading or tree removal until an Abbreviated Tree Preservation Plan has been submitted and approved, and the tree protection measures at the site inspected.

B. Tree Preservation Criteria. The Landscape Administrator shall consider the following factors, and any other relevant information, when evaluating Tree Preservation Plans:

1. The desirability of preserving a tree or group of trees by reason of age, location, size or species.

2. Whether the design incorporates the required Tree Preservation Priorities.

3. The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.

4. 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.

EXHIBIT "B"

5. Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.

6. Whether the size or shape of the lot reduces the flexibility of the design.

7. The general health and condition of the tree or group of trees, or the presence of any disease, injury or hazard.

8. The placement of the tree or group of trees in relation to utilities, structures and the use of the property.

9. The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.

10. Whether roads and utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.

11. Construction requirements for On-Site and Off-Site drainage.

12. The effects of proposed On-Site Mitigation or Off-Site Alternatives.

13. The effect other chapters of the UDO, or City policies have on the development design.

14. The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations.

15. The impact a substantial modification or rejection of the application would have on the Applicant.

Note: The above items are not presented in any particular order of importance. The weight each is given will depend in large part on the individual characteristics of each project.

C. Canopy Area. In all new Subdivisions, Large Scale Developments, Industrial and Commercial Developments, and all other improvements listed above, trees shall be preserved as outlined in Table 1 under Percent Minimum Canopy, unless the Applicant has been approved for On-Site Mitigation or Off-Site Alternatives as set forth in subsections (I) & (J) below. The square foot percentage of canopy area required for preservation in new development is based on the total area of the property for which the Applicant is seeking approval, less the right-of-way dedications. An Applicant shall not be required to plant trees in order to reach the Percent Minimum Canopy requirement on land where less than the minimum exists prior to development, unless trees have been removed.

Table 1 – Minimum Canopy Requirements

ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
A-1 Agricultural (Non-agricultural uses)	25
RE Residential Estate	25
RA Residential Acre	25

EXHIBIT "B"

ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
RL Residential Large Lot	20
RS Residential Small Lot	20
R-O Residential-Office	20
R-1 Low Density Residential	25
R-1.5 Moderate Density Residential	20
RMF-6 Low Density Multi-Family Residential	20
RMF-12 Moderate Density Multi-Family Residential	20
RMF-18 Medium Density Multi-Family Residential	20
R-2 Medium Density Residential	20
R-3 High Density Residential	20
C-1 Neighborhood Commercial	15
C-2 Thoroughfare Commercial	15
C-3 Central Business Commercial	15
C-4 Downtown	10
I-1 Heavy Commercial and Light Industrial	15
I-2 General Industrial	15
P-1 Institutional	25

D. Prior Tree Removal. If trees have been removed below the required minimum within the five (5) years preceding application for development approval, the site must be forested to meet the Percent Minimum Canopy according to Table 1, plus an additional ten percent (10%) of the total area of the property for which the Applicant is seeking approval, less the right-of-way dedications. The number of trees required to be planted shall be calculated using the Base Density for High Priority trees.

E. Tree Preservation Priorities.

1. Proposed designs must meet the Percent Minimum Canopy requirements for the particular zoning designation, emphasizing the preservation and protection of High Priority trees on the site. Trees in utility easements shall not be counted toward the Percent Minimum Canopy requirement, and such utilities shall be routed, wherever possible, to avoid existing canopy.

2. Each design shall consider the existing natural features of the site, the Preservation Priorities for the trees, and the impact their proposed removal may have both on and off site.

3. The list of Preservation Priorities (see Table 2) shall guide the review of each development's design. The submittal of designs which do not incorporate Preservation Priorities for the trees on the site shall result in the denial of the Tree Preservation Plan.

EXHIBIT "B"

4. The preservation and protection of High Priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. The preservation and protection of lower priority trees shall not be substituted for that of High Priority trees, except:

a. when the justification for such a substitution is set forth in the Analysis Report; and,

b. the substitution is approved by the Landscape Administrator.

Table 2 – Preservation Priorities

High Priority	Mid-level Priority	Low Priority
Canopied Slopes,	***Contiguous Woodlands,***	***Invasive Species,***
Native Woodlands,	***Non-native Woodlands,***	***Relic Orchards,*** *and*
Floodways & Riparian Buffers, *and* ***Significant Trees.***	*and,* ***Use Buffers.***	***Undesirable Species.***

Note: Each of the above is listed alphabetically beneath its respective category. They are not presented in any particular order of importance within that category.

F. Tree Preservation Requirements for Proposed Residential and Non-Residential Subdivisions. Where trees exist, flexible approaches such as adjustments to lot layout, placement of buildings and paved surfaces, and location of utilities shall be pursued in order to meet the Percent Minimum Canopy required for the applicable zoning designation.

1. Residential Subdivisions. The Percent Minimum Canopy in residential subdivisions shall be located in areas that have the least possibility of impact as utilities are installed and homes built. The intent is to leave undisturbed as many existing trees as possible for the use and enjoyment of prospective lot owners. Trees in utility easements shall not be counted toward the Percent Minimum Canopy requirement, and such utilities shall be routed to avoid existing canopy.

2. Non-Residential Subdivisions. Two options are available for establishing a Tree Preservation Plan for the development of non-residential subdivisions. The proposed plan that will potentially preserve the largest amount of priority canopy shall be encouraged. The Landscape Administrator may recommend approval of a plan that contains some of the features of both options, if the plan satisfies the intent and requirements of this chapter.

a. Preservation Plan for Entire Subdivision. The developer may choose to preserve the Percent Minimum Canopy required for the entire development. With this option, the preserved canopy shall be located in areas that will not be impacted by future development of the individual lots. Canopy to be preserved shall be noted on the Final Plat, and shall be protected as set forth in §167.04(L) below. Should the entire Percent Minimum Canopy requirement for the site be so protected, the Final Plat shall

EXHIBIT "B"

include a statement that the individual lots, as represented thereon, shall not require separate Tree Preservation Plans.

b. Preservation Plan for Infrastructure Only. The developer, in consultation with City Staff, shall delineate the area required for the construction of the infrastructure and improvements for the development. This area should include street rights-of-way, and utility and drainage easements. This option shall not allow the removal of trees during the grading of individual lots, unless shown by the developer to be essential to the project's engineering design. The developer will be required to mitigate the canopy removed from this defined area at the percentage requirement for the applicable zone. On all other areas of the development, the developer shall protect the existing canopy during the construction phase in accordance with §167.05 below. The Final Plat shall include a statement that the individual lots shall require separate Tree Preservation Plans.

G. Initial Review.

1. Meeting with the Landscape Administrator. It is strongly recommended that prospective Applicants meet with the Landscape Administrator for an Initial Review of the proposed Tree Preservation Plan for the site prior to submitting a Preliminary Plat, Large Scale Development, or Site Plan to the City. During the Initial Review, the Landscape Administrator shall make recommendations to ensure the proposed subdivision or development complies with the requirements of this chapter. These recommendations shall be non-binding. However, Applicants proceed at the risk of higher costs due to changes required by a noncompliant submittal should they choose not to have the Initial Review or to disregard the recommendations of the Landscape Administrator.

2. Letter of Confirmation. The Landscape Administrator shall document whether the Applicant participated in the Initial Review meeting in a Letter Of Confirmation to the Applicant. If the Applicant chose to attend an Initial Review meeting, the letter shall also document any recommendations made. The Landscape Administrator shall ensure that a copy of the letter becomes part of the permanent file for the project.

H. Submittal of Plans. Applicants should bear in mind that all plans will be evaluated according to the Tree Preservation Criteria and Percent Minimum Canopy requirements as set forth under §167.04(B) & (C).

1. Site Analysis Plan. On sites with existing tree canopy, the Applicant shall conduct a Site Analysis to determine the approximate age, health, size and species distribution of the trees, noting each on a Site Analysis Plan, and clearly showing the locations and types of all natural features on a site, including features one hundred feet (100') beyond the property lines. The Site Analysis Plan shall also specifically depict the applicable Preservation Priority level for each tree or group of trees on the site. The plan should include, but need not be limited to, delineation of the following features as they exist on the site:

EXHIBIT "B"

a. The existing topography of the site highlighting slopes of 15% or greater and indicating the natural drainage patterns.

b. The property line boundaries of the site.

c. Soils identified according the Unified Soil Classification System.

d. Any Significant Trees existing on the site, and the location of trunks, spread of the canopy, species, Diameter at Breast Height (DBH), and the overall health of each Significant Tree.

e. Groupings of trees, delineating the edges of the overall canopy, noting the predominate species, average height, Diameter at Breast Height (DBH), and general health of the trees.

f. All existing utilities and utility easements.

g. All perennial and intermittent streams and creeks that exist on the site or within one hundred feet (100') of the site.

h. Floodplains and floodways on the site.

i. All existing rights of way within and surrounding the project site including any designated trails or bike paths.

j. Any other factors that may impact the design of the site.

2. Tree Preservation Plan. The Applicant shall indicate all proposed site improvements, and delineate in the Tree Preservation Plan the trees to be retained on-site, and the measures to be implemented for their protection. These measures shall include, but need not be limited to fencing, limits of root pruning, as well as restrictions on traffic and material storage. The Plan shall also clearly depict the limits of soil disturbance to include all areas to be graded both on and off site, as well as the proposed location of utilities. The Applicant should consult the City of Fayetteville Tree Preservation, Protection and Landscape Manual for details, examples and specific checklists.

3. Abbreviated Tree Preservation Plan. Applicants requesting approval of development projects that require Building, Grading or Parking Lot permits, but that do not fall under the requirements for Large Scale Developments or Subdivisions, shall prepare and submit an Abbreviated Tree Preservation Plan. The information for this plan may be combined with the Site Plan, Plat Drawing or Grading Plan. The Applicant is expected to show the general location of all existing groups of trees, individual Significant Trees, and to clearly depict the limits of soil disturbance to include all areas to be graded, both on and off site, as well as the proposed location of utilities. Protective measures such as fencing, limits of root pruning, restrictions on traffic and materials storage shall be depicted on the plan. A preliminary site visit with the Landscape Administrator is highly recommended before applying for any of the above-mentioned permits. The Applicant should consult the City of Fayetteville Tree

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Preservation, Protection, and Landscape Manual for details, examples and specific checklists. Applicants submitting Abbreviated Tree Preservation Plans shall not be required to submit either a Site Analysis Plan or Analysis Report, nor shall they be required to hire architects, engineers, or landscape architects to prepare their Plans.

4. Analysis Report. The Applicant shall submit an Analysis Report detailing the design approaches used to minimize damage to or removal of existing canopy that were considered in arriving at the proposed design. Written justification shall be presented as to why individual trees or canopy must be removed. The report shall also detail proposed On-Site Mitigation options or Off-Site Alternatives, as detailed below.

5. Grading and Utility Plans. All subsequent Grading and Utility Plans shall depict the Tree Preservation Areas on the site, to include the preserved trees and the physical limits of all protective measures required during construction.

6. Submittal Requirements. The Applicant shall submit two (2) copies of a Site Analysis Plan and Analysis Report to the Landscape Administrator, concurrently with their Tree Preservation Plan. Applicants submitting Abbreviated Tree Preservation Plans shall not be required to submit either a Site Analysis Plan or Analysis Report.

7. Conservation Easements. The City shall encourage the use of conservation easements for the added protection of trees preserved or planted to meet Percent Minimum Canopy requirements in those instances where such would be of mutual benefit to the Applicant and the City.

I. Request for On-Site Mitigation. If an Applicant is able to demonstrate to the Landscape Administrator's satisfaction that a site's physical or spatial constraints prevent the preservation of the Percent Minimum Canopy, the Applicant may request On-Site Mitigation. Trees that are required to be planted in compliance with other development chapters shall not be counted for the purpose of satisfying the On-Site Mitigation or Off-Site Alternative requirements of this chapter.

1. Timing of Request for On-Site Mitigation. Requests to remove trees below the Percent Minimum Canopy requirement must be incorporated in, and submitted concurrently with the Applicant's Tree Preservation Plan.

2. Plan Requirements. The Tree Preservation Plan must graphically represent the species and location for all trees to be planted on-site. It shall also include a chart clearly stating the following information:

a. The number of trees requested for removal;

b. The percentage below the Percent Minimum Canopy requirement they represent; and,

c. The species and number of trees to be planted, based on the Forestation Requirements below.

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3. Planting Details and Notes. Planting details and notes shall be included on the Tree Preservation Plan as set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

4. Forestation Requirements. The number and species of trees required for forestation shall be based upon the quality of the canopy lost:

a. High Priority Canopy. When removing High Priority canopy below the Percent Minimum Canopy required, the canopy square footage removed shall be forested at a Base Density of two hundred (200) two inch (2") caliper trees per acre removed.

b. Mid-Level Priority Canopy. When removing Mid-Level Priority canopy below the Percent Minimum Canopy required, the canopy square footage removed shall be forested at a Base Density of one hundred fifty (150) two inch (2") caliper trees per acre removed.

c. Low Priority Canopy. When removing Low Priority canopy below the Percent Minimum Canopy required, the canopy square footage removed shall be forested at a Base Density of one hundred (100) two inch (2") caliper trees per acre removed.

5. Base Density. Compensating for the environmental damage caused by removing tree canopy shall be accomplished by forestation on a per acre basis. The Base Density formula used above is based on two inch (2") caliper trees. However, the Landscape Administrator may approve the use of trees with less than two inch (2") caliper for the planting of smaller tree species required by spatial constraints on the site. In such cases, the number of trees to be planted may be adjusted in accordance with the Species Density Table to be found in the City of Fayetteville Tree Preservation, Protection and Landscape Manual, along with examples for using the Base Density formula.

6. Preferred Species. All trees to be planted shall be species native to the region, when available, and selected from the list of preferred tree species set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual. Species selection shall be based upon the amount of space available for proper growth on the site, and must be approved by the Landscape Administrator.

7. Placement of Trees. The Applicant is expected to plant trees in locations on the site where the environmental benefits of canopy cover are most likely to offset the impact of development. Trees shall not be placed within utility easements, or in other locations where their future protection cannot be assured.

8. On-Site Mitigation Incentive. If all of the required trees can be located on-site, the Landscape Administrator may approve up to a twenty percent (20%) reduction in the number of trees to be planted. Any incentive reductions allowed shall be based upon the following factors:

a. The species of the mitigation trees; and,

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b. The space needed for the healthy growth of the trees.

J. Request for Off-Site Alternatives. If an Applicant is able to demonstrate to the Landscape Administrator's satisfaction that neither preservation, nor On-Site Mitigation can be achieved, the Applicant may request Off-Site Alternatives. For Non-Residential Subdivisions and Large Scale Developments, Off-Site Alternatives shall be allowed only if On-Site Mitigation is proven impossible due to environmental or spatial constraints. Trees that are required to be planted in compliance with other development chapters shall not be counted for the purpose of satisfying the On-Site Mitigation or Off-Site Alternative requirements of this chapter.

1. Timing of Request for Off-Site Alternatives. Requests for Off-Site Alternatives must be incorporated in, and submitted concurrently with the Applicant's Tree Preservation Plan.

2. Off-Site Preservation. The Applicant may seek approval from the Landscape Administrator to preserve an equal or greater amount of canopy cover at a site within the City limits.

3. Off-Site Forestation. If Off-Site Preservation cannot be achieved, the Applicant may seek approval from the Landscape Administrator to plant the required number of trees on another site owned by the Applicant and located within the City limits.

4. Tree Escrow Account. Large Scale Development Applicants requesting Off-Site Alternatives, all Residential Subdivision Applicants requesting tree removal below the Percent Minimum Canopy requirement, and any other Applicant unable to achieve either On-Site Mitigation, Off-Site Preservation or Off-Site Forestation, shall make a payment to the City of Fayetteville Tree Escrow Account for each tree required to meet the Base Density requirements set forth above. The amount of money to be paid shall be based on the fair market value of materials and labor at the time of planting. The Applicant shall submit cost estimates to the Landscape Administrator for approval.

a. All Residential Subdivisions requesting tree removal below the Percent Minimum Canopy requirement are required to contribute to the Tree Escrow Account, due to the fact that the health and survival of the trees may be adversely affected as individual lots are developed. The City shall use the money paid into the Tree Escrow Account to plant street trees within the subdivision, when possible, once the subdivision is built out.

b. Money contributed in lieu of On-Site Mitigation or Off-Site Forestation shall be paid prior to issuance of a Building Permit on all Commercial, Industrial, or Multi-Family Residential buildings and prior to Final Plat acceptance for all Residential and Non-Residential Subdivisions.

c. Money contributed under this section:

(1) May be used for canopy mitigation, including planting site identification, tree acquisition, planting, and

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maintenance, utilizing either City Staff or contract labor;

(2) Shall be deposited in a separate interest-bearing Tree Escrow Account; and

(3) Shall not revert to the general fund for ongoing operations.

d. Planting locations will be sought in appropriate sites within a one (1) mile radius of where the original project is located, but if this cannot be achieved, the moneys shall be used to plant the trees in the quadrant in which the development took place, and if that cannot be achieved, anywhere in the City limits. The location of appropriate planting spaces is to be derived from the Fayetteville Tree Inventory to be updated every seven (7) to ten (10) years.

5. Maintenance Agreement and Landscape Establishment Guarantee. All Plans requesting On-Site Mitigation or Off-Site Forestation shall include a binding three (3) year maintenance and monitoring plan, which shall hold the Applicant responsible for the health of all planted trees.

a. Approval of a Plan requesting On-Site Mitigation or Off-Site Forestation shall be contingent upon the Applicant depositing with the City either currency, bond, irrevocable letter of credit or other surety, in an amount equal to the estimated cost of materials and labor for all trees at the time of planting. The bond, irrevocable letter of credit or other surety must cover the entire three (3) year maintenance and monitoring period. Applicant shall submit cost estimates to the Landscape Administrator for approval.

b. Upon completion of the three year landscape establishment period, the Landscape Administrator shall inspect the site and determine whether ninety percent (90%) of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the City shall release the currency, bond or letter of credit.

c. In the absence of such a finding, the Applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the Landscape Administrator. If the Applicant does not take remedial steps to bring the property into compliance, the City shall use the necessary moneys from the Landscape Establishment Guarantee to do so.

d. Special consideration shall be given the Applicant in the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the actions of third parties.

K. Tree Preservation Plan Review Form. The Landscape Administrator shall use a standardized form for all Recommendations or Administrative Determinations made regarding an Applicant's Tree Preservation Plan.

1. The form shall clearly indicate whether the Landscape Administrator is making a final Administrative Determination, or a Recommendation to the Planning Commission or City Council.

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2. The form shall also clearly indicate whether the Applicant's plan is "Approved," "Disapproved" or "Conditionally Approved," and explain the reasoning therefore.

3. A statement shall appear on the form explaining the process by which a final Administrative Determination may be appealed in accordance with Chapter 155 of the Unified Development Ordinance.

4. The Landscape Administrator shall sign and date the form, and ensure that a copy becomes part of the permanent file for the project.

L. Continuing Preservation and Protection Under Approved Tree Preservation Plans. No person shall damage, destroy, transplant or remove any tree or group of trees once preserved or planted under an approved Tree Preservation Plan, without the express approval of the City Council.

1. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such damage, destruction, transplantation or removal is in the best interest of the of the residents of Fayetteville.

2. Such requests shall be submitted to the Landscape Administrator, who shall ask the City Clerk to placed it on the agenda of the next regularly scheduled City Council meeting.

3. In order to ensure that an Applicant's heirs, successors, assigns or any subsequent purchasers of the subject property are put on notice as to the existence and extent of an approved Tree Preservation Plan, Tree Preservation Areas shall be clearly depicted on all Easement Plats and Final Plats, accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the Landscape Administrator. If it is impractical to include the actual depiction of the canopy to be preserved on the Easement Plat or Final Plat itself, a note cross-referencing an accompanying document shall suffice.

§167.05 TREE PROTECTION MEASURES AND CONSTRUCTION.

A. Site Inspection. A preliminary site inspection followed by periodic inspections will be conducted by the Landscape Administrator to ensure compliance with the Tree Preservation Plan.

B. Tree Protection. Tree Preservation Areas shall be protected from construction activity to prevent impingement by or the storage of construction vehicles, materials, debris, spoils or equipment in Tree Preservation Areas. No filling, excavating or other land disturbance shall take place in Tree Preservation Areas. Before commencing any construction activity, the Applicant shall construct tree protection barriers on the site along the tree dripline or ten feet (10') from the trunk, whichever is greater. The Applicant shall also post signs at each tree preservation area in accordance with the standards, specifications and guidelines provided in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual. The Landscape Administrator may require other protective measures based upon the individual

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characteristics of the site and the proposed construction methods. Tree protection measures shall also protect any off-site trees the roots of which extend onto the site of the proposed construction. Any Applicant damaging or destroying an off-site tree shall be required to mitigate such damage or destruction as prescribed by the Landscape Administrator. If the required barriers surrounding the tree preservation areas are not adequately maintained and protected during construction, the Landscape Administrator shall prescribe remedial measures, and may issue a Stop Work Order in accordance with §153.07(C). All remedial measures shall be completed within the specified amount of time and shall be considered prior to granting Final Plat approval or issuing a Certificate of Occupancy.

§167.06 TREE PLANTING, MAINTENANCE, AND REMOVAL ON STREET RIGHTS-OF-WAY AND OTHER PUBLIC GROUNDS.

A. Follow Tree Preservation, Protection, and Landscape Manual. All tree planting, maintenance or removal on public grounds shall follow the standards, specifications and guidelines provided in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

B. Tree Planting. Trees may be planted within street rights-of-way or on other public grounds only after notification to the Landscape Administrator; and, provided the selection and location of said trees is in accordance with the requirements of this chapter.

C. Tree Removal. Trees shall not be removed from a street right-of-way or other public grounds unless approval is received from the Landscape Administrator, with the exception that City employees may remove trees when necessary to accomplish emergency repairs to sewer or water systems, or in order to alleviate flooding.

D. Damage to Trees. It shall be a violation of this chapter to damage, destroy or mutilate any tree in a public right-of-way or on other public grounds, or attach or place any rope or wire (other than one to support a young or broken tree or limb), sign, poster, handbill or any other thing to any such tree.

E. Top or Cutback to Stubs. It shall be unlawful for any person to top or cut back to stubs the crown of any tree in street rights-of-way or on other public grounds.

F. Reserved Rights. The City reserves the right to plant, preserve, prune, maintain or remove any tree within the street rights-of-way, alleys, squares, and all public grounds when such interferes with the proper spread of light along the street from a street light, or interferes with visibility of any traffic control device or sign, or, as may be necessary to preserve or enhance the symmetry and beauty of such public grounds.

G. Line of Sight. Trees shall not be planted to conceal a fire hydrant from the street or impede the line of sight on any street.

H. Storm Damage. Trees severely damaged by storms or other accidental

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causes, where required pruning practices are impractical, are exempt from this chapter.

I. City Employees. Before cutting, pruning, removing or trimming any tree, City employees performing tree work on public grounds shall attend an educational workshop on basic tree science and the proper techniques of tree pruning. A certificate will be issued when an individual has successfully completed the workshop.

J. Public Utilities. Nothing in this section shall be construed to prohibit public utilities from pruning or removing trees that encroach upon electric, telephone, or cable television transmission lines, or gas, sewer or water pipes.

§167.07 COMMERCIAL TREE PRUNER/ SERVICE: CERTIFICATE AND INSURANCE REQUIRED.

A. Certificate Required. Before cutting, pruning, removing or trimming any tree within the City of Fayetteville, the owner and supervisory personnel of each business performing commercial tree work shall obtain a City issued Commercial Tree Pruner/Service Certificate.

B. Liability Insurance. Each business performing commercial tree work, to include tree surgery, within the City of Fayetteville, shall be required to carry liability insurance in the following minimum amounts:

General Aggregate: $100,000

Personal & Advertising: $100,000

Each Occurrence: $100,000

Proof of coverage shall include the name of the insurance company issuing the policy, the name of the insured, the policy number, effective and expiration dates, and the signature of an authorized representative of the insurance company.

C. Workshop. Owners and supervisory personnel shall attend an educational workshop on basic tree science and the proper techniques of tree pruning; or shall demonstrate sufficient knowledge of basic tree science and the proper techniques of tree pruning by scoring 75% or higher on a test provided by the International Society of Arboriculture (ISA).

D. Certificate Issuance. A certificate shall be issued when an individual has successfully completed the workshop or scored adequately on the test.

E. Job Site. It shall be the responsibility of the business owner to ensure that a copy of the certificate is maintained at each job site.

F. Supervision. All persons engaged in the business of trimming trees shall be under the supervision of a certified tree pruner/service.

G. Workers Compensation. Those individuals performing commercial tree work on public grounds shall comply with all workers compensation requirements as set forth under Arkansas law and shall hold a City issued Commercial Tree Pruner/Service Certificate.

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H. Licensure. Those individuals performing tree surgery shall comply with licensure requirements as set forth under Arkansas law.

§167.08 HAZARDOUS TREES.

A. Pruning. Every owner of any tree overhanging a street or sidewalk within the city is responsible for pruning the branches so that such branches shall not obstruct vehicles or pedestrians.

B. Order of Removal. The Mayor, or his/her duly authorized representative, is hereby authorized to order the owner of any real property within the City to cause the removal of any dead or diseased trees on their property, and further, to order compliance, when such trees constitute a hazard to life and property, or harbor insects which constitute a potential threat to other trees. Whenever any such condition is found to exist, the Mayor, or his/her duly authorized representative, shall send written notice via First Class mail to the property owner ordering the performance of such acts within twenty (20) days. If the property owner's identity or whereabouts are unknown, a copy of the written notice shall be posted upon the premises.

C. Non-compliance. It shall be unlawful for any person to fail or refuse to comply with any order and notice given pursuant to this section.

D. Removal By City. If the conditions described in a notice given, as set forth above, are not removed or corrected within twenty (20) days after such notice is given, the Mayor, or his/her duly authorized representative, is hereby authorized to enter upon the property and do whatever is necessary to correct or remove the conditions described in the notice. The costs of correcting said conditions shall be charged to the owner or owners of the property, and the City shall have a lien against such property for such costs. Enforcement of the lien shall be as set forth in section 95.03 of the Fayetteville Code of Ordinances. Such action shall not be taken if the owner has evidenced a willingness to comply by hiring a qualified tree service before the expiration of the twenty (20) day period.

§167.09 LOCAL DISASTER EMERGENCY. If it becomes necessary for the Mayor to declare a local disaster emergency pursuant to A.C.A. 12-75-108(b)(2), the provisions of this chapter may be suspended for up to thirty (30) days, if strict compliance with its provisions would prevent, hinder, or delay actions necessary to cope with the disaster emergency.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

CITY ATTORNEY DIVISION
113 WEST MOUNTAIN, 72701
PHONE: 501-575-8313
FAX: 501-575-8315

Kit Williams
CITY ATTORNEY

DATE: 8/24/2001

TO: Robert Reynolds, Brenda Thiel, Cyrus Young, Randy Zurcher, Trent Trumbo, Bob Davis, Kevin Santos, Lioneld Jordon

CC: Mayor Coody, Ted Webber, Hugh Earnest, Tim Conklin, Kim Hesse

FROM: David J. Whitaker, Assistant City Attorney

RE: PROPOSED CHAPTER 167

During the course of the Public Q & A and the special Planning Commission hearing, problems with two (2) sections of the proposed revision surfaced. Subsequently, members of the Subcommittee contacted this office and the Landscape Administrator to ask if there were some avenue available to offer corrections. At my request, Kim Hesse polled the membership via e-mail as to whether they approved of the changes. This memo summarizes the suggestions that they have overwhelmingly approved.

The first recommendation concerns **§167.04(A)(2) Grading Permits.** This section inadvertently includes single-family dwelling units and duplexes in the regulatory scheme. It has never been the intention of the Subcommittee to do so. Evidence of this can be found in the very next paragraph dealing with Building Permits. The language there was clearly drafted to exclude both housing types when applying for Building Permits. It would therefore be an absurdity to include them under the Grading Permit requirements. The Subcommittee is therefore recommending that the following language be inserted after the first sentence of §167.04(A)(2): ***"Single-Family dwelling units and duplexes are specifically exempt from the provisions of the chapter."***

The Subcommittee further recommends that the definition of **Relic Orchard** be changed to read as follows: ***"Groups of fruit trees originally planted for agricultural purposes, but since taken out of production."*** No one from the Subcommittee can seem to recall when the reference to nut trees found its way into the text, and all wish to see it removed.

This office will also furnish each of you with "mark-up" copies of the proposed ordinance; one reflecting the revisions made since the Subcommittee's final version of July 11; and the other showing all of the revisions made to the text of our current ordinance.

DJW

ATTACHMENTS

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TO: Mayor Coody, City Council

COPY: Planning Department, City Attorney's Office

THRU: Hugh Ernest, Urban Development Director

FROM: Kim J. Hesse, Landscape Administrator

DATE: August 23, 2001

SUBJECT: An Ordinance enacting the revisions proposed to the Fayetteville Tree Protection and Preservation Ordinance.

Background:
Beginning in June 2000, the Tree and Landscape Advisory Committee began reviewing the city's current Tree Protection and Preservation Ordinance. A diverse committee was selected to serve on an Ad-Hoc committee to review needed revisions to the ordinance. The revisions were completed by the committee on July 11, 2001. Assistant City Attorney David Whitaker, who was involved in the process from the beginning, codified the proposed language providing a smooth transition from the language suggested by the Ad Hoc Committee to the format required as a part of Unified Development Ordinance.

Current Status:
The proposed revisions have been through two public hearing:

- On Tuesday, August 14th, the Ad-Hoc Committee hosted a Question and Answer Session for the general public. This meeting included a presentation of the major changes and additions to the current ordinance and a open format for members of the public to ask questions directly to the committee making the revisions.

- On Monday, August 20th, the Planning Commission recommended approval of the revised ordinance. That recommendation came with conditions to include suggested additions discussed by the Planning Commissioners and to forward the revision to the City Council. Those changes are reflected in your copy of the revision.

Recommendation:
The staff recommends approval of the Ordinance.

MINUTES OF A MEETING OF THE PLANNING COMMISSION

A regular meeting of the Fayetteville Planning Commission was held on August 20, 2001, at 5:30 p.m. in Room 219 of the City Administration Building, 113 W. Mountain, Fayetteville, Arkansas.

ITEMS CONSIDERED		ACTION TAKEN
ADM 01-32.00:	Administrative Item (Tree Preservation and Protection Ordinance)	Forwarded

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MEMBERS PRESENT	MEMBERS ABSENT
Nancy Allen	Don Marr
Lorel Hoffman	Alice Bishop
Bob Estes	
Lee Ward	
Donald Bunch	
Sharon Hoover	
Loren Shackelford	

STAFF PRESENT	STAFF ABSENT
Tim Conklin	Dawn Warrick
David Whitaker	
Sheri Metheney	
Hugh Earnest	

ROLL CALL

Estes: Good evening and welcome to the special meeting of your Fayetteville Planning Commission for August 20, 2001. There is one item on the agenda and that is administrative item 01-32.00, the Tree Preservation and Protection Ordinance, an ordinance amending Title 15, Unified Development Ordinance of the Code of Fayetteville to provide amendments to and clarification of various provisions concerning tree preservation and protection. As an introduction, if I may begin with a brief explanation of why we are here this evening and the purpose of this meeting, it is that there is a legislative mandate that we hold this meeting. In Title 14, Chapter 56 of our Arkansas Statutes is the provision regarding municipal building and zoning regulations and planning. A part of that statute is that one of the purposes of this Commission is to prepare and transmit to the legislative body, that is the City Council, recommended ordinances implementing plans. The specific ordinance or adoption of plans, ordinances and regulations, provides that the Planning Commission shall hold a public meeting on the plans, ordinances and regulations proposed under this statute. Notice of the public hearing shall be published in a newspaper of general circulation in the city at least one time, 15 days prior to the hearing. Following the public hearing, proposed plans may be adopted and proposed ordinances and regulations may be recommended as presented or, in modified form, by a majority vote of the entire Planning Commission. Following it's adoption of plans and recommendations of ordinances and regulations, the Planning Commission shall certify adopted plans or recommended ordinances and regulations to the legislative body of the city for it's adoption. The legislative body of the city, that is the City Council, may return the plans and recommended ordinances and regulations to the Planning Commission for further study or recertification or, by a majority vote of the entire membership, may by ordinance or resolution, adopt the plans and recommended ordinances or regulations submitted by the Planning Commission. Following adoption by the legislative body, that is the City Council, the adopted plans, ordinances and regulations shall be filed in the office of the City Clerk, spread of record with the County Recorder of the counties in which territorial jurisdiction is being exercised and then shall then become law. The proposed ordinance that we have before us this evening has been presented to us after much effort and much work. I would like to take a brief moment and mention how the drafting committee was formed and then the members of the drafting committee. Letters were sent to various members of the community to seek participants to guide the revision of the ordinance. Those contacted included architects, Chamber of Commerce members, citizen groups, contractors, developers, engineers, environmentalists, lawyers, planners, professors and realtors. 25 members of the community were selected of which 15 were chosen to serve as the core group which

met weekly and reported to the full committee monthly. This has been an ongoing process for approximately one year. Assistant City Attorney, David Whitaker served as Chairman until employed with the City and than served as Legal Assistant and drafted the ordinance. Those members of the drafting committee who participated in writing the ordinance that we have before us this evening were Audrey Lack of Miller, Boskus and Lack, Fran Alexander with The Friends of Fayetteville, John Duvall with We've Had Enough, Jim Neal with McClinton-Anchor, Matthew Bottishball with Navaho, Richard Alexander, Kirk Elsass, Andy Feinstein, Dr. Gerald Clingerman, Missy Lefler, Celia Scott-Silkwood, Beverly Milton and Jim Wilson, Tree and Landscape Advisory Committee and other members who contributed to the core group meetings included Jo Bennett with The League of Women Voters, John Harbison with the Sierra Club, Bob Hill with Nickel-Hill Group, Bill Keating and Chris Brackett with Jorgensen and Associates, and Jim Key. Before we begin the meeting this evening, Sheri would you call the roll please?

ROLL CALL:

Upon roll call there were 7 Commissioners present with Commissioners Marr and Bishop absent.

ADM 01-32.00 Administrative Item Tree Preservation & Protection

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT ORDINANCE, OF THE CODE OF FAYETTEVILLE, TO PROVIDE AMENDMENTS TO AND CLARIFICATION OF VARIOUS PROVISIONS CONCERNING TREE PRESERVATION AND PROTECTION.

Estes: A quorum is present and we will begin the special meeting of your Fayetteville Planning Commission. Let me tell you how we will proceed and what the order of business will be. First I would like to take public comment. As you come forward and address the Commission if you would state your name and give us your address. If you would please speak to that specific section of the ordinance to which you wish to comment. What that will do is allow us to go to that specific section and make appropriate notes as you speak. If you wish to make a general policy statement, would you please identify whether that general policy statement is one of a definitional issue, a procedural issue or a substantive issue. If it is something that is in the ordinance that you would like to see taken out, again refer us to that specific section. If it's something that is not in the ordinance that you would like included in the ordinance, please tell us the section where you would like to see that particular provision included. Ask questions, if I am not able to answer your questions, which in all probability I will not, we have Mrs. Kim Hesse, our Landscape Administrator with us this evening, we have Mr. Tim Conklin who is our City Planner, we have Mr. Hugh Earnest who is our Urban Development Director and we have several members of the drafting committee who participated in actually writing the ordinance that we have before that can perhaps speak to your questions. After we have heard public comment I will then close the floor to public comment and I will bring the matter back to the full Commission and we will go through section by section and discuss the comments that have been made and then once our discussion is completed, I will ask for a motion as to the entire ordinance.

PUBLIC COMMENT:

Estes: With that said, is there any member of the audience that wishes to provide public comment? If so, please come forward, give us your names and address and tell us that specific ordinance for which you wish to speak.

Israel: My name is Ben Israel, I live at 1501 Starr Road, Fayetteville. I am a commercial developer and would like to address several issues. I'm not sure I can give you what you are asking for as far as the particular section but I will try. First of all let me say

that Fayetteville needs developers. I know we sometimes don't do a good job and sometimes we do a good job but Fayetteville needs developers. I just started a project on the corner of Joyce and Old Missouri Road that the taxes on that property a year ago were $800. The taxes on that property next year will be $55,000 and I think our school system can certainly use the revenue. The thing I find most disheartening about any ordinance is the inability of the staff to carry it out in a timely fashion. Fayetteville is a very difficult place to do business in as a developer. For example, on our latest project it took 89 days from the submittal of our last documentation to the City employees before we were able to get a grading permit. When you have two million dollars borrowed at 9% interest, that's about $45,000 additional cost that we would not have had had we developed in a City that had the infrastructure to support the ordinances they pass. Your people aren't sitting around on their thumbs, they just don't have enough help to enforce the current ordinances so that developers are put in a position of supplying an enormous amount of information. Then City staff, not only do they have to look at that information, they have to attend other meetings to provide similar advice to other developers. To wait 90 days from the time you submit your last detail to the City to get a permit to start grading is quite ridiculous. I encourage you, if you pass the ordinance I hope that you provide staff to evaluate the plans so that we don't wait another 90 days before we can have access to go forward. There are two or three things about the ordinance that I would like to see you change. Right now it is somewhat discriminatory. If you are going to require 20% canopy of trees on a tree lot, why not require it on every lot? A lot without trees doesn't have to have any trees other than those that are called for in the parking arrangement. I would suggest if you are in a position of requiring a 20% canopy on some lots, the person who owns a lot who has trees on it is at a disadvantage. A developer determines a price of a given piece of property by how many square feet he can build on that property. If I have to preserve 20% of the property for trees that are already existing on the property than it's worth less to me as a developer than it is if there are no trees at all. I would encourage you to say let's make it a level playing field, let's say that any lot that's developed commercially must have a 20% tree canopy. That's only fair. It's also unfair that downtown only needs a 10% tree canopy. Why is downtown any more special than any other part of the City? Is a tree less deserving downtown than one that's out in the countryside? Or the citizens of downtown Fayetteville are less likely to appreciate the fact that 20% of the ground is covered with trees. The difficulty I have as a developer is that the plans are not administered evenly. One developer is not required to leave any trees, while another developer is required to leave 20%. I think that if you had an ordinance that said every lot regardless of whether it had a tree on it to start with and it's a commercial development, should have trees on it and it should have 20% canopy. If I was a landowner in the growth area of Fayetteville, the first thing I would do is go

clear-cut it, if I thought I wanted to sell it for retirement and wait five years and then sell it to a developer. I know I would make more money on it. But if I knew as a developer that even if it was clear-cut, I had to replace that 20% trees than I wouldn't want to do that. I think that anytime an administrator, whether it is this administrator or another administrator, has the ability to make a decision that you don't need 20% trees, you only need 17% trees, that's a mistake. If it say's 20%, it should say 20% and let's go vertical with the buildings and not horizontal. Fayetteville is a horizontal developing city, you don't see very many vertical buildings except downtown and that's crazy. We would like to develop vertically but nobody will rent them. People don't want to be on the 4th flood. If we start demanding that they leave a 20% tree canopy, then let's do that and we will build vertical buildings because we will have to in order to get the return on the investment that we are looking for. I live off of the 45 Highway. There was a lot there that has some beautiful, gorgeous trees on it and now there is a convenient store on that with one scraggly little ole tree in it's place. I don't understand how they do that. As a developer I'm held to a different standard than that, I don't know why isn't held to the same standard. I've got a new development on Joyce Street apart from the other one I mentioned and they've required me to set aside 630 feet in length by 55 feet in depth that I can't even park in a car into that tree. I don't see how the next developer on a given corner can take down every tree on it and not plant anything back, it's not fair. As I said, anything that's fair, honest and non-discriminatory, I'll live with it if you tell me what it is. Fayetteville is still a hard place to develop property in. It costs about 20% more to develop property in Fayetteville than any other city we develop in. The other thing I have difficulty with is, if there is an existing tree canopy, let's say it's this one acre that I am setting aside, I can't go on that one acre and make the better trees healthier because I can't cut any trees out of it. If there is a persimmon grove in the middle of it, I can't remove the persimmon grove and put in oak trees. They won't let me cut them. The national forest burns to achieve undergrowth destruction so that healthy trees will have a chance to survive. I don't know where we are reading that no trees should be cut. The ordinance indicates that any tree already existing is better than any new tree I can plant and that's just not true. I went out on 45 Highway, we had 30 acres, we cleared of a bunch of scrub brush and we planted maples and we planted everything else you could plant that's going to be a beautiful tree someday. A persimmon tree is going to be a persimmon tree until it falls over. That's what it is and it's not going to be a beautiful tree. I'm sure it has it's advantage but I don't like them. I can't choose the trees I want to plant. You are telling me that here's a list you can choose from and if you plant one that's not on this list, we are not going to let you count it towards your canopy. I don't like that. It also states that after a tree is preserved, in order for me to remove that tree, I've got to come before the City Council and convince the City Council that is in the best interests

of the citizens of Fayetteville to remove that tree. How in the world could I do that? How can get before the City Council and convince them that it's in the best interest of the City of Fayetteville? If it's in the best interest of the tree, I can understand that. Do we have a vote? Do we take a public opinion poll to determine how it's in the best interest of the citizens of Fayetteville? That's on page 13 "such damage, destruction, transplantation or removal is in the best interest of the residents of Fayetteville". That's just too far reaching for me.

Estes: What subsection is that?

Israel: It's exhibit "A", Technical Corrections for Planning Commission...

Estes: I'm on page 13.

Israel: It's under L1. I received from the Administrator and I like her, I have nothing against her, she is doing a great job and I believe in what she's doing. It's just I don't believe in the manner in which we are doing it. It's a good opportunity to work together but I don't get an opportunity to work together, I get directives. I says that if I damage a root of a tree, you know when you got bulldozers and men from everywhere in the country bringing in materials you are going to damage a root of a tree. Somehow I've got to cover that tree root with 4 inches of mulch and water it every day. This is a construction site, we are doing everything in the world we can we can to protect it. If that tree is protected were outside the dripline has a root that extends another 20 feet over here, I don't know how to do that. I got a letter the other day that if I was to prune a tree that I had to use a special sharpened something and that if I used one that was dull, I wonder if I would be fined. I don't mean to be facetious, it's just that we don't have to have that much instruction. Give me 20% tree canopy and say protect, preserve, replant or replace it and we'll do that. Just don't let somebody else not do that and get away with it but you are doing that. Maybe you are not doing that but somebody is doing that. That's about all I have to say. I have one other thing. You are asking me to ensure that tree will live 3 years. I've got to put up money or a bond that says that tree will live for 3 years. If I know that I have to maintain 20% canopy, would I purposely destroy a tree or not take care of a tree? That's an expense to a developer to have to guarantee the life of a tree for three years or whoever the assigned of the developer is, it travels with the property. I don't think that's necessary. If you tell me I have to maintain 20% canopy, I'm going to do the best I can not to have to spend a lot of money two or three times to replace trees. Doesn't that make more sense than you tying up my money for 3 years, me having to charge the tenant more, I'm already having to charge them more because it costs more here. I just ask that you

use common sense and not get so carried away that we lose sight of the fact that this is still America and we still have individual rights and part of our individual rights are that pursuit of life, liberty and the pursuit of happiness. I'm not real happy right now but I will do whatever we have to do to develop. I like Fayetteville, been here 35 years and I want to stay here. Thank you.

Estes: Is there any other member of the audience that would like to provide public comment on the ordinance amending Title 15?

COMMISSION DISCUSSION:

Estes: Seeing none, I will bring it back to the Commission for discussion and motions. Commissioners, let's begin working off of the technical corrections draft dated August 17, 2001? Let's begin with section 1, the definitional section. Is there any discussion regarding any item of section 1?

Hoffman: I do have one suggestion and I have just about 3 or 4 throughout the ordinance. I have one for the definition section. Before I start on that I just want to say thanks to the Committee because I realize that it was made of all segments of the community, as you stated before, and a lot of work has gone into it. It's a difficult process once a lightening rod or seminole issue like Kohl's development began this, to go through and put together an ordinance that's as far reaching as this and it's implications. With that being said, I'll throw in my two cents worth on some of the text. Under the definition of significant tree, I would like to add, I'll pass my copy of this down for the record later so we don't have to worry about typing everything. Under the definition of significant tree at the end you've got "endangered species" add ", or due to it's location on a site designated as historic by local, state or federal authority". I'm adding historic sites into the definition of significant trees. I'm doing this because I can think of other locations where treaties have been signed under trees that are given historic markers, I'm not aware of any particular sites like that in Fayetteville but there may be that I'm not aware of. There are tree groves in the confederate cemetery that if someone wanted to add a structure one day, those trees shall be considered because of their location on a historic site. That's all.

Estes: Any other discussion regarding section one? Seeing none, we'll go to section 155.05, Appeals From Planning Commission Decisions. Any discussion? Seeing none, we'll to go section 156.03, Development, Consideration by the Planning Commission. Any discussion? Seeing none, we'll go to the tree and preservation ordinance section 167.01, Purpose, which includes both Objectives and Principals. Any discussion?

Hoffman: Under objectives A7 "To stabilize soil and prevent erosion" add ", with emphasis on maintaining tree canopy on hillsides as defined in canopied slopes under the definition section". I like the format that you used following the question and answer session and I would just like to throw them in the mix.

Estes: Any other discussion?

Bunch: One of the things that appears to be missing is stabilization of riparian areas. It does say stream beds, "preserve river and stream beds and present sedimentation". Possibly under item 7, in addition to what Commissioner Hoffman suggested, on stabilizing soil and preventing erosion, add a comment about riparian areas. It just seems that is one item that appears to have been overlooked.

Hesse: I would think we could add that to either number 7 or number 9, "Preserve river and stream beds and banks and riparian buffers to prevent sedimentation". The idea was basically that objective.

Estes: Commissioner Bunch do you have a comment regarding whether you would like to see that included in item A7 or item A9?

Bunch: For clarity it would probably be better to have it in item 9.

Estes: Any other discussion regarding section 167.01? Seeing none, section 167.02, City of Fayetteville Tree Preservation, Protection, and Landscape Manual, any discussion? Seeing none, we will go to section 167.03, Tree Registry, any comments or discussion?

Allen: I wondered if there needed to be a clarification under A, the tree registry that this registration goes with the landowner and not with the property?

Hesse: I tried to cover that in B. Did you see the underlined statement in B, "Registration of trees shall be voluntary and may be done by the owner(s) of the property on which the tree is located. I guess it doesn't really discuss into the future as this property is sold.

Whitaker: I think it would probably be in order to put some sort of disclaimer in it, if your reading of it raises that ambiguity in your mind and it's a fear that it would for others as well. I don't think there would be any problem adding some sort of disclaimer there to that affect.

Estes: Before we go to that, can we have more definition where that should be included and

how should the language read?

Whitaker: I'm thinking probably almost immediately after the corrections in B which Mrs. Hesse just read and something to the affect that "registration shall affect only the owner who sought registration and shall not run with the land". I can clean this up a bit. Something to that affect.

Hoffman: "Shall not run with the land unless designated by the seller." They might do that.

Whitaker: Yes, they certainly could voluntary put a trust on that. Yes, I think something like that would be appropriate.

Estes: Any other discussion regarding this section?

Allen: I also wondered, how it would be determined whether or not a tree would be registered? Supposing I have a magnolia tree, I can just register it or does someone have to come look at the tree and determine that it's a significant tree or it fits into some category or is it just at the owner's discretion?

Hesse: It's basically at the owner's discretion. If the tree or group of trees that are documented that are of uncommon or endangered species regardless of the size, that are of extraordinary value due to their age, size or type. Really although we were going along with the significant tree definition, we would allow some flexibility to that. The idea is, this is a tool to raise awareness and pride of homeowner's trees. We didn't want to eliminate somebody who really wanted to put a tree on the registry that we somehow had to come up with a mechanism the owner, in the future on the website or something, they could actually be able to view theses trees. We would like to try to do something to encourage that kind of pride. I didn't want to eliminate the ability to put a tree on the registry if for that homeowner it meant something to them.

Allen: Conceivably, if a person was a real conservationist, they could register every tree on their property?

Whitaker: They certainly could but I don't know, other than the fact that they could brag to all of their neighbors that all their trees are registered , I don't think it would have any real affect.

Allen: I just had some question about it.

Whitaker: I want to reassure you that one of the changes that was made was trying to pull the registration process away from the development regulation process so that the only real affect would be that the person we would have or the registry of the trees and people would develop some pride in the trees on their land. Theoretically someone could, if they wanted to, register every tree on their land, yes.

Allen: Thank you.

Estes: Any other discussion regarding section 167.03? Seeing none, section 167.04, Tree Preservation and Protection During Development. Any discussion or comments?

Allen: Sorry to keep asking questions but I wondered if there might be something added since we have had a situation since I have been on the Planning Commission where there were some discussion as to whether something was a large scale development, whether or not it was an acre or not and the trees were cut. Whether there could be something included that would make the developer or the City need to measure the area. I don't know quite how to put this. I just don't want to see trees cut in an area until we determine whether or not that is over or under an acre.

Estes: The application of paragraph 167.04 provides that this section applies to proposed subdivisions, large scale developments and developments required by other chapters to go through the City's permitting process. By definition this section applies to proposed subdivisions, large scale developments and other developments required by other chapters of the UDO to go through the City's permitting process.

Hesse: On that specific type of situation, most of the time grading permits are always required which is why we put a grading permit. They will fall into this ordinance if they require a grading permit. It used to be for an acre or more but now that is no longer there. It's basically all grading permits. Than also what is included are multi-family from three units and up and then all non-residential buildings. If they had to get a building permit, other than single family and duplex, it would fall under the ordinance. It still doesn't keep them from cutting trees prior to building permit.

Allen: Thank you.

Estes: If required to go through the City's permitting process than this subsection applies, is that correct?

Hesse: To everything that is listed in here. I'm sure there are processes through permitting that

we do not see.

Conklin: On a duplex, you wouldn't see those unless it's on a slope or floodplain.

Estes: Any further discussion regarding this section?

Hoover: On section 167.04(C), Canopy Area, I was noticing that we've got in zoning designation, a C-4 for downtown and that's a 10% canopy and in our administration and management draft they don't show a C-4 on here. How much C-4 is there downtown?

Conklin: It's primarily the square and surrounding streets around the square, it's not very much.

Hoover: What is downtown district as far as zoning?

Conklin: If you are talking about the square and surrounding buildings, that's zoned C-4. Dickson Street is primarily zoned C-3, in between the Square and Dickson Street we have everything from R-0 to C-2, R-2 multi-family and many different zoning districts.

Hoover: Do we need to show the C-4 on this? There is not a C-4 listed in here, I was just curious.

Hesse: That is a draft, I'll make sure it's included.

Hoover: I have a question on C-4 and 10% in the downtown area. For instance if we have a lot down here and we are trying to build zero lot lines then what do we do when we have trees that are actually going to be in tree wells out on the sidewalk. Does the developer go for a variance for this?

Hesse: I think that's a good point to bring up. In the most situations on Dickson Street, if you went through this criteria we wouldn't be saving any trees. That was from the original ordinance.

Whitaker: Yes. I actually have it in the latest draft.

Hesse: Didn't we discuss the change in the percentages so we didn't go through it individually. That's a very good point because of the density downtown area.

Hoover: There wasn't any discussion during all the meetings about the difference? I see the

downtown area from Dickson to Archibald Yale and this whole area is being different than developing out on 45 and 260, especially if we are encouraging higher density. Don't we have smaller setbacks?

Conklin: Yes, in C-4 setbacks are up against the sidewalk.

Hoover: It would be impossible to do any canopy.

Conklin: Depending on the lot size. Typically it would be very difficult to preserve canopy unless you have a large enough lot that maybe back behind the building save a few trees.

Hoover: I don't think that would be what we are wanting to encourage. I don't have any language or anything, I'm just bringing that up as a question. I don't know how to address it. I don't know if other cities tree ordinances separate the downtown area from other areas?

Hesse: A majority that we reviewed didn't go by percentage, it's by zone. Those that did definitely did define them but I didn't really point out or look for that high density commercial. I do agree.

Estes: Any other discussion?

Ward: You are talking about 10% on basically zero lot lines and buildings that shouldn't even be in there.

Hoover: On C-4 but also in our area we have lots of C-3 which is 15%. It would be like Dickson Street.

Hoffman: I think there is other wording in the ordinance like technically and feasible or something like that that the Landscape Administrator makes that determination and makes the recommendation to the Planning Commission.

Hesse: In the criteria, basically if your building footprint fills the site then I wouldn't recommend making them preserve a tree. It's actually section B of the same subsection.

Hoffman: We could look in the future at taking it out or something. If this ordinance is eventually passed it's going to go through some evolution of it's own. Things are going to be dropped and changed as we go along and start implementing various things. I would like to incorporate Dr. Israel's request that we look at an equal playing field for all lots.

I'm sure the committee had talked about that and if you have a bare lot, if it's worth more or less and should we require the 20% of it be planted? I am concerned and, I'm not sure where you came up with the figure of 20% more, development cost in Fayetteville with impact fees coming in in Bentonville right now. I would want, before this goes forward to City Council to investigate and see if that has been discussed in any of the committee meetings about the completely bare lots.

Whitaker: I can tell you it definitely was discussed. The subcommittee spent a good deal of time on the subject at one point during it's career. My impression of having watched discussions and participated in numerous ones until late March. There was a sense that might be going too far. We had never previously had what we referred to as an A4 station requirement. Certainly I think that's being a policy question is certainly something within your power to adopt and recommend to the Council.

Hoffman: What you said is just my feeling. We are talking about a far reaching ordinance and to make it too overbearing at one time seems to me to be putting more pressure on the development community than I would prefer to at this time.

Whitaker: That was my impression of the subcommittees sentiment as well. Better to make progress than to overreach.

Hoover: I have a couple more questions on the section on prior tree removal. I frankly didn't think that that was severe enough. Is this different than what we had before?

Hesse: What we used to have is replacement which is now mitigation or off-site alternatives. Those are a lot stricter. To have to replace your canopy by your zone plus 10% and has to all be done on site...

Hoover: I'm talking about the prior tree removal. You are saying if it was removed without...

Hesse: Basically. They have to mitigate on site for what's removed. If it where a 20% requirement, they would have to mitigate 30%. It would all have to be on site. If they would have to provide the amount of area for those trees to mature which will limit any chance for the size of the property they have to develop on. By removing those trees suddenly they are limited, versus 20%, they are limited to 70% of the site.

Hoover: Was there any discussion as far as, this probably wouldn't be very popular, I'm assuming we took out the option of paying a fee for the tree removal? Was there any discussion of maybe a delay of being eligible to apply for a permit if you did tree

removal without a tree preservation plan or any permit?

Whitaker: Not specifically, I don't believe.

Hesse: I don't remember discussing it.

Hoover: I was trying to think of what would be a significant reprimand for not going through the proper procedures.

Hesse: I think that it is a little bit presumptuous to assume they would only be able to utilize 70% of their land. The canopy would have to be replaced on that land through mitigation measures.

Hoover: I'm thinking of a particular one we have that's been come through Planning Commission lately. That doesn't seem to be enough incentive. To me, a time delay would be incentive for a developer not to do that or for anyone not to do that.

Estes: Commissioners, with regard to subsection E, Tree Preservation Priorities, we've been provided with a memo from Mrs. Hesse that contains suggested additions and she speaks to section 167.04(E), Preservation Priorities. Mrs. Hesse, would you like to comment on your suggestion change to this particular subsection?

Hesse: Basically, versus using the language undesirable, we would change that to less desirable. Mainly because most of the trees that are listed there as undesirable, they all have benefits to them. They all provide some sort of function on the land. They considered undesirable in an urban setting where maybe they have a lot of pedestrian use underneath them or cars are parked near them or that sort of situation. In every case they may not be really undesirable, they may be utilized for their canopy if they are in a location that works well with the development where they possibly don't have a sidewalk next to the tree, or parking next to the tree. Also, say you have a willow in there, the willow may function to stabilize the bank of the stream. I want to point out the fact that even though they are listed as undesirable, if they are functioning as a high priority, we will view them as that. If they are holding up a stream bank per se, or if they are in the floodway they would be considered more desirable. I really was uncomfortable with the use of the word undesirable. Throughout that section we talk about the preservation of high and mid level priority trees and we do not talk about the preservation of the low level trees. Like I said, in some situations that that's your only canopy, if it works well on the site we would want that canopy protect and we do require that it be mitigated if you have to remove it all. It is of value. I just prefer we

use the word canopy in those situations where we are talking about protection of high and mid level. The canopy would include all canopy that was being preserved. That we use the word less desirable versus undesirable.

Estes: What is the numbered paragraph where you are suggesting the undesirable and less desirable language?

Hesse: Actually it's utilized in table 2 on page 6.

Estes: In table 2, column 3, undesirable you would like to see changed to less desirable?

Hesse: Yes.

Estes: Your second revision canopy versus the high and mid level priority trees, where would that language change be made?

Hesse: On page 5 under E-1, the bottom of that paragraph.

Estes: Paragraph E-1, last sentence, ..."routed wherever possible to avoid high and mid level priority trees", and how would you like that changed?

Hesse: "Such utilities shall be routed wherever possible to avoid canopy."

Estes: Any other changes?

Hesse: On page 6 under F, paragraph one, again the last sentence. "Trees in the utility easements shall not be counted towards percent minimum canopy requirement, and such utilities shall be routed to avoid canopy."

Estes: Any other changes?

Hesse: On page 9, paragraph 4, Analysis Report, "The applicant shall submit an analysis report detailing the design approaches used to minimize damage to or removal of canopy that were considered in arriving at the proposed design."

Estes: Any other suggested changes?

Hesse: No sir.

Estes: Commissioners any other discussion regarding section 167.04, Tree Preservation and Protection during development?

Hoover: I have one other question for Kim. Was there any discussion about civic trees, that a canopy that's along the street edge gets any more credit than a canopy in the rear as a buffer? Or, was there any discussion about is all canopy equal on the site or do we see one being more desirable than another if possible?

Hesse: That's basically it's preservation priorities, identify more valuable trees on the site based on the function. Actually we started out looking at more environmental issues like canopy slopes, floodway, riparian buffers and we also put in the large significant trees as being high priority. A second level priority would include the use buffers and we define those in the definitions. I don't know if we discussed them along the right-of-way but in our discussions that was kind of part of that, buffering between land uses as well as between vehicular and pedestrian. We may need to further design that.

Hoover: I see under use buffer incompatible land uses, unwanted light or noise. I guess I would be interested if you could include in the public realm what you are going to see as being pointed out. Do you know what I mean? In my viewpoint, I would rather see if they have to do tree canopy in the front of the building rather than in the back that maybe has 300 feet before it gets to the next lot.

Conklin: That issue does come up about where it's more desirable to preserve tree canopy and where we view trees from the public realm, the civic space or from our streets. I don't think it's in the ordinance but I do agree with you that we do want to try to preserve trees that the public will be able to enjoy from our streets.

Hoover: Even if it's replacement canopy, I would prefer to see it out in the front more so. I've noticed on some things that have come through Planning Commission will be like 14 new trees in the rear which 4 would have taken care of screening to the next neighbor but it would have been nice to have more than 2 trees up front.

Whitaker: Right-of-ways and public grounds are addressed in 167.06.

Conklin: I think what Commissioner Hoover is suggesting is, should we place a higher priority on trees that you will be able to see in a development to be up front versus back behind the building?

Whitaker: On private land as opposed to city right-of-way.

Conklin: Not on city right-of-way, on the development site, should we have a priority where trees that you preserve, should there be a higher priority for those trees that you can view from public space versus back behind the building.

Hoover: Possibly as an incentive if you put larger trees in that public realm than you don't need as many. Some kind of incentive. I don't want to make it even harder, I would like it to be an either/or kind of thing so there is a trade-off there.

Hesse: I see a couple of ways we could incorporate that into use buffers between pedestrian use and vehicle use. We can incorporate that into that definition. Oftentimes, just through my experiences, it's sometimes more difficult to preserve them along there but it doesn't mean it's impossible. If it's a commercial development the Commercial Design Standards require the trees along the right-of-way every 30 feet. One thing we have done, when they do mitigate on site, obviously we are looking for a space where they have room for the trees to grow. Oftentimes you find that setback allows for that room and I have a feeling we will find a lot of mitigation going in that area in the front setback especially because there is more space.

Hoover: What about when you mentioned the utility easement? Are we allowed now to plant trees in the utility easement? I'm thinking again along in the front where there is often utilities.

Hesse: We have continued to plant in the utility easements. It's the preservation in the utility easement that we don't count as preservation. We have no control over the utilities, they come in and dig out. That's also true for those that have been planted. We have been planting in utility easements and I haven't seen it as being a major problem.

Hoover: They are not going to get any credit for their canopy in the utility easement, or are they?

Hesse: Not for their preservation. They do get credit for what they plant in Commercial Design Standards, they can plant those in the utility easement. They would not count that as replacement in the utility easements, you've got a point there.

Hoover: I don't know, is that a good or bad thing? I'm seeing a lot of trees are being setback 50 or 60 feet from the road which is not helping shade the road or sidewalk at all. I am just wondering how to get to that point?

Hesse: We have a couple of issues to deal with as far as water and sewer as well. The water and sewer Superintendent feels strongly about the repairs that has to occur in that area

and they prefer that we keep it at a minimum 6 to 8 feet from that line. Sometimes that will pull us back. There is a lot of situations that cause us to pull it back, sight distance from the driveways. I can see where aesthetically and also functionally we have benefits by putting the trees near the streets, it seems like we do have a lot of obstacles. I don't know if there is a good answer for that.

Estes: There has been provided a written comment to us from Ms. Colene Gaston and copies of her comments have been distributed to you and I would like to pass the original to Sheri to be made a permanent part of the record. With regard to those comments, in section 167.04A, that change has been made in the technical correction draft that we have and that section now reads "Canopy to be preserved shall be noted on the final plat and shall be protected as set forth in section 167.04L below." The comment provided as to section 167.04 F.2.b and let me give you an opportunity to go to that, Preservation Plan for Infrastructure Only, the comment that Ms. Gaston has provided is "This second option for a preservation plan (for infrastructure only) should also include the mandatory filing of a "Tree Protection Easement or other recorded device, which provides a permanent record of the protection afforded under this chapter." Any discussion? In section 167.04 I, which is titled Request for On-site Mitigation, Ms. Gaston is "I believe that the test for allowing on-site mitigation should be clarified to provide that the applicant must demonstrate to the Landscape Administrator's satisfaction that a site's physical or spacial constraints prevent <u>any development</u> of the property that would preserve the Percent Minimum Canopy." Any discussion? As to section 167.04 J, Request for Off-site Alternatives, at the bottom of page 10 of your technical correction draft, in column 2. The comment made is "I recommend that this option for off-site alternatives also require demonstration that the property would not in any way be developed and also meet the Percent Minimum Canopy." Any discussion? In 167.04 L.3, which is found on page 13 in the left hand column, the comment is "This provision regarding continuing preservation and protection should include the same language as recommended above for UDO 167.04F.2.a and 167.04F.2.b that would require the filing of a Tree Protection Easement or other recorded device." Any comment or discussion? Is there any other comment or discussion regarding section 167.04?

Shackelford: On the site analysis plan, which I believe is somewhat of a new document trying to combine other things, 167.04H subset 1, Site Analysis Plan, page 7. My concern is, if this does not apply to LSD only then it would apply to the individual developer who was wanting to build a triplex on a so zoned piece of property. If that is the case, I assume it is the applicant's responsibility to complete this plan at his cost. My concern is that as a developer trying to build a piece of property, I'm going to have to do a plan

showing the approximate age, health and size of every tree on the lot, a plan including all natural features including features beyond 100 feet beyond the property line, a plan showing the topography highlighting slopes 15% or greater and I'm going to have to identify all the soil on the property according to soil classification system. My concern is that if this is held outside the LSD on just developments that are not excluded by the overall ordinance, it's going to be a requirement that the developer on smaller scale may not have the professionalism to do. My concern is who's going to do this type of study and at what cost is it going to add to the developer on that project?

Estes: Mrs. Hesse, would you comment and before you do, let me sort of add a little footnote to that. We have the abbreviated tree preservation plan which is in subpart 3, is that what we are talking about, subsection H, Submittal of Plans?

Hesse: Yes, for abbreviated tree preservation plans, those are the required of building permits, grading permits and parking lot permits. Anything that does not go through the full review of this Commission would not be required to do a site analysis or analysis report. They would be required to only do an abbreviated tree plan, which could actually be done with a hand drawing, it does not have to be a computer generated drawing. The intent was not to have to require them to hire somebody to do this.

Whitaker: Also, on page 9 the very end of the abbreviated tree preservation plan section, the committee asked that I put in the specific disclaimer that applicants submitting abbreviated plans shall not be required to submit either a site analysis plan or analysis report.

Shackelford: Thank you.

Hoffman: Do you want to get any more specific and say that professional engineers or architects will not be required for abbreviated tree preservation plan?

Whitaker: I could.

Estes: Commissioner Hoffman where would you suggest that language be included?

Hoffman: Just add it on page 9 on 167.04H.3, the end. Add "An architects or engineers seal is not required for an abbreviated tree preservation plan."

Conklin: You might want to add landscape architects also.

Hoffman: Architects, landscape architects or engineers seal is not required.

Estes: Is there any further discussion regarding section 167.04?

Shackelford: The changes that Ms. Gaston has referenced that you read earlier, are those being read into the document as it exists?

Estes: No, my intention was to read those and ask for comment. If my memory is correct, there was no comment or discussion. It was certainly not my intent to read those in as a change to be considered. It was my intention to read those and offer them for discussion.

Shackelford: The only reason I ask that is because it would be in conflict with number 7 but if those are not changes that have been made then we are okay there.

Estes: It was only my intent to bring those to your attention by reading them and asking for comment. Any other discussion?

Hoover: I have a general question that I was wondering if the committee discussed. I appreciate all the ordinances that we have and making them more stringent but were there any tree ordinances around that gave incentives to developers so that if they did one thing they would get something else? It seems like reading through here this is pretty in depth. Have other cities approached it from that direction?

Hesse: I'm sure they have. I can't think of anything at this point. The only incentive we built into this ordinance was for the mitigation aspect of it. If they were able to mitigate all on-site, they would only have to mitigate 80% of what's required. That was just trying to encourage them to do that. I don't believe we had any other built in mechanisms.

Hoover: From the developers in the group, did they think that was enough incentive or would they want to see more?

Hesse: I'm sure they would want more.

Hoover: In general, did they think that was an incentive or did that mean nothing?

Hesse: That was an incentive. That was brought up by one of the engineering representatives of the committee. At our committees we had a mixed bag, we almost always has some from the construction industry, some from engineering. We did not always have a

developer there, we had representatives for them but we did always physically have a developer on the committee at every meeting. As we went through this they may have missed an opportunity to question something.

Allen: I had a like concern as I read through, there are so many rules that if you are abiding by everything there ought to be more incentive built into the ordinance. Did you have any thoughts or ideas as you were working on it about other things that could be added?

Whitaker: I must tell you that on that it came up from time to time but no one really brought forward any concrete plans or specific schemes for incentives other than the 20% allowance that made it into the final draft. There are such things elsewhere but it's subject to pretty complex schemes. Some things are earning development points and things like that but who tracks that over time? How many tree compliance points do you have? Did you use them up on the last one? Do you get into a regime where you have all these points so you could come in and clear 300 acres and not put any trees on it because you've earned up enough bonus points. Those are some of the things that you encounter when you start talking about these incentive programs. I think that at some point the subcommittee felt like it had enough work over the 14 months that it just wasn't ready to move there in any of those complex parts.

Allen: I was thinking about on the piece of property that they were developing, not accumulating points. Maybe they would have an additional parking space. There might be something that could be a real incentive for people to want to comply.

Whitaker: I would defer to the Planning Director when you start giving away parking spaces and things of that nature.

Conklin: I think one of the biggest changes I've seen since we went through the ordeal with Kohl's that resulted this ordinance, the development community is meeting with staff up front prior to the applicant submittal. They understand that when you do meet the ordinance requirements and you do work with out Landscape Administrator and you meet our ordinance requirements, you can get through the process on time. There are very few developments now that we are unaware that they are coming into the Planning Division for processing. It's almost always a preapplication conference. Even with the new tree ordinance where it encourages preapplication conferences, that has been happening for about a year now. I think it's evident at our Planning Commission meetings lately that development community and staff are working closely together to make sure these projects come to you meeting our ordinances. The biggest incentive that we can give the development community is an ordinance that's clear, the ability for

staff to communicate with them and bring in projects that meet our ordinance requirements. I think this will be a positive step.

Estes: Any other discussion regarding this section? Seeing none, Section 167.05, Tree Protection measures and construction. Let me direct your attention to Ms. Hesse suggested additions to the technical corrections regarding section 167.05B, Tree Protection. Mrs. Hesse could you speak to your suggested change please?

Hesse: Yes, just from experiences on projects, oftentimes I think anyone that has dealt with construction realizes that once you design a plan on a sheet of paper that there is quite a few differences when you get out into the real world on the site. There are a lot of construction changes that happen during construction. Oftentimes we find ourselves, even prior to or during construction allowing them to encroach on some of the protected trees, into the dripline. Basically they find themselves boxed in or a utility has to run in a different location. In situations like that I would like to have the ability to require them to do root pruning or add mulch to the base. Oftentimes you can allow them to get under that dripline if you put a thick layer of mulch and then that tree will not be impacted like it would be if there was nothing there to cushion the weight of the compaction of the soil. My suggestion was that under tree protection that we would include a statement saying that the Landscape Administrator may require other protective measures based upon the individual characteristic of the site and the proposed construction methods. Very often I find, especially on tight sites with commercial buildings, if you look at it on a drawing it may look perfectly fine but if you looked at the details of their footing plan you would realize that they are having to excavate beyond that tree. Typically you need to keep 10 feet from the building in order to build the building and oftentimes I'm being more flexible on the site and allowing them to move into that tree. I do so by asking them to do some additional measures and it has worked for many sites. I was uncomfortable that without this language I may not be able to make those changes.

Estes: Any discussion regarding this section?

Hoffman: I have some elaboration or expansion on your idea. That is that we implement tree preservation measures for trees that are actually located off the site but have a root zone on the site. I've come up with some wording that you are welcome to change but this is the idea. At the end of 167.05B to say "Tree preservation measures must also adequately protect off-site trees with root structures extending into a site for proposed construction. If damage or destruction to an off-site tree occurs, the applicant or developer will be required to mitigate that damage as prescribed by the Landscape

Administrator."

Estes: Any discussion? Any other discussion regarding Section 167.05? Seeing none, Section 167.06, Tree Planting Maintenance and Removal on Street Right-of-ways and Other Public Grounds, any discussion? Seeing none, Section 167.07, Commercial Tree Pruner/Service:Certificate and Insurance Required, any discussion? Seeing none, Section 167.08, Hazardous Trees, any discussion? Seeing none, Section 167.09, Local Disaster Emergency, any discussion?

Hoffman: I only have one question about that, the ice storm brings it to mind. Is there anything in our ordinance or UDO that covers trees down on power lines? Does SWEPCO or the utility company have to come and cut the trees off the power line, should we address that or is that a separate disaster issue?

Hesse: I think that there laws would probably override these and they don't allow anyone get near those lines when there is a tree on them. It's something that the utility wants to maintain for safety reasons. No, it's not addressed in here. We discuss it in some section.

Whitaker: Section 167.06J, talks about public utilities rights.

Hesse: It basically states that nothing in this section shall be construed to prohibit public utilities from pruning or removing trees that encroach upon electric, phone, cable, television transmission lines, gas, sewer or water pipes.

Conklin: Most of those utilities are probably within our rights-of-way where they have franchise agreements to be there or within utility easements which they already have the right to go in there and remove the trees.

Estes: Any other discussion? Seeing none, if we could refer back to Section 167.02 for just a moment. The comment letter that Ms. Gaston provided with regard to this section reads "The Landscape Administrator...shall promulgate and periodically revise forms, procedures, and regulations to implement this chapter...", I do not believe that the Landscape Administrator has the legal authority to promulgate regulations. Any discussion? David, would you speak to that please?

Whitaker: This ordinance would be the enabling legislation. It would be the governing body of the City telling a particular city official to promulgate regulations to enforce the chapter.

Estes: The chair will now entertain motions, any further discussion or comments. Let me say this, I do not want to limit the discussion in any way nor do I want to limit the motions. We have had several comments by Commissioners. Rather than require that we go back through and discuss each of those individually, let me suggest this, any motion incorporate by reference those changes. They have been recorded by our clerk and will be duly made a part of the record. I do not in any way limit your ability or capacity to make motions. If you would like to go to some specific comment that's been made and discuss it more fully and completely remove it, modify it, do so.

MOTION:

Hoffman: I would like move for recommendation of approval to City Council of Administrative Item 01-32.00, with reference to all Commissioners and public comments recorded today that they be duly considered prior to the ordinance reaching City Council as so recorded.

Estes: We have a motion by Commissioner Hoffman to approve Administrative Item 01-32.00 which would be forwarded to the City Council an ordinance amending title 15 of the Unified Development Ordinance of the Code of Fayetteville to provide amendments to and clarification of various provisions concerning tree preservation and protection, is there a second?

Allen: I'll second.

Estes: We have a motion by Commissioner Hoffman and second by Commissioner Allen, is there any discussion?

Bunch: I ask Commissioner Hoffman just how you were including the various portions of the public comment and the letters that have been read into the public record? Are you suggesting these be in the form of suggestion in minutes or that they be incorporated into the document as substantive changes?

Hoffman: If I understand our Chairman correctly and by looking at the memorandum from Mr. Whitaker, I think that as this goes forward it's a good idea to go ahead and have staff and the City Attorney's office incorporate all of the discussion that has been made here tonight by the public and by the Commission. It seems that there was some discussion on various wordings and various legal issues and so forth, in the technical memorandum following the question and answer question. I would assume a similar format or similar action would be taken by the staff prior to it reaching the Council level. Am I right or

wrong?

Whitaker: My only concern is that, if we gather every comment that was made both here in the chambers and from letters and such and attempt to incorporate in the draft, we are going to have some incredible inconsistencies. Some folks opposed you and I wonder how you would want the City Attorney's office to reconcile that?

Estes: My thought was that the amendments made by the individual Commissioners be incorporated and be the modified draft that goes to the City Council. Not public comments and not Ms. Gaston's letter which I read simply for the purpose of inviting comment but that those changes and modifications to the technical draft include only those changes made by individual Commission members. If there is a disagreement or question by any individual Commissioner as to whether that specific provision should go forward that it be discussed and proliferated at this time. Commissioner Hoffman, was that the intent of your motion?

Hoffman: Not really but I understand. Otherwise we will be here all night rewriting and trying to get the opposing views in. Understanding that, not having a great legal brain, I would say that there is still time for public comment to City Council and that those people that wish to make it will have further opportunity. We should go ahead and incorporate our comments and leave the public to the next meeting as those go forward. Does that sound better?

Whitaker: Yes. I believe the Council will get a copy of the minutes.

Hoffman: I understand now. Colene's letter has some definite legal terminology that I'm certainly not prepared to deal with tonight.

Estes: Commissioner Allen, was that the intent of your second?

Allen: Yes.

Hoover: Will the tree committee be meeting again before this goes to City Council and revising or what?

Whitaker: It had not been planned.

Hoover: I guess I'm concerned if we are just making the motion with new language, I didn't make any new language. I want my points to be considered.

Conklin: There will be an opportunity, I believe this is going to go to the Ordinance Review Committee and there will be opportunity there to have that committee make the final recommendations to City Council.

Hoover: When will that be do you think?

Conklin: The City Council will have to set that up, I'm not sure.

Hoover: Thank you.

Estes: The statute provides that following the public hearing proposed plans may be adopted and proposed ordinances and regulations may be recommended as presented or in modified form by a majority vote of the entire Commission. That's what we are doing. That's the purpose that we are charged with this evening. There is a motion by Commissioner Hoffman, second by Commissioner Allen to approve Administrative Item 01-32.00, is there any other discussion?

Shackelford: I would just like to make some comments for the record as well. While I agree we need consistency and clarification beyond what our current ordinance offers, I feel that we need to do this without infringing on property owner's rights. I am somewhat troubled that we are adding more restrictive covenants that will further add to the difficulty of development in Fayetteville and add to the gap between here and our neighboring communities. I'm concerned that this might push more development and tax revenue outside our City limits. I know that many hours have gone into rewriting this ordinance and it's merits were good. My concern is, it may be somewhat intrusive and could possibly cost the City of Fayetteville a great deal of lost tax revenue going forward. I think we need to be very careful going forward to keep from further increasing the gap in development costs between the City of Fayetteville and other communities. If this ordinance is passed, I feel that we need to keep an open mind on appeals that are brought before either the Planning Commission or City Council. We need to continue to look at these things on a case by case basis and not let this ordinance stop proposed developments in Fayetteville.

Ward: There is a lot of gestapo about the landscape establishment guarantees that we are putting in this ordinance, how we picked out a three year maintenance and monitoring period and all this type of thing. I think we are really pushing legal, property rights and constitution as far as some of these things we are asking to do here. For the most part I think the tree ordinance is fantastic. A lot of good stuff in here. I'm just kind of worried about going too far. We all want to have beautiful real estate, we all want the

trees, we all want to preserve what we have but there is two sides to all this.

Estes: Any further discussion, comments? We have a motion by Commissioner Hoffman to approve administrative item 01-32.00 and a second by Commissioner Allen, Sheri would you call the roll?

ROLL CALL:

Upon roll call administrative item 01-32.00 is approved by a vote of 7-0-0 and will be forwarded to City Council for consideration.

Estes: In closing, let me speak on behalf of the entire Commission and thank each of you for your participation in this process. As I have attend various meetings and as I look out over the audience this evening, I see architects, I see engineers, I see lawyers. There have literally been over 1,000 hours of time put into the preparation and drafting of this ordinance. On behalf of your Commission I thank you. It's been a very noble effort and we appreciate it very much. Is there any other business?

Conklin: There is no further business.

Earnest: I did want to make sure, we did spend a lot of time last week mailing out a notice to everybody about the meeting on September 11th and I hope you have all gotten that in the mail. If you haven't, please let me know. We are proceeding. We did mail out over 900 letters to people in the region. It went out last Friday.

Estes: What is the meeting?

Earnest: It's the presentation by Mayor Brent Coles from Boise, Idaho, speaking about smart growth and his perspective on it as a past president of the U.S. Conference of Mayors.

Estes: Thank you, any other announcements? We will be adjourned until our next regularly called meeting.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: City Council

THRU: Mayor Dan Coody

Gary Dumas

FROM: Sharon Crosson, Utilities Manager

DATE: August 29, 2001

SUBJECT: **Additional Information on Town Center Parking Deck**

At a July meeting of the Advertising and Promotion Commission, the City was asked to consider operating the Town Center Parking deck, due to the fact that the City already handles all other downtown parking and has the personnel, expertise, and equipment in place. The City would provide for the basic operational needs of the Parking Deck. The details of that service are specifically outlined in the Resolution associated with this item.

The compensation to the City for this service will be the use of 40 parking spaces in the Town Center Parking Deck. These 40 spaces will be used for employee parking to relieve parking congestion around the City Hall. The City provides parking to employees and this is an effort to continue to provide that off-street alternative to help maintain the retail and office customer parking around the square.

A totally separate issue is the decision of the A&P Commission to provide 50 spaces in the Town Center Parking Deck for monthly leasing. These spaces lease for $50.00 per month. The Town Center Parking Deck has 220 parking spaces. The Off-Street Parking District has requested that the A&P Commission reconsider the 50-lease limit. The City may wish to make a similar request, but it may be prudent to allow the downtown parking to return to equilibrium in the next 30 to 45 days, following the opening of the Town Center and the removal of the construction material storage and construction employees from the downtown area.

Additionally, the staff will be reporting back to Council on the results of a series of meeting with downtown parking interests within the next 30 days. The results should lead to programs that will free on-street downtown parking for customers' use.

AGREEMENT

This Agreement, made and entered into this _____ day of _____, 2001, by and between the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called the City, and the Fayetteville Advertising and Promotion Commission, operating as the Fayetteville Town Center, hereinafter called the Commission.

WITNESSETH, IN CONSIDERATION of mutual promises of the parties contained herein and other good and valuable consideration, the parties agree as follows:

1. This agreement shall remain in full force and effect for an initial term of six (6) months from the above date. Upon completion of the initial term, the needs of the parties shall be re-evaluated.

2. This agreement is for an exchange of services between the parties. The City agrees to ~~manage~~ operate the parking deck at the Town Center, with duties to include:

   a. Preparing lease agreements for customers desiring to lease parking deck spaces.

   b. Billing customers either monthly or quarterly, and receiving customer lease payments.

   c. Removing any and all moneys and tokens from the auto cashier machine and transferring custody and control of such directly to authorized Commission personnel.

   d. Providing an accounting of all revenues received through the parking lease program and the auto cashier machine on a monthly basis.

   e. Programming and distributing parking cards, and maintaining the associated customer accounts.

   f. Notifying customers of "Event Days" when parking cards cannot be used to access the parking deck. Providing cardholders with information on alternative parking during "Event Days," as well as providing them with hang tags, tokens, or other supplies needed

for alternative parking (as stated in the attached "Procedures for Alternative Parking on Event Days").

g. Providing routine maintenance on gates, card readers, auto cashier machine, credit card reader, etc., provided that any costs and expenses incurred for vendor-provided equipment maintenance shall be borne by the Commission. Additionally, all costs and expenses incurred for the purchase of equipment and supplies for the operation of the parking deck shall be borne by the Commission, provided that such purchases have the prior approval of a designated representative of the Commission.

h. Attending the auto cashier machine in a diligent and timely manner to ensure the coin hopper has a sufficient number of coins to provide correct and sufficient change to customers.

i. Taking customer calls and complaints concerning the parking deck.

3. In exchange for these services, the Commission agrees to provide forty (40) parking spaces on the deck to be used by employees of the City of Fayetteville, provided that:

a. The City agrees to abide by the same rules that apply to the other customers leasing spaces on the deck.

b. The City agrees to allocate parking cards only to city employees.

c. The City shall expend its best efforts to discourage nighttime parking, as the Town Center frequently holds nighttime events.

d. The City shall encourage employees to park towards the west end of the deck, leaving spaces closest to the elevators open for customer parking.

4. The Commission shall be responsible for all collection actions associated with delinquent accounts, provided that the City shall be responsible for informing the Commission of such accounts in a timely manner.

5. Neither party may assign any of its rights or obligations under this agreement, without the express written consent of the other.

6. The parties agree and understand that this Agreement is exclusive of any and all other agreements, and that it in no way alters, amends or abridges any rights, obligations or duties of the parties contained in such agreements.

7. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance, and shall not be construed as a general waiver of any other breaches by either party.

8. This Agreement constitutes the entire understanding of the parties, and no modification or variation of the terms of this agreement shall be valid unless made in writing and signed by the duly authorized agents of the City and the Commission.

IN WITNESS WHEREOF, the City and the Commission have executed this Agreement on or as of the date first written above.

CITY OF FAYETTEVILLE

_____

Dan Coody, Mayor

ATTEST:

_____

Heather Woodruff, City Clerk

ADVERTISING AND PROMOTION COMMISSION

By:_____

ATTEST:

By: _____

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF FAYETTEVILLE AND THE FAYETTEVILLE ADVERTISING AND PROMOTION COMMISSION WHEREIN THE CITY AGREES TO OPERATE THE PARKING DECK AT THE FAYETTEVILLE TOWN CENTER IN EXCHANGE FOR THE USE OF FORTY (40) PARKING SPACES, AND LIMITING SAID AGREEMENT TO A PERIOD NOT TO EXCEED SIX (6) MONTHS FROM THE DATE OF ITS EXECUTION.

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

Section 1. That the City Council hereby Approves an agreement between the City of Fayetteville and the Fayetteville Advertising and Promotion Commission wherein the City agrees to operate the parking deck at the Fayetteville Town Center in exchange for the use of forty (40) parking spaces. A copy of the agreement is attached hereto marked Exhibit "A" and made a part hereof.

Section 2. That said agreement is limited in duration to a period not to exceed six (6) months from the date of its execution.

Section 3. That the City Council authorizes the Mayor to sign said agreement with the Fayetteville Advertising and Promotion Commission.

PASSED AND APPROVED this _____ day of September, 2001.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

STAFF REVIEW FORM

____ AGENDA REQUEST
__X__ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council meeting of _____

FROM:

Sharon Crosson (Name) | Parking Management (Division) | Utility Services (Department)

ACTION REQUIRED:
Approval of Agreement between the City of Fayetteville and the Fayetteville A & P Commission for the City to operate and manage the Town Center deck in exchange for 40 parking spaces.

COST TO CITY:
12,000 - Rev 2 Service Exchange
12,000 - Exp 3

$ .00 Cost of this Request | $ _____ Category/Project Budget | _____ Category/Project Name

_____ Account Number | $ _____ Funds Used To Date | _____ Program Name

_____ Project Number | $ _____ Remaining Balance | _____ Fund

BUDGET REVIEW: ____ Budgeted Item ____ Budget Adjustment Attached

_____ Budget Manager | _____ Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

Marsha Farthing — Accounting Manager — 8/15/01 Date
Danny Smith — Internal Auditor — 8/15/01 Date
[signature] — City Attorney — 8/14/01 Date
_____ — ADA Coordinator — _____ Date
_____ — Purchasing Officer — _____ Date

GRANTING AGENCY: _____

STAFF RECOMMENDATION:
Approval of 6 month contract.

Sharon Crosson — Division Head — 8-13-01 Date
[signature] — Department Director — 8-15-01 Date
[signature] — Administrative Services Director — 8/20/01 Date
[signature] — Mayor — 8/23/01 Date

Cross Reference

New Item: **Yes** **No**

Prev Ord/Res #: _____

Orig Contract Date: _____

Orig Contract Number: _____

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FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Dan Coody

FROM: Sharon Crosson, Utilities Manager

DATE: August 13, 2001

SUBJECT: **Request for Approval of Agreement with A & P Commission**

Staff recommends the approval of the attached Agreement with the Fayetteville Advertising and Promotion Commission. The Agreement provides that the A & P will afford the city 40 parking spaces in the Town Center parking deck in exchange for operations and management services of the deck. The contract term is for 6 months, at which time we will revisit the issue and make changes accordingly.

When the construction of the Town Center began, the project displaced parking for 40 city employees by allowing the parking areas to be used for storage of construction materials. The 40 employees were relocated to a lot on Spring Street by utilizing the Park-N-Ride program. Now that the construction has ended, we had hoped to regain parking areas that we previously used. However, I have found that due to current ordinances, these parking areas may not be reused until the lot(s) are paved, curbed, and sidewalks installed. In light of the fact that the Park-N-Ride program cost the City over $2,400 per month, it was decided to discontinue this program and find alternative parking. Therefore, until we resolve the issue of regaining use of our original parking areas, the City is in immediate need of 40 parking spaces.

At the July 9th A & P Commission meeting, the A & P asked the City of Fayetteville to provide management of the Town Center parking deck. The City already has the staff, expertise, equipment, and billing system in place to accommodate this service. Therefore, we decided to propose an even exchange of our services for 40 spaces in the deck.

I feel that this Agreement serves the best interest of both entities by providing the immediate needs of both. I request approval of this contract and we will review it again in 6 months. Thank you for your consideration.

/slc

Attachment

AGREEMENT

This Agreement, made and entered into this 13th day of August, 2001, by and between the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called the City, and the Fayetteville Advertising and Promotion Commission, operating as the Fayetteville Town Center, hereinafter called the Commission.

WITNESSETH, IN CONSIDERATION of mutual promises of the parties contained herein and other good and valuable consideration, the parties agree as follows:

1. This agreement shall remain in full force and effect for an initial term of six (6) months from the above date. Upon completion of the initial term, the needs of the parties shall be re-evaluated.

2. This agreement is for an exchange of services between the parties. The City agrees to manage the parking deck at the Town Center, with duties to include:

   a. Preparing lease agreements for customers desiring to lease parking deck spaces.

   b. Billing customers either monthly or quarterly, and receiving customer lease payments.

   c. Removing any and all moneys and tokens from the auto cashier machine and transferring custody and control of such directly to authorized Commission personnel.

   d. Providing an accounting of all revenues received through the parking lease program and the auto cashier machine on a monthly basis.

   e. Programming and distributing parking cards, and maintaining the associated customer accounts.

   f. Notifying customers of "Event Days" when parking cards cannot be used to access the parking deck. Providing cardholders with information on alternative parking during "Event Days," as well as providing them with hang tags, tokens, or other supplies needed

for alternative parking (as stated in the attached "Procedures for Alternative Parking on Event Days").

g. Providing routine maintenance on gates, card readers, auto cashier machine, credit card reader, etc., provided that any costs and expenses incurred for vendor-provided equipment maintenance shall be borne by the Commission. Additionally, all costs and expenses incurred for the purchase of equipment and supplies for the operation of the parking deck shall be borne by the Commission, provided that such purchases have the prior approval of a designated representative of the Commission.

h. Attending the auto cashier machine in a diligent and timely manner to ensure the coin hopper has a sufficient number of coins to provide correct and sufficient change to customers.

i. Taking customer calls and complaints concerning the parking deck.

3. In exchange for these services, the Commission agrees to provide forty (40) parking spaces on the deck to be used by employees of the City of Fayetteville, provided that:

a. The City agrees to abide by the same rules that apply to the other customers leasing spaces on the deck.

b. The City agrees to allocate parking cards only to city employees.

c. The City shall expend its best efforts to discourage nighttime parking, as the Town Center frequently holds nighttime events.

d. The City shall encourage employees to park towards the west end of the deck, leaving spaces closest to the elevators open for customer parking.

4. The Commission shall be responsible for all collection actions associated with delinquent accounts, provided that the City shall be responsible for informing the Commission of such accounts in a timely manner.

5. Neither party may assign any of its rights or obligations under this agreement, without the express written consent of the other.

6. The parties agree and understand that this Agreement is exclusive of any and all other agreements, and that it in no way alters, amends or abridges any rights, obligations or duties of the parties contained in such agreements.

7. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance, and shall not be construed as a general waiver of any other breaches by either party.

8. This Agreement constitutes the entire understanding of the parties, and no modification or variation of the terms of this agreement shall be valid unless made in writing and signed by the duly authorized agents of the City and the Commission.

IN WITNESS WHEREOF, the City and the Commission have executed this Agreement on or as of the date first written above.

CITY OF FAYETTEVILLE

_____
Dan Coody, Mayor

ATTEST:

_____
Heather Woodruff, City Clerk

ADVERTISING AND PROMOTION COMMISSION

By: _____

ATTEST:

By: _____

STAFF REVIEW FORM

_X_ **Agenda Request**
____ **Contract Review**
____ **Grant Review**

For the Fayetteville City Council meeting of September 4, 2001.

FROM:

Tim Conklin	Planning	Public Works
Name	Division	Department

ACTION REQUESTED: To adopt an ordinance amending Title XV: Unified Development Ordinance of the Code of Fayetteville , to provide amendments to and clarification of various provisions concerning tree preservation and protection.

COST TO CITY:

$0		
Cost of this request	Category/Project Budget	Category/Project Name
Account Number	Funds used to date	Program Name
Project Number	Remaining balance	Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

Budget Coordinator — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**_____

Accounting Manager	Date	ADA Coordinator	Date
City Attorney	8/24/01 Date	Internal Auditor	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended approval and Planning Commission unanimously voted 7-0-0 to recommend and forward the amended ordinance to the City Council.

Division Head	8-24-01 Date	**Cross Reference**
Department Director	Date	New Item: **Yes** **No**
Administrative Services Director	Date	Prev Ord/Res#:_____
Mayor	8/24/01 Date	Orig Contract Date: _____

STAFF REVIEW FORM

Description: _____ **Meeting Date:** _____

Comments: **Reference Comments:**

Budget Coordinator:

Accounting Manager:

City Attorney:
Please see the attached Memo. JN

Purchasing Officer:

ADA Coordinator:

Internal Auditor:

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT ORDINANCE, OF THE CODE OF FAYETTEVILLE, TO PROVIDE AMENDMENTS TO AND CLARIFICATION OF VARIOUS PROVISIONS CONCERNING TREE PRESERVATION AND PROTECTION.

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

Section 1. That Chapter 151: Definitions, Unified Development Ordinance, Code of Fayetteville is hereby Amended by deleting the following definitions: **Development** (Tree Protection and Preservation); **Landmark Tree; Mature Canopy Area; Rare Tree;** and **Tree Preservation Area;** and in its stead, is inserted Exhibit "A" attached hereto and made a part hereof.

Section 2. That Sections 152(H) and 153.02(A) Unified Development Ordinance, Code of Fayetteville are hereby Amended by deleting the subheadings **"**Tree Protection and Preservation**,"** and inserting "Tree Preservation and Protection" in their stead, and as to 153.02(A) only, striking the phrase "landmark and rare" and inserting the term "significant" in its stead.

Section 3. That Section 155.05(A), Unified Development Ordinance, Code of Fayetteville is hereby Amended by inserting the following:

§155.05 APPEALS FROM PLANNING COMMISSION DECISIONS.

A. Appeals To City Council.

7. Tree Preservation Plan. Owners of record or any member of the City Council wishing to contest a Tree Preservation Plan must appeal the decision to deny or approve the preliminary subdivision plat or large scale development according to the procedures set forth in subsection (A)(2) above.

Section 4. That Section 156.03(C), Unified Development Ordinance, Code of Fayetteville is hereby Amended by inserting the following:

§156.03 DEVELOPMENT.

C. Consideration By The Planning Commission.

6. Tree Preservation Plan. A developer may petition the Planning Commission for a variance from the requirements of Chapter 167: Tree Preservation and Protection, in those cases where its strict application would work an injustice due to the unique characteristics of the subject real property; provided that such variance shall not

have the effect of nullifying the intent and purpose of the chapter. The Planning Commission's approval of said variance must be affirmed by the City Council to become effective, and a denial of the requested variance may be appealed to the City Council.

Section 5. That Chapter 167: Tree Protection and Preservation, Unified Development Ordinance, Code of Fayetteville is hereby repealed, and Exhibit "B" attached hereto and made a part hereof, is inserted in its stead.

PASSED AND APPROVED this _____ day of _____, 2001.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

EXHIBIT "A"

To be inserted at Chapter 151: Definitions:

Abbreviated Tree Preservation Plan. (Tree Preservation and Protection) A shorter, less formal Tree Preservation Plan required of Applicants seeking Building, Grading or Parking Lot Permits, but who are not subject to the requirements for Large Scale Developments or Subdivisions.

Administrative Determination. (Tree Preservation and Protection) Final action by the Landscape Administrator to either approve, conditionally approve or disapprove a Tree Preservation Plan. Administrative determinations apply only to those projects which do not require Planning Commission approval.

Analysis Report. (Tree Preservation and Protection) A report, which among other things, sets forth any alternative designs the Applicant considered in arriving at the proposed design.

Applicant. (Tree Preservation and Protection) Any person, party, partnership, corporation or other business entity seeking the City's approval of a proposed Tree Preservation Plan.

Base Density. (Tree Preservation and Protection) The number of trees an Applicant must plant based upon the quality and number of the trees proposed to be removed per acre.

Caliper. (Tree Preservation and Protection) The diameter of a young tree (those with a diameter of 4″ or less) measured 6″ above ground level.

Canopied Slopes. (Tree Preservation and Protection) Any land with a slope of 15% or greater containing trees, woody shrubs and herbaceous plants that serve the function of sustaining the structural integrity of the soil, thus reducing the likelihood of erosion, slide, or slump.

Canopy. (Tree Preservation and Protection) The combined crowns of all trees on a tract of land.

Conservation Easement. (Tree Preservation and Protection) A formal, legally binding agreement between parties, usually a landowner and a private or public entity, providing for the preservation of land in its natural state.

Contiguous Woodlands. (Tree Preservation and Protection) A portion of canopy existing on the site of proposed development, which is a part of a larger, unbroken forest, whether or not it extends onto adjacent lots.

Development. (Tree Preservation and Protection) The process of changing the use or appearance of land, including, but not limited to, the construction, demolition or

movement of structures, the division of land into two (2) or more parcels, the removal of trees or woody shrubs, or the grading, removal or addition of any debris, fill, or soil.

Forestation. (Tree Preservation and Protection) The act of planting trees.

Invasive Species. (Tree Preservation and Protection) Any species not indigenous to a region, which becomes established and displaces native species.

Landscape Establishment Guarantee. (Tree Preservation and Protection) A bond, irrevocable letter of credit, or other surety held by the City until the satisfactory conclusion of the three-year landscape establishment period.

Less Desirable Species. (Tree Preservation and Protection) Low-Priority trees or other woody shrubs listed in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

Mitigation. (Tree Preservation and Protection) The planting of trees on-site in an effort to lessen the environmental damage caused by the injury or removal of trees during development.

Native Woodlands. (Tree Preservation and Protection) A biological community dominated by trees and woody shrubs native to the Ozark Plateau, covering an area of 10,000 square feet or greater. A list of species native to the Ozark Plateau may be found in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

Non-native Woodlands. (Tree Preservation and Protection) A biological community of trees and woody shrubs, covering an area of 10,000 square feet or greater, descended from non-native species brought to the area during urban settlement. A list of typical non-native species may be found in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

Percent Minimum Canopy. (Tree Preservation and Protection) The amount of existing tree canopy an Applicant must preserve based on the zoning designation of the land to be developed.

Relic Orchard. (Tree Preservation and Protection) Groups of fruit or nut trees originally planted for agricultural purposes, but since taken out of production.

Riparian. (Tree Preservation and Protection) Of, relating to, or located on the bank of a river or stream.

Riparian Buffer. (Tree Preservation and Protection) A biological community consisting of trees, woody shrubs and groundcover that exists along the banks of rivers, creeks or intermittent and perennial streams.

EXHIBIT "A"

Significant Tree. (Tree Preservation and Protection) A tree with a diameter at breast height (DBH) of 24" or more for Fast Growth Species, 18" or more for Slow and Moderate Growth Species, and 8" or more for Understory Species, as set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual. A tree may also be considered significant because of advanced age for its species, or because it represents an uncommon or endangered species, or due to its location on a site designated as historic by local, state or federal authorities.

Tree Preservation Area. (Tree Preservation and Protection) Those areas designated for the protection of both preserved and planted trees depicted on a Tree Preservation Plan, Abbreviated Tree Preservation Plan, Preliminary Plat, Large Scale Development, or Site Plan.

Use Buffer. (Tree Preservation and Protection) Trees or other woody shrubs that serve to screen incompatible land uses, unwanted light, or noise.

EXHIBIT "B"

CHAPTER 167:
TREE PRESERVATION AND PROTECTION

§167.01 PURPOSE.

It is the purpose of this chapter to protect and promote the health, safety, and general welfare and preserve and enhance the natural beauty of Fayetteville by providing for regulation of the preservation, planting, maintenance, and removal of trees within the city, in order to accomplish the following objectives:

A. Objectives.

1. To preserve existing tree canopy.

2. To create a healthful environment for Fayetteville residents, businesses and industries.

3. To moderate the harmful effects of sun, wind and temperature changes.

4. To buffer noise, air and visual pollution.

5. To filter pollutants from the air and assist in the generation of oxygen.

6. To reduce stormwater runoff and the potential damage it may create.

7. To stabilize soil and prevent erosion, with an emphasis on maintaining tree canopy on hillsides defined as Canopied Slopes in §151.

8. To provide habitat for birds and other wildlife.

9. To preserve riparian banks and beds, and prevent sedimentation.

10. To screen incompatible land uses.

11. To promote energy conservation.

12. To protect and enhance property values.

B. Principles. This chapter shall be enforced according to the following principles:

1. Preservation shall be the first, best, and standard approach.

2. If preservation cannot be achieved, On-Site Mitigation shall next be pursued.

3. If On-Site Mitigation cannot be achieved, Off-Site Preservation shall be pursued.

4. If Off-Site Preservation cannot be achieved, Off-Site Forestation shall be pursued.

5. If none of the above approaches can be achieved, payment shall be made to the Tree Escrow Account.

EXHIBIT "B"

§167.02 CITY OF FAYETTEVILLE TREE PRESERVATION, PROTECTION, AND LANDSCAPE MANUAL.

The Landscape Administrator, in cooperation with other members of City Staff, shall promulgate and periodically revise forms, procedures and regulations to implement this chapter, and publish this information in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

A. Copies of the Tree Preservation, Protection, and Landscape Manual are to be made readily available to the public and shall include, but need not be limited to:

1. Specific criteria for gaining City approval of Tree Preservation Plans;

2. The format and content of reports and plans the Applicant must submit to the City pursuant to this chapter;

3. Tree protection during construction;

4. A glossary of important terms used in this chapter;

5. Size and species requirements for trees planted for On-Site Mitigation or Off-Site Forestation;

6. Maintenance of trees (including but not limited to pruning, irrigation, and protection from disease).

B. The Tree and Landscape Advisory Committee shall review and may recommend revisions to the Tree Preservation, Protection, and Landscape Manual at least every three (3) years to reflect changes in arboricultural and horticultural practices, lists of preferred tree species, City policies or the content of this chapter.

§167.03 TREE REGISTRY.

A. Trees or groups of trees which are documented to be of historic merit, of an uncommon or endangered species, or are of extraordinary value due to their age, size, or type, may be registered in the City of Fayetteville's Tree Registry. It shall be the duty of the Landscape Administrator to maintain and keep this Registry on file in the Administrator's office.

B. Registration of trees shall be voluntary and may be done by the owner(s) of the property on which the tree is located. Registration shall not run with the land, unless the property owner wishes to use an express trust to transfer a benefit in the tree or groups of trees to the City. Registered tree owners are entitled to consultation with the Tree and Landscape Advisory Committee and/or the Landscape Administrator concerning proper care and protection of the tree, as well as an evaluation of the tree's condition.

§167.04 TREE PRESERVATION AND PROTECTION DURING DEVELOPMENT.

A. Applicability. The provisions of this section shall apply to proposed Subdivisions, Large Scale Developments, and developments required by other chapters

of the Unified Development Ordinance to go through the City's permitting process.

1. Subdivisions and Large Scale Developments. Applicants seeking approval of proposed Subdivisions and Large Scale Developments shall submit a Site Analysis Plan, Analysis Report, and Tree Preservation Plan with the Preliminary Plat or Site Plan. There shall be no land disturbance, grading or tree removal until a Tree Preservation Plan has been submitted and approved, and the tree protection measures at the site inspected.

2. Grading Permits. An Abbreviated Tree Preservation Plan, as set forth in §167.04(H)(3), shall be submitted with the application for Grading Permits on projects that are not required to go through the Subdivision or Large Scale Development process. There shall be no land disturbance, grading or tree removal until an Abbreviated Tree Preservation Plan has been submitted and approved, and the tree protection measures at the site inspected.

3. Building Permits. Tree preservation requirements apply to all permit applications for non-residential construction, and the construction of multi-family residential buildings composed of three (3) or more dwelling units. An Abbreviated Tree Preservation Plan, as set forth in §167.04(H)(3), shall be submitted with the application for Building Permits on projects that are not required to go through the Subdivision or Large Scale Development process. There shall be no land disturbance, grading or tree removal until an Abbreviated Tree Preservation Plan has been submitted and approved, and the tree protection measures at the site inspected.

4. Parking Lots. Tree preservation requirements apply to all permit applications for the construction of parking lots with five (5) or more spaces. An Abbreviated Tree Preservation Plan, as set forth in §167.04(H)(3), shall be submitted with the application for permits on projects that are not required to go through the Subdivision or Large Scale Development process. There shall be no land disturbance, grading or tree removal until an Abbreviated Tree Preservation Plan has been submitted and approved, and the tree protection measures at the site inspected.

B. Tree Preservation Criteria. The Landscape Administrator shall consider the following factors, and any other relevant information, when evaluating Tree Preservation Plans:

1. The desirability of preserving a tree or group of trees by reason of age, location, size or species.

2. Whether the design incorporates the required Tree Preservation Priorities.

3. The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.

4. 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.

5. Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.

6. Whether the size or shape of the lot reduces the flexibility of the design.

7. The general health and condition of the tree or group of trees, or the presence of any disease, injury or hazard.

8. The placement of the tree or group of trees in relation to utilities, structures and the use of the property.

9. The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.

10. Whether roads and utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.

11. Construction requirements for On-Site and Off-Site drainage.

12. The effects of proposed On-Site Mitigation or Off-Site Alternatives.

13. The effect other chapters of the UDO, or City policies have on the development design.

14. The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations.

15. The impact a substantial modification or rejection of the application would have on the Applicant.

Note: The above items are not presented in any particular order of importance. The weight each is given will depend in large part on the individual characteristics of each project.

C. Canopy Area. In all new Subdivisions, Large Scale Developments, Industrial and Commercial Developments, and all other improvements listed above, trees shall be preserved as outlined in Table 1 under Percent Minimum Canopy, unless the Applicant has been approved for On-Site Mitigation or Off-Site Alternatives as set forth in subsections (I) & (J) below. The square foot percentage of canopy area required for preservation in new development is based on the total area of the property for which the Applicant is seeking approval, less the right-of-way dedications. An Applicant shall not be required to plant trees in order to reach the Percent Minimum Canopy requirement on land where less than the minimum exists prior to development, unless trees have been removed.

Table 1 – Minimum Canopy Requirements

ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
A-1 Agricultural (Non-agricultural uses)	25
RE Residential Estate	25
RA Residential Acre	25

EXHIBIT "B"

ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
RL Residential Large Lot	20
RS Residential Small Lot	20
R-O Residential-Office	20
R-1 Low Density Residential	25
R-1.5 Moderate Density Residential	20
RMF-6 Low Density Multi-Family Residential	20
RMF-12 Moderate Density Multi-Family Residential	20
RMF-18 Medium Density Multi-Family Residential	20
R-2 Medium Density Residential	20
R-3 High Density Residential	20
C-1 Neighborhood Commercial	15
C-2 Thoroughfare Commercial	15
C-3 Central Business Commercial	15
C-4 Downtown	10
I-1 Heavy Commercial and Light Industrial	15
I-2 General Industrial	15
P-1 Institutional	25

D. Prior Tree Removal. If trees have been removed below the required minimum within the five (5) years preceding application for development approval, the site must be forested to meet the Percent Minimum Canopy according to Table 1, plus an additional ten percent (10%) of the total area of the property for which the Applicant is seeking approval, less the right-of-way dedications. The number of trees required to be planted shall be calculated using the Base Density for High Priority trees.

E. Tree Preservation Priorities.

1. Proposed designs must meet the Percent Minimum Canopy requirements for the particular zoning designation, emphasizing the preservation and protection of High Priority trees on the site. Trees in utility easements shall not be counted toward the Percent Minimum Canopy requirement, and such utilities shall be routed, wherever possible, to avoid existing canopy.

2. Each design shall consider the existing natural features of the site, the Preservation Priorities for the trees, and the impact their proposed removal may have both on and off site.

3. The list of Preservation Priorities (see Table 2) shall guide the review of each development's design. The submittal of designs which do not incorporate Preservation Priorities for the trees on the site shall result in the denial of the Tree Preservation Plan.

4. The preservation and protection of High Priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. The preservation and protection of lower priority trees shall not be substituted for that of High Priority trees, except:

a. when the justification for such a substitution is set forth in the Analysis Report; and,

b. the substitution is approved by the Landscape Administrator.

Table 2 – Preservation Priorities

High Priority	Mid-level Priority	Low Priority
Canopied Slopes,	***Contiguous Woodlands,***	***Invasive Species,***
Native Woodlands,	***Non-native Woodlands,***	***Relic Orchards,*** *and*
Floodways & Riparian Buffers, *and* ***Significant Trees.***	*and,* ***Use Buffers.***	***Undesirable Species.***

Note: Each of the above is listed alphabetically beneath its respective category. They are not presented in any particular order of importance within that category.

F. Tree Preservation Requirements for Proposed Residential and Non-Residential Subdivisions. Where trees exist, flexible approaches such as adjustments to lot layout, placement of buildings and paved surfaces, and location of utilities shall be pursued in order to meet the Percent Minimum Canopy required for the applicable zoning designation.

1. Residential Subdivisions. The Percent Minimum Canopy in residential subdivisions shall be located in areas that have the least possibility of impact as utilities are installed and homes built. The intent is to leave undisturbed as many existing trees as possible for the use and enjoyment of prospective lot owners. Trees in utility easements shall not be counted toward the Percent Minimum Canopy requirement, and such utilities shall be routed to avoid existing canopy.

2. Non-Residential Subdivisions. Two options are available for establishing a Tree Preservation Plan for the development of non-residential subdivisions. The proposed plan that will potentially preserve the largest amount of priority canopy shall be encouraged. The Landscape Administrator may recommend approval of a plan that contains some of the features of both options, if the plan satisfies the intent and requirements of this chapter.

a. Preservation Plan for Entire Subdivision. The developer may choose to preserve the Percent Minimum Canopy required for the entire development. With this option, the preserved canopy shall be located in areas that will not be impacted by future development of the individual lots. Canopy to be preserved shall be noted on the Final Plat, and shall be protected as set forth in §167.04(L) below. Should the entire Percent Minimum Canopy requirement for the site be so protected, the Final Plat shall

include a statement that the individual lots, as represented thereon, shall not require separate Tree Preservation Plans.

b. Preservation Plan for Infrastructure Only. The developer, in consultation with City Staff, shall delineate the area required for the construction of the infrastructure and improvements for the development. This area should include street rights-of-way, and utility and drainage easements. This option shall not allow the removal of trees during the grading of individual lots, unless shown by the developer to be essential to the project's engineering design. The developer will be required to mitigate the canopy removed from this defined area at the percentage requirement for the applicable zone. On all other areas of the development, the developer shall protect the existing canopy during the construction phase in accordance with §167.05 below. The Final Plat shall include a statement that the individual lots shall require separate Tree Preservation Plans.

G. Initial Review.

1. Meeting with the Landscape Administrator. It is strongly recommended that prospective Applicants meet with the Landscape Administrator for an Initial Review of the proposed Tree Preservation Plan for the site prior to submitting a Preliminary Plat, Large Scale Development, or Site Plan to the City. During the Initial Review, the Landscape Administrator shall make recommendations to ensure the proposed subdivision or development complies with the requirements of this chapter. These recommendations shall be non-binding. However, Applicants proceed at the risk of higher costs due to changes required by a noncompliant submittal should they choose not to have the Initial Review or to disregard the recommendations of the Landscape Administrator.

2. Letter of Confirmation. The Landscape Administrator shall document whether the Applicant participated in the Initial Review meeting in a Letter Of Confirmation to the Applicant. If the Applicant chose to attend an Initial Review meeting, the letter shall also document any recommendations made. The Landscape Administrator shall ensure that a copy of the letter becomes part of the permanent file for the project.

H. Submittal of Plans. Applicants should bear in mind that all plans will be evaluated according to the Tree Preservation Criteria and Percent Minimum Canopy requirements as set forth under §167.04(B) & (C).

1. Site Analysis Plan. On sites with existing tree canopy, the Applicant shall conduct a Site Analysis to determine the approximate age, health, size and species distribution of the trees, noting each on a Site Analysis Plan, and clearly showing the locations and types of all natural features on a site, including features one hundred feet (100') beyond the property lines. The Site Analysis Plan shall also specifically depict the applicable Preservation Priority level for each tree or group of trees on the site. The plan should include, but need not be limited to, delineation of the following features as they exist on the site:

EXHIBIT "B"

a. The existing topography of the site highlighting slopes of 15% or greater and indicating the natural drainage patterns.

b. The property line boundaries of the site.

c. Soils identified according the Unified Soil Classification System.

d. Any Significant Trees existing on the site, and the location of trunks, spread of the canopy, species, Diameter at Breast Height (DBH), and the overall health of each Significant Tree.

e. Groupings of trees, delineating the edges of the overall canopy, noting the predominate species, average height, Diameter at Breast Height (DBH), and general health of the trees.

f. All existing utilities and utility easements.

g. All perennial and intermittent streams and creeks that exist on the site or within one hundred feet (100') of the site.

h. Floodplains and floodways on the site.

i. All existing rights of way within and surrounding the project site including any designated trails or bike paths.

j. Any other factors that may impact the design of the site.

2. Tree Preservation Plan. The Applicant shall indicate all proposed site improvements, and delineate in the Tree Preservation Plan the trees to be retained on-site, and the measures to be implemented for their protection. These measures shall include, but need not be limited to fencing, limits of root pruning, as well as restrictions on traffic and material storage. The Plan shall also clearly depict the limits of soil disturbance to include all areas to be graded both on and off site, as well as the proposed location of utilities. The Applicant should consult the City of Fayetteville Tree Preservation, Protection and Landscape Manual for details, examples and specific checklists.

3. Abbreviated Tree Preservation Plan. Applicants requesting approval of development projects that require Building, Grading or Parking Lot permits, but that do not fall under the requirements for Large Scale Developments or Subdivisions, shall prepare and submit an Abbreviated Tree Preservation Plan. The information for this plan may be combined with the Site Plan, Plat Drawing or Grading Plan. The Applicant is expected to show the general location of all existing groups of trees, individual Significant Trees, and to clearly depict the limits of soil disturbance to include all areas to be graded, both on and off site, as well as the proposed location of utilities. Protective measures such as fencing, limits of root pruning, restrictions on traffic and materials storage shall be depicted on the plan. A preliminary site visit with the Landscape Administrator is highly recommended before applying for any of the above-mentioned permits. The Applicant should consult the City of Fayetteville Tree

Preservation, Protection, and Landscape Manual for details, examples and specific checklists. Applicants submitting Abbreviated Tree Preservation Plans shall not be required to submit either a Site Analysis Plan or Analysis Report, nor shall they be required to hire architects, engineers, or landscape architects to prepare their Plans.

4. Analysis Report. The Applicant shall submit an Analysis Report detailing the design approaches used to minimize damage to or removal of existing canopy that were considered in arriving at the proposed design. Written justification shall be presented as to why individual trees or canopy must be removed. The report shall also detail proposed On-Site Mitigation options or Off-Site Alternatives, as detailed below.

5. Grading and Utility Plans. All subsequent Grading and Utility Plans shall depict the Tree Preservation Areas on the site, to include the preserved trees and the physical limits of all protective measures required during construction.

6. Submittal Requirements. The Applicant shall submit two (2) copies of a Site Analysis Plan and Analysis Report to the Landscape Administrator, concurrently with their Tree Preservation Plan. Applicants submitting Abbreviated Tree Preservation Plans shall not be required to submit either a Site Analysis Plan or Analysis Report.

7. Conservation Easements. The City shall encourage the use of conservation easements for the added protection of trees preserved or planted to meet Percent Minimum Canopy requirements in those instances where such would be of mutual benefit to the Applicant and the City.

I. Request for On-Site Mitigation. If an Applicant is able to demonstrate to the Landscape Administrator's satisfaction that a site's physical or spatial constraints prevent the preservation of the Percent Minimum Canopy, the Applicant may request On-Site Mitigation. Trees that are required to be planted in compliance with other development chapters shall not be counted for the purpose of satisfying the On-Site Mitigation or Off-Site Alternative requirements of this chapter.

1. Timing of Request for On-Site Mitigation. Requests to remove trees below the Percent Minimum Canopy requirement must be incorporated in, and submitted concurrently with the Applicant's Tree Preservation Plan.

2. Plan Requirements. The Tree Preservation Plan must graphically represent the species and location for all trees to be planted on-site. It shall also include a chart clearly stating the following information:

a. The number of trees requested for removal;

b. The percentage below the Percent Minimum Canopy requirement they represent; and,

c. The species and number of trees to be planted, based on the Forestation Requirements below.

EXHIBIT "B"

3. Planting Details and Notes. Planting details and notes shall be included on the Tree Preservation Plan as set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

4. Forestation Requirements. The number and species of trees required for forestation shall be based upon the quality of the canopy lost:

a. High Priority Canopy. When removing High Priority canopy below the Percent Minimum Canopy required, the canopy square footage removed shall be forested at a Base Density of two hundred (200) two inch (2″) caliper trees per acre removed.

b. Mid-Level Priority Canopy. When removing Mid-Level Priority canopy below the Percent Minimum Canopy required, the canopy square footage removed shall be forested at a Base Density of one hundred fifty (150) two inch (2″) caliper trees per acre removed.

c. Low Priority Canopy. When removing Low Priority canopy below the Percent Minimum Canopy required, the canopy square footage removed shall be forested at a Base Density of one hundred (100) two inch (2″) caliper trees per acre removed.

5. Base Density. Compensating for the environmental damage caused by removing tree canopy shall be accomplished by forestation on a per acre basis. The Base Density formula used above is based on two inch (2″) caliper trees. However, the Landscape Administrator may approve the use of trees with less than two inch (2″) caliper for the planting of smaller tree species required by spatial constraints on the site. In such cases, the number of trees to be planted may be adjusted in accordance with the Species Density Table to be found in the City of Fayetteville Tree Preservation, Protection and Landscape Manual, along with examples for using the Base Density formula.

6. Preferred Species. All trees to be planted shall be species native to the region, when available, and selected from the list of preferred tree species set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual. Species selection shall be based upon the amount of space available for proper growth on the site, and must be approved by the Landscape Administrator.

7. Placement of Trees. The Applicant is expected to plant trees in locations on the site where the environmental benefits of canopy cover are most likely to offset the impact of development. Trees shall not be placed within utility easements, or in other locations where their future protection cannot be assured.

8. On-Site Mitigation Incentive. If all of the required trees can be located on-site, the Landscape Administrator may approve up to a twenty percent (20%) reduction in the number of trees to be planted. Any incentive reductions allowed shall be based upon the following factors:

a. The species of the mitigation trees; and,

EXHIBIT "B"

b. The space needed for the healthy growth of the trees.

J. Request for Off-Site Alternatives. If an Applicant is able to demonstrate to the Landscape Administrator's satisfaction that neither preservation, nor On-Site Mitigation can be achieved, the Applicant may request Off-Site Alternatives. For Non-Residential Subdivisions and Large Scale Developments, Off-Site Alternatives shall be allowed only if On-Site Mitigation is proven impossible due to environmental or spatial constraints. Trees that are required to be planted in compliance with other development chapters shall not be counted for the purpose of satisfying the On-Site Mitigation or Off-Site Alternative requirements of this chapter.

1. Timing of Request for Off-Site Alternatives. Requests for Off-Site Alternatives must be incorporated in, and submitted concurrently with the Applicant's Tree Preservation Plan.

2. Off-Site Preservation. The Applicant may seek approval from the Landscape Administrator to preserve an equal or greater amount of canopy cover at a site within the City limits.

3. Off-Site Forestation. If Off-Site Preservation cannot be achieved, the Applicant may seek approval from the Landscape Administrator to plant the required number of trees on another site owned by the Applicant and located within the City limits.

4. Tree Escrow Account. Large Scale Development Applicants requesting Off-Site Alternatives, all Residential Subdivision Applicants requesting tree removal below the Percent Minimum Canopy requirement, and any other Applicant unable to achieve either On-Site Mitigation, Off-Site Preservation or Off-Site Forestation, shall make a payment to the City of Fayetteville Tree Escrow Account for each tree required to meet the Base Density requirements set forth above. The amount of money to be paid shall be based on the fair market value of materials and labor at the time of planting. The Applicant shall submit cost estimates to the Landscape Administrator for approval.

a. All Residential Subdivisions requesting tree removal below the Percent Minimum Canopy requirement are required to contribute to the Tree Escrow Account, due to the fact that the health and survival of the trees may be adversely affected as individual lots are developed. The City shall use the money paid into the Tree Escrow Account to plant street trees within the subdivision, when possible, once the subdivision is built out.

b. Money contributed in lieu of On-Site Mitigation or Off-Site Forestation shall be paid prior to issuance of a Building Permit on all Commercial, Industrial, or Multi-Family Residential buildings and prior to Final Plat acceptance for all Residential and Non-Residential Subdivisions.

c. Money contributed under this section:

(1) May be used for canopy mitigation, including planting site identification, tree acquisition, planting, and

maintenance, utilizing either City Staff or contract labor;

(2) Shall be deposited in a separate interest-bearing Tree Escrow Account; and

(3) Shall not revert to the general fund for ongoing operations.

d. Planting locations will be sought in appropriate sites within a one (1) mile radius of where the original project is located, but if this cannot be achieved, the moneys shall be used to plant the trees in the quadrant in which the development took place, and if that cannot be achieved, anywhere in the City limits. The location of appropriate planting spaces is to be derived from the Fayetteville Tree Inventory to be updated every seven (7) to ten (10) years.

5. Maintenance Agreement and Landscape Establishment Guarantee. All Plans requesting On-Site Mitigation or Off-Site Forestation shall include a binding three (3) year maintenance and monitoring plan, which shall hold the Applicant responsible for the health of all planted trees.

a. Approval of a Plan requesting On-Site Mitigation or Off-Site Forestation shall be contingent upon the Applicant depositing with the City either currency, bond, irrevocable letter of credit or other surety, in an amount equal to the estimated cost of materials and labor for all trees at the time of planting. The bond, irrevocable letter of credit or other surety must cover the entire three (3) year maintenance and monitoring period. Applicant shall submit cost estimates to the Landscape Administrator for approval.

b. Upon completion of the three year landscape establishment period, the Landscape Administrator shall inspect the site and determine whether ninety percent (90%) of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the City shall release the currency, bond or letter of credit.

c. In the absence of such a finding, the Applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the Landscape Administrator. If the Applicant does not take remedial steps to bring the property into compliance, the City shall use the necessary moneys from the Landscape Establishment Guarantee to do so.

d. Special consideration shall be given the Applicant in the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the actions of third parties.

K. Tree Preservation Plan Review Form. The Landscape Administrator shall use a standardized form for all Recommendations or Administrative Determinations made regarding an Applicant's Tree Preservation Plan.

1. The form shall clearly indicate whether the Landscape Administrator is making a final Administrative Determination, or a Recommendation to the Planning Commission or City Council.

2. The form shall also clearly indicate whether the Applicant's plan is "Approved," "Disapproved" or "Conditionally Approved," and explain the reasoning therefore.

3. A statement shall appear on the form explaining the process by which a final Administrative Determination may be appealed in accordance with Chapter 155 of the Unified Development Ordinance.

4. The Landscape Administrator shall sign and date the form, and ensure that a copy becomes part of the permanent file for the project.

L. Continuing Preservation and Protection Under Approved Tree Preservation Plans. No person shall damage, destroy, transplant or remove any tree or group of trees once preserved or planted under an approved Tree Preservation Plan, without the express approval of the City Council.

1. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such damage, destruction, transplantation or removal is in the best interest of the of the residents of Fayetteville.

2. Such requests shall be submitted to the Landscape Administrator, who shall ask the City Clerk to placed it on the agenda of the next regularly scheduled City Council meeting.

3. In order to ensure that an Applicant's heirs, successors, assigns or any subsequent purchasers of the subject property are put on notice as to the existence and extent of an approved Tree Preservation Plan, Tree Preservation Areas shall be clearly depicted on all Easement Plats and Final Plats, accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the Landscape Administrator. If it is impractical to include the actual depiction of the canopy to be preserved on the Easement Plat or Final Plat itself, a note cross-referencing an accompanying document shall suffice.

§167.05 TREE PROTECTION MEASURES AND CONSTRUCTION.

A. Site Inspection. A preliminary site inspection followed by periodic inspections will be conducted by the Landscape Administrator to ensure compliance with the Tree Preservation Plan.

B. Tree Protection. Tree Preservation Areas shall be protected from construction activity to prevent impingement by or the storage of construction vehicles, materials, debris, spoils or equipment in Tree Preservation Areas. No filling, excavating or other land disturbance shall take place in Tree Preservation Areas. Before commencing any construction activity, the Applicant shall construct tree protection barriers on the site along the tree dripline or ten feet (10') from the trunk, whichever is greater. The Applicant shall also post signs at each tree preservation area in accordance with the standards, specifications and guidelines provided in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual. The Landscape Administrator may require other protective measures based upon the individual

characteristics of the site and the proposed construction methods. Tree protection measures shall also protect any off-site trees the roots of which extend onto the site of the proposed construction. Any Applicant damaging or destroying an off-site tree shall be required to mitigate such damage or destruction as prescribed by the Landscape Administrator. If the required barriers surrounding the tree preservation areas are not adequately maintained and protected during construction, the Landscape Administrator shall prescribe remedial measures, and may issue a Stop Work Order in accordance with §153.07(C). All remedial measures shall be completed within the specified amount of time and shall be considered prior to granting Final Plat approval or issuing a Certificate of Occupancy.

§167.06 TREE PLANTING, MAINTENANCE, AND REMOVAL ON STREET RIGHTS-OF-WAY AND OTHER PUBLIC GROUNDS.

A. Follow Tree Preservation, Protection, and Landscape Manual. All tree planting, maintenance or removal on public grounds shall follow the standards, specifications and guidelines provided in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

B. Tree Planting. Trees may be planted within street rights-of-way or on other public grounds only after notification to the Landscape Administrator; and, provided the selection and location of said trees is in accordance with the requirements of this chapter.

C. Tree Removal. Trees shall not be removed from a street right-of-way or other public grounds unless approval is received from the Landscape Administrator, with the exception that City employees may remove trees when necessary to accomplish emergency repairs to sewer or water systems, or in order to alleviate flooding.

D. Damage to Trees. It shall be a violation of this chapter to damage, destroy or mutilate any tree in a public right-of-way or on other public grounds, or attach or place any rope or wire (other than one to support a young or broken tree or limb), sign, poster, handbill or any other thing to any such tree.

E. Top or Cutback to Stubs. It shall be unlawful for any person to top or cut back to stubs the crown of any tree in street rights-of-way or on other public grounds.

F. Reserved Rights. The City reserves the right to plant, preserve, prune, maintain or remove any tree within the street rights-of-way, alleys, squares, and all public grounds when such interferes with the proper spread of light along the street from a street light, or interferes with visibility of any traffic control device or sign, or, as may be necessary to preserve or enhance the symmetry and beauty of such public grounds.

G. Line of Sight. Trees shall not be planted to conceal a fire hydrant from the street or impede the line of sight on any street.

H. Storm Damage. Trees severely damaged by storms or other accidental

causes, where required pruning practices are impractical, are exempt from this chapter.

I. City Employees. Before cutting, pruning, removing or trimming any tree, City employees performing tree work on public grounds shall attend an educational workshop on basic tree science and the proper techniques of tree pruning. A certificate will be issued when an individual has successfully completed the workshop.

J. Public Utilities. Nothing in this section shall be construed to prohibit public utilities from pruning or removing trees that encroach upon electric, telephone, or cable television transmission lines, or gas, sewer or water pipes.

§167.07 COMMERCIAL TREE PRUNER/ SERVICE: CERTIFICATE AND INSURANCE REQUIRED.

A. Certificate Required. Before cutting, pruning, removing or trimming any tree within the City of Fayetteville, the owner and supervisory personnel of each business performing commercial tree work shall obtain a City issued Commercial Tree Pruner/Service Certificate.

B. Liability Insurance. Each business performing commercial tree work, to include tree surgery, within the City of Fayetteville, shall be required to carry liability insurance in the following minimum amounts:

General Aggregate: $100,000

Personal & Advertising: $100,000

Each Occurrence: $100,000

Proof of coverage shall include the name of the insurance company issuing the policy, the name of the insured, the policy number, effective and expiration dates, and the signature of an authorized representative of the insurance company.

C. Workshop. Owners and supervisory personnel shall attend an educational workshop on basic tree science and the proper techniques of tree pruning; or shall demonstrate sufficient knowledge of basic tree science and the proper techniques of tree pruning by scoring 75% or higher on a test provided by the International Society of Arboriculture (ISA).

D. Certificate Issuance. A certificate shall be issued when an individual has successfully completed the workshop or scored adequately on the test.

E. Job Site. It shall be the responsibility of the business owner to ensure that a copy of the certificate is maintained at each job site.

F. Supervision. All persons engaged in the business of trimming trees shall be under the supervision of a certified tree pruner/service.

G. Workers Compensation. Those individuals performing commercial tree work on public grounds shall comply with all workers compensation requirements as set forth under Arkansas law and shall hold a City issued Commercial Tree Pruner/Service Certificate.

H. Licensure. Those individuals performing tree surgery shall comply with licensure requirements as set forth under Arkansas law.

§167.08 HAZARDOUS TREES.

A. Pruning. Every owner of any tree overhanging a street or sidewalk within the city is responsible for pruning the branches so that such branches shall not obstruct vehicles or pedestrians.

B. Order of Removal. The Mayor, or his/her duly authorized representative, is hereby authorized to order the owner of any real property within the City to cause the removal of any dead or diseased trees on their property, and further, to order compliance, when such trees constitute a hazard to life and property, or harbor insects which constitute a potential threat to other trees. Whenever any such condition is found to exist, the Mayor, or his/her duly authorized representative, shall send written notice via First Class mail to the property owner ordering the performance of such acts within twenty (20) days. If the property owner's identity or whereabouts are unknown, a copy of the written notice shall be posted upon the premises.

C. Non-compliance. It shall be unlawful for any person to fail or refuse to comply with any order and notice given pursuant to this section.

D. Removal By City. If the conditions described in a notice given, as set forth above, are not removed or corrected within twenty (20) days after such notice is given, the Mayor, or his/her duly authorized representative, is hereby authorized to enter upon the property and do whatever is necessary to correct or remove the conditions described in the notice. The costs of correcting said conditions shall be charged to the owner or owners of the property, and the City shall have a lien against such property for such costs. Enforcement of the lien shall be as set forth in section 95.03 of the Fayetteville Code of Ordinances. Such action shall not be taken if the owner has evidenced a willingness to comply by hiring a qualified tree service before the expiration of the twenty (20) day period.

§167.09 LOCAL DISASTER EMERGENCY. If it becomes necessary for the Mayor to declare a local disaster emergency pursuant to A.C.A. 12-75-108(b)(2), the provisions of this chapter may be suspended for up to thirty (30) days, if strict compliance with its provisions would prevent, hinder, or delay actions necessary to cope with the disaster emergency.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

CITY ATTORNEY DIVISION
113 WEST MOUNTAIN, 72701
PHONE: 501-575-8313
FAX: 501-575-8315

Kit Williams
CITY ATTORNEY

DATE: 8/24/2001

TO: Robert Reynolds, Brenda Thiel, Cyrus Young, Randy Zurcher, Trent Trumbo, Bob Davis, Kevin Santos, Lioneld Jordon

CC: Mayor Coody, Ted Webber, Hugh Earnest, Tim Conklin, Kim Hesse

FROM: David J. Whitaker, Assistant City Attorney

RE: PROPOSED CHAPTER 167

During the course of the Public Q & A and the special Planning Commission hearing, problems with two (2) sections of the proposed revision surfaced. Subsequently, members of the Subcommittee contacted this office and the Landscape Administrator to ask if there were some avenue available to offer corrections. At my request, Kim Hesse polled the membership via e-mail as to whether they approved of the changes. This memo summarizes the suggestions that they have overwhelmingly approved.

The first recommendation concerns **§167.04(A)(2) Grading Permits.** This section inadvertently includes single-family dwelling units and duplexes in the regulatory scheme. It has never been the intention of the Subcommittee to do so. Evidence of this can be found in the very next paragraph dealing with Building Permits. The language there was clearly drafted to exclude both housing types when applying for Building Permits. It would therefore be an absurdity to include them under the Grading Permit requirements. The Subcommittee is therefore recommending that the following language be inserted after the first sentence of §167.04(A)(2): ***"Single-Family dwelling units and duplexes are specifically exempt from the provisions of the chapter."***

The Subcommittee further recommends that the definition of **Relic Orchard** be changed to read as follows: ***"Groups of fruit trees originally planted for agricultural purposes, but since taken out of production."*** No one from the Subcommittee can seem to recall when the reference to nut trees found its way into the text, and all wish to see it removed.

This office will also furnish each of you with "mark-up" copies of the proposed ordinance; one reflecting the revisions made since the Subcommittee's final version of July 11; and the other showing all of the revisions made to the text of our current ordinance.

DJW

ATTACHMENTS

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TO: Mayor Coody, City Council

COPY: Planning Department, City Attorney's Office

THRU: Hugh Ernest, Urban Development Director

FROM: Kim J. Hesse, Landscape Administrator

DATE: August 23, 2001

SUBJECT: An Ordinance enacting the revisions proposed to the Fayetteville Tree Protection and Preservation Ordinance.

Background:
Beginning in June 2000, the Tree and Landscape Advisory Committee began reviewing the city's current Tree Protection and Preservation Ordinance. A diverse committee was selected to serve on an Ad-Hoc committee to review needed revisions to the ordinance. The revisions were completed by the committee on July 11, 2001. Assistant City Attorney David Whitaker, who was involved in the process from the beginning, codified the proposed language providing a smooth transition from the language suggested by the Ad Hoc Committee to the format required as a part of Unified Development Ordinance.

Current Status:
The proposed revisions have been through two public hearing:

- On Tuesday, August 14th, the Ad-Hoc Committee hosted a Question and Answer Session for the general public. This meeting included a presentation of the major changes and additions to the current ordinance and a open format for members of the public to ask questions directly to the committee making the revisions.

- On Monday, August 20th, the Planning Commission recommended approval of the revised ordinance. That recommendation came with conditions to include suggested additions discussed by the Planning Commissioners and to forward the revision to the City Council. Those changes are reflected in your copy of the revision.

Recommendation:
The staff recommends approval of the Ordinance.

MINUTES OF A MEETING OF THE PLANNING COMMISSION

A regular meeting of the Fayetteville Planning Commission was held on August 20, 2001, at 5:30 p.m. in Room 219 of the City Administration Building, 113 W. Mountain, Fayetteville, Arkansas.

ITEMS CONSIDERED		ACTION TAKEN
ADM 01-32.00:	Administrative Item (Tree Preservation and Protection Ordinance)	Forwarded

Page 3

MEMBERS PRESENT	MEMBERS ABSENT
Nancy Allen	Don Marr
Lorel Hoffman	Alice Bishop
Bob Estes	
Lee Ward	
Donald Bunch	
Sharon Hoover	
Loren Shackelford	

STAFF PRESENT	STAFF ABSENT
Tim Conklin	Dawn Warrick
David Whitaker	
Sheri Metheney	
Hugh Earnest	

ROLL CALL

Estes: Good evening and welcome to the special meeting of your Fayetteville Planning Commission for August 20, 2001. There is one item on the agenda and that is administrative item 01-32.00, the Tree Preservation and Protection Ordinance, an ordinance amending Title 15, Unified Development Ordinance of the Code of Fayetteville to provide amendments to and clarification of various provisions concerning tree preservation and protection. As an introduction, if I may begin with a brief explanation of why we are here this evening and the purpose of this meeting, it is that there is a legislative mandate that we hold this meeting. In Title 14, Chapter 56 of our Arkansas Statutes is the provision regarding municipal building and zoning regulations and planning. A part of that statute is that one of the purposes of this Commission is to prepare and transmit to the legislative body, that is the City Council, recommended ordinances implementing plans. The specific ordinance or adoption of plans, ordinances and regulations, provides that the Planning Commission shall hold a public meeting on the plans, ordinances and regulations proposed under this statute. Notice of the public hearing shall be published in a newspaper of general circulation in the city at least one time, 15 days prior to the hearing. Following the public hearing, proposed plans may be adopted and proposed ordinances and regulations may be recommended as presented or, in modified form, by a majority vote of the entire Planning Commission. Following it's adoption of plans and recommendations of ordinances and regulations, the Planning Commission shall certify adopted plans or recommended ordinances and regulations to the legislative body of the city for it's adoption. The legislative body of the city, that is the City Council, may return the plans and recommended ordinances and regulations to the Planning Commission for further study or recertification or, by a majority vote of the entire membership, may by ordinance or resolution, adopt the plans and recommended ordinances or regulations submitted by the Planning Commission. Following adoption by the legislative body, that is the City Council, the adopted plans, ordinances and regulations shall be filed in the office of the City Clerk, spread of record with the County Recorder of the counties in which territorial jurisdiction is being exercised and then shall then become law. The proposed ordinance that we have before us this evening has been presented to us after much effort and much work. I would like to take a brief moment and mention how the drafting committee was formed and then the members of the drafting committee. Letters were sent to various members of the community to seek participants to guide the revision of the ordinance. Those contacted included architects, Chamber of Commerce members, citizen groups, contractors, developers, engineers, environmentalists, lawyers, planners, professors and realtors. 25 members of the community were selected of which 15 were chosen to serve as the core group which

met weekly and reported to the full committee monthly. This has been an ongoing process for approximately one year. Assistant City Attorney, David Whitaker served as Chairman until employed with the City and than served as Legal Assistant and drafted the ordinance. Those members of the drafting committee who participated in writing the ordinance that we have before us this evening were Audrey Lack of Miller, Boskus and Lack, Fran Alexander with The Friends of Fayetteville, John Duvall with We've Had Enough, Jim Neal with McClinton-Anchor, Matthew Bottishball with Navaho, Richard Alexander, Kirk Elsass, Andy Feinstein, Dr. Gerald Clingerman, Missy Lefler, Celia Scott-Silkwood, Beverly Milton and Jim Wilson, Tree and Landscape Advisory Committee and other members who contributed to the core group meetings included Jo Bennett with The League of Women Voters, John Harbison with the Sierra Club, Bob Hill with Nickel-Hill Group, Bill Keating and Chris Brackett with Jorgensen and Associates, and Jim Key. Before we begin the meeting this evening, Sheri would you call the roll please?

ROLL CALL:

Upon roll call there were 7 Commissioners present with Commissioners Marr and Bishop absent.

ADM 01-32.00 Administrative Item Tree Preservation & Protection

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT ORDINANCE, OF THE CODE OF FAYETTEVILLE, TO PROVIDE AMENDMENTS TO AND CLARIFICATION OF VARIOUS PROVISIONS CONCERNING TREE PRESERVATION AND PROTECTION.

Estes: A quorum is present and we will begin the special meeting of your Fayetteville Planning Commission. Let me tell you how we will proceed and what the order of business will be. First I would like to take public comment. As you come forward and address the Commission if you would state your name and give us your address. If you would please speak to that specific section of the ordinance to which you wish to comment. What that will do is allow us to go to that specific section and make appropriate notes as you speak. If you wish to make a general policy statement, would you please identify whether that general policy statement is one of a definitional issue, a procedural issue or a substantive issue. If it is something that is in the ordinance that you would like to see taken out, again refer us to that specific section. If it's something that is not in the ordinance that you would like included in the ordinance, please tell us the section where you would like to see that particular provision included. Ask questions, if I am not able to answer your questions, which in all probability I will not, we have Mrs. Kim Hesse, our Landscape Administrator with us this evening, we have Mr. Tim Conklin who is our City Planner, we have Mr. Hugh Earnest who is our Urban Development Director and we have several members of the drafting committee who participated in actually writing the ordinance that we have before that can perhaps speak to your questions. After we have heard public comment I will then close the floor to public comment and I will bring the matter back to the full Commission and we will go through section by section and discuss the comments that have been made and then once our discussion is completed, I will ask for a motion as to the entire ordinance.

PUBLIC COMMENT:

Estes: With that said, is there any member of the audience that wishes to provide public comment? If so, please come forward, give us your names and address and tell us that specific ordinance for which you wish to speak.

Israel: My name is Ben Israel, I live at 1501 Starr Road, Fayetteville. I am a commercial developer and would like to address several issues. I'm not sure I can give you what you are asking for as far as the particular section but I will try. First of all let me say

that Fayetteville needs developers. I know we sometimes don't do a good job and sometimes we do a good job but Fayetteville needs developers. I just started a project on the corner of Joyce and Old Missouri Road that the taxes on that property a year ago were $800. The taxes on that property next year will be $55,000 and I think our school system can certainly use the revenue. The thing I find most disheartening about any ordinance is the inability of the staff to carry it out in a timely fashion. Fayetteville is a very difficult place to do business in as a developer. For example, on our latest project it took 89 days from the submittal of our last documentation to the City employees before we were able to get a grading permit. When you have two million dollars borrowed at 9% interest, that's about $45,000 additional cost that we would not have had had we developed in a City that had the infrastructure to support the ordinances they pass. Your people aren't sitting around on their thumbs, they just don't have enough help to enforce the current ordinances so that developers are put in a position of supplying an enormous amount of information. Then City staff, not only do they have to look at that information, they have to attend other meetings to provide similar advice to other developers. To wait 90 days from the time you submit your last detail to the City to get a permit to start grading is quite ridiculous. I encourage you, if you pass the ordinance I hope that you provide staff to evaluate the plans so that we don't wait another 90 days before we can have access to go forward. There are two or three things about the ordinance that I would like to see you change. Right now it is somewhat discriminatory. If you are going to require 20% canopy of trees on a tree lot, why not require it on every lot? A lot without trees doesn't have to have any trees other than those that are called for in the parking arrangement. I would suggest if you are in a position of requiring a 20% canopy on some lots, the person who owns a lot who has trees on it is at a disadvantage. A developer determines a price of a given piece of property by how many square feet he can build on that property. If I have to preserve 20% of the property for trees that are already existing on the property than it's worth less to me as a developer than it is if there are no trees at all. I would encourage you to say let's make it a level playing field, let's say that any lot that's developed commercially must have a 20% tree canopy. That's only fair. It's also unfair that downtown only needs a 10% tree canopy. Why is downtown any more special than any other part of the City? Is a tree less deserving downtown than one that's out in the countryside? Or the citizens of downtown Fayetteville are less likely to appreciate the fact that 20% of the ground is covered with trees. The difficulty I have as a developer is that the plans are not administered evenly. One developer is not required to leave any trees, while another developer is required to leave 20%. I think that if you had an ordinance that said every lot regardless of whether it had a tree on it to start with and it's a commercial development, should have trees on it and it should have 20% canopy. If I was a landowner in the growth area of Fayetteville, the first thing I would do is go

clear-cut it, if I thought I wanted to sell it for retirement and wait five years and then sell it to a developer. I know I would make more money on it. But if I knew as a developer that even if it was clear-cut, I had to replace that 20% trees than I wouldn't want to do that. I think that anytime an administrator, whether it is this administrator or another administrator, has the ability to make a decision that you don't need 20% trees, you only need 17% trees, that's a mistake. If it say's 20%, it should say 20% and let's go vertical with the buildings and not horizontal. Fayetteville is a horizontal developing city, you don't see very many vertical buildings except downtown and that's crazy. We would like to develop vertically but nobody will rent them. People don't want to be on the 4th flood. If we start demanding that they leave a 20% tree canopy, then let's do that and we will build vertical buildings because we will have to in order to get the return on the investment that we are looking for. I live off of the 45 Highway. There was a lot there that has some beautiful, gorgeous trees on it and now there is a convenient store on that with one scraggly little ole tree in it's place. I don't understand how they do that. As a developer I'm held to a different standard than that, I don't know why isn't held to the same standard. I've got a new development on Joyce Street apart from the other one I mentioned and they've required me to set aside 630 feet in length by 55 feet in depth that I can't even park in a car into that tree. I don't see how the next developer on a given corner can take down every tree on it and not plant anything back, it's not fair. As I said, anything that's fair, honest and non-discriminatory, I'll live with it if you tell me what it is. Fayetteville is still a hard place to develop property in. It costs about 20% more to develop property in Fayetteville than any other city we develop in. The other thing I have difficulty with is, if there is an existing tree canopy, let's say it's this one acre that I am setting aside, I can't go on that one acre and make the better trees healthier because I can't cut any trees out of it. If there is a persimmon grove in the middle of it, I can't remove the persimmon grove and put in oak trees. They won't let me cut them. The national forest burns to achieve undergrowth destruction so that healthy trees will have a chance to survive. I don't know where we are reading that no trees should be cut. The ordinance indicates that any tree already existing is better than any new tree I can plant and that's just not true. I went out on 45 Highway, we had 30 acres, we cleared of a bunch of scrub brush and we planted maples and we planted everything else you could plant that's going to be a beautiful tree someday. A persimmon tree is going to be a persimmon tree until it falls over. That's what it is and it's not going to be a beautiful tree. I'm sure it has it's advantage but I don't like them. I can't choose the trees I want to plant. You are telling me that here's a list you can choose from and if you plant one that's not on this list, we are not going to let you count it towards your canopy. I don't like that. It also states that after a tree is preserved, in order for me to remove that tree, I've got to come before the City Council and convince the City Council that is in the best interests

of the citizens of Fayetteville to remove that tree. How in the world could I do that? How can get before the City Council and convince them that it's in the best interest of the City of Fayetteville? If it's in the best interest of the tree, I can understand that. Do we have a vote? Do we take a public opinion poll to determine how it's in the best interest of the citizens of Fayetteville? That's on page 13 "such damage, destruction, transplantation or removal is in the best interest of the residents of Fayetteville". That's just too far reaching for me.

Estes: What subsection is that?

Israel: It's exhibit "A", Technical Corrections for Planning Commission...

Estes: I'm on page 13.

Israel: It's under L1. I received from the Administrator and I like her, I have nothing against her, she is doing a great job and I believe in what she's doing. It's just I don't believe in the manner in which we are doing it. It's a good opportunity to work together but I don't get an opportunity to work together, I get directives. I says that if I damage a root of a tree, you know when you got bulldozers and men from everywhere in the country bringing in materials you are going to damage a root of a tree. Somehow I've got to cover that tree root with 4 inches of mulch and water it every day. This is a construction site, we are doing everything in the world we can we can to protect it. If that tree is protected were outside the dripline has a root that extends another 20 feet over here, I don't know how to do that. I got a letter the other day that if I was to prune a tree that I had to use a special sharpened something and that if I used one that was dull, I wonder if I would be fined. I don't mean to be facetious, it's just that we don't have to have that much instruction. Give me 20% tree canopy and say protect, preserve, replant or replace it and we'll do that. Just don't let somebody else not do that and get away with it but you are doing that. Maybe you are not doing that but somebody is doing that. That's about all I have to say. I have one other thing. You are asking me to ensure that tree will live 3 years. I've got to put up money or a bond that says that tree will live for 3 years. If I know that I have to maintain 20% canopy, would I purposely destroy a tree or not take care of a tree? That's an expense to a developer to have to guarantee the life of a tree for three years or whoever the assigned of the developer is, it travels with the property. I don't think that's necessary. If you tell me I have to maintain 20% canopy, I'm going to do the best I can not to have to spend a lot of money two or three times to replace trees. Doesn't that make more sense than you tying up my money for 3 years, me having to charge the tenant more, I'm already having to charge them more because it costs more here. I just ask that you

use common sense and not get so carried away that we lose sight of the fact that this is still America and we still have individual rights and part of our individual rights are that pursuit of life, liberty and the pursuit of happiness. I'm not real happy right now but I will do whatever we have to do to develop. I like Fayetteville, been here 35 years and I want to stay here. Thank you.

Estes: Is there any other member of the audience that would like to provide public comment on the ordinance amending Title 15?

COMMISSION DISCUSSION:

Estes: Seeing none, I will bring it back to the Commission for discussion and motions. Commissioners, let's begin working off of the technical corrections draft dated August 17, 2001? Let's begin with section 1, the definitional section. Is there any discussion regarding any item of section 1?

Hoffman: I do have one suggestion and I have just about 3 or 4 throughout the ordinance. I have one for the definition section. Before I start on that I just want to say thanks to the Committee because I realize that it was made of all segments of the community, as you stated before, and a lot of work has gone into it. It's a difficult process once a lightening rod or seminole issue like Kohl's development began this, to go through and put together an ordinance that's as far reaching as this and it's implications. With that being said, I'll throw in my two cents worth on some of the text. Under the definition of significant tree, I would like to add, I'll pass my copy of this down for the record later so we don't have to worry about typing everything. Under the definition of significant tree at the end you've got "endangered species" add ", or due to it's location on a site designated as historic by local, state or federal authority". I'm adding historic sites into the definition of significant trees. I'm doing this because I can think of other locations where treaties have been signed under trees that are given historic markers, I'm not aware of any particular sites like that in Fayetteville but there may be that I'm not aware of. There are tree groves in the confederate cemetery that if someone wanted to add a structure one day, those trees shall be considered because of their location on a historic site. That's all.

Estes: Any other discussion regarding section one? Seeing none, we'll go to section 155.05, Appeals From Planning Commission Decisions. Any discussion? Seeing none, we'll to go section 156.03, Development, Consideration by the Planning Commission. Any discussion? Seeing none, we'll go to the tree and preservation ordinance section 167.01, Purpose, which includes both Objectives and Principals. Any discussion?

Hoffman: Under objectives A7 "To stabilize soil and prevent erosion" add ", with emphasis on maintaining tree canopy on hillsides as defined in canopied slopes under the definition section". I like the format that you used following the question and answer session and I would just like to throw them in the mix.

Estes: Any other discussion?

Bunch: One of the things that appears to be missing is stabilization of riparian areas. It does say stream beds, "preserve river and stream beds and present sedimentation". Possibly under item 7, in addition to what Commissioner Hoffman suggested, on stabilizing soil and preventing erosion, add a comment about riparian areas. It just seems that is one item that appears to have been overlooked.

Hesse: I would think we could add that to either number 7 or number 9, "Preserve river and stream beds and banks and riparian buffers to prevent sedimentation". The idea was basically that objective.

Estes: Commissioner Bunch do you have a comment regarding whether you would like to see that included in item A7 or item A9?

Bunch: For clarity it would probably be better to have it in item 9.

Estes: Any other discussion regarding section 167.01? Seeing none, section 167.02, City of Fayetteville Tree Preservation, Protection, and Landscape Manual, any discussion? Seeing none, we will go to section 167.03, Tree Registry, any comments or discussion?

Allen: I wondered if there needed to be a clarification under A, the tree registry that this registration goes with the landowner and not with the property?

Hesse: I tried to cover that in B. Did you see the underlined statement in B, "Registration of trees shall be voluntary and may be done by the owner(s) of the property on which the tree is located. I guess it doesn't really discuss into the future as this property is sold.

Whitaker: I think it would probably be in order to put some sort of disclaimer in it, if your reading of it raises that ambiguity in your mind and it's a fear that it would for others as well. I don't think there would be any problem adding some sort of disclaimer there to that affect.

Estes: Before we go to that, can we have more definition where that should be included and

how should the language read?

Whitaker: I'm thinking probably almost immediately after the corrections in B which Mrs. Hesse just read and something to the affect that "registration shall affect only the owner who sought registration and shall not run with the land". I can clean this up a bit. Something to that affect.

Hoffman: "Shall not run with the land unless designated by the seller." They might do that.

Whitaker: Yes, they certainly could voluntary put a trust on that. Yes, I think something like that would be appropriate.

Estes: Any other discussion regarding this section?

Allen: I also wondered, how it would be determined whether or not a tree would be registered? Supposing I have a magnolia tree, I can just register it or does someone have to come look at the tree and determine that it's a significant tree or it fits into some category or is it just at the owner's discretion?

Hesse: It's basically at the owner's discretion. If the tree or group of trees that are documented that are of uncommon or endangered species regardless of the size, that are of extraordinary value due to their age, size or type. Really although we were going along with the significant tree definition, we would allow some flexibility to that. The idea is, this is a tool to raise awareness and pride of homeowner's trees. We didn't want to eliminate somebody who really wanted to put a tree on the registry that we somehow had to come up with a mechanism the owner, in the future on the website or something, they could actually be able to view theses trees. We would like to try to do something to encourage that kind of pride. I didn't want to eliminate the ability to put a tree on the registry if for that homeowner it meant something to them.

Allen: Conceivably, if a person was a real conservationist, they could register every tree on their property?

Whitaker: They certainly could but I don't know, other than the fact that they could brag to all of their neighbors that all their trees are registered , I don't think it would have any real affect.

Allen: I just had some question about it.

Whitaker: I want to reassure you that one of the changes that was made was trying to pull the registration process away from the development regulation process so that the only real affect would be that the person we would have or the registry of the trees and people would develop some pride in the trees on their land. Theoretically someone could, if they wanted to, register every tree on their land, yes.

Allen: Thank you.

Estes: Any other discussion regarding section 167.03? Seeing none, section 167.04, Tree Preservation and Protection During Development. Any discussion or comments?

Allen: Sorry to keep asking questions but I wondered if there might be something added since we have had a situation since I have been on the Planning Commission where there were some discussion as to whether something was a large scale development, whether or not it was an acre or not and the trees were cut. Whether there could be something included that would make the developer or the City need to measure the area. I don't know quite how to put this. I just don't want to see trees cut in an area until we determine whether or not that is over or under an acre.

Estes: The application of paragraph 167.04 provides that this section applies to proposed subdivisions, large scale developments and developments required by other chapters to go through the City's permitting process. By definition this section applies to proposed subdivisions, large scale developments and other developments required by other chapters of the UDO to go through the City's permitting process.

Hesse: On that specific type of situation, most of the time grading permits are always required which is why we put a grading permit. They will fall into this ordinance if they require a grading permit. It used to be for an acre or more but now that is no longer there. It's basically all grading permits. Than also what is included are multi-family from three units and up and then all non-residential buildings. If they had to get a building permit, other than single family and duplex, it would fall under the ordinance. It still doesn't keep them from cutting trees prior to building permit.

Allen: Thank you.

Estes: If required to go through the City's permitting process than this subsection applies, is that correct?

Hesse: To everything that is listed in here. I'm sure there are processes through permitting that

we do not see.

Conklin: On a duplex, you wouldn't see those unless it's on a slope or floodplain.

Estes: Any further discussion regarding this section?

Hoover: On section 167.04(C), Canopy Area, I was noticing that we've got in zoning designation, a C-4 for downtown and that's a 10% canopy and in our administration and management draft they don't show a C-4 on here. How much C-4 is there downtown?

Conklin: It's primarily the square and surrounding streets around the square, it's not very much.

Hoover: What is downtown district as far as zoning?

Conklin: If you are talking about the square and surrounding buildings, that's zoned C-4. Dickson Street is primarily zoned C-3, in between the Square and Dickson Street we have everything from R-0 to C-2, R-2 multi-family and many different zoning districts.

Hoover: Do we need to show the C-4 on this? There is not a C-4 listed in here, I was just curious.

Hesse: That is a draft, I'll make sure it's included.

Hoover: I have a question on C-4 and 10% in the downtown area. For instance if we have a lot down here and we are trying to build zero lot lines then what do we do when we have trees that are actually going to be in tree wells out on the sidewalk. Does the developer go for a variance for this?

Hesse: I think that's a good point to bring up. In the most situations on Dickson Street, if you went through this criteria we wouldn't be saving any trees. That was from the original ordinance.

Whitaker: Yes. I actually have it in the latest draft.

Hesse: Didn't we discuss the change in the percentages so we didn't go through it individually. That's a very good point because of the density downtown area.

Hoover: There wasn't any discussion during all the meetings about the difference? I see the

downtown area from Dickson to Archibald Yale and this whole area is being different than developing out on 45 and 260, especially if we are encouraging higher density. Don't we have smaller setbacks?

Conklin: Yes, in C-4 setbacks are up against the sidewalk.

Hoover: It would be impossible to do any canopy.

Conklin: Depending on the lot size. Typically it would be very difficult to preserve canopy unless you have a large enough lot that maybe back behind the building save a few trees.

Hoover: I don't think that would be what we are wanting to encourage. I don't have any language or anything, I'm just bringing that up as a question. I don't know how to address it. I don't know if other cities tree ordinances separate the downtown area from other areas?

Hesse: A majority that we reviewed didn't go by percentage, it's by zone. Those that did definitely did define them but I didn't really point out or look for that high density commercial. I do agree.

Estes: Any other discussion?

Ward: You are talking about 10% on basically zero lot lines and buildings that shouldn't even be in there.

Hoover: On C-4 but also in our area we have lots of C-3 which is 15%. It would be like Dickson Street.

Hoffman: I think there is other wording in the ordinance like technically and feasible or something like that that the Landscape Administrator makes that determination and makes the recommendation to the Planning Commission.

Hesse: In the criteria, basically if your building footprint fills the site then I wouldn't recommend making them preserve a tree. It's actually section B of the same subsection.

Hoffman: We could look in the future at taking it out or something. If this ordinance is eventually passed it's going to go through some evolution of it's own. Things are going to be dropped and changed as we go along and start implementing various things. I would like to incorporate Dr. Israel's request that we look at an equal playing field for all lots.

I'm sure the committee had talked about that and if you have a bare lot, if it's worth more or less and should we require the 20% of it be planted? I am concerned and, I'm not sure where you came up with the figure of 20% more, development cost in Fayetteville with impact fees coming in in Bentonville right now. I would want, before this goes forward to City Council to investigate and see if that has been discussed in any of the committee meetings about the completely bare lots.

Whitaker: I can tell you it definitely was discussed. The subcommittee spent a good deal of time on the subject at one point during it's career. My impression of having watched discussions and participated in numerous ones until late March. There was a sense that might be going too far. We had never previously had what we referred to as an A4 station requirement. Certainly I think that's being a policy question is certainly something within your power to adopt and recommend to the Council.

Hoffman: What you said is just my feeling. We are talking about a far reaching ordinance and to make it too overbearing at one time seems to me to be putting more pressure on the development community than I would prefer to at this time.

Whitaker: That was my impression of the subcommittees sentiment as well. Better to make progress than to overreach.

Hoover: I have a couple more questions on the section on prior tree removal. I frankly didn't think that that was severe enough. Is this different than what we had before?

Hesse: What we used to have is replacement which is now mitigation or off-site alternatives. Those are a lot stricter. To have to replace your canopy by your zone plus 10% and has to all be done on site...

Hoover: I'm talking about the prior tree removal. You are saying if it was removed without...

Hesse: Basically. They have to mitigate on site for what's removed. If it where a 20% requirement, they would have to mitigate 30%. It would all have to be on site. If they would have to provide the amount of area for those trees to mature which will limit any chance for the size of the property they have to develop on. By removing those trees suddenly they are limited, versus 20%, they are limited to 70% of the site.

Hoover: Was there any discussion as far as, this probably wouldn't be very popular, I'm assuming we took out the option of paying a fee for the tree removal? Was there any discussion of maybe a delay of being eligible to apply for a permit if you did tree

removal without a tree preservation plan or any permit?

Whitaker: Not specifically, I don't believe.

Hesse: I don't remember discussing it.

Hoover: I was trying to think of what would be a significant reprimand for not going through the proper procedures.

Hesse: I think that it is a little bit presumptuous to assume they would only be able to utilize 70% of their land. The canopy would have to be replaced on that land through mitigation measures.

Hoover: I'm thinking of a particular one we have that's been come through Planning Commission lately. That doesn't seem to be enough incentive. To me, a time delay would be incentive for a developer not to do that or for anyone not to do that.

Estes: Commissioners, with regard to subsection E, Tree Preservation Priorities, we've been provided with a memo from Mrs. Hesse that contains suggested additions and she speaks to section 167.04(E), Preservation Priorities. Mrs. Hesse, would you like to comment on your suggestion change to this particular subsection?

Hesse: Basically, versus using the language undesirable, we would change that to less desirable. Mainly because most of the trees that are listed there as undesirable, they all have benefits to them. They all provide some sort of function on the land. They considered undesirable in an urban setting where maybe they have a lot of pedestrian use underneath them or cars are parked near them or that sort of situation. In every case they may not be really undesirable, they may be utilized for their canopy if they are in a location that works well with the development where they possibly don't have a sidewalk next to the tree, or parking next to the tree. Also, say you have a willow in there, the willow may function to stabilize the bank of the stream. I want to point out the fact that even though they are listed as undesirable, if they are functioning as a high priority, we will view them as that. If they are holding up a stream bank per se, or if they are in the floodway they would be considered more desirable. I really was uncomfortable with the use of the word undesirable. Throughout that section we talk about the preservation of high and mid level priority trees and we do not talk about the preservation of the low level trees. Like I said, in some situations that that's your only canopy, if it works well on the site we would want that canopy protect and we do require that it be mitigated if you have to remove it all. It is of value. I just prefer we

use the word canopy in those situations where we are talking about protection of high and mid level. The canopy would include all canopy that was being preserved. That we use the word less desirable versus undesirable.

Estes: What is the numbered paragraph where you are suggesting the undesirable and less desirable language?

Hesse: Actually it's utilized in table 2 on page 6.

Estes: In table 2, column 3, undesirable you would like to see changed to less desirable?

Hesse: Yes.

Estes: Your second revision canopy versus the high and mid level priority trees, where would that language change be made?

Hesse: On page 5 under E-1, the bottom of that paragraph.

Estes: Paragraph E-1, last sentence, ..."routed wherever possible to avoid high and mid level priority trees", and how would you like that changed?

Hesse: "Such utilities shall be routed wherever possible to avoid canopy."

Estes: Any other changes?

Hesse: On page 6 under F, paragraph one, again the last sentence. "Trees in the utility easements shall not be counted towards percent minimum canopy requirement, and such utilities shall be routed to avoid canopy."

Estes: Any other changes?

Hesse: On page 9, paragraph 4, Analysis Report, "The applicant shall submit an analysis report detailing the design approaches used to minimize damage to or removal of canopy that were considered in arriving at the proposed design."

Estes: Any other suggested changes?

Hesse: No sir.

Estes: Commissioners any other discussion regarding section 167.04, Tree Preservation and Protection during development?

Hoover: I have one other question for Kim. Was there any discussion about civic trees, that a canopy that's along the street edge gets any more credit than a canopy in the rear as a buffer? Or, was there any discussion about is all canopy equal on the site or do we see one being more desirable than another if possible?

Hesse: That's basically it's preservation priorities, identify more valuable trees on the site based on the function. Actually we started out looking at more environmental issues like canopy slopes, floodway, riparian buffers and we also put in the large significant trees as being high priority. A second level priority would include the use buffers and we define those in the definitions. I don't know if we discussed them along the right-of-way but in our discussions that was kind of part of that, buffering between land uses as well as between vehicular and pedestrian. We may need to further design that.

Hoover: I see under use buffer incompatible land uses, unwanted light or noise. I guess I would be interested if you could include in the public realm what you are going to see as being pointed out. Do you know what I mean? In my viewpoint, I would rather see if they have to do tree canopy in the front of the building rather than in the back that maybe has 300 feet before it gets to the next lot.

Conklin: That issue does come up about where it's more desirable to preserve tree canopy and where we view trees from the public realm, the civic space or from our streets. I don't think it's in the ordinance but I do agree with you that we do want to try to preserve trees that the public will be able to enjoy from our streets.

Hoover: Even if it's replacement canopy, I would prefer to see it out in the front more so. I've noticed on some things that have come through Planning Commission will be like 14 new trees in the rear which 4 would have taken care of screening to the next neighbor but it would have been nice to have more than 2 trees up front.

Whitaker: Right-of-ways and public grounds are addressed in 167.06.

Conklin: I think what Commissioner Hoover is suggesting is, should we place a higher priority on trees that you will be able to see in a development to be up front versus back behind the building?

Whitaker: On private land as opposed to city right-of-way.

Conklin: Not on city right-of-way, on the development site, should we have a priority where trees that you preserve, should there be a higher priority for those trees that you can view from public space versus back behind the building.

Hoover: Possibly as an incentive if you put larger trees in that public realm than you don't need as many. Some kind of incentive. I don't want to make it even harder, I would like it to be an either/or kind of thing so there is a trade-off there.

Hesse: I see a couple of ways we could incorporate that into use buffers between pedestrian use and vehicle use. We can incorporate that into that definition. Oftentimes, just through my experiences, it's sometimes more difficult to preserve them along there but it doesn't mean it's impossible. If it's a commercial development the Commercial Design Standards require the trees along the right-of-way every 30 feet. One thing we have done, when they do mitigate on site, obviously we are looking for a space where they have room for the trees to grow. Oftentimes you find that setback allows for that room and I have a feeling we will find a lot of mitigation going in that area in the front setback especially because there is more space.

Hoover: What about when you mentioned the utility easement? Are we allowed now to plant trees in the utility easement? I'm thinking again along in the front where there is often utilities.

Hesse: We have continued to plant in the utility easements. It's the preservation in the utility easement that we don't count as preservation. We have no control over the utilities, they come in and dig out. That's also true for those that have been planted. We have been planting in utility easements and I haven't seen it as being a major problem.

Hoover: They are not going to get any credit for their canopy in the utility easement, or are they?

Hesse: Not for their preservation. They do get credit for what they plant in Commercial Design Standards, they can plant those in the utility easement. They would not count that as replacement in the utility easements, you've got a point there.

Hoover: I don't know, is that a good or bad thing? I'm seeing a lot of trees are being setback 50 or 60 feet from the road which is not helping shade the road or sidewalk at all. I am just wondering how to get to that point?

Hesse: We have a couple of issues to deal with as far as water and sewer as well. The water and sewer Superintendent feels strongly about the repairs that has to occur in that area

and they prefer that we keep it at a minimum 6 to 8 feet from that line. Sometimes that will pull us back. There is a lot of situations that cause us to pull it back, sight distance from the driveways. I can see where aesthetically and also functionally we have benefits by putting the trees near the streets, it seems like we do have a lot of obstacles. I don't know if there is a good answer for that.

Estes: There has been provided a written comment to us from Ms. Colene Gaston and copies of her comments have been distributed to you and I would like to pass the original to Sheri to be made a permanent part of the record. With regard to those comments, in section 167.04A, that change has been made in the technical correction draft that we have and that section now reads "Canopy to be preserved shall be noted on the final plat and shall be protected as set forth in section 167.04L below." The comment provided as to section 167.04 F.2.b and let me give you an opportunity to go to that, Preservation Plan for Infrastructure Only, the comment that Ms. Gaston has provided is "This second option for a preservation plan (for infrastructure only) should also include the mandatory filing of a "Tree Protection Easement or other recorded device, which provides a permanent record of the protection afforded under this chapter." Any discussion? In section 167.04 I, which is titled Request for On-site Mitigation, Ms. Gaston is "I believe that the test for allowing on-site mitigation should be clarified to provide that the applicant must demonstrate to the Landscape Administrator's satisfaction that a site's physical or spacial constraints prevent <u>any development</u> of the property that would preserve the Percent Minimum Canopy." Any discussion? As to section 167.04 J, Request for Off-site Alternatives, at the bottom of page 10 of your technical correction draft, in column 2. The comment made is "I recommend that this option for off-site alternatives also require demonstration that the property would not in any way be developed and also meet the Percent Minimum Canopy." Any discussion? In 167.04 L.3, which is found on page 13 in the left hand column, the comment is "This provision regarding continuing preservation and protection should include the same language as recommended above for UDO 167.04F.2.a and 167.04F.2.b that would require the filing of a Tree Protection Easement or other recorded device." Any comment or discussion? Is there any other comment or discussion regarding section 167.04?

Shackelford: On the site analysis plan, which I believe is somewhat of a new document trying to combine other things, 167.04H subset 1, Site Analysis Plan, page 7. My concern is, if this does not apply to LSD only then it would apply to the individual developer who was wanting to build a triplex on a so zoned piece of property. If that is the case, I assume it is the applicant's responsibility to complete this plan at his cost. My concern is that as a developer trying to build a piece of property, I'm going to have to do a plan

showing the approximate age, health and size of every tree on the lot, a plan including all natural features including features beyond 100 feet beyond the property line, a plan showing the topography highlighting slopes 15% or greater and I'm going to have to identify all the soil on the property according to soil classification system. My concern is that if this is held outside the LSD on just developments that are not excluded by the overall ordinance, it's going to be a requirement that the developer on smaller scale may not have the professionalism to do. My concern is who's going to do this type of study and at what cost is it going to add to the developer on that project?

Estes: Mrs. Hesse, would you comment and before you do, let me sort of add a little footnote to that. We have the abbreviated tree preservation plan which is in subpart 3, is that what we are talking about, subsection H, Submittal of Plans?

Hesse: Yes, for abbreviated tree preservation plans, those are the required of building permits, grading permits and parking lot permits. Anything that does not go through the full review of this Commission would not be required to do a site analysis or analysis report. They would be required to only do an abbreviated tree plan, which could actually be done with a hand drawing, it does not have to be a computer generated drawing. The intent was not to have to require them to hire somebody to do this.

Whitaker: Also, on page 9 the very end of the abbreviated tree preservation plan section, the committee asked that I put in the specific disclaimer that applicants submitting abbreviated plans shall not be required to submit either a site analysis plan or analysis report.

Shackelford: Thank you.

Hoffman: Do you want to get any more specific and say that professional engineers or architects will not be required for abbreviated tree preservation plan?

Whitaker: I could.

Estes: Commissioner Hoffman where would you suggest that language be included?

Hoffman: Just add it on page 9 on 167.04H.3, the end. Add "An architects or engineers seal is not required for an abbreviated tree preservation plan."

Conklin: You might want to add landscape architects also.

Hoffman: Architects, landscape architects or engineers seal is not required.

Estes: Is there any further discussion regarding section 167.04?

Shackelford: The changes that Ms. Gaston has referenced that you read earlier, are those being read into the document as it exists?

Estes: No, my intention was to read those and ask for comment. If my memory is correct, there was no comment or discussion. It was certainly not my intent to read those in as a change to be considered. It was my intention to read those and offer them for discussion.

Shackelford: The only reason I ask that is because it would be in conflict with number 7 but if those are not changes that have been made then we are okay there.

Estes: It was only my intent to bring those to your attention by reading them and asking for comment. Any other discussion?

Hoover: I have a general question that I was wondering if the committee discussed. I appreciate all the ordinances that we have and making them more stringent but were there any tree ordinances around that gave incentives to developers so that if they did one thing they would get something else? It seems like reading through here this is pretty in depth. Have other cities approached it from that direction?

Hesse: I'm sure they have. I can't think of anything at this point. The only incentive we built into this ordinance was for the mitigation aspect of it. If they were able to mitigate all on-site, they would only have to mitigate 80% of what's required. That was just trying to encourage them to do that. I don't believe we had any other built in mechanisms.

Hoover: From the developers in the group, did they think that was enough incentive or would they want to see more?

Hesse: I'm sure they would want more.

Hoover: In general, did they think that was an incentive or did that mean nothing?

Hesse: That was an incentive. That was brought up by one of the engineering representatives of the committee. At our committees we had a mixed bag, we almost always has some from the construction industry, some from engineering. We did not always have a

developer there, we had representatives for them but we did always physically have a developer on the committee at every meeting. As we went through this they may have missed an opportunity to question something.

Allen: I had a like concern as I read through, there are so many rules that if you are abiding by everything there ought to be more incentive built into the ordinance. Did you have any thoughts or ideas as you were working on it about other things that could be added?

Whitaker: I must tell you that on that it came up from time to time but no one really brought forward any concrete plans or specific schemes for incentives other than the 20% allowance that made it into the final draft. There are such things elsewhere but it's subject to pretty complex schemes. Some things are earning development points and things like that but who tracks that over time? How many tree compliance points do you have? Did you use them up on the last one? Do you get into a regime where you have all these points so you could come in and clear 300 acres and not put any trees on it because you've earned up enough bonus points. Those are some of the things that you encounter when you start talking about these incentive programs. I think that at some point the subcommittee felt like it had enough work over the 14 months that it just wasn't ready to move there in any of those complex parts.

Allen: I was thinking about on the piece of property that they were developing, not accumulating points. Maybe they would have an additional parking space. There might be something that could be a real incentive for people to want to comply.

Whitaker: I would defer to the Planning Director when you start giving away parking spaces and things of that nature.

Conklin: I think one of the biggest changes I've seen since we went through the ordeal with Kohl's that resulted this ordinance, the development community is meeting with staff up front prior to the applicant submittal. They understand that when you do meet the ordinance requirements and you do work with out Landscape Administrator and you meet our ordinance requirements, you can get through the process on time. There are very few developments now that we are unaware that they are coming into the Planning Division for processing. It's almost always a preapplication conference. Even with the new tree ordinance where it encourages preapplication conferences, that has been happening for about a year now. I think it's evident at our Planning Commission meetings lately that development community and staff are working closely together to make sure these projects come to you meeting our ordinances. The biggest incentive that we can give the development community is an ordinance that's clear, the ability for

staff to communicate with them and bring in projects that meet our ordinance requirements. I think this will be a positive step.

Estes: Any other discussion regarding this section? Seeing none, Section 167.05, Tree Protection measures and construction. Let me direct your attention to Ms. Hesse suggested additions to the technical corrections regarding section 167.05B, Tree Protection. Mrs. Hesse could you speak to your suggested change please?

Hesse: Yes, just from experiences on projects, oftentimes I think anyone that has dealt with construction realizes that once you design a plan on a sheet of paper that there is quite a few differences when you get out into the real world on the site. There are a lot of construction changes that happen during construction. Oftentimes we find ourselves, even prior to or during construction allowing them to encroach on some of the protected trees, into the dripline. Basically they find themselves boxed in or a utility has to run in a different location. In situations like that I would like to have the ability to require them to do root pruning or add mulch to the base. Oftentimes you can allow them to get under that dripline if you put a thick layer of mulch and then that tree will not be impacted like it would be if there was nothing there to cushion the weight of the compaction of the soil. My suggestion was that under tree protection that we would include a statement saying that the Landscape Administrator may require other protective measures based upon the individual characteristic of the site and the proposed construction methods. Very often I find, especially on tight sites with commercial buildings, if you look at it on a drawing it may look perfectly fine but if you looked at the details of their footing plan you would realize that they are having to excavate beyond that tree. Typically you need to keep 10 feet from the building in order to build the building and oftentimes I'm being more flexible on the site and allowing them to move into that tree. I do so by asking them to do some additional measures and it has worked for many sites. I was uncomfortable that without this language I may not be able to make those changes.

Estes: Any discussion regarding this section?

Hoffman: I have some elaboration or expansion on your idea. That is that we implement tree preservation measures for trees that are actually located off the site but have a root zone on the site. I've come up with some wording that you are welcome to change but this is the idea. At the end of 167.05B to say "Tree preservation measures must also adequately protect off-site trees with root structures extending into a site for proposed construction. If damage or destruction to an off-site tree occurs, the applicant or developer will be required to mitigate that damage as prescribed by the Landscape

Administrator."

Estes: Any discussion? Any other discussion regarding Section 167.05? Seeing none, Section 167.06, Tree Planting Maintenance and Removal on Street Right-of-ways and Other Public Grounds, any discussion? Seeing none, Section 167.07, Commercial Tree Pruner/Service:Certificate and Insurance Required, any discussion? Seeing none, Section 167.08, Hazardous Trees, any discussion? Seeing none, Section 167.09, Local Disaster Emergency, any discussion?

Hoffman: I only have one question about that, the ice storm brings it to mind. Is there anything in our ordinance or UDO that covers trees down on power lines? Does SWEPCO or the utility company have to come and cut the trees off the power line, should we address that or is that a separate disaster issue?

Hesse: I think that there laws would probably override these and they don't allow anyone get near those lines when there is a tree on them. It's something that the utility wants to maintain for safety reasons. No, it's not addressed in here. We discuss it in some section.

Whitaker: Section 167.06J, talks about public utilities rights.

Hesse: It basically states that nothing in this section shall be construed to prohibit public utilities from pruning or removing trees that encroach upon electric, phone, cable, television transmission lines, gas, sewer or water pipes.

Conklin: Most of those utilities are probably within our rights-of-way where they have franchise agreements to be there or within utility easements which they already have the right to go in there and remove the trees.

Estes: Any other discussion? Seeing none, if we could refer back to Section 167.02 for just a moment. The comment letter that Ms. Gaston provided with regard to this section reads "The Landscape Administrator...shall promulgate and periodically revise forms, procedures, and regulations to implement this chapter...", I do not believe that the Landscape Administrator has the legal authority to promulgate regulations. Any discussion? David, would you speak to that please?

Whitaker: This ordinance would be the enabling legislation. It would be the governing body of the City telling a particular city official to promulgate regulations to enforce the chapter.

Estes: The chair will now entertain motions, any further discussion or comments. Let me say this, I do not want to limit the discussion in any way nor do I want to limit the motions. We have had several comments by Commissioners. Rather than require that we go back through and discuss each of those individually, let me suggest this, any motion incorporate by reference those changes. They have been recorded by our clerk and will be duly made a part of the record. I do not in any way limit your ability or capacity to make motions. If you would like to go to some specific comment that's been made and discuss it more fully and completely remove it, modify it, do so.

MOTION:

Hoffman: I would like move for recommendation of approval to City Council of Administrative Item 01-32.00, with reference to all Commissioners and public comments recorded today that they be duly considered prior to the ordinance reaching City Council as so recorded.

Estes: We have a motion by Commissioner Hoffman to approve Administrative Item 01-32.00 which would be forwarded to the City Council an ordinance amending title 15 of the Unified Development Ordinance of the Code of Fayetteville to provide amendments to and clarification of various provisions concerning tree preservation and protection, is there a second?

Allen: I'll second.

Estes: We have a motion by Commissioner Hoffman and second by Commissioner Allen, is there any discussion?

Bunch: I ask Commissioner Hoffman just how you were including the various portions of the public comment and the letters that have been read into the public record? Are you suggesting these be in the form of suggestion in minutes or that they be incorporated into the document as substantive changes?

Hoffman: If I understand our Chairman correctly and by looking at the memorandum from Mr. Whitaker, I think that as this goes forward it's a good idea to go ahead and have staff and the City Attorney's office incorporate all of the discussion that has been made here tonight by the public and by the Commission. It seems that there was some discussion on various wordings and various legal issues and so forth, in the technical memorandum following the question and answer question. I would assume a similar format or similar action would be taken by the staff prior to it reaching the Council level. Am I right or

wrong?

Whitaker: My only concern is that, if we gather every comment that was made both here in the chambers and from letters and such and attempt to incorporate in the draft, we are going to have some incredible inconsistencies. Some folks opposed you and I wonder how you would want the City Attorney's office to reconcile that?

Estes: My thought was that the amendments made by the individual Commissioners be incorporated and be the modified draft that goes to the City Council. Not public comments and not Ms. Gaston's letter which I read simply for the purpose of inviting comment but that those changes and modifications to the technical draft include only those changes made by individual Commission members. If there is a disagreement or question by any individual Commissioner as to whether that specific provision should go forward that it be discussed and proliferated at this time. Commissioner Hoffman, was that the intent of your motion?

Hoffman: Not really but I understand. Otherwise we will be here all night rewriting and trying to get the opposing views in. Understanding that, not having a great legal brain, I would say that there is still time for public comment to City Council and that those people that wish to make it will have further opportunity. We should go ahead and incorporate our comments and leave the public to the next meeting as those go forward. Does that sound better?

Whitaker: Yes. I believe the Council will get a copy of the minutes.

Hoffman: I understand now. Colene's letter has some definite legal terminology that I'm certainly not prepared to deal with tonight.

Estes: Commissioner Allen, was that the intent of your second?

Allen: Yes.

Hoover: Will the tree committee be meeting again before this goes to City Council and revising or what?

Whitaker: It had not been planned.

Hoover: I guess I'm concerned if we are just making the motion with new language, I didn't make any new language. I want my points to be considered.

Conklin: There will be an opportunity, I believe this is going to go to the Ordinance Review Committee and there will be opportunity there to have that committee make the final recommendations to City Council.

Hoover: When will that be do you think?

Conklin: The City Council will have to set that up, I'm not sure.

Hoover: Thank you.

Estes: The statute provides that following the public hearing proposed plans may be adopted and proposed ordinances and regulations may be recommended as presented or in modified form by a majority vote of the entire Commission. That's what we are doing. That's the purpose that we are charged with this evening. There is a motion by Commissioner Hoffman, second by Commissioner Allen to approve Administrative Item 01-32.00, is there any other discussion?

Shackelford: I would just like to make some comments for the record as well. While I agree we need consistency and clarification beyond what our current ordinance offers, I feel that we need to do this without infringing on property owner's rights. I am somewhat troubled that we are adding more restrictive covenants that will further add to the difficulty of development in Fayetteville and add to the gap between here and our neighboring communities. I'm concerned that this might push more development and tax revenue outside our City limits. I know that many hours have gone into rewriting this ordinance and it's merits were good. My concern is, it may be somewhat intrusive and could possibly cost the City of Fayetteville a great deal of lost tax revenue going forward. I think we need to be very careful going forward to keep from further increasing the gap in development costs between the City of Fayetteville and other communities. If this ordinance is passed, I feel that we need to keep an open mind on appeals that are brought before either the Planning Commission or City Council. We need to continue to look at these things on a case by case basis and not let this ordinance stop proposed developments in Fayetteville.

Ward: There is a lot of gestapo about the landscape establishment guarantees that we are putting in this ordinance, how we picked out a three year maintenance and monitoring period and all this type of thing. I think we are really pushing legal, property rights and constitution as far as some of these things we are asking to do here. For the most part I think the tree ordinance is fantastic. A lot of good stuff in here. I'm just kind of worried about going too far. We all want to have beautiful real estate, we all want the

trees, we all want to preserve what we have but there is two sides to all this.

Estes: Any further discussion, comments? We have a motion by Commissioner Hoffman to approve administrative item 01-32.00 and a second by Commissioner Allen, Sheri would you call the roll?

ROLL CALL:

Upon roll call administrative item 01-32.00 is approved by a vote of 7-0-0 and will be forwarded to City Council for consideration.

Estes: In closing, let me speak on behalf of the entire Commission and thank each of you for your participation in this process. As I have attend various meetings and as I look out over the audience this evening, I see architects, I see engineers, I see lawyers. There have literally been over 1,000 hours of time put into the preparation and drafting of this ordinance. On behalf of your Commission I thank you. It's been a very noble effort and we appreciate it very much. Is there any other business?

Conklin: There is no further business.

Earnest: I did want to make sure, we did spend a lot of time last week mailing out a notice to everybody about the meeting on September 11th and I hope you have all gotten that in the mail. If you haven't, please let me know. We are proceeding. We did mail out over 900 letters to people in the region. It went out last Friday.

Estes: What is the meeting?

Earnest: It's the presentation by Mayor Brent Coles from Boise, Idaho, speaking about smart growth and his perspective on it as a past president of the U.S. Conference of Mayors.

Estes: Thank you, any other announcements? We will be adjourned until our next regularly called meeting.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TENTATIVE AGENDA
CITY COUNCIL
SEPTEMBER 4, 2001

A meeting of the Fayetteville City Council will be held on September 4, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

– **CADIS GROUP:** Presentation from Cadis Group.

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:** Approval of the minutes from the August 21, 2001 meeting.

2. **SFCDC:** A resolution approving the transfer of the property located at 1035 S. Washington Avenue to the South Fayetteville Community Development Corporation.

3. **ARVEST BANK:** A resolution accepting a proposal from Arvest Bank to provide banking services for the City of Fayetteville for one year, renewable for four years.

4. **TOWN CENTER DECK:** A resolution approving an agreement between the City of Fayetteville and the Fayetteville A&P Commission for the City to operate and manage the Town Center Deck in exchange for forty parking spaces.

B. OLD BUSINESS

1. **CONDITIONAL USE APPEAL:** An ordinance amending Chapter 155, Appeals, to allow an appeal by three aldermen of a decision by the Planning Commission to approve or deny a conditional use. The ordinance was tabled on the third reading at the July 17, 2001 meeting until the Attorney General's opinion was received.

113 WEST MOUNTAIN 72701 501 521-7700
FAX 501 575-8257

C. NEW BUSINESS

1. **RZN 01-14.00:** An ordinance approving rezoning request RZN 01-14.00 submitted by Donna Treat on behalf of Greg and April Robinson for property located at 1245 N. 51 street. The property is zoned A-1, Agricultural and contains approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential.

2. **VA 01-6.00:** An ordinance approving vacation request VA 01-6.00 submitted by Andy Feinstein on behalf of Marriott Courtyard for property located on Lot 17 CMN Business Park Phase I. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on Lot 17 of CMN Business Park.

3. **VA 01-7.00:** An ordinance approving vacation request VA 01-7.00 for property located at 2483-2485 Jeremiah Place, Lot 7, Coyote Trail Subdivision. The request is to vacate a portion of a 25' wide utility easement.

4. **BID WAIVER:** An ordinance establishing a formal process to allow the purchase of used equipment. The ordinance waives competitive bidding on equipment types. Passenger vehicles, pick-up trucks and vans are excluded.

5. **TREE ORDINANCE:** An ordinance amending Title XV, Unified Development Ordinance of the Code of Fayetteville, to provide amendments to and clarification of various provision concerning tree preservation and protection.

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

DATE: August 14, 2001

TO: The Mayor and Council

FROM: Hugh Earnest
Urban Development Director

SUBJECT: Property Transfer, 1035 South Washington Avenue

Background

The South Fayetteville Community Development Corporation (SFCDC) is a non-profit organization and was created to construct affordable Housing in South Fayetteville. The City of Fayetteville, Community Development Division has partnered with the SFCDC to acquire dilapidated property in South Fayetteville. The Bank of Fayetteville has partnered with the SFCDC to provide funding to construct the Housing. This is the second piece of property the city has purchased and donated to the SFCDC for affordable housing. Construction is ready to begin on the first piece of property.

Current Status

Attached is a Warranty Deed to a piece of property the City of Fayetteville, Community Development Division purchased. The property is being donated to the South Fayetteville Community Development Corporation (SFCDC). A new Warranty Deed is required from the City transferring the property to the SFCDC. The SFCDC will construct a new house on the property for a family with an income of 50% - 80% of the median, adjusted for family size.

Recommendation

The staff recommends approval of this resolution.

STAFF REVIEW FORM

_____ AGENDA REQUEST
_____ CONTRACT REVIEW
_____ GRANT REVIEW

For the Fayetteville City Council meeting of_____

FROM:

Yolanda Fields (Name) | Community Development (Division) | Urban Development (Department)

ACTION REQUIRED: Approval of the transfer of the property located at 1035 S. Washington Avenue to the South Fayetteville Community Development Corporation.

COST TO CITY:

$-0- (Cost of this Request) | Category/Project Budget | Category/Project Name

Account Number | Funds Used To Date | Program Name

Project Number | Remaining Balance | Fund

BUDGET REVIEW: _____ Budgeted Item ____ Budget Adjustment Attached

Budget Manager | Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**_____

Accounting Manager	8/14/01 Date	Internal Auditor	8/14/01 Date
City Attorney	8/14/01 Date	ADA Coordinator	Date
Purchasing Officer	8-14-01 Date	Grants Coordinator	Date

STAFF RECOMMENDATION: Approval of this agreement.

Division Head	8-14-01 Date	Cross Reference
Department Director	8-14-01 Date	New Item: **YES**
Administrative Services Director	8/14/01 Date	Prev Ord/Res
Mayor	Date	Orig Contract Date:

STAFF REVIEW FORM

Description: Approval of property transfer

Meeting Date _____

Comments:

Reference Comments:

Budget Manager

_____ _____

_____ _____

Accounting Manager

_____ _____

_____ _____

City Attorney

_____ _____

_____ _____

Purchasing Manager

_____ _____

_____ _____

Internal Auditor

_____ _____

_____ _____

ADA Coordinator

_____ _____

_____ _____

Grants Coordinator

_____ _____

_____ _____

CITY OF FAYETTEVILLE
Community Development Division
113 West Mountain Street
Fayetteville, Arkansas 72701

AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 2001 between the City of Fayetteville, hereinafter known as the "City" and the **South Fayetteville Community Development Corporation** hereinafter known as the **SFCDC.**

WHEREAS, the **SFCDC** is an Arkansas private non-profit corporation that develops and constructs housing that is affordable to lower income citizens of Fayetteville, and

WHEREAS, the City encourages neighborhood revitalization through improvements to housing, infrastructure ans associated improvements for South Fayetteville citizens, and

NOW, THEREFORE, in consideration of the benefits to be derived from programs and services described herein, the parties agree as follows;

1. The City through its Community Development Division, has obtained title to the real property generally located at **1035 S. Washington Avenue, Fayetteville, Arkansas 72701** more particularly described as; **Lots Numbered Thirty-Seven and Thirty-eight (37-38) in Block Number Two (2) in Glenwood Park Addition to the City of Fayetteville, Arkansas, as the same are known and designated upon the recorded Plat of said Addition now of record in the office of the Recorder of Washington County, Arkansas (said Plat is recorded on page "91" in Plat Book and shows Addition is laid out in the Wets Half of the Northwest Quarter of the Northwest Quarter of Section Twenty-Two (22) in Township Sixteen (16) North, Range Thirty (30) West, and being situated in the County of Washington ands State of Arkansas.**

2. The real property described above was acquired by the City of Fayetteville with Community Development Block Grant Funds awarded to the city by the U.S. Department of Housing & Urban Development. The purposes of the acquisition was to eliminate slums and blight on a spot basis.

3. The City will convey the real property described above to the SFCDC for the sum of One Dollar ($1.00) and other good and valuable consideration.

4. The City will furnish title insurance in the amount of $7,500.00.

5. Each party will be responsible for payment of property taxes, if any, on the conveyed property, prorated as of the date of closing.

6. In accordance with U.S. Department of Housing & Urban Development regulations governing the Community Development Block Grant Program, the SFCDC specifically agrees to construct housing on the conveyed property that is affordable to persons in the low to moderate income levels. Construction completion date to be one (1) year from the date of this agreement.

IN WITNESS WHEREOF, the City and the SFCDC have executed this agreement on or as of the date first written above.

CITY OF FAYETTEVILLE

_____
Dan Coody, Mayor

ATTEST:

_____
Heather Woodruff, City Clerk

S. Fayetteville Community Development Corporation (SFCDC)

Cherry Pearson President
_____
Cherry Pearson, President (SFCDC)

ATTEST:

_____
Yolanda Fields, C.D. Coordinator

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT The City of Fayetteville, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar ($1.00) and other valuable consideration, paid by South Fayetteville Community Development Corporation (SFCDC) the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto South Fayetteville Community Development Corporation hereinafter called GRANTEE, and unto its heirs and assigns forever, the following lands lying in Washington County, Arkansas, to-wit:

Lots Numbered Thirty-Seven and Thirty-Eight (37-38) in Block Number Two (2) in Glenwood Park Addition to the City of Fayetteville, Arkansas, as the same are known and designated upon the recorded Plat of said Addition now of record in the office of the Recorder of Washington County, Arkansas (said Plat is recorded on page 91 in Plat Book and shows said Addition is laid out in the West Half of the Northwest Quarter of the Northwest Quarter of Section Twenty-two (22) in Township Sixteen (16) North, Range Thirty (30) West, and being situated in the County of Washington and State of Arkansas. (Subject to easements and restrictions, if any.)

TO HAVE AND TO HOLD the same unto the said GRANTEE SFCDC and unto his heirs and assigns forever, with all appurtenances thereunto belonging.

And The City of Fayetteville hereby covenants with said South Fayetteville Community Development Corporation, that the City of Fayetteville will forever warrant and defend the title to said lands against all lawful claims whatever.

WITNESS my hand and seal on this _____ day of _____, 2001.

_____
DAN COODY, Mayor

ACKNOWLEDGMENT

STATE OF ARKANSAS
COUNTY OF WASHINGTON

BE IT REMEMBERED, that on this day came before me, the undersigned, a Notary Public within and for the county aforesaid, duly commissioned and acting, the Mayor of the City of Fayetteville, to me well known as the grantor in the foregoing Deed, and acknowledged that he had executed the same on behalf of the City for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public on this ___ day of _____, 2001.

My Commission Expires: _____

_____
Notary Public

'01 AUG AM 11 01

WASHINGTON
B. STAMPS

City

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That Lewis P. Johnson and Christine E. Johnson, trustees of The Johnson Trust dated December 19, 1996, hereinafter referred to as Grantors, for and in consideration of the sum of One Dollar ($1.00) and other valuable consideration in hand paid by The City of Fayetteville, Arkansas, a municipal corporation, hereinafter referred to as Grantee, the receipt of which is hereby acknowledged, do hereby grant, bargain and sell unto said Grantee, and unto its successor or assigns, forever, the following lands lying in Washington County, Arkansas, to-wit

Lots Numbered Thirty Seven and Thirty Eight (37-38) in Block Number Two (2) in Glenwood Park Addition to the City of Fayetteville, Arkansas, as the same are known and designated upon the recorded Plat of said Addition now of record in the office of the Recorder of Washington County, Arkansas (said Plat is recorded on page "91" in Plat Book and shows said Addition is laid out in the West Half of the Northwest Quarter of the Northwest Quarter of Section Twenty-two (22) in Township Sixteen (16) North, Range Thirty (30) West, and being situated in the County of Washington and State of Arkansas.

TO HAVE AND TO HOLD the same unto the said Grantee and its successor or assigns, forever. And the said Grantors hereby covenant that they are lawfully seized of said land and premises, that the same is unencumbered, and that they will forever warrant and defend the title to said lands against all legal claims.

WITNESS our hands and seals this 31st day of July 2001.

City 2

THE JOHNSON TRUST dated
December 19, 1996

by: _____ Trustee
Trustee

South Fayetteville
Community Development
Corporation

by Christine E Johnson, Trustee
Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS }
} ss.
COUNTY OF WASHINGTON }

Be it remembered that on this 31st day of July 2001, before me a notary public duly commissioned and acting in and for the county and state aforesaid, personally appeared Lewis P. Johnson and Christine E. Johnson, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they had executed the same for the purposes therein set forth.

Lela R. Davis

Lela R. Davis
NOTARY PUBLIC

My commission expires:

Notary Public, State of Arkansas
Washington County
My Commission Expires 03/27/05

SFCDC
A. 2. Page 8

2001092987

FILED FOR RECORD

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WASHINGTON COUNTY
B. STAMPS

SFCDC
A. 2. Page 9

WARRANTY DEED

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TO HAVE AND TO HOLD the same unto the said Grantee and its successor or assigns, forever. And the said Grantors hereby covenant that they are lawfully seized of said land and premises, that the same is unencumbered, and that they will forever warrant and defend the title to said lands against all legal claims.

WITNESS our hands and seals this 31st day of July 2001.

E01-1321

THE JOHNSON TRUST dated
December 19, 1996

by: Lewis P. Johnson Trustee
Trustee

by Christine E. Johnson, Trustee
Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS }
} ss.
COUNTY OF WASHINGTON }

Be it remembered that on this 31st day of July 2001, before me a notary public duly commissioned and acting in and for the county and state aforesaid, personally appeared Lewis P. Johnson and Christine E. Johnson, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they had executed the same for the purposes therein set forth.

Lela R. Davis
Notary Public, State of Ark...

Lela R. Davis
NOTARY PUBLIC

FILED FOR RECORD

'01 AUG 6 AM 11 01

WASHINGTON CO...K
B. STAMPS

WARRANTY DEED

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Lots Numbered Thirty Seven and Thirty Eight (37-38) in Block Number Two (2) in Glenwood Park Addition to the City of Fayetteville, Arkansas, as the same are known and designated upon the recorded Plat of said Addition now of record in the office of the Recorder of Washington County, Arkansas (said Plat is recorded on page "91" in Plat Book and shows said Addition is laid out in the West Half of the Northwest Quarter of the Northwest Quarter of Section Twenty-two (22) in Township Sixteen (16) North, Range Thirty (30) West, and being situated in the County of Washington and State of Arkansas.

TO HAVE AND TO HOLD the same unto the said Grantee and its successor or assigns, forever. And the said Grantors hereby covenant that they are lawfully seized of said land and premises, that the same is unencumbered, and that they will forever warrant and defend the title to said lands against all legal claims.

WITNESS our hands and seals this 31st day of July 2001.

THE JOHNSON TRUST dated
December 19, 1996

by: _____ Trustee
Lewis P. Johnson, Trustee

by _____ Trustee
Christine E. Johnson, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS }
} ss.
COUNTY OF WASHINGTON }

Be it remembered that on this 31st day of July 2001, before me a notary public duly commissioned and acting in and for the county and state aforesaid, personally appeared Lewis P. Johnson and Christine E. Johnson, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they had executed the same for the purposes therein set forth.

Lela R. Davis
Notary Public, State of Ark...

_____
NOTARY PUBLIC

E-01-182 11

SFCDC
A. 2. Page 10

STAFF REVIEW FORM

___x___ AGENDA REQUEST
___x___ CONTRACT REVIEW
_____ GRANT REVIEW
_____ ORDINANCE REVIEW
For the Fayetteville City Council meeting of September 4, 2001

FROM:

Marsha Farthing	Accounting	Admin. Services
Name	Division	Department

ACTION REQUIRED: Approval of a resolution accepting a proposal from ARVEST Bank to provide banking services for the City of Fayetteville for one year, renewable for four years.

COST TO CITY: Estimated annual fees of $10,000 are expected to be offset by increased interest earnings.

$0		
Cost of this Request	Category/Project Budget	Category/Project Name
Account Number	Funds Used To Date	Program Name
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ___ Budgeted Item ____ Budget Adjustment Attached

Budget Manager — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**

Marsha Farthing	8/15/01		
Accounting Manager	Date	ADA Coordinator	Date
D.J. White	8/17/01	Danny Smith	8/15/01
City Attorney	Date	Internal Auditor	Date

Purchasing Officer	Date

STAFF RECOMMENDATION:
Staff recommends approval.

Marsha Farthing	8/15/01	
Division Head	Date	Cross Reference
		New Item:
Department Director	Date	
Chris Wilson	8/16/01	Prev Ord/Res #:
Administrative Services Director	Date	
Dan Coody	8/17/01	Orig Contract Date:
Mayor	Date	

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: Mayor Dan Coody and City Council

From: Ted Webber, Administrative Services Director

Date: August 13, 2001

Subject: Contract with Arvest Bank

Background

The City of Fayetteville solicited proposals from qualified banking institutions in June 2001, to provide primary banking services for the City. The three banks that returned proposals were Bank of America, Bank of Arkansas, and Arvest Bank. Arvest was chosen by the selection committee.

Recommendation

Staff is requesting City Council's approval of a contract with Arvest Bank to provide primary banking services for the City. The contract is for a one year period, renewable for four additional years by annual action of the council.

CONTRACT

THIS CONTRACT, made and entered into the _____day of August 2001, by and between the City of Fayetteville, Arkansas, Party of the First Part, hereinafter termed "CITY" and Arvest Bank of the City of Fayetteville, Arkansas, Party of the Second Part, hereinafter termed the "BANK",

WITNESSETH:

SECTION 1. BASIC SERVICES: The CITY hereby engages the BANK to provide certain banking services for the CITY'S operating funds. The BANK shall furnish and supervise all necessary personnel, materials, equipment, and any and all other items necessary for the conduct of these services. The banking services shall be accomplished in accordance with the terms and conditions as stated in the the CITY'S RFP specifications, and printed or written explanatory matter thereof, the BANK'S Proposal (as accepted by the CITY) and this Agreement, all of which are hereby made a part thereof and collectively evident and constitute the entire agreement. In case of any conflict between the CITY'S RFP, the BANK'S Proposal (Appendix A) and this Agreement, the order of procedure shall be 1) Agreement, 2) CITY'S RFP, and 3) BANK'S Proposal.

SECTION 2. CONTRACT PERIOD: This Contract shall be in effect from the date of execution until August 31, 2002, provided, however, that this Contract may at the option of the CITY, be extended for four additional one year terms by annual action of the City Council.

SECTION 3. QUALITY OF WORK: All material, workmanship and equipment shall be subject to the inspection and approval of the CITY. All work or service unsatisfactorily performed shall be promptly corrected and made acceptable to the CITY using standard acceptable banking practices.

SECTION 4. CONTRACT CHANGES: Occasionally, during the course of the contract period, it may become necessary to effect certain changes and/or modifications in the contract. All such changes shall be justified in writing by the party desiring the change and forwarded to the other party. All such changes will be negotiated by the parties hereto and shall not be effective until accepted in writing by both the BANK and the CITY.

SECTION 5. THIRD PARTY CONTRACTS: Unless otherwise authorized in writing by the CITY, the BANK shall not assign this contract, or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this contract.

SECTION 6. TERMINATION:

a. Termination for Convenience. The CITY or BANK may terminate this contract, in whole or in part, at any time by ninety (90) days written notice to the other party. If the BANK has any property, reports or materials in its possession belonging to the CITY, the BANK will account for the same, and surrender to the CITY or dispose of it in such a manner as the CITY directs.

b. Termination for Default. If the BANK fails to comply with any provisions of the contract including, but not limited to, the timely performance, the CITY may terminate this contract for default. Termination shall be effected by serving a notice of termination on the BANK, setting forth the manner in which the BANK is in default. The BANK will only be paid for services performed in accordance with the manner of performance set forth in this contract. If it is later determined by the CITY that the BANK had an excusable reason for not performing, such as a strike, fire or flood, events which are not the fault of, or are beyond the control of the BANK, the CITY may allow the BANK to continue work or treat the termination as a termination for convenience.

c. Mutual Agreement. By mutual agreement and consent of the parties thereto, this contract may be terminated with ninety (90) days written notice.

d. Contract Expiration. Upon expiration of the contract period, however, the term of the contract may be extended by mutual consent of the parties hereto.

SECTION 7. GOVERNING RULE AND REGULATIONS. The BANK will comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the order and decrees of any court or administrative bodies or tribunals in any nature affecting the performance of this contract, including without limitation, banking law and regulations, workers' compensation laws, minimum and maximum salary and wage statues. When required, the BANK shall furnish the CITY with satisfactory proof of its compliance therewith.

SECTION 8. COVENANT AGAINST CONTINGENT FEES. The BANK warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for the BANK, to solicit or secure this contract, and that it has not paid or agreed to pay any company or persons, other than a bona fide employee working solely for the BANK, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the CITY shall have the right to annul this contract without liability, or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

SECTION 9. COVENANT AGAINST GRATUITIES. The BANK warrants that no person or selling agency has offered or given gratuities (in the form of entertainment, gifts or otherwise) to any official or employee of the CITY with a view toward securing favorable treatment in the awarding, amending or evaluation performance of the contract.

SECTION 10. EQUAL EMPLOYMENT OPPORTUNITY. In connection with the execution of this contract, the BANK shall comply with EEOC rules and regulations.

SECTION 11. HOLD HARMLESS CLAUSE. The BANK shall save harmless the CITY from all claims and liabilities due to its negligent acts or omissions or the negligent acts or omissions of its agents or employees.

SECTION 12. INSURANCE. The BANK shall take out and maintain, during the period of work comtemplated under this agreement, such workers' compensation, public liability property damage and professional liability insurance as shall protect the BANK performing work covered by this agreement.

SECTION 13. INDEPENDENT CONTRACTOR. The BANK will perform the duties of an independent contractor and not as an agent or employee of the CITY.

SECTION 14. COLLATERAL AGREEMENT. The BANK agrees to collateralize all CITY deposits, in excess of FDIC Insurance, at the rate of 102% and to honor all other provisions of the existing collateral agreement.

SECTION 15. PAYMENT OF FEES. Fees will be paid monthly based on an analysis of the account volumes and services rendered. A statement of analysis will be furnished to the CITY by the 15th of each month for the previous month.

SECTION 16. AGENT FOR SERVICE. The agent for service relative to all matters pertaining to this contract and delivery of project products shall be as follows:

a. For the CITY

Ted H. Webber, Administrative Services Director
City of Fayetteville, Arkansas
113 West Mountain
Fayetteville, AR 72701

b. For the BANK

Michael Wingo, Vice President
Commercial Services
Arvest Bank
One McIlroy Plaza
Fayetteville, AR 72701

IN WITNESS WHEREOF, THE PARTIES TO THESE PRESENTS HAVE EXECUTED THIS AGREEMENT, CONSISTING OF 16 SECTIONS AND FOUR TYPEWRITTEN PAGES, IN THE YEAR AND DAY FIRST ABOVE WRITTEN.

CITY OF FAYETTEVILLE, ARKANSAS
PARTY OF THE FIRST PART

By:_____
Dan Coody, Mayor

ATTEST:

By:_____

ARVEST BANK
PARTY OF THE SECOND PART

By:_____
Gary Head, CEO Arvest Bank, Fayetteville

ATTEST:

By:_____

OFFICIAL SEAL
MICHAEL WINGO
NOTARY PUBLIC - ARKANSAS
WASHINGTON COUNTY
EXPIRES 7/01/2006

ARVEST

McIlroy Bank Member FDIC

Appendix A

Checks Posted	$0.14
Deposits Posted	0.15
Deposit Items Posted	
a. "On-Us" items	0.06
b. Clearing House Items	0.10
c. Electronic Items	0.10
Cash Deposited	0.15
Coin Counting and Bagging	N/C
Stop Payments / Domestic Wires	7.50
ACH Items on other Banks	0.10
Account Maintenance	8.00
Additional Bank Bags	N/C
Deposit Slips	N/C
Returned Items	4.00

Rate Information

The following rate indexes apply only to those accounts which the city would rather be billed for the services used, and earn a rate of interest on the entire investable balance. The rates are determined as follows:

Balance	IBC 7 Day Simple Yield (Donahue)
$0 -- 24,999	Minus 175 Basis Points
$25,000 -- $99,9999	Minus 150 Basis Points
$100,000 -- $499,999	Minus 125 Basis Points
Above $500,000	Minus 100 Basis Points

At the end of each day, the average investable balance in the account accrues interest at the rate which corresponds to the proper tier. This accrued interest is credited to the account at the end of each month less any service charge which may apply.

A family of banks.
A world of possibilities.

II. SERVICES TO BE PERFORMED

A. Required Services:

1. Deposit Services

   All Arvest branches will provide same day ledger balances for deposits received before 5:00 p.m. CST.

2. Electronic Payment / Deposit Services

   Arvest has the systems and the capacity within those systems to handle all of the expressed deposit and investment needs of the city. We are a fully functioning ACH originating and receiving bank. Through our cash management service, all wires both incoming and outgoing will be posted and made available to the customer on the same business day. We also have a fax back service. A fax is sent to a designated location notifying your office of any wires the same day they are received.

3. Direct Deposit Services

   As a fully functioning ACH originator, we are capable of processing balanced NACHA formatted files. This process starts with a certification process through which our corporate services team assists your office so that a deliverable file is generated. The method of file delivery will be through a phone transmission to our processing facility at Lowell, AR.

4. Counting and Depositing Parking Meter Coins

   Our vault is equipped with fully functioning coin and currency counters. The processing and depositing of all coins delivered to the vault will be deposited on the same business day. The deposit will be listed on the statement as well as an imaged copy of the actual item.

5. Checks / Deposit Slips

   As a standard practice, Arvest does prefer a trail run of proposed checks. The process requires a representative sample batch of check stock so that they may be run through our reader/sorter. This will ensure the items can be read and the images meet our minimum standard of clarity. Under this agreement, we will furnish deposit slips for the City.

6. Paper Bank Drafts

Arvest will continue the process already in place for processing the paper drafts the City currently employs. It is our understanding that an ACH module for the water/sewer billing is being researched at this time, and our expertise may be needed in this area. We will provide the City any help the we reasonably can in order to expedite this project. This includes but is not limited to the certification of test files sent to our processing center.

7. Credit Card Services

Arvest is also a fully functioning credit card processor and issuer. Any normal needs the City has regarding the processing of cards, and or the need for its own credit cards, should not pose a problem.

8. Detailed Account Information

Any debit or credit initiated by the bank will have supporting information. This documentation is retrievable the next business day after the transaction has posted. Our imaging capabilities enable us to provide these items in timely manner and may even be emailed or faxed to a designated address or location.

9. Monthly Statements

It is preferred that we provided the City with a monthly statement in the form of a CD-Rom. This will enable for the ease of sorting, storage, and all general research which may be necessary. Each CD will contain the software required to view the items and the statement. The CD is labeled with the name of the month and customer's name. It is probable that all of the cities accounts will be contained on one CD.

10. Resource Personnel

Arvest has the staff to handle any need, which the City may have with regard to all aspects of our relationship. We have a fully staffed customer service area that already works with City personnel on existing accounts. This type of service will be available on any service which you may employ from our list of services. We have also begun the process of forming a corporate services call center which is staffed with trained experts on specific area such as ACH origination, cash management, remittance processing, reconciliation, and positive pay.

11. Access to Records and Cooperation

Arvest will cooperate fully with all legal inquiries and make available all records pertaining to the City's relationship.

12. New Accounts

Arvest will provide any additional accounts and services as needed.

13. Return Check Account

Our returned check procedures will accommodate the City's needs.

14. Optional Banking Services

As a commercial bank, Arvest has a fully staffed remittance processing team capable of handling most processing needs. In order to determine exactly what type of processing the City needs, we will need to establish processing criteria and protocol. A full proposal in this area is the most common approach.

CITY OF FAYETTEVILLE, ARKANSAS
REQUEST FOR PROPOSALS
FOR GENERAL BANKING SERVICES

RFP 01-06
JUNE 1, 2001

I. INTRODUCTION

The City of Fayetteville, Arkansas, (City) is soliciting sealed proposals from qualified local banking institutions (bank) to provide the City's primary general banking services with the highest quality of service at the most reasonable cost, while maintaining sufficient liquidity and protection of public funds.

The City anticipates maintaining approximately ten to fifteen demand deposit accounts, including one pooled cash account for the majority of the City's operations and a separate payroll account. The annual receipts and expenditures are estimated to be $86,800,000 and 86,300,000 respectively. Approximately 34,000 checks are expected to be processed annually.

A non-exclusive banking services contract will be executed with the successful bidder which will include, at a minimum, the pooled cash account and the payroll account. The City reserves the right to maintain accounts at other banks. The City also requires a Depository Agreement and a Collateral Agreement with any bank that holds City funds.

II. SERVICES TO BE PERFORMED

A. Required Services. (In addition to accepting deposits and processing checks and other withdrawals. Please address each service in numerical order in proposal.)

1. Deposit Services

The bank shall give all deposits received by (5:00) p.m. credit as good ledger balance funds for the same day. The bank shall similarly identify the time and branch(es) where a final daily deposit(s) will be accepted.

2. Electronic Payment/ Deposit Services

The bank must have the capability to accommodate a wide range of electronic payment and deposit services for investment purchases or sales and other transactions with authorized institutions. Wire service credit and debit notices must be mailed or faxed to the City's Accounting and Audit Division on the same day of the transaction and be included in the monthly statement.

3. Direct Deposit Services

The bank shall provide direct deposit services for employee payroll amounts (currently approximately 600 employees) to elected accounts with institutions which participate in the system for ACH/direct deposit transfers. The bank must be capable of accepting data transmissions via telephone lines, tapes, diskettes, or EFT. The bank shall provide direct deposit services for grant funds and other transactions from state and federal programs received by the City.

4. Counting and Depositing Parking Meter Coins

Bank shall provide coin counting and bagging services for parking meter collections. Coins will be delivered to the successful proposer in eight (8) bags and or two (2) lock-boxes twice a month and average $8,000 per month. The bank will count the coins separately for each bag or box and will indicate on the deposit slip the amount deposited for each. All revenues will be deposited to an account designated by the City and the deposit slip will be provided to the City's Accounting and Audit Division.

5. Checks/Deposit Slips

The City does not require that the bank provide checks. The bank will cooperate with the City and the City's vendors to insure that checks meet the bank's specifications. The bank will furnish encoded deposit slips to the City as needed.

6. Paper Bank Drafts

The City Water Department currently uses paper drafts to direct draft customer accounts for monthly water bills. The City currently drafts an estimated 3,800 accounts monthly. The bank will need the ability to process the paper drafts.

7. Credit Card Services

The City currently accepts credit cards for payment of services. The bank must be able to provide an electronic payment system which will accommodate credit card payments to the City in accordance with State laws.

8. Detailed Account Information

The bank will provide to the City, detailed backup for any debits and

credits, initiated by the bank, to the City's accounts.

9. Monthly Statements

Monthly statements for all accounts must be provided to the Accounting & Audit Division, with documentation supporting all entries on the statement, within five (5) business days after the last calendar day of each month. Canceled checks shall be sorted in numerical order and returned in boxes suitable for storage. The statements shall have checks listed in numerical order with any breaks in the order noted.

10. Resource Personnel

The bank shall identify personnel in its operations department who are available to answer questions pertaining to transactions which require more detailed explanation.

11. Access to Records and Cooperation

The bank shall, upon authorization from the Administrative Services Director, allow reasonable access to bank records by the City's Accounting Manager, the City's independent auditors, and where state or federal assistance is involved, to state and federal auditors, to examine records relating to the use of City funds. The bank shall cooperate in any prosecution for the misuse of checks and misappropriation of funds.

12. New Accounts

If the City develops a need for additional accounts or services during the life of the Banking Services Agreement, those new accounts or services shall be provided with the same conditions as apply to accounts existing at the time. If the Federal Reserve, Depository Institutions Deregulation Committee or other regulatory bodies provide for the establishment of new accounts or other regulations which are favorable to the City, the bank shall make those new services available to the City

13. Return Check Account

Deposit items returned for non-sufficient funds must be automatically redeposited. If an item is returned a second time, it should be charged to the City's Returned Check account and returned to a designated City contact. The City processes approximately 1,800 return items per year.

B. Optional Banking Services

In addition to the basic services described in the "Description of the System and Services to be Performed," the City requests proposals for the following optional services:

1. LOCK BOX COLLECTION

2. COURIER SERVICE

The Bank shall provide courier services to pick up deposits at the City Administration Building at 113 West Mountain Street between 2:00 and 2:30 p.m. each banking day. (This does not include coins from the parking system which are addressed elsewhere in this document.) The courier will also deliver the prior day's deposit slips, canceled checks and statements at the end of each month, and other miscellaneous items. The City will be supplied with sufficient lock-able deposit bags.

3. GROUP BENEFITS

The bank may propose additional services available to large employee groups. These benefits could include, but not be limited to, group discounts on health services, travel, telephone services, and insurance.

4. OTHER SERVICES

A proposer may, under separate cover, submit optional proposals for other services that the proposer feels would be in the best interest of the City. Any optional service proposal will be considered separately from the basic service proposal. Each proposal is to be separate, so that each can be considered as a complete entity.

III. COMPENSATION

A. General Information

1. Net Interest

A bank may agree to provide required services at no cost to the City and bid a net interest rate that will be paid on daily account balances.

2 Fee Based

A bank may agree to charge the City fees for specified services and pay a quoted interest rate on daily account balances. (See Appendix A)

Bidders may also propose to provide additional services to the City at no cost or for a specified fee. These additional services will be considered by the City in the evaluation of the bids if their economic benefit can be quantified.

IV. MINIMUM QUALIFICATIONS TO BID

A. Location Within the City Limits

A proposer must be a federally or State of Arkansas chartered banking institution with banking facilities located within the City limits of the City of Fayetteville. If the headquarters of the proposer is not located within the City limits, a branch bank of the proposer located within the City must be able to offer the full range of banking services required by this RFP. Any question as to whether a proposer meets this qualifying condition may be submitted to the Administrative Services Director in writing prior to submission of a proposal.

B. Designated Depository

A proposer must be designated as a qualified depository for public funds pursuant to Arkansas Code Annotated 19-8-105. Currently, depositories are not allowed to receive deposits of public funds in excess of twenty-five percent (25%) of their total general deposits, exclusive of public funds.

C. Report of Capital and Surplus

A proposer shall have on file with the Administrative Services Director and the City Council the affidavit of one of its officers of the amount of its capital stock and surplus. The bank selected to perform banking services shall maintain a capital structure equal to or greater than the amount of the City deposits.

D. Required Financial Information

Each proposer shall submit, with their proposal, copies of their quarterly call reports for the past two (2) years and their annual financial reports for the past three (3) years. These reports will be used by the City to determine the financial strength of the proposer. The successful proposer shall, during the duration of this contract, continue to furnish to the City updated issues of each report in a timely manner.

V. BIDDING INSTRUCTIONS

1. Sealed proposals must be received no later than 5:00 P.M. on **June 18, 2001.**

2. Sealed proposals must be submitted or mailed to: Peggy Vice, Purchasing Manager, Room 306, 113 West Mountain, Fayetteville, AR 72701.

3. Eight (8) copies of the proposal must be provided in the submission.

4. The sealed proposals should be clearly labeled **RFP 01-06** on the outside of the envelope.

5. All proposals submitted shall be binding for ninety (90) calendar days following the above due date for receipt of proposals.

To facilitate the clarification of requirements, proposers are requested, if possible, to submit questions in writing by **June 11, 2001**. Please submit your questions to:

John Maguire
Administrative Services Director
City of Fayetteville
113 West Mountain
Fayetteville, Arkansas 72701
Telephone (501) 575-8330.

VI. RFP EVALUATION/SELECTION CRITERIA

The City will utilize the Professional Selection Policy & Procedure of the City (PUR-13) to choose the selected firm(s). A copy of the professional selection policy and procedure is attached for informational purposes.

The proposals will be reviewed by a committee consisting of representatives of the Mayor, City Council, City staff, and community leaders. The selection committee will select the most qualified firm for the job by grading the firms based on the following point structure:

(1) Availability of services (both basic and optional) within the RFP, completeness of proposal and staff qualifications 20%
(2) Financial Strength and capacity of the bank 20%
(3) Proposed method (procedures, staff assigned, proximity, convenience) 10%
(4) Past record of performance, familiarity with similar businesses, references . . 30%
(5) Cost 20%

Responsiveness to the criteria will be measured as follows:

A check will be made to ensure that a proposer is qualified under Arkansas Code Annotated 19-8-105 as a designated depository; that the submitted proposal forms are complete and that the required financial data has been attached. Financial strength and capacity evaluation will be based upon the information contained in the annual financial reports and call reports as required. Tests on these reports shall include but not be limited to the following:

- Gross loans, as a percentage of total assets
- Loan loss reserves, as a percentage of gross loans
- Core deposits, as a percentage of total assets
- Borrowed funds, as a percentage of total assets
- Equity capital as a percentage of total assets
- Equity growth.
- Return on assets
- Equity growth in relation to asset and deposit growth

All proposals from qualified public depositories that pass the completeness test and financial strength/capacity tests and provide a satisfactory service level will then be ranked based upon past performance (or references) and then upon least total cost to the City. Least total cost to the City is defined as the lowest combination of projected monthly service costs, float factor, highest earnings factor specified in the bank's proposal and the resulting compensation balance or direct fee basis.

The basic required service proposal will be evaluated separately from any optional service proposal. Please make each proposal separate, so that each can be evaluated on its individual completeness and cost criteria.

Standard Terms and Conditions Relating to the City's RFP Process:

1. The City reserves the right to reject any or all proposals, the right in its sole discretion to accept the proposal which it considers most favorable to the City's interest, and the right to waive any minor irregularity or technicality in proposals received.

2. Failure to observe any of the instructions or conditions in this Request for Proposal may constitute grounds for rejection.

3. The City will not be liable for any costs incurred in the preparation of proposals.

4. The City reserves the right to request an interview with any proposer to determine service capabilities in greater detail and to clarify any unclear areas in the proposal. This may include a site visit to the proposer's facilities.

5. In the event the proposer to whom the contract is awarded does not execute a contract within 45 days of such award, the City may give notice to such proposer of intent to award the contract to the next ranked proposer, or to call for new proposals.

6. By submitting a proposal, the proposer certifies that the appropriate bank officer has read and fully understands this RFP and has full knowledge of the scope, nature, quantity, and quality of work to be performed; the detailed requirements of the services to be provided; and the conditions under which the services are to be performed.

7. The City reserves the right to accept or reject any item or combination of items within a proposal.

8. The City reserves the right to conduct pre-contract negotiations with any or all proposers.

9. The proposer shall furnish such additional information as the City may reasonably require. The City reserves the right to make investigations of the qualifications of the proposer as it deems appropriate.

10. The City reserves the right to invest any or all funds in accordance with applicable statutes, City ordinances, and bond covenants.

11. This RFP contains an anticipated number of transactions. Although this is the City's best estimate of expected volumes, the City cannot guarantee that such will be the actual transaction volumes.

12. All proposals will become the property of the City of Fayetteville when received and, as such, will be subject to Arkansas' Freedom of Information Act.

VII. CONTRACT TERMS

1. *Contract Period* - The selected bank shall be designated as the City's primary bank for an initial 1 year term. The banking services contract shall contain an automatic renewal clause which may be used for the following 4 year(s) under the same terms and conditions, thereby providing for 5 years of banking services.

2. *Cancellation of Contract* - The banking services contract shall provide that the City reserves the right to cancel any agreement at any time upon 90 days prior written notice of its intent to terminate any agreement. The designated depository shall provide the City at least 90 days prior written notice of its intent to terminate any agreement. A decision by the City to terminate the banking services contract may not be as a result of an offering of a lower price from another bank during the contract period.

John Maguire
Administrative Services Director
City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

Dear Mr. Maguire:

We have read the Banking Services RFP and fully understand its intent. We certify that we have adequate personnel, equipment, and facilities to fulfill the requirements thereto. We understand that our ability to meet the criteria and provide the required services shall be judged solely by the Banking Services Selection Committee.

We have attached the following:

1. Call reports for the past two years.
2. Annual financial reports for the past three years.

We further certify that we have filed with the Administrative Services Director the affidavit of one of our officers of the amount of this institution's capital stock and surplus in the manner prescribed in Arkansas Code Annotated 19-8-105.

It is understood the above information will be used as evidence of our ability to meet the capital structure requirements necessary to service this account.

It is further understood that all information included in, attached to, or required by this Request for Proposal shall become public record upon their delivery to the Administrative Services Director.

Submitted by:

_____
(Bank)

_____
(Authorized Signature) (Title)

_____
(Authorized Signature) (Title)

_____
(Telephone)

_____
(Date)

Appendix A

We agree to furnish such required services to the Administrative Services Director's Office with the following prices:

Checks Posted . . . . . $_____ each
Deposits Posted . . . . . $_____ each
Deposit Items Posted
a. "On us" items . . . . . $_____ each
b. Clearing House items . . . . . $_____ each
c. Electronic items . . . . . $_____ each
Cash Deposited . . . . . $_____ each
Coin Counting and Bagging . . . . . $_____ per hundred
Stop Payments . . . . . $_____ each
Wire Transfers . . . . . $_____ each
ACH Items on Other Banks . . . . . $_____ each
Account Maintenance . . . . . $_____ monthly
Additional Bank Bags:
12" x 15" Locking . . . . . $_____ each
8" x 11" Locking . . . . . $_____ each
6" x 11 1/2" Zippered . . . . . $_____ each
Deposit slips . . . . . $_____each
Returned items . . . . . $_____ each

Other Costs:

Description	Amount
1.	$_____ each
2.	$_____ each
3.	$_____ each
4.	$_____ each

STAFF REVIEW FORM

_____ AGENDA REQUEST
__X__ CONTRACT REVIEW
_____ GRANT REVIEW

For the Fayetteville City Council meeting of _____

FROM:

Sharon Crosson	Parking Management	Utility Services
Name	Division	Department

ACTION REQUIRED:
Approval of Agreement between the City of Fayetteville and the Fayetteville A & P Commission for the City to operate and manage the Town Center deck in exchange for 40 parking spaces.

COST TO CITY:
12,000 - Rev 2 Service Exchange
12,000 - Exp 3

$ .00	$	
Cost of this Request	Category/Project Budget	Category/Project Name
	$	
Account Number	Funds Used To Date	Program Name
	$	
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ____ Budgeted Item ____ Budget Adjustment Attached

Budget Manager	Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

Marsha Farthing	8/15/01	Danny Smith	8/15/01
Accounting Manager	Date	Internal Auditor	Date
[signature]	8/14/01		
City Attorney	Date	ADA Coordinator	Date
Purchasing Officer	Date		

GRANTING AGENCY: _____

STAFF RECOMMENDATION:
Approval of 6 month contract.

Sharon Crosson	8-13-01	Cross Reference
Division Head	Date	
[signature]	8-15-01	New Item: **Yes** **No**
Department Director	Date	
[signature]	8/20/01	Prev Ord/Res #: _____
Administrative Services Director	Date	
[signature]	8/23/01	Orig Contract Date: _____
Mayor	Date	
		Orig Contract Number: _____

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FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Dan Coody

FROM: Sharon Crosson, Utilities Manager

DATE: August 13, 2001

SUBJECT: **Request for Approval of Agreement with A & P Commission**

Staff recommends the approval of the attached Agreement with the Fayetteville Advertising and Promotion Commission. The Agreement provides that the A & P will afford the city 40 parking spaces in the Town Center parking deck in exchange for operations and management services of the deck. The contract term is for 6 months, at which time we will revisit the issue and make changes accordingly.

When the construction of the Town Center began, the project displaced parking for 40 city employees by allowing the parking areas to be used for storage of construction materials. The 40 employees were relocated to a lot on Spring Street by utilizing the Park-N-Ride program. Now that the construction has ended, we had hoped to regain parking areas that we previously used. However, I have found that due to current ordinances, these parking areas may not be reused until the lot(s) are paved, curbed, and sidewalks installed. In light of the fact that the Park-N-Ride program cost the City over $2,400 per month, it was decided to discontinue this program and find alternative parking. Therefore, until we resolve the issue of regaining use of our original parking areas, the City is in immediate need of 40 parking spaces.

At the July 9th A & P Commission meeting, the A & P asked the City of Fayetteville to provide management of the Town Center parking deck. The City already has the staff, expertise, equipment, and billing system in place to accommodate this service. Therefore, we decided to propose an even exchange of our services for 40 spaces in the deck.

I feel that this Agreement serves the best interest of both entities by providing the immediate needs of both. I request approval of this contract and we will review it again in 6 months. Thank you for your consideration.

/slc

Attachment

AGREEMENT

This Agreement, made and entered into this 13th day of August, 2001, by and between the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called the City, and the Fayetteville Advertising and Promotion Commission, operating as the Fayetteville Town Center, hereinafter called the Commission.

WITNESSETH, IN CONSIDERATION of mutual promises of the parties contained herein and other good and valuable consideration, the parties agree as follows:

1. This agreement shall remain in full force and effect for an initial term of six (6) months from the above date. Upon completion of the initial term, the needs of the parties shall be re-evaluated.

2. This agreement is for an exchange of services between the parties. The City agrees to manage the parking deck at the Town Center, with duties to include:

   a. Preparing lease agreements for customers desiring to lease parking deck spaces.

   b. Billing customers either monthly or quarterly, and receiving customer lease payments.

   c. Removing any and all moneys and tokens from the auto cashier machine and transferring custody and control of such directly to authorized Commission personnel.

   d. Providing an accounting of all revenues received through the parking lease program and the auto cashier machine on a monthly basis.

   e. Programming and distributing parking cards, and maintaining the associated customer accounts.

   f. Notifying customers of "Event Days" when parking cards cannot be used to access the parking deck. Providing cardholders with information on alternative parking during "Event Days," as well as providing them with hang tags, tokens, or other supplies needed

for alternative parking (as stated in the attached "Procedures for Alternative Parking on Event Days").

g. Providing routine maintenance on gates, card readers, auto cashier machine, credit card reader, etc., provided that any costs and expenses incurred for vendor-provided equipment maintenance shall be borne by the Commission. Additionally, all costs and expenses incurred for the purchase of equipment and supplies for the operation of the parking deck shall be borne by the Commission, provided that such purchases have the prior approval of a designated representative of the Commission.

h. Attending the auto cashier machine in a diligent and timely manner to ensure the coin hopper has a sufficient number of coins to provide correct and sufficient change to customers.

i. Taking customer calls and complaints concerning the parking deck.

3. In exchange for these services, the Commission agrees to provide forty (40) parking spaces on the deck to be used by employees of the City of Fayetteville, provided that:

a. The City agrees to abide by the same rules that apply to the other customers leasing spaces on the deck.

b. The City agrees to allocate parking cards only to city employees.

c. The City shall expend its best efforts to discourage nighttime parking, as the Town Center frequently holds nighttime events.

d. The City shall encourage employees to park towards the west end of the deck, leaving spaces closest to the elevators open for customer parking.

4. The Commission shall be responsible for all collection actions associated with delinquent accounts, provided that the City shall be responsible for informing the Commission of such accounts in a timely manner.

5. Neither party may assign any of its rights or obligations under this agreement, without the express written consent of the other.

6. The parties agree and understand that this Agreement is exclusive of any and all other agreements, and that it in no way alters, amends or abridges any rights, obligations or duties of the parties contained in such agreements.

7. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance, and shall not be construed as a general waiver of any other breaches by either party.

8. This Agreement constitutes the entire understanding of the parties, and no modification or variation of the terms of this agreement shall be valid unless made in writing and signed by the duly authorized agents of the City and the Commission.

IN WITNESS WHEREOF, the City and the Commission have executed this Agreement on or as of the date first written above.

CITY OF FAYETTEVILLE

_____

Dan Coody, Mayor

ATTEST:

_____

Heather Woodruff, City Clerk

ADVERTISING AND PROMOTION COMMISSION

By: _____

ATTEST:

By: _____

ATTORNEY GENERAL OF ARKANSAS
Mark Pryor

Opinion No. 2001-198

August 15, 2001

The Honorable Janice A. Judy
State Representative
202 West Maple Street
Fayetteville, AR 72701-4132

Dear Representative Judy:

I am writing in response to your request for an opinion on the following question:

> Can the City of Fayetteville, by ordinance, provide for an appeal of decisions by the city's planning commission granting or denying a conditional-use permit to the city's governing body?

RESPONSE

It is my opinion that the answer to this question is "yes."

You mention in your correspondence that you believe A.C.A. § 14-56-416 (b) (2) (B) (i) (c) is the basis for the so-called "conditional-use permits" being issued under municipal zoning ordinances. Section 14-56-416 (b) (2) (B) (i) (c) provides that "[t]he board [of zoning adjustment] may impose conditions in the granting of a variance to insure compliance and to protect adjacent property." You also state that "[a]ccording to subdivision (b) (2) (B) (ii), the board of zoning adjustment decision regarding a variance or a conditional-use permit is subject to appeal 'to a court of record having jurisdiction.'" You note, however, that several Arkansas cities allow appeals to the governing body of decisions regarding conditional-use permits. You apparently question this in light of § 14-56-416 (b) (2) (B) (ii).

Section 14-56-416 (b) (2) (B) (ii) provides in full that "[d]ecisions of the board [of adjustment] in respect to the above shall be subject to appeal only to a court of record having jurisdiction." It seems clear that the "[d]ecisions of the board in

respect to the above" are those decisions pertaining to requests for variances in accordance with § 14-56-416 (b) (2) (B), which pertains only to variances. This would include conditional variances, which are authorized under § 14-56-416 (b) (2) (B) (i) (c). The phrase "[d]ecisions of the board in respect to the above" does not, however, in my opinion, encompass so-called "conditional uses." It is my opinion that the legislature did not have such conditional uses in mind when it authorized conditional variances under § 14-56-416 (b) (2) (B) (i) (c). In accordance with A.C.A. § 14-56-416 (b) (2) (B) (i) (b), a board of adjustment "shall not permit, as a variance, any use in a zone that is not permitted under the [zoning] ordinance." As reflected by this provision, a variance involves a use that is permitted in the particular zone. As a general matter, in the zoning process a "conditional use" is not the same as a "variance" from a use that is permitted in a particular zone. As noted by one authority on zoning matters, the "conditional use permit situation" involves "certain uses which are not permitted as a matter of right in particular use districts...." *See* R. Wright, *Zoning Law in Arkansas: A Comparative Analysis,* 3 UALR Law Journal 421, 452. The use may be "permitted conditionally when the end result will not adversely affect the comprehensive plan for the area and is not incompatible with the permitted uses." *Id. See also Rolling Pines v. City of Little Rock,* 73 Ark. App. 97, 100, __ S.W.3d __ (2001) (involving an application for a conditional use permit with regard to manufactured homes under the City of Little Rock's zoning code which, as stated by the court, "do[es] not allow manufactured homes to be placed in an R-2 district as a matter of right[,]" but which "does allow them as a conditional use, provided certain criteria are met.")

I must therefore conclude that you are incorrect in your belief that A.C.A. § 14-56-416 (b) (2) (B) (i) (c), which authorizes conditional variances, is the basis for the so-called "conditional-use permits" being issued under municipal zoning ordinances. The conditional use permit is a distinct device that has been developed in the municipal zoning process. *See generally* Wright, *Zoning Law in Arkansas, supra.* It thus follows that A.C.A. § 14-56-416 (b) (2) (B) (ii), requiring appeals to courts of record of decisions in respect to variances, is inapplicable.

A review of the pertinent City of Fayetteville ordinances reflects this distinction between a "variance" and a "conditional use." According to information submitted to this office by the Fayetteville City Attorney, conditional uses in Fayetteville are decided by the Planning Commission. It appears that the process is similar to that under Little Rock's zoning ordinances, as reflected in *Rolling Pines, supra.* In *Rolling Pines*, the Little Rock Planning Commission denied the manufactured home conditional use permit application. The applicant appealed the Commission's decision to the Little Rock City Board of Directors pursuant to

the zoning code. 73 Ark. App. at 101. There is no indication in the reported decision that this process was questioned or challenged.

It is my opinion that there is no prohibition against a city providing for an appeal of its planning commission's decisions regarding conditional use permits to the city's governing body. The provisions of A.C.A. § 14-56-416 (b) (2) do not, in my opinion, address the conditional use permit. In accordance with § 14-56-416 (a) (3) (C), the zoning ordinance may provide for "compatible uses" and for "elimination of uses" and it may provide for "such other matters as are necessary to the health, safety, and general welfare of the municipality." The ordinance shall also "include provisions for administration and enforcement." *Id.* at subsection (a) (3) (D). In my opinion, these provisions afford ample basis for such an appeal process involving conditional use permits.

Assistant Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

MARK PRYOR
Attorney General

MP:EAW/cyh

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Mayor Dan Coody
FROM: Hugh Earnest, Urban Development Director
DATE: August 13, 2001

BACKGROUND:

RZN 01-14.00: Rezoning was submitted by Donna Treat of Coldwell Banker Faucette on behalf of Greg & April Robinson for property located at 1245 N. 51st Street. The property is zoned A-1, Agricultural contains approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential. The subject property is located immediately south of the City Limits on the west side of Sunshine Road (51st Street), north of Wedington Drive and west of the Fieldstone Subdivision. Properties surrounding the subject tract are developed primarily as single family homes. The Fayetteville City Limit line divides the property with a strip of land approximately 50' wide lying within Washington County. The portion of the property within Washington County is not included in the description of property to be rezoned.

The applicant is seeking approval of a lot split in order to divide this property to create a new lot for a single family home. The lot split cannot occur without rezoning approval since minimum lot requirements in the A-1 zoning district call for a 2 acre tract with at least 200' of lot width. In the requested R-1 district, a lot must have 8,000 s.f. of area and at least 70' of width.

This rezoning may only create one additional lot and development is restricted to one single family home. This will be a minimal increase in density in this area. The proposed rezoning is in keeping with the character and general development patterns of this area.

CURRENT STATUS

Staff recommended the rezoning and the Planning Commission voted 8-0-0 to recommend approval to the City Council.

RECOMMENDATION

Staff recommends approval of the requested rezoning.

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STAFF REVIEW FORM

_X_ Agenda Request
____ Contract Review
____ Grant Review

For the Fayetteville City Council meeting of September 4, 2001.

FROM:

Tim Conklin	Planning	Public Works
Name	Division	Department

ACTION REQUESTED: To approve an ordinance for RZN 01-14.00 submitted by Donna Treat of Coldwell Banker Faucette on behalf of Greg & April Robinson for property located at 1245 N. 51st Street. The property is zoned A-1, Agricultural containing approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential.

COST TO CITY:

$0		
Cost of this request	Category/Project Budget	Category/Project Name
Account Number	Funds used to date	Program Name
Project Number	Remaining balance	Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

Budget Coordinator — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**_____

Accounting Manager	Date	ADA Coordinator	Date
City Attorney	Date	Internal Auditor	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended approval and Planning Commission voted 8-0-0 to recommend and forward the rezoning to the City Council.

Division Head	8-15-01 Date	**Cross Reference**
Department Director	Date	New Item: **Yes** **No**
Administrative Services Director	8/21/01 Date	Prev Ord/Res#:_____
Mayor	8/23/01 Date	Orig Contract Date: _____

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 01-14.00 FOR A PARCEL CONTAINING APPROXIMATELY 2.26 ACRES FOR PROPERTY LOCATED AT 1245 N. 51ST , AS SUBMITTED BY DONNA TREAT OF COLDWELL BANKER FAUCETTE ON BEHALF OF GREG & APRIL ROBINSON.

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

Section 1: That the zone classification of the following described property is hereby changed as follows:

From A-1, Agricultural to R-1, Low Density Residential described in Exhibit "A" attached hereto and made a part hereof.

Section 2. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this _____ day of _____, 2001.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

EXHIBIT "A"
RZN 01-14.00

PART OF LOT 8 (IN FAYETTEVILLE CITY LIMITS)
PART OF LOT NUMBER 8 IN HAMESTRING SOUTH ADDITION, AS PER PLAT ON FILE IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF WASHINGTON COUNTY, ARKANSAS. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:
BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT AND RUNNING THENCE N00°31'02"W 148.96 FEET, THENCE N89°32'26"E 648.64 FEET, THENCE S00°18'00"E 154.16 FEET, THENCE WEST 648.08 FEET TO THE POINT OF BEGINNING CONTAINING 2.26 ACRES MORE OR LESS.

RZN 01-14.00: Rezoning (Robinson, pp 398) was submitted by Donna Treat of Coldwell Banker Faucette on behalf of Greg & April Robinson for property located at 1245 N. 51st Street. The property is zoned A-1, Agricultural contains approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential.

Estes: The next item to come before your Commission is a rezoning request 01-14.00 submitted by Donna Treat of Coldwell Banker Faucette on behalf of Greg & April Robinson for property located at 1245 N. 51st Street. The property is zoned A-1, Agricultural contains approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential. Staff recommends approval of the requested rezoning based on the findings included as a part of your report. Is the applicant present?

Treat: My name is Donna Treat with Coldwell Banker Faucette Real Estate and I represent Greg and April Robinson, the owners.

Estes: Donna, do you have any presentation that you would like to make to us or would you like to just be available to answer questions from the Commission?

Treat: I have no presentation.

Estes: Commissioners, do you have any questions of Ms. Treat regarding this rezoning request?

PUBLIC COMMENT:

Estes: Seeing none, is there any member of the audience who would like to provide comment regarding this rezoning request?

COMMISSION DISCUSSION:

Estes: Seeing none, I'll bring it back to the Commission for motions, comments or any questions of the applicant.

MOTION:

Marr: I would like to move for approval of rezoning 01-14.00 to recommend to City Council.

Shackelford: I'll second.

Planning Commission
August 13, 2001
Page 9

Estes: We have a motion by Commissioner Marr and second by Commissioner Shackelford to approve RZN 01-14.00, is there any discussion or comments? Sheri, would you call the roll?

ROLL CALL:

Upon roll call RZN 01-14.00 is approved by a unanimous vote of 8-0-0 and will be forwarded on to the City Council for their determination.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Dawn T. Warrick, Planner
THRU: Tim Conklin, A.I.C.P., City Planner
Hugh Earnest, Urban Development Director
Kit Williams, City Attorney
DATE: August 13, 2001

RZN 01-14.00: Rezoning (Robinson, pp 398) was submitted by Donna Treat of Coldwell Banker Faucette on behalf of Greg & April Robinson for property located at 1245 N. 51st Street. The property is zoned A-1, Agricultural contains approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential.

RECOMMENDATION:

Staff recommends approval of the requested rezoning based on the findings included as part of this report.

PLANNING COMMISSION ACTION: **Required** **YES**
O Approved **O Denied**

Date: **August 13, 2001**

CITY COUNCIL ACTION: **Required** **YES**
O Approved **O Denied**

Date: **September 4, 2001 (first reading)**

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Comments: _____

_____

_____

BACKGROUND:

The subject property is located immediately south of the City Limits on the west side of Sunshine Road (51st Street), north of Wedington Drive and west of the Fieldstone Subdivision. Properties surrounding the subject tract are developed primarily as single family homes. The Fayetteville City Limit line divides the property with a strip of land approximately 50' wide lying within Washington County. The portion of the property within Washington County is not included in the description of property to be rezoned.

The applicant is seeking approval of a lot split in order to divide this property to create a new lot for a single family home. The lot split cannot occur without rezoning approval since minimum lot requirements in the A-1 zoning district call for a 2 acre tract with at least 200' of lot width. In the requested R-1 district, a lot must have 8,000 s.f. of area and at least 70' of width.

This rezoning may only create one additional lot and development is restricted to one single family home. This will be a minimal increase in density in this area. The proposed rezoning is in keeping with the character and general development patterns of this area.

SURROUNDING LAND USE AND ZONING

North:	Single family home, Washington County
South:	Single family home, A-1
East:	Single family home, R-1
West:	Single family home, A-1

INFRASTRUCTURE:

Sunshine Road (51st Street) is located along the eastern property line and runs north from Wedington Drive to Mt. Comfort Road. In this location, the street is paved but does not have curb, gutter or storm drains. Further north, this street is a county road and is unpaved. The street, north of this project site is designated as a principal arterial on the Master Street Plan which will carry traffic from Hwy 62 north towards Tontitown (see maps included in agenda packet).

Water and sewer both run along the west side of the street right-of-way adjacent to this property.

LAND USE PLAN: General Plan 2020 designates this site **Residential.** Rezoning this property to R-1, Low Density Residential is consistent with the land use plan and compatible with surrounding land uses in the area.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: **The proposed zoning is consistent with the City's adopted General Plan 2020 which designates this area as Residential. Adjacent properties are developed with single family homes.**

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 at this time. The applicant seeks to divide the property into two lots and to build a second single family home north of the existing structure.**

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 appreciable increase traffic danger or congestion.**

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: **The proposed zoning will alter the population density slightly, however this increase will not undesirably increase the load on public services. If this property remains in the A-1 zoning district, the existing single family home is the maximum density that would be permitted based on lot area requirements in that district. The proposed zoning of R-1 will only permit the creation of one additional lot which will allow for one new single family home on the 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**

§ 161.04 DISTRICT R-1: LOW DENSITY RESIDENTIAL.

A. Purpose. The Low Density Residential District is designed to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

B. Uses.

1. Permitted Uses.

Unit 1	City-Wide Uses by Right
Unit 26	Single-Family Dwelling

2.

Uses Permissible on Appeal to the Planning Commission.

Unit 2	City-Wide Uses by Conditional Use Permit
Unit 3	Public Protection and Utility Facilities
Unit 4	Cultural and Recreational Facilities
Unit 8	Single-Family and Two-Family Dwellings

C. Density.

SINGLE-FAMILY DWELLINGS	TWO FAMILY DWELLINGS
4 or Less Families Per Acre	7 or Less Families Per Acre

D. Bulk and Area Regulations.

	Single-Family	Two-Family
Lot Minimum Width	70 ft.	80 ft.
Lot Area Minimum	8,000 sq. ft.	12,000 sq.ft.
Land Area Per Dwelling Unit	8,000 sq. ft.	6,000 sq. ft.

E. Yard Requirements (feet).

FRONT YARD	SIDE YARD	REAR YARD
25	8	20

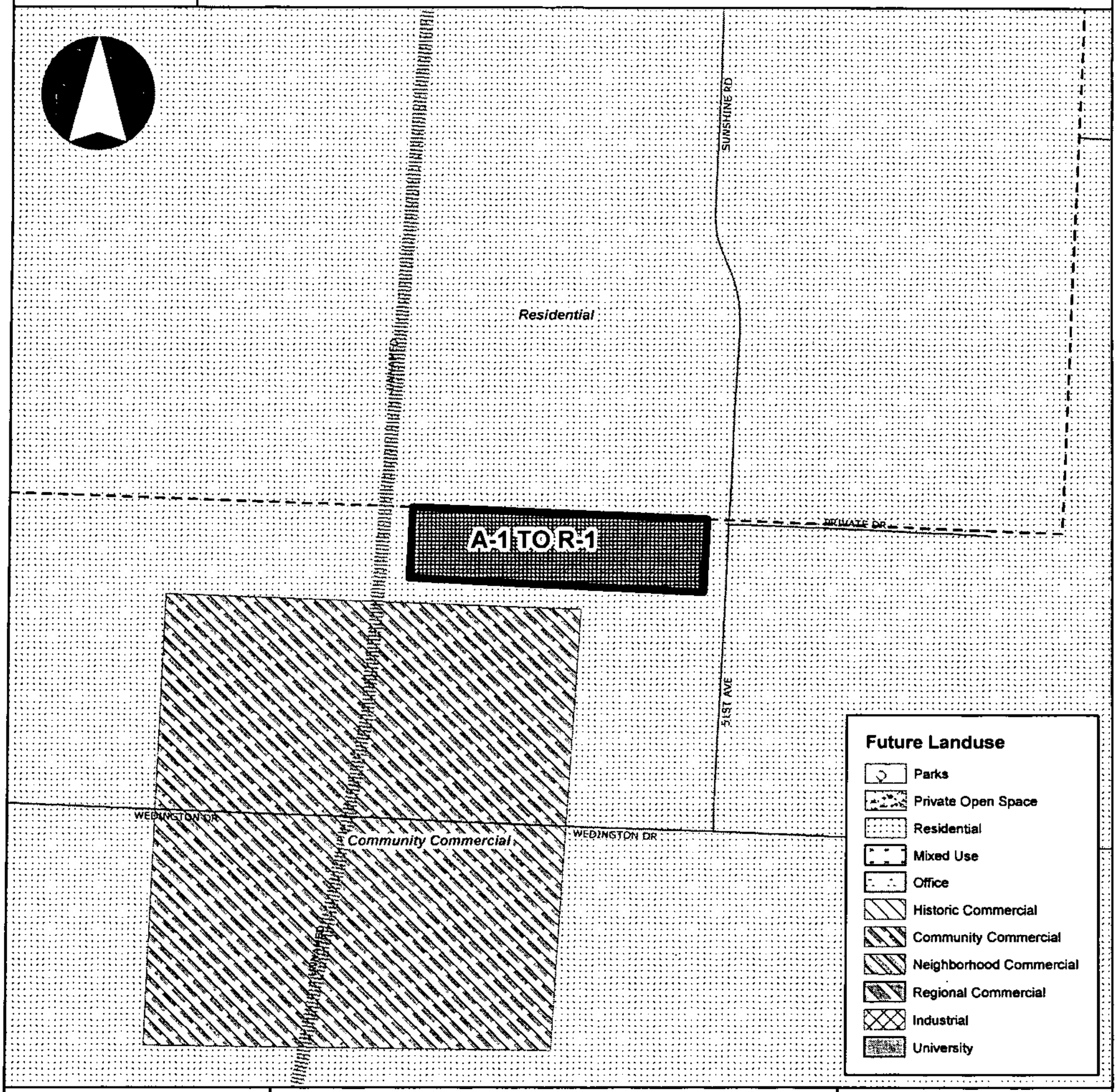
F. Building Area. On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

(Code 1991, §160.031)

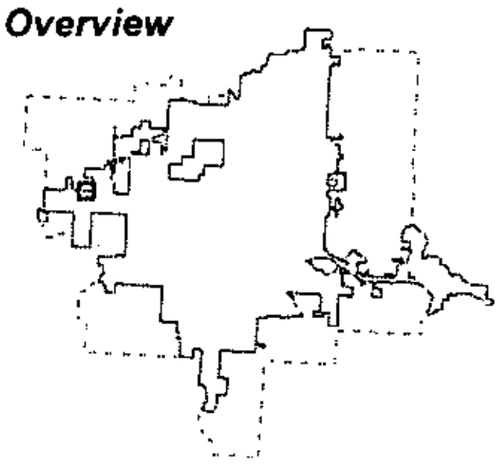
RZN01-14.00

Future Landuse

ROBINSON



Overview



Legend

Subject Property
RZN01-14.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits

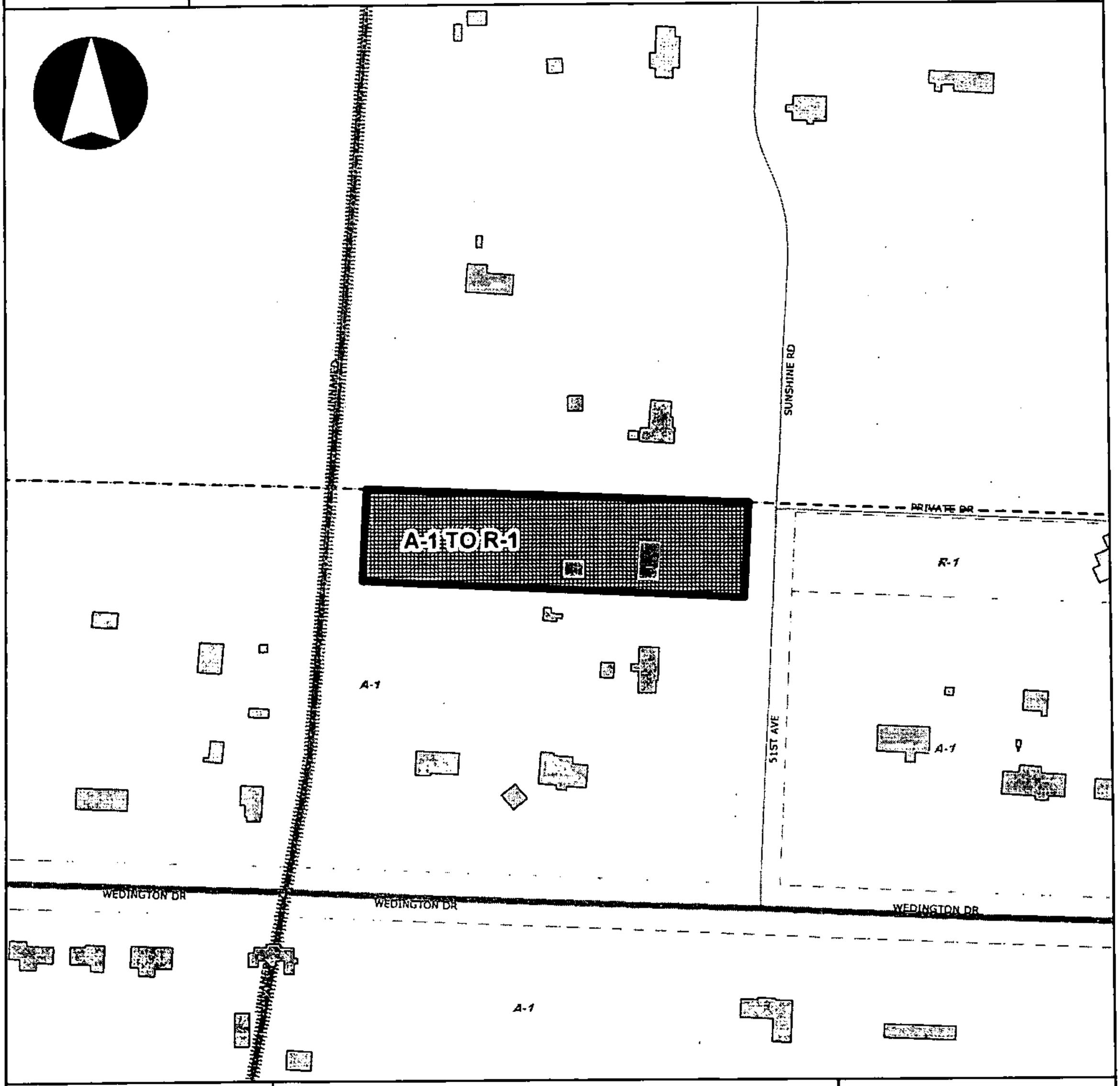
0 100 200 400
Feet

CITY OF FAYETTEVILLE ARKANSAS

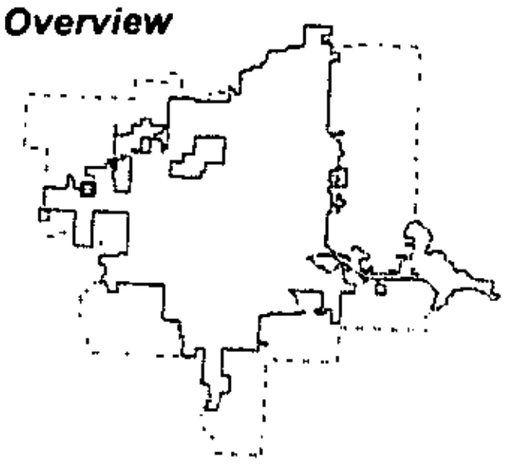
RZN01-14.00

Close Up View

ROBINSON



Overview



Legend

Subject Property
RZN01-14.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

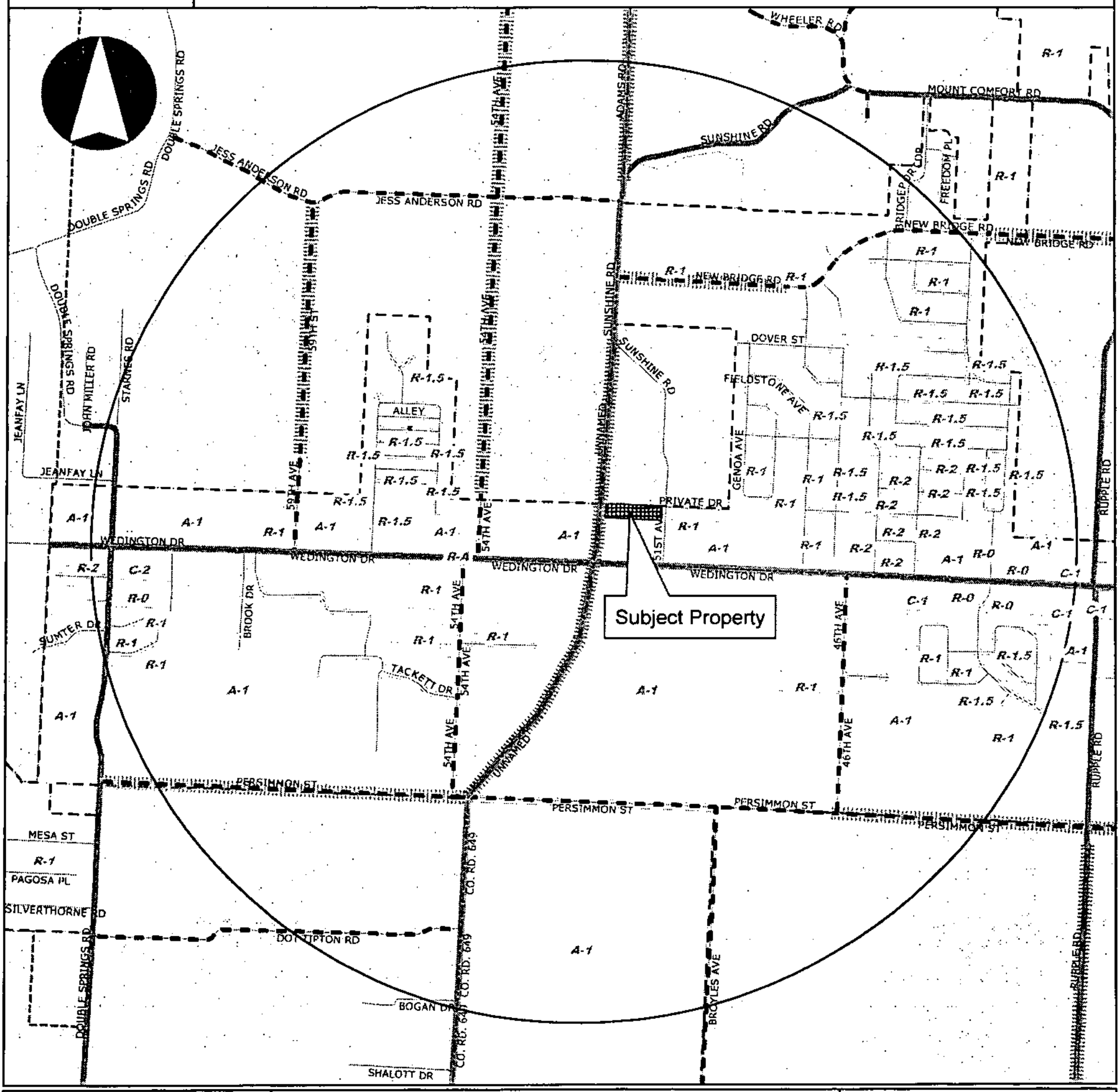
0 100 200
Feet

CITY OF FAYETTEVILLE ARKANSAS

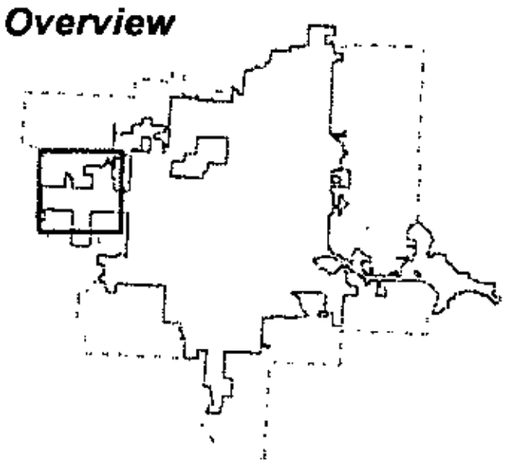
RZN01-14.00

ROBINSON

One Mile View



Overview



Legend

Subject Property
RZN01-14.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

0 0.125 0.25 0.5
Miles

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
113 W. Mountain St.
Fayetteville, AR 72701

Easement Vacation
Marriot Courtyard

TO: Mayor Dan Coody
Fayetteville City Council
FROM: Hugh Earnest, Urban Development Director
DATE: August 21, 2001

BACKGROUND

VAC 01-6.00: Vacation was submitted by Andy Feinstein of Engineering Design Assoc. on behalf of Marriott Courtyard for property located on lot 17 CMN Business Park. The property is zoned C-2, Thoroughfare Commercial and contains approximately 1.95 acres. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on lot 17 of CMN Business Park Phase I..

The applicant is requesting to replace a portion of the existing easements on the south & east of this lot to the north & west sides of the lot. All existing utility lines effected within these portions of the easements are proposed to be relocated to the new easements in order to construct a Courtyard by Marriot hotel on the property.

CURRENT STATUS

Staff recommended approval and the Planning Commission voted 7-0-0 to approve the vaction request.

RECOMMENDATION

Approval of the proposed easement vacations with the condition that a 25' utility easement be dedicated along the northern and western sides of Lot 7 as part of the easement plat for the large scale development.

STAFF REVIEW FORM

_X_ **Agenda Request**
____ **Contract Review**
____ **Grant Review**

For the Fayetteville City Council meeting of September 4, 2001.

FROM:

Tim Conklin	Planning	Public Works
Name	Division	Department

ACTION REQUESTED: To approve an ordinance for VA01-6, submitted by Andy Feinstein of Engineering Design Assoc. on behalf of Marriott Courtyard for property located on lot 17 CMN Business Park Phase I, The property is zoned C-2, Thoroughfare Commercial and contains approximately 1.95 acres. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on lot 17 of CMN Business Park Phase I.

COST TO CITY:

$0		
Cost of this request	Category/Project Budget	Category/Project Name
Account Number	Funds used to date	Program Name
Project Number	Remaining balance	Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

Budget Coordinator — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**_____

Accounting Manager	Date	ADA Coordinator	Date
City Attorney	9/17/01 Date	Internal Auditor	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended approval and Planning Commission unanimously voted 8-0-0 to recommend and forward the vacation to the City Council.

Division Head	8-15-01 Date	**Cross Reference**
Department Director	8-17-01 Date	New Item: **Yes** **No**
Administrative Services Director	8/23/01 Date	Prev Ord/Res#:_____
Mayor	8/23/01 Date	Orig Contract Date: _____

ORDINANCE NO. _____

AN ORDINANCE APPROVING VA01-6.00 TO VACATE AND ABANDON A 15' WATER AND SEWER EASEMENT AND ALSO A PORTION OF A 20' GENERAL UTILITY EASEMENT ON LOT 17 OF CMN BUSINESS PARK PHASE I AS REQUEST BY ANDY FEINSTEIN OF ENGINEERING DESIGN ASSOCIATES ON BEHALF OF MARRIOTT COURTYARD.

WHEREAS, the City Council has the authority under A.C.A. §14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes, and

WHEREAS, the City Council has determined that the following described right-of-way is not required for corporate purposes.

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

Section 1. That the City of Fayetteville, Arkansas hereby vacates and abandons all of its rights together with the rights of the public generally, in and to the following described right-of-way:

See Exhibit "A" attached hereto and made a part hereof.

Section 2. That a copy of this Ordinance duly certified by the City Clerk shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

Section 3. That the above is contingent upon receiving the following: Dedication of a 25' utility easement along the northern and western sides of Lot 7.

PASSED AND APPROVED this _____ day of _____, 2001.

APPROVED:

By_____
Dan Coody, Mayor

ATTEST:

By_____
Heather Woodruff, City Clerk

EXHIBIT "A"

Description of Water, Sewer Easement and General Utility

A PERMANENT 15' WATER AND SEWER EASEMENT AS DESCRIBED IN DEED BOOK 2001 AT PAGE 58565 SITUATED ALONG AND CONTIGUOUS TO A 25' PERMANENT DRAINAGE & UTILITY EASEMENT WHICH IS LOCATED ALONG AND CONTIGUOUS TO THE EAST BOUNDARY OF LOT NO. 17 CMN BUSINESS PARK, CITY OF FAYETTEVILLE, ARKANSAS EXCLUDING THE NORTHERNMOST 10'. ALSO THE NORTHERNMOST 15' OF THE 20' GENERAL UTILITY EASEMENT ALONG AND CONTIGUOUS TO THE SOUTHERN LINE EXCLUDING THE WESTERNMOST 10' OF SAID LOT NO. 17 LOCATED IN THE NORTHWEST QUARTER (NW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 26, TOWNSHIP 17 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS AS SUCH UTILITY EASEMENTS ARE MORE PARTICULARLY SHOWN ON THE PLAT OF SAID LOT FILED FOR RECORD OCTOBER 8, 1993 IN BOOK 12, PAGE 92, IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF WASHINGTON COUNTY ARKANSAS

Consent Agenda:

VAC 01-6.00: Vacation (Marriott Courtyard, pp 213) was submitted by Andy Feinstein of Engineering Design Assoc. on behalf of Marriott Courtyard for property located on lot 17 CMN Business Park. The property is zoned C-2, Thoroughfare Commercial and contains approximately 1.95 acres. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on lot 17 of CMN Business Park Phase I.

VAC 01-7.00: Vacation (Greg Brockman, pp 286) was submitted by Greg Brockman for property located at 2483-2485 Jeremiah. The property is zoned R-2. Medium Density Residential and contains approximately 0.12 acres. The request is to vacate a portion of the utility easement located along the front property line adjacent to Jeremiah Court

Estes: The next item of business to come before your Commission is the Consent Agenda. Vacation 01-6.00 for Marriott Courtyard submitted by Andy Feinstein of Engineering Design Assoc. on behalf of Marriott Courtyard for property located on lot 17 CMN Business Park. The property is zoned C-2, Thoroughfare Commercial and contains approximately 1.95 acres. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on lot 17 of CMN Business Park Phase I. The second item on the consent agenda is also a Vacation request submitted by Greg Brockman for property located at 2483-2485 Jeremiah. The property is zoned R-2. Medium Density Residential and contains approximately 0.12 acres. The request is to vacate a portion of the utility easement located along the front property line adjacent to Jeremiah Court. Either one of these items that are on the consent agenda may be pulled by any member of the Commission or by anyone in attendance in the audience this evening. Does anyone wish to pull either of these two items from the Consent Agenda? Seeing that no one desires to pull these items, would you call the roll Sheri?

ROLL CALL:

Upon roll call the Consent Agenda is approved by a vote of 7-0-0.

PC Meeting of 13 Aug. 01

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
113 W. Mountain St.
Fayetteville, AR 72701

Easement Vacation
Marriot Courtyard

TO: Fayetteville Planning Commission Members
THRU: Tim Conklin, City Planner
FROM: Ron Petrie, Staff Engineer
DATE: August 9, 2001

Project: **VAC 01-6.00: Vacation (Marriott Courtyard, pp 213)** was submitted by Andy Feinstein of Engineering Design Assoc. on behalf of Marriott Courtyard for property located on lot 17 CMN Business Park. The property is zoned C-2, Thoroughfare Commercial and contains approximately 1.95 acres. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on lot 17 of CMN Business Park Phase I..

The applicant is requesting to replace a portion of the existing easements on the south & east of this lot to the north & west sides of the lot. All existing utility lines effected within these portions of the easements are proposed to be relocated to the new easements in order to construct a Courtyard by Marriot hotel on the property.

The applicant has submitted the required notification forms to the utility companies and to the City. The results are as follows:

Ozarks Electric - Not applicable.
Southwestern Electric Power Company - No objections provided that a 5' utility easement is retained along the southern lot line and a 15' utility easement is retained along the eastern lot line.
Arkansas Western Gas - No objections provided that a 25' utility easement is retained on the west side of the property.
SW Bell - No objections provided that "all SWBT plant is to be moved at the owners/developers expense, charges are to be paid in full prior to job start, if relocations are necessary a minimum of eight weeks is required, and additional easements will need to be dedicated to replace those being vacated."
Cox Communications - No objections provided the same easements and considerations are given to them as the Electric Company.

City of Fayetteville:
Water/Sewer - No objections provided that a 25' utility easement is dedicated along the north and west sides of the lot.
Street Department - No objections.
Solid Waste - No objections.

Recommendation: Approval of the proposed easement vacations with the condition that a 25' utility easement be dedicated along the northern and western sides of Lot 7.

PLANNING COMMISSION ACTION: __yes__Required
_____Approved _____Denied

Date: __/__/__

Comments:

_____
_____
_____

CITY COUNCIL ACTION: __yes__Required
_____Approved _____Denied

Date: __/__/__

PETITION TO VACATE EASEMENTS LOCATED IN LOT 17, CMN BUSINESS PARK, CITY OF FAYETTEVILLE, ARKANSAS

TO: The Fayetteville, City Planning Commission and
The Fayetteville City Council

We the undersigned, being the owner of the real estate containing the easements hereinafter sought to be abandoned and vacated, lying totally within Lot 17, CMN Business Park, City of Fayetteville, Arkansas, a municiple corporation, petition to vacate the easements which are described as follows:

A permanent 15' Water and Sewer Easement as described in Deed Book 2001 at Page 58565 situated along and contiguous to a 25' permanent drainage & utility easement which is located along and contiguous to the east boundary of Lot No. 17 CMN Business Park, City of Fayetteville, Arkansas excluding the northernmost 10'. Also the northernmost 15' of the 20' General Utility Easement along and contiguous to the southern line excluding the westernmost 10' of said Lot No. 17 located in the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of Section 26, Township 17 North, Range 30 West, Washington County, Arkansas as such utility easements are more particularly shown on the plat of said lot filed for record October 8, 1993 in Book 12, Page 92, in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County Arkansas

That the real estate affected by said abandonment of the easement are indicated on the attached Exhibit "A", 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 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 granting of new easements as required, and that the above described real estate be used for their respective benefit and purpose as now approved 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 granting of new utility easements and that title to said real estate sought to be abandoned be vested in the propoerty owner as provided by law, and as to that particular land owner be free from the easements of the public for the use of said easements.

Dated this 9 day of Aug 2001 Millsap Road Development Co. LLC & 755 Millsap LLC

Henry Kelley Jr
printed name

Henry Kelley Jr member
signature

LOTS 18 & 19 (PROCTOR & GAMBLE)

CONC DRAINANGE SWALE

10' U.E. (EXISTING TO REMAIN)

25' U.E. (PROPOSED) ACTUAL WIDTH TO BE DETERMINED AT TECHNICAL REVIEW FOR LSD

LOT 17, CMN BUSINESS PARK

EASEMENTS ON EAST & SOUTH TO BE VACATED AND REPLACED WITH EASEMENTS ON NORTH AND WEST SIDES OF LOT.

SOUTH EASEMENT CONTAINS GAS AND UNDERGROUND TELEPHONE. EAST EASEMENT CONTAINS GAS, UNDERGROUND TELEPHONE, AND OVERHEAD ELECTRIC. THE DEVELOPER PROPOSES TO RELOCATE ALL UTILITIES AT HIS EXPENSE.

PLAINVIEW ROAD

10' U.E. (EXISTING TO REMAIN)

25' U.E. (PROPOSED) ACTUAL WIDTH TO BE DETERMINED AT TECH. REVIEW FOR LSD

15' WATER & SEWER EASEMENT TO BE VACATED

25' U.E. & D.E. TO REMAIN

15' WATER & SEWER EASEMENT (DB 2001 PG 58565) TO BE VACATED

NORTHERN 15' OF 20' U.E. (PLAT BOOK 12, PAGE 92) TO BE VACATED

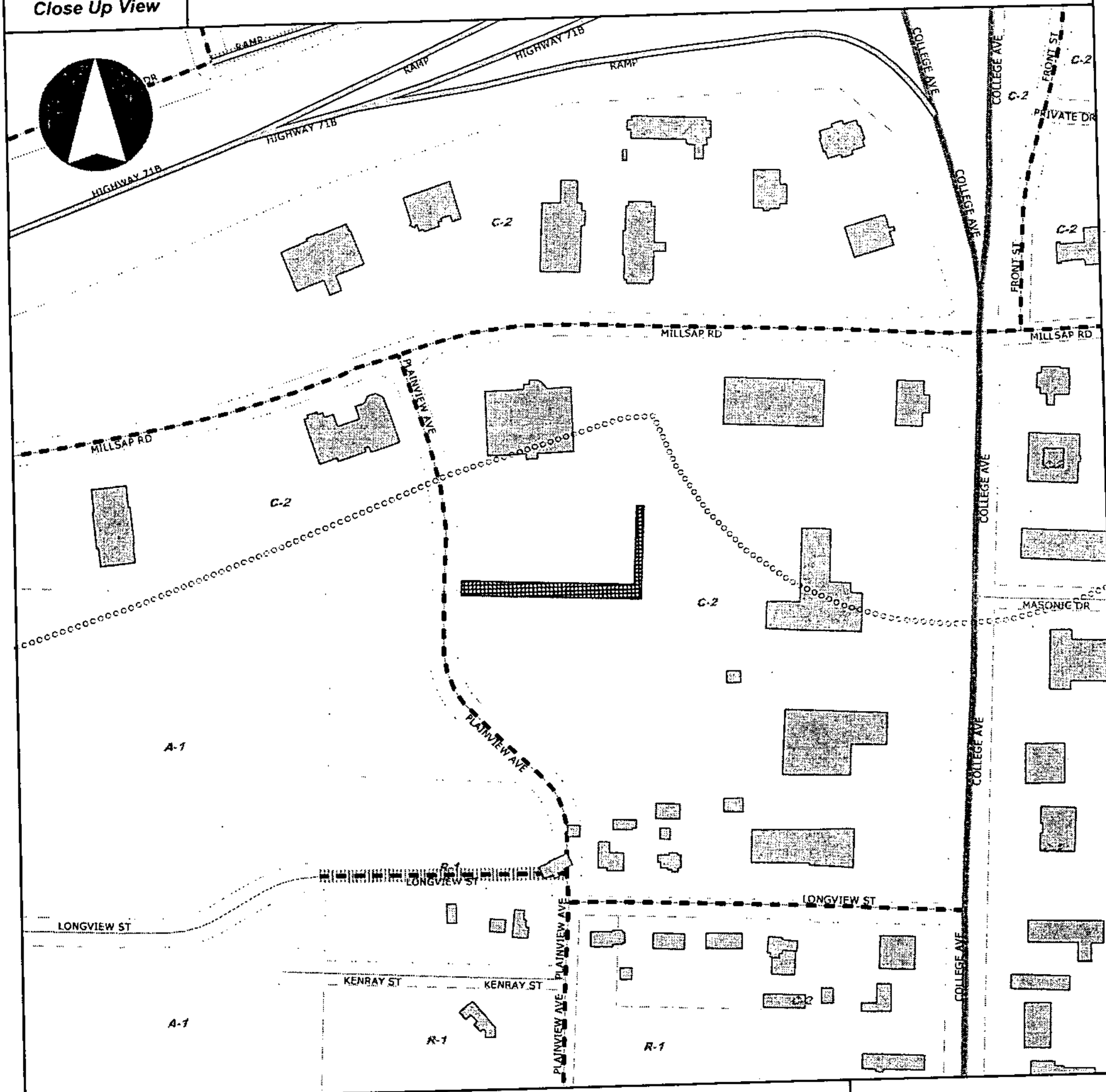
10' U.E. TO REMAIN (OFF SITE)

VAC01-6

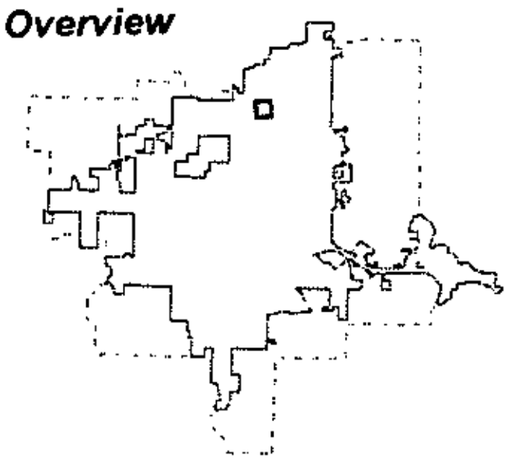
VAC01-06.00

Close Up View

MARRIOTT



Overview



Legend

Subject Property
- VAC01-06.00

Streets
- Existing
- Planned

Boundary
- Planning Area
- Overlay District
- City Limits
- Outside City

Master Street Plan
- Freeway/Expressway
- Principal Arterial
- Minor Arterial
- Collector
- Historic Collector

0 100 200 400 600 Feet

CITY OF FAYETTEVILLE ARKANSAS

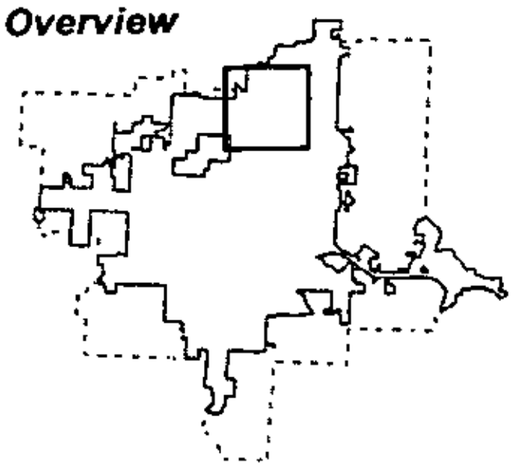
VAC01-06.00

One Mile View

MARRIOTT

Subject Property

Overview



Legend

Subject Property
VAC01-06.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

0 0.125 0.25 0.5 0.75 1 Miles

CITY OF FAYETTEVILLE ARKANSAS

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
113 W. Mountain St.
Fayetteville, AR 72701

Easement Vacation
Brock's Incorporated

TO: Mayor Dan Coody
FROM: Hugh Earnest, Urban Development Director
DATE: August 21, 2001

BACKGROUND

VA 01-07.00: Vacation was submitted by Greg Brockman of Brock's, Inc. for property located at 2483-2485 Jeremiah Place, Lot 7, Coyote Trail Subdivision. The request is to vacate a portion of a 25'wide utility easement adjacent to Jeremiah Place as shown and described on the attached maps and legal descriptions.

The requested easement vacation is due to an error in drafting which caused the duplex to be constructed within the existing 25'utility easement and required front yard. The Board of Adjustment, at the July 2, 2001 meeting approved a variance for the portion of the building located within the 25' required front building setback contingent upon the approval of a vacation of the encroached area of the easement. Only the portion of the easement in which the building encroachment has occurred is being requested to be vacated. There are no existing utilities located within this portion of the easement.

CURRENT STATUS

Staff recommended the vacation and the Planning Commission approved the request by a 7-0-0 vote.

RECOMMENDATION

Approval of the proposed easement vacation.

STAFF REVIEW FORM

_X_ **Agenda Request**
____ **Contract Review**
____ **Grant Review**

For the Fayetteville City Council meeting of September 4, 2001.

FROM:

Tim Conklin	Planning	Public Works
Name	Division	Department

ACTION REQUESTED: To approve an ordinance for VA01-7, submitted by Greg Brockman of Brock's Inc. for property located at 2483-2485 Jeremiah Place, Lot 7, Coyote Trail Subdivision. The request is to vacate a portion of a 25' wide utility easement adjacent to Jeremiah Place as shown and described on the attached maps and legal descriptions.

COST TO CITY:

$0 Cost of this request	Category/Project Budget	Category/Project Name
Account Number	Funds used to date	Program Name
Project Number	Remaining balance	Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

Budget Coordinator — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**_____

Accounting Manager	Date	ADA Coordinator	Date
City Attorney	8/17/01 Date	Internal Auditor	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended approval and Planning Commission unanimously voted 8-0-0 to recommend and forward the vacation to the City Council.

Division Head	8-15-01 Date	**Cross Reference**
Department Director	8.22 Date	New Item: **Yes** **No**
Administrative Services Director	8/21/01 Date	Prev Ord/Res#:_____
Mayor	8/23/01 Date	Orig Contract Date: _____

ORDINANCE NO. _____

AN ORDINANCE APPROVING VA01-7.00 TO VACATE AND ABANDON A PORTION OF A 25' WIDE UTILITY EASEMENT ADJACENT TO JEREMIAH PLACE AS SHOWN AND DESCRIBED ON THE ATTACHED MAPS AND LEGAL DESCRIPTIONS AS REQUESTED BY GREG BROCKMAN.

WHEREAS, the City Council has the authority under A.C.A. §14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes, and

WHEREAS, the City Council has determined that the following described right-of-way is not required for corporate purposes.

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

Section 1. That the City of Fayetteville, Arkansas hereby vacates and abandons all of its rights together with the rights of the public generally, in and to the following described right-of-way:

See Exhibit "A" attached hereto and made a part hereof.

Section 2. That a copy of this Ordinance duly certified by the City Clerk shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

PASSED AND APPROVED this _____ day of _____, 2001.

APPROVED:

By_____
Dan Coody, Mayor

ATTEST:

By_____
Heather Woodruff, City Clerk

EXHIBIT "A"

Utility Easement Description

A PART OF LOT NUMBERED SEVEN (7) OF THE COYOTE TRAIL SUBDIVISION, CITY OF FAYETTEVILLE, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT THAT IS N87°03'18"W 33.1 FEET AND S3°10'W 15.4 FEET FROM THE NORTHEAST CORNER OF SAID LOT 7, SAID POINT OF BEGINNING BEING THE NORTHEAST CORNER OF THE ENCROACHING DUPLEX, AND RUNNING THENCE SOUTHERLY ALONG THE EAST SIDE OF SAID DUPLEX THE FOLLOWING: S3°10'W 9.0 FEET, S86°50'E 4.7 FEET, S3°10'W 37.5 FEET, N86°50'W 2.4 FEET TO THE 25 FOOT BUILDING SET-BACK AND UTILITY EASEMENT LINE; THENCE LEAVING SAID EAST SIDE AND RUNNING NORTHERLY 46.7 FEET ALONG A CURVE TO THE RIGHT (DELTA 36°17'12", RADIUS 75 FEET) ALONG SAID BUILDING SET-BACK AND UTILITY EASEMENT LINE TO THE NORTH SIDE OF SAID DUPLEX; THENCE LEAVING SAID BUILDING SET-BACK LINE AND RUNNING S86°50'E 1.85 FEET TO THE POINT OF BEGINNING, CONTAINING 0.0065 ACRES, MORE OR LESS.

Consent Agenda:

VAC 01-6.00: Vacation (Marriott Courtyard, pp 213) was submitted by Andy Feinstein of Engineering Design Assoc. on behalf of Marriott Courtyard for property located on lot 17 CMN Business Park. The property is zoned C-2, Thoroughfare Commercial and contains approximately 1.95 acres. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on lot 17 of CMN Business Park Phase I.

VAC 01-7.00: Vacation (Greg Brockman, pp 286) was submitted by Greg Brockman for property located at 2483-2485 Jeremiah. The property is zoned R-2. Medium Density Residential and contains approximately 0.12 acres. The request is to vacate a portion of the utility easement located along the front property line adjacent to Jeremiah Court

Estes: The next item of business to come before your Commission is the Consent Agenda. Vacation 01-6.00 for Marriott Courtyard submitted by Andy Feinstein of Engineering Design Assoc. on behalf of Marriott Courtyard for property located on lot 17 CMN Business Park. The property is zoned C-2, Thoroughfare Commercial and contains approximately 1.95 acres. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on lot 17 of CMN Business Park Phase I. The second item on the consent agenda is also a Vacation request submitted by Greg Brockman for property located at 2483-2485 Jeremiah. The property is zoned R-2. Medium Density Residential and contains approximately 0.12 acres. The request is to vacate a portion of the utility easement located along the front property line adjacent to Jeremiah Court. Either one of these items that are on the consent agenda may be pulled by any member of the Commission or by anyone in attendance in the audience this evening. Does anyone wish to pull either of these two items from the Consent Agenda? Seeing that no one desires to pull these items, would you call the roll Sheri?

ROLL CALL:

Upon roll call the Consent Agenda is approved by a vote of 7-0-0.

PC Meeting of 13 Aug. 01

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
113 W. Mountain St.
Fayetteville, AR 72701

Easement Vacation
Brock's Incorporated

TO: **Fayetteville Planning Commission Members**
THRU: **Tim Conklin, City Planner**
FROM: **Ron Petrie, Staff Engineer**
DATE: **August 9, 2001**

Project: **VA 01-07.00: Vacation (Brock's Incorporated, pp 286)** was submitted by Greg Brockman of Brock's, Inc. for property located at 2483-2485 Jeremiah Place, Lot 7, Coyote Trail Subdivision. The request is to vacate a portion of a 25'wide utility easement adjacent to Jeremiah Place as shown and described on the attached maps and legal descriptions.

The requested easement vacation is due to an error in drafting which caused the duplex to be constructed within the existing 25'utility easement and required front yard. The Board of Adjustment, at the July 2, 2001 meeting approved a variance for the portion of the building located within the 25' required front building setback contingent upon the approval of a vacation of the encroached area of the easement. Only the portion of the easement in which the building encroachment has occurred is being requested to be vacated. There are no existing utilities located within this portion of the easement.

The applicant has submitted the required notification forms to the utility companies and to the City. The results are as follows:

Ozarks Electric - No objections.
Southwestern Electric Power Company - Not Applicable.
Arkansas Western Gas - No objections.
SW Bell - No objections.
Cox Communications - No objections.

City of Fayetteville:
Water/Sewer - No objections provided that the vacation is only for the area of the building footprint including eaves, foundations, and all visible structure.
Street Department - No objections.
Solid Waste - No objections.

Recommendation: Approval of the proposed easement vacation.

PLANNING COMMISSION ACTION: __yes__ **Required**
_____ **Approved** _____ **Denied**

Date: ___/___/___

Comments:

_____
_____
_____
_____

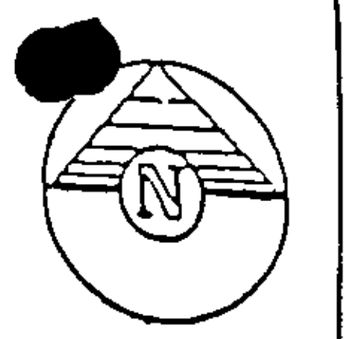
CITY COUNCIL ACTION: __yes__ **Required**
_____ **Approved** _____ **Denied**

Date: ___/___/___

PLAT OF SURVEY FOR

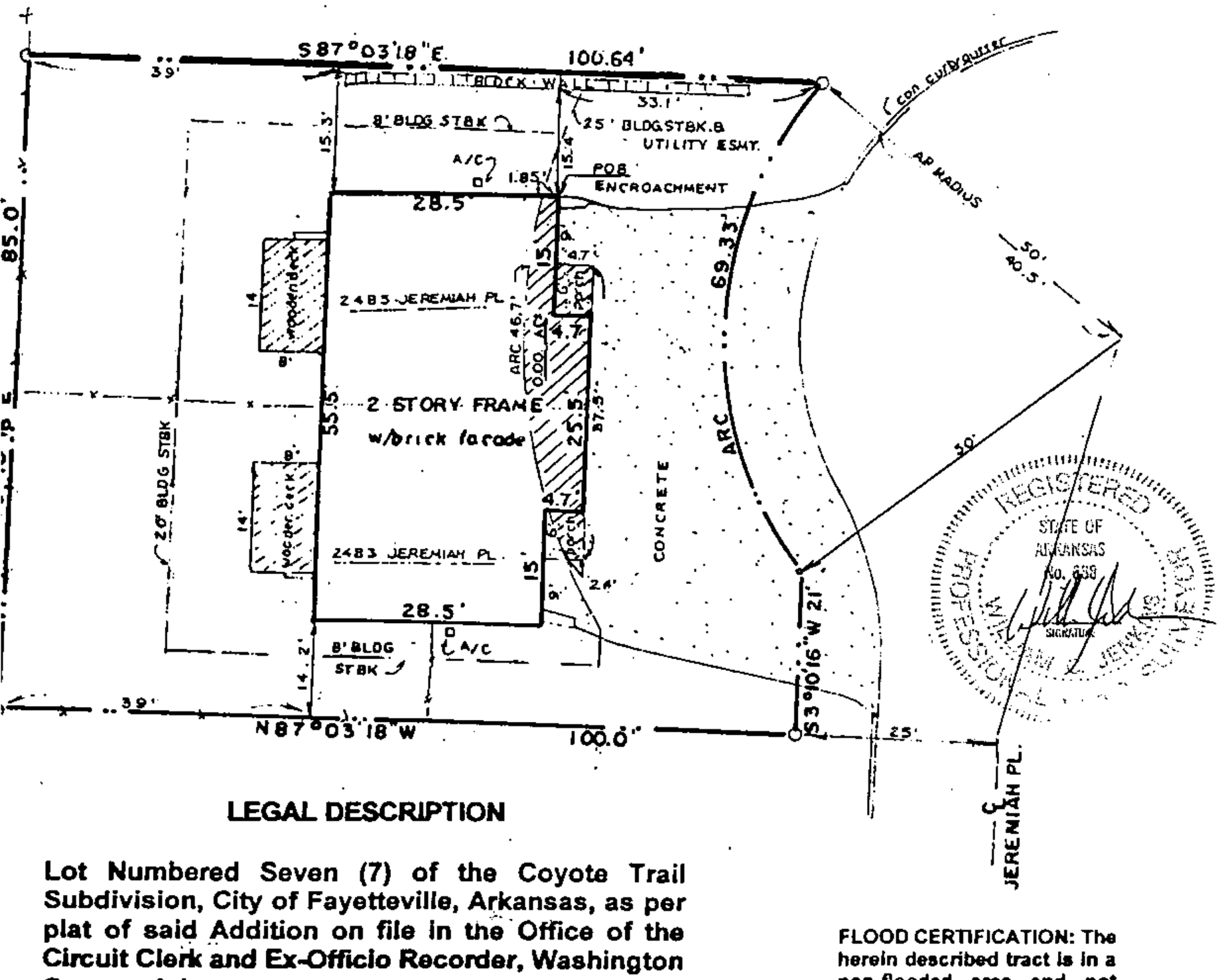
BROCK'S Inc.

RECEIVED
AUG 06 2001
PLANNING DIV.



LEGEND
PROPERTY LINE
FOUND IRON PIN
SET IRON PIN
FENCE

LOT 7
COYOTE TRAIL
SUBD.



LEGAL DESCRIPTION

Lot Numbered Seven (7) of the Coyote Trail Subdivision, City of Fayetteville, Arkansas, as per plat of said Addition on file in the Office of the Circuit Clerk and Ex-Officio Recorder, Washington County, Arkansas.

LEGAL DESCRIPTION
BUILDING SET-BACK & UTILITY EASEMENT ENCROACHMENT

A part of Lot Numbered Seven (7) of the Coyote Trail Subdivision, City of Fayetteville, Arkansas, being more particularly described as follows:
Beginning at a point that is N87°03'18"W 33.1 feet and S3°10'W 15.4 feet from the Northeast corner of said Lot 7, said point of beginning being the Northeast corner of the encroaching duplex, and running thence Southerly along the East side of said duplex the following: S3°10'W 9.0 feet, S86°50'E 4.7 feet, S3°10'W 37.5 feet, N86°50'W 2.4 feet to the 25 foot building set-back and utility easement line; thence leaving said East side and running Northerly 46.7 feet along a curve to the right (Delta 36°17'12", Radius 75 feet) along said building set-back and utility easement line to the North side of said duplex; thence leaving said building set-back line and running S86°50'E 1.85 feet to the point of beginning, containing 0.0065 acres, more or less.

FLOOD CERTIFICATION: The herein described tract is in a non-flooded area and not within the 100 year flood plain. Per FIRM Map No. 05143C 0085C, dated 9-18-91.

SURVEYOR'S CERTIFICATION: I hereby certify that I have surveyed the herein described tract and that the property lines and corner monuments are, to the best of my knowledge and ability, correctly established as shown. Also, any easements and/or encroachments revealed by said survey are shown hereon.

WILLIAM C. JENKINS PLS No. 688 AR

REVISED: 8/3/01 REVISED: 8/27/01

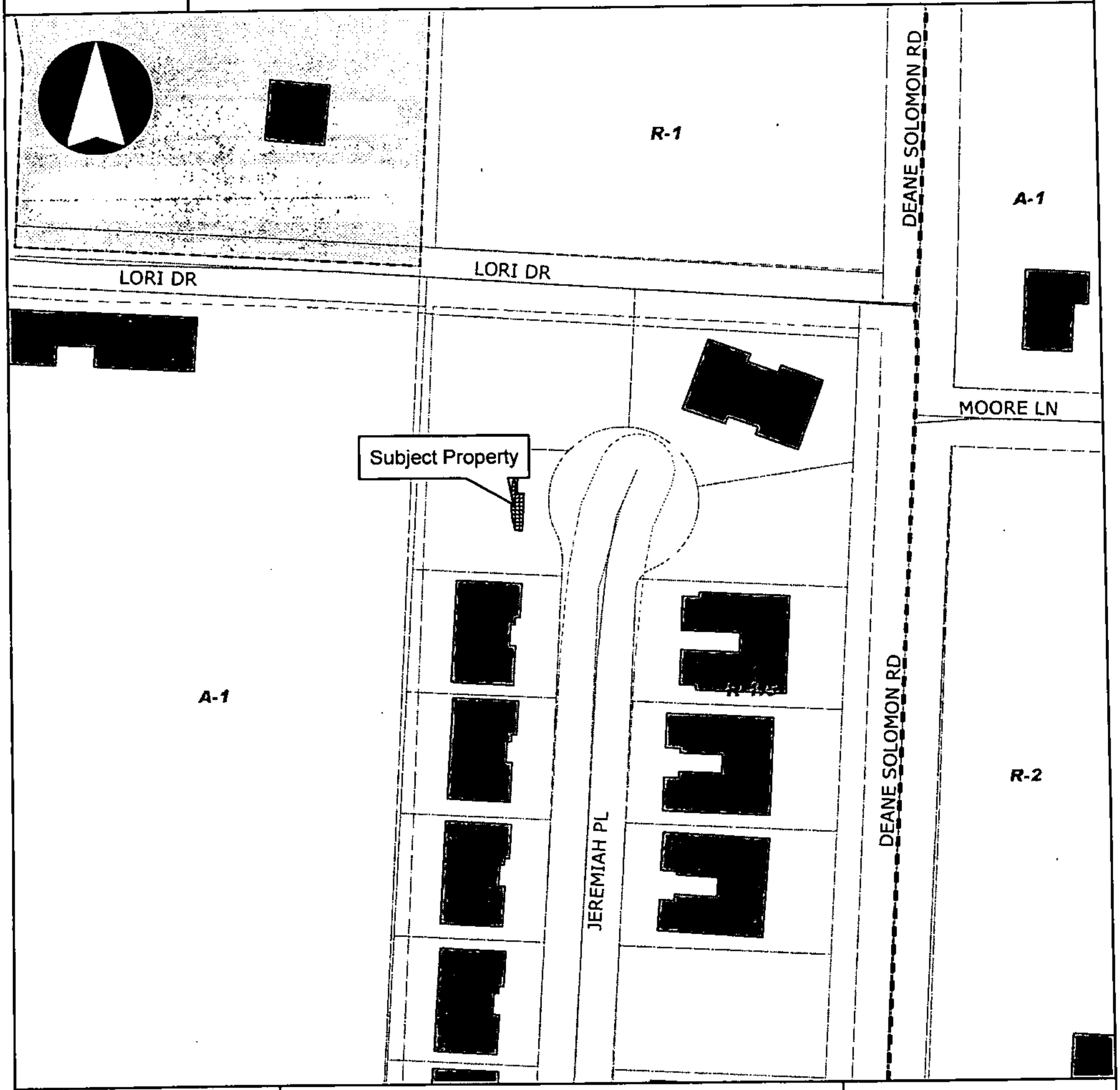
JENKINS SURVEYING, INC.
1552 CEDAR ST.
FAYETTEVILLE AR 72703
(501) 521-5231

DATE:	5/14/01
DRAWN BY:	WCJ
FIELD BOOK:	842
JOB NO:	01-89

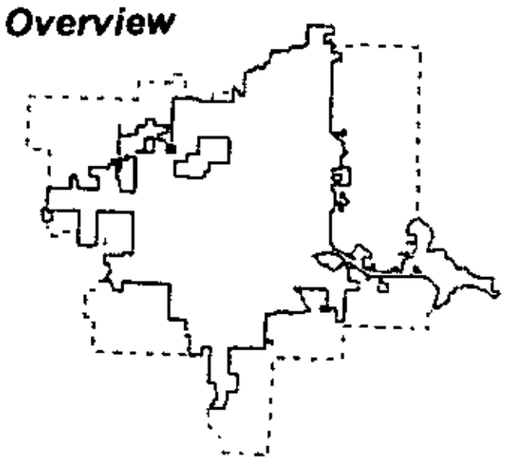
VAC01-07.00

Close Up View

BROCKMAN



Overview



Legend

Subject Property
- VAC01-07.00

Streets
- Existing
- Planned

Boundary
- Planning Area
- Overlay District
- City Limits
- Outside City

Master Street Plan
- Freeway/Expressway
- Principal Arterial
- Minor Arterial
- Collector
- Historic Collector

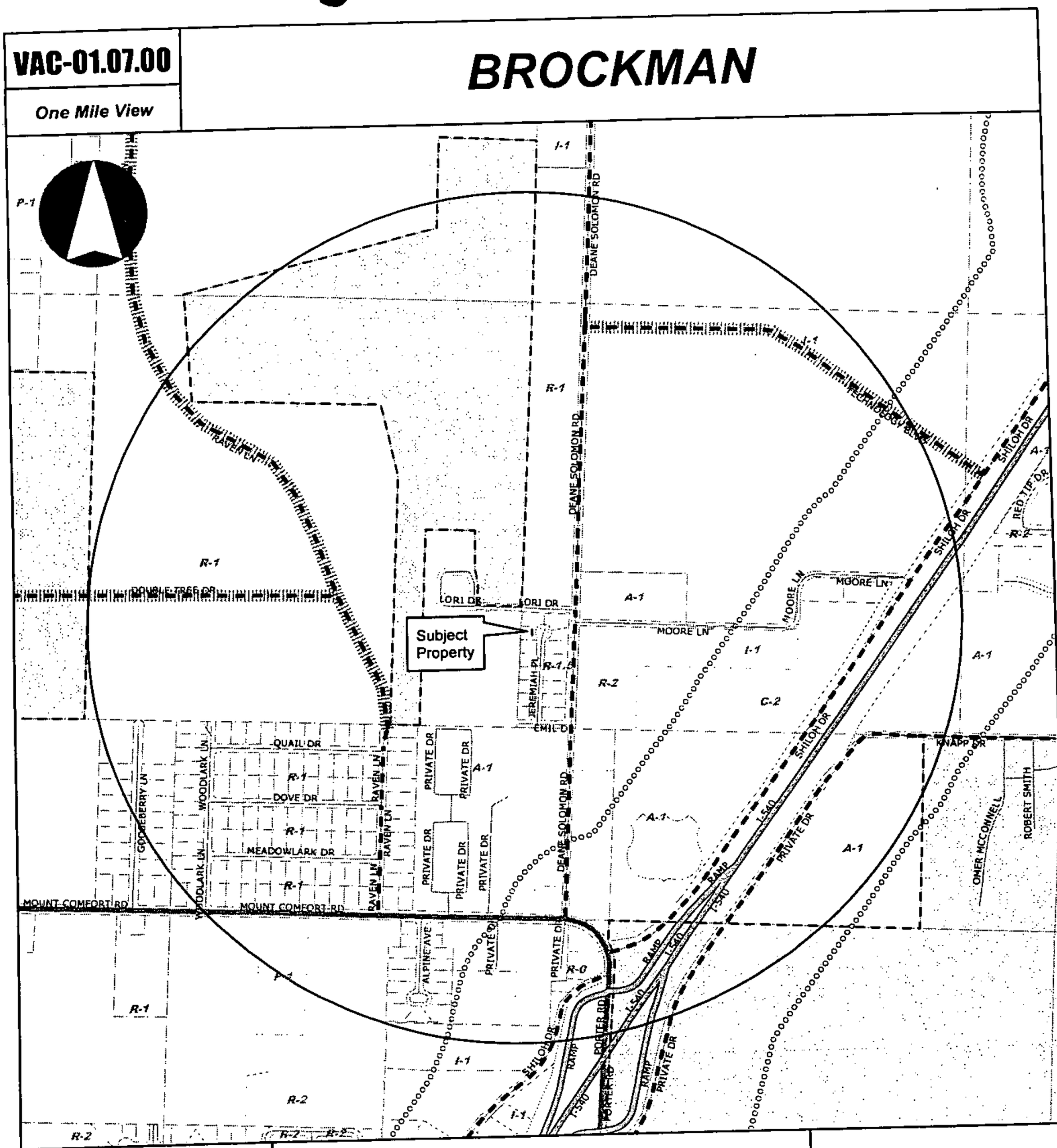
0 25 50 100 150 200 250 Feet

CITY OF FAYETTEVILLE ARKANSAS

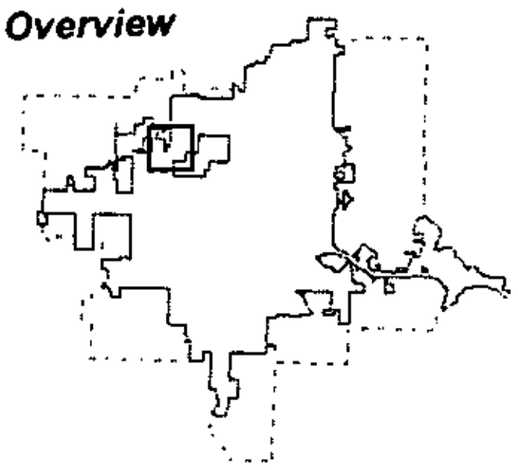
VAC-01.07.00

BROCKMAN

One Mile View



Overview



Legend

Subject Property
- VAC01-07.00

Streets
- Existing
- Planned

Boundary
- Planning Area
- Overlay District
- City Limits
- Outside City

Master Street Plan
- Freeway/Expressway
- Principal Arterial
- Minor Arterial
- Collector
- Historic Collector

0 0.125 0.25 0.5 Miles

STAFF REVIEW FORM

X Agenda Request
___ Contract Review
___ Grant Review

For the Fayetteville City Council meeting of August 22, 2001

FROM:

Greg Boettcher	Fleet	Public Works
Name	Division	Department

ACTION REQUIRED: Review and approve attached ordinance which establishes a formal process to allow the purchase of used heavy equipment. This ordinance waives competitive bidding on aforementioned equipment types. Passenger vehicles, pick-up trucks and vans are excluded.

COST TO CITY:

$ NTE $200,000.00	$ 3,678,259	
Cost of this Request	Category/Project Budget	Category/Project Name
9700-1920-5802-00	$ 588,252	Capital
Account Number	Funds Used to Date	Program Name
Various	$ 3,090,007	Shop
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ___Budgeted Item ___Budget Adjustment Attached

Budget Manager — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**

Marsha Tarkington	8/15/01		
Accounting Manager	Date	ADA Coordinator	Date
[signature]	8/16/01	Danny Smith	8/15/01
City Attorney	Date	Internal Auditor	Date

Purchasing Officer — Date

STAFF RECOMMENDATION: Approval of the ordinance.

Division Head — Date

Department Director: [signature] — Date: 08-15-01

Administrative Services Director: [signature] — Date: 8/16/01

Mayor: [signature] — Date: 8/20/01

Cross Reference

New Item: **Yes** **No**

Prev Ord/Res #:

Orig Contract Date:

STAFF REVIEW FORM

Description_____ Meeting Date_____

Comments:

Reference Comments:

Budget Coordinator

Accounting Manager

City Attorney

I have attached an amended version JW

Purchasing Officer

ADA Coordinator

Internal Auditor

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE FORMAL COMPETITIVE BIDDING REQUIREMENTS FOR THE PURCHASE OF USED EQUIPMENT FOR AN AMOUNT NOT TO EXCEED TWO HUNDRED THOUSAND DOLLARS ($200,000.00) PER ANNUM FOR CALENDAR YEARS 2001 AND 2002; SUBJECTING SUCH PURCHASES TO THE REVIEW AND APPROVAL OF THE EQUIPMENT COMMITTEE; AND AUTHORIZING THE MAYOR OR HIS REPRESENTATIVE TO SIGN THE AGREEMENTS REQUIRED TO COMPLETE AN APPROVED PURCHASE.

WHEREAS, the City of Fayetteville has an ongoing need to purchase equipment; and

WHEREAS, significant savings of taxpayer dollars can be achieved through the purchase of used equipment; and,

WHEREAS, used equipment purchases take place on the "spot market" with the sale going to the first offeror; and,

WHEREAS, taking the time necessary to seek individual bid waivers for each and every proposed used equipment purchase can cause the City to miss out on such opportunities; and,

WHEREAS, the City Council finds that such circumstances constitute an exceptional situation where competitive bidding is not feasible or practical.

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

Section 1. That the City Council hereby waives the formal competitive bidding requirements for the purchase of used equipment for an amount not to exceed Two Hundred Thousand Dollars ($200,000.00) per annum for calendar years 2001 and 2002.

Section 2. That the Equipment Committee is hereby authorized and empowered to establish procedures for the review of used equipment purchase requests, and to approve or disapprove such purchases as it deems reasonable and prudent.

Section 3. That the City Council hereby authorizes the Mayor or his duly authorized representative to sign any agreements required to complete an approved purchase.

Section 4. That this ordinance shall remain in effect until midnight on December 31, 2002, at which time it shall be repealed unless previously renewed by an affirmative vote of the City Council .

PASSED AND APPROVED this _____ day of _____, 2001.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
HEATHER WOODRUFF, City Clerk

STAFF REVIEW FORM

_X_ **Agenda Request**
____ **Contract Review**
____ **Grant Review**

For the Fayetteville City Council meeting of September 4, 2001.

FROM:

Tim Conklin	Planning	Public Works
Name	Division	Department

ACTION REQUESTED: To adopt an ordinance amending Title XV: Unified Development Ordinance of the Code of Fayetteville , to provide amendments to and clarification of various provisions concerning tree preservation and protection.

COST TO CITY:

$0		
Cost of this request	Category/Project Budget	Category/Project Name
Account Number	Funds used to date	Program Name
Project Number	Remaining balance	Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

Budget Coordinator — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**_____

Accounting Manager	Date	ADA Coordinator	Date
City Attorney	8/24/01 Date	Internal Auditor	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended approval and Planning Commission unanimously voted 7-0-0 to recommend and forward the amended ordinance to the City Council.

Division Head	8-24-01 Date	**Cross Reference**
Department Director	Date	New Item: **Yes** **No**
Administrative Services Director	Date	Prev Ord/Res#:_____
Mayor	8/24/01 Date	Orig Contract Date: _____

STAFF REVIEW FORM

Description: _____ **Meeting Date:** _____

Comments:

Reference Comments:

Budget Coordinator:

Accounting Manager:

City Attorney:
Please see the attached Memo. JFN

Purchasing Officer:

ADA Coordinator:

Internal Auditor:

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT ORDINANCE, OF THE CODE OF FAYETTEVILLE, TO PROVIDE AMENDMENTS TO AND CLARIFICATION OF VARIOUS PROVISIONS CONCERNING TREE PRESERVATION AND PROTECTION.

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

Section 1. That Chapter 151: Definitions, Unified Development Ordinance, Code of Fayetteville is hereby Amended by deleting the following definitions: **Development** (Tree Protection and Preservation); **Landmark Tree; Mature Canopy Area; Rare Tree;** and **Tree Preservation Area;** and in its stead, is inserted Exhibit "A" attached hereto and made a part hereof.

Section 2. That Sections 152(H) and 153.02(A) Unified Development Ordinance, Code of Fayetteville are hereby Amended by deleting the subheadings "Tree Protection and Preservation," and inserting "Tree Preservation and Protection" in their stead, and as to 153.02(A) only, striking the phrase "landmark and rare" and inserting the term "significant" in its stead.

Section 3. That Section 155.05(A), Unified Development Ordinance, Code of Fayetteville is hereby Amended by inserting the following:

§155.05 APPEALS FROM PLANNING COMMISSION DECISIONS.

A. Appeals To City Council.

7. Tree Preservation Plan. Owners of record or any member of the City Council wishing to contest a Tree Preservation Plan must appeal the decision to deny or approve the preliminary subdivision plat or large scale development according to the procedures set forth in subsection (A)(2) above.

Section 4. That Section 156.03(C), Unified Development Ordinance, Code of Fayetteville is hereby Amended by inserting the following:

§156.03 DEVELOPMENT.

C. Consideration By The Planning Commission.

6. Tree Preservation Plan. A developer may petition the Planning Commission for a variance from the requirements of Chapter 167: Tree Preservation and Protection, in those cases where its strict application would work an injustice due to the unique characteristics of the subject real property; provided that such variance shall not

have the effect of nullifying the intent and purpose of the chapter. The Planning Commission's approval of said variance must be affirmed by the City Council to become effective, and a denial of the requested variance may be appealed to the City Council.

Section 5. That Chapter 167: Tree Protection and Preservation, Unified Development Ordinance, Code of Fayetteville is hereby repealed, and Exhibit "B" attached hereto and made a part hereof, is inserted in its stead.

PASSED AND APPROVED this _____ day of _____, 2001.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

EXHIBIT "A"

To be inserted at Chapter 151: Definitions:

Abbreviated Tree Preservation Plan. (Tree Preservation and Protection) A shorter, less formal Tree Preservation Plan required of Applicants seeking Building, Grading or Parking Lot Permits, but who are not subject to the requirements for Large Scale Developments or Subdivisions.

Administrative Determination. (Tree Preservation and Protection) Final action by the Landscape Administrator to either approve, conditionally approve or disapprove a Tree Preservation Plan. Administrative determinations apply only to those projects which do not require Planning Commission approval.

Analysis Report. (Tree Preservation and Protection) A report, which among other things, sets forth any alternative designs the Applicant considered in arriving at the proposed design.

Applicant. (Tree Preservation and Protection) Any person, party, partnership, corporation or other business entity seeking the City's approval of a proposed Tree Preservation Plan.

Base Density. (Tree Preservation and Protection) The number of trees an Applicant must plant based upon the quality and number of the trees proposed to be removed per acre.

Caliper. (Tree Preservation and Protection) The diameter of a young tree (those with a diameter of 4" or less) measured 6" above ground level.

Canopied Slopes. (Tree Preservation and Protection) Any land with a slope of 15% or greater containing trees, woody shrubs and herbaceous plants that serve the function of sustaining the structural integrity of the soil, thus reducing the likelihood of erosion, slide, or slump.

Canopy. (Tree Preservation and Protection) The combined crowns of all trees on a tract of land.

Conservation Easement. (Tree Preservation and Protection) A formal, legally binding agreement between parties, usually a landowner and a private or public entity, providing for the preservation of land in its natural state.

Contiguous Woodlands. (Tree Preservation and Protection) A portion of canopy existing on the site of proposed development, which is a part of a larger, unbroken forest, whether or not it extends onto adjacent lots.

Development. (Tree Preservation and Protection) The process of changing the use or appearance of land, including, but not limited to, the construction, demolition or

EXHIBIT "A"

movement of structures, the division of land into two (2) or more parcels, the removal of trees or woody shrubs, or the grading, removal or addition of any debris, fill, or soil.

Forestation. (Tree Preservation and Protection) The act of planting trees.

Invasive Species. (Tree Preservation and Protection) Any species not indigenous to a region, which becomes established and displaces native species.

Landscape Establishment Guarantee. (Tree Preservation and Protection) A bond, irrevocable letter of credit, or other surety held by the City until the satisfactory conclusion of the three-year landscape establishment period.

Less Desirable Species. (Tree Preservation and Protection) Low-Priority trees or other woody shrubs listed in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

Mitigation. (Tree Preservation and Protection) The planting of trees on-site in an effort to lessen the environmental damage caused by the injury or removal of trees during development.

Native Woodlands. (Tree Preservation and Protection) A biological community dominated by trees and woody shrubs native to the Ozark Plateau, covering an area of 10,000 square feet or greater. A list of species native to the Ozark Plateau may be found in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

Non-native Woodlands. (Tree Preservation and Protection) A biological community of trees and woody shrubs, covering an area of 10,000 square feet or greater, descended from non-native species brought to the area during urban settlement. A list of typical non-native species may be found in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

Percent Minimum Canopy. (Tree Preservation and Protection) The amount of existing tree canopy an Applicant must preserve based on the zoning designation of the land to be developed.

Relic Orchard. (Tree Preservation and Protection) Groups of fruit or nut trees originally planted for agricultural purposes, but since taken out of production.

Riparian. (Tree Preservation and Protection) Of, relating to, or located on the bank of a river or stream.

Riparian Buffer. (Tree Preservation and Protection) A biological community consisting of trees, woody shrubs and groundcover that exists along the banks of rivers, creeks or intermittent and perennial streams.

EXHIBIT "A"

Significant Tree. (Tree Preservation and Protection) A tree with a diameter at breast height (DBH) of 24" or more for Fast Growth Species, 18" or more for Slow and Moderate Growth Species, and 8" or more for Understory Species, as set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual. A tree may also be considered significant because of advanced age for its species, or because it represents an uncommon or endangered species, or due to its location on a site designated as historic by local, state or federal authorities.

Tree Preservation Area. (Tree Preservation and Protection) Those areas designated for the protection of both preserved and planted trees depicted on a Tree Preservation Plan, Abbreviated Tree Preservation Plan, Preliminary Plat, Large Scale Development, or Site Plan.

Use Buffer. (Tree Preservation and Protection) Trees or other woody shrubs that serve to screen incompatible land uses, unwanted light, or noise.

EXHIBIT "B"

CHAPTER 167:
TREE PRESERVATION AND PROTECTION

§167.01 PURPOSE.

It is the purpose of this chapter to protect and promote the health, safety, and general welfare and preserve and enhance the natural beauty of Fayetteville by providing for regulation of the preservation, planting, maintenance, and removal of trees within the city, in order to accomplish the following objectives:

A. Objectives.

1. To preserve existing tree canopy.

2. To create a healthful environment for Fayetteville residents, businesses and industries.

3. To moderate the harmful effects of sun, wind and temperature changes.

4. To buffer noise, air and visual pollution.

5. To filter pollutants from the air and assist in the generation of oxygen.

6. To reduce stormwater runoff and the potential damage it may create.

7. To stabilize soil and prevent erosion, with an emphasis on maintaining tree canopy on hillsides defined as Canopied Slopes in §151.

8. To provide habitat for birds and other wildlife.

9. To preserve riparian banks and beds, and prevent sedimentation.

10. To screen incompatible land uses.

11. To promote energy conservation.

12. To protect and enhance property values.

B. Principles. This chapter shall be enforced according to the following principles:

1. Preservation shall be the first, best, and standard approach.

2. If preservation cannot be achieved, On-Site Mitigation shall next be pursued.

3. If On-Site Mitigation cannot be achieved, Off-Site Preservation shall be pursued.

4. If Off-Site Preservation cannot be achieved, Off-Site Forestation shall be pursued.

5. If none of the above approaches can be achieved, payment shall be made to the Tree Escrow Account.

EXHIBIT "B"

§167.02 CITY OF FAYETTEVILLE TREE PRESERVATION, PROTECTION, AND LANDSCAPE MANUAL.

The Landscape Administrator, in cooperation with other members of City Staff, shall promulgate and periodically revise forms, procedures and regulations to implement this chapter, and publish this information in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

A. Copies of the Tree Preservation, Protection, and Landscape Manual are to be made readily available to the public and shall include, but need not be limited to:

1. Specific criteria for gaining City approval of Tree Preservation Plans;

2. The format and content of reports and plans the Applicant must submit to the City pursuant to this chapter;

3. Tree protection during construction;

4. A glossary of important terms used in this chapter;

5. Size and species requirements for trees planted for On-Site Mitigation or Off-Site Forestation;

6. Maintenance of trees (including but not limited to pruning, irrigation, and protection from disease).

B. The Tree and Landscape Advisory Committee shall review and may recommend revisions to the Tree Preservation, Protection, and Landscape Manual at least every three (3) years to reflect changes in arboricultural and horticultural practices, lists of preferred tree species, City policies or the content of this chapter.

§167.03 TREE REGISTRY.

A. Trees or groups of trees which are documented to be of historic merit, of an uncommon or endangered species, or are of extraordinary value due to their age, size, or type, may be registered in the City of Fayetteville's Tree Registry. It shall be the duty of the Landscape Administrator to maintain and keep this Registry on file in the Administrator's office.

B. Registration of trees shall be voluntary and may be done by the owner(s) of the property on which the tree is located. Registration shall not run with the land, unless the property owner wishes to use an express trust to transfer a benefit in the tree or groups of trees to the City. Registered tree owners are entitled to consultation with the Tree and Landscape Advisory Committee and/or the Landscape Administrator concerning proper care and protection of the tree, as well as an evaluation of the tree's condition.

§167.04 TREE PRESERVATION AND PROTECTION DURING DEVELOPMENT.

A. Applicability. The provisions of this section shall apply to proposed Subdivisions, Large Scale Developments, and developments required by other chapters

EXHIBIT "B"

of the Unified Development Ordinance to go through the City's permitting process.

1. Subdivisions and Large Scale Developments. Applicants seeking approval of proposed Subdivisions and Large Scale Developments shall submit a Site Analysis Plan, Analysis Report, and Tree Preservation Plan with the Preliminary Plat or Site Plan. There shall be no land disturbance, grading or tree removal until a Tree Preservation Plan has been submitted and approved, and the tree protection measures at the site inspected.

2. Grading Permits. An Abbreviated Tree Preservation Plan, as set forth in §167.04(H)(3), shall be submitted with the application for Grading Permits on projects that are not required to go through the Subdivision or Large Scale Development process. There shall be no land disturbance, grading or tree removal until an Abbreviated Tree Preservation Plan has been submitted and approved, and the tree protection measures at the site inspected.

3. Building Permits. Tree preservation requirements apply to all permit applications for non-residential construction, and the construction of multi-family residential buildings composed of three (3) or more dwelling units. An Abbreviated Tree Preservation Plan, as set forth in §167.04(H)(3), shall be submitted with the application for Building Permits on projects that are not required to go through the Subdivision or Large Scale Development process. There shall be no land disturbance, grading or tree removal until an Abbreviated Tree Preservation Plan has been submitted and approved, and the tree protection measures at the site inspected.

4. Parking Lots. Tree preservation requirements apply to all permit applications for the construction of parking lots with five (5) or more spaces. An Abbreviated Tree Preservation Plan, as set forth in §167.04(H)(3), shall be submitted with the application for permits on projects that are not required to go through the Subdivision or Large Scale Development process. There shall be no land disturbance, grading or tree removal until an Abbreviated Tree Preservation Plan has been submitted and approved, and the tree protection measures at the site inspected.

B. Tree Preservation Criteria. The Landscape Administrator shall consider the following factors, and any other relevant information, when evaluating Tree Preservation Plans:

1. The desirability of preserving a tree or group of trees by reason of age, location, size or species.

2. Whether the design incorporates the required Tree Preservation Priorities.

3. The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.

4. 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.

EXHIBIT "B"

5. Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.

6. Whether the size or shape of the lot reduces the flexibility of the design.

7. The general health and condition of the tree or group of trees, or the presence of any disease, injury or hazard.

8. The placement of the tree or group of trees in relation to utilities, structures and the use of the property.

9. The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.

10. Whether roads and utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.

11. Construction requirements for On-Site and Off-Site drainage.

12. The effects of proposed On-Site Mitigation or Off-Site Alternatives.

13. The effect other chapters of the UDO, or City policies have on the development design.

14. The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations.

15. The impact a substantial modification or rejection of the application would have on the Applicant.

Note: The above items are not presented in any particular order of importance. The weight each is given will depend in large part on the individual characteristics of each project.

C. Canopy Area. In all new Subdivisions, Large Scale Developments, Industrial and Commercial Developments, and all other improvements listed above, trees shall be preserved as outlined in Table 1 under Percent Minimum Canopy, unless the Applicant has been approved for On-Site Mitigation or Off-Site Alternatives as set forth in subsections (I) & (J) below. The square foot percentage of canopy area required for preservation in new development is based on the total area of the property for which the Applicant is seeking approval, less the right-of-way dedications. An Applicant shall not be required to plant trees in order to reach the Percent Minimum Canopy requirement on land where less than the minimum exists prior to development, unless trees have been removed.

Table 1 – Minimum Canopy Requirements

ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
A-1 Agricultural (Non-agricultural uses)	25
RE Residential Estate	25
RA Residential Acre	25

EXHIBIT "B"

ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
RL Residential Large Lot	20
RS Residential Small Lot	20
R-O Residential-Office	20
R-1 Low Density Residential	25
R-1.5 Moderate Density Residential	20
RMF-6 Low Density Multi-Family Residential	20
RMF-12 Moderate Density Multi-Family Residential	20
RMF-18 Medium Density Multi-Family Residential	20
R-2 Medium Density Residential	20
R-3 High Density Residential	20
C-1 Neighborhood Commercial	15
C-2 Thoroughfare Commercial	15
C-3 Central Business Commercial	15
C-4 Downtown	10
I-1 Heavy Commercial and Light Industrial	15
I-2 General Industrial	15
P-1 Institutional	25

D. Prior Tree Removal. If trees have been removed below the required minimum within the five (5) years preceding application for development approval, the site must be forested to meet the Percent Minimum Canopy according to Table 1, plus an additional ten percent (10%) of the total area of the property for which the Applicant is seeking approval, less the right-of-way dedications. The number of trees required to be planted shall be calculated using the Base Density for High Priority trees.

E. Tree Preservation Priorities.

1. Proposed designs must meet the Percent Minimum Canopy requirements for the particular zoning designation, emphasizing the preservation and protection of High Priority trees on the site. Trees in utility easements shall not be counted toward the Percent Minimum Canopy requirement, and such utilities shall be routed, wherever possible, to avoid existing canopy.

2. Each design shall consider the existing natural features of the site, the Preservation Priorities for the trees, and the impact their proposed removal may have both on and off site.

3. The list of Preservation Priorities (see Table 2) shall guide the review of each development's design. The submittal of designs which do not incorporate Preservation Priorities for the trees on the site shall result in the denial of the Tree Preservation Plan.

EXHIBIT "B"

4. The preservation and protection of High Priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. The preservation and protection of lower priority trees shall not be substituted for that of High Priority trees, except:

a. when the justification for such a substitution is set forth in the Analysis Report; and,

b. the substitution is approved by the Landscape Administrator.

Table 2 – Preservation Priorities

High Priority	Mid-level Priority	Low Priority
Canopied Slopes,	***Contiguous Woodlands,***	***Invasive Species,***
Native Woodlands,	***Non-native Woodlands,***	***Relic Orchards,*** *and*
Floodways & Riparian Buffers, *and* ***Significant Trees.***	*and,* ***Use Buffers.***	***Undesirable Species.***

Note: Each of the above is listed alphabetically beneath its respective category. They are not presented in any particular order of importance within that category.

F. Tree Preservation Requirements for Proposed Residential and Non-Residential Subdivisions. Where trees exist, flexible approaches such as adjustments to lot layout, placement of buildings and paved surfaces, and location of utilities shall be pursued in order to meet the Percent Minimum Canopy required for the applicable zoning designation.

1. Residential Subdivisions. The Percent Minimum Canopy in residential subdivisions shall be located in areas that have the least possibility of impact as utilities are installed and homes built. The intent is to leave undisturbed as many existing trees as possible for the use and enjoyment of prospective lot owners. Trees in utility easements shall not be counted toward the Percent Minimum Canopy requirement, and such utilities shall be routed to avoid existing canopy.

2. Non-Residential Subdivisions. Two options are available for establishing a Tree Preservation Plan for the development of non-residential subdivisions. The proposed plan that will potentially preserve the largest amount of priority canopy shall be encouraged. The Landscape Administrator may recommend approval of a plan that contains some of the features of both options, if the plan satisfies the intent and requirements of this chapter.

a. Preservation Plan for Entire Subdivision. The developer may choose to preserve the Percent Minimum Canopy required for the entire development. With this option, the preserved canopy shall be located in areas that will not be impacted by future development of the individual lots. Canopy to be preserved shall be noted on the Final Plat, and shall be protected as set forth in §167.04(L) below. Should the entire Percent Minimum Canopy requirement for the site be so protected, the Final Plat shall

EXHIBIT "B"

include a statement that the individual lots, as represented thereon, shall not require separate Tree Preservation Plans.

b. Preservation Plan for Infrastructure Only. The developer, in consultation with City Staff, shall delineate the area required for the construction of the infrastructure and improvements for the development. This area should include street rights-of-way, and utility and drainage easements. This option shall not allow the removal of trees during the grading of individual lots, unless shown by the developer to be essential to the project's engineering design. The developer will be required to mitigate the canopy removed from this defined area at the percentage requirement for the applicable zone. On all other areas of the development, the developer shall protect the existing canopy during the construction phase in accordance with §167.05 below. The Final Plat shall include a statement that the individual lots shall require separate Tree Preservation Plans.

G. Initial Review.

1. Meeting with the Landscape Administrator. It is strongly recommended that prospective Applicants meet with the Landscape Administrator for an Initial Review of the proposed Tree Preservation Plan for the site prior to submitting a Preliminary Plat, Large Scale Development, or Site Plan to the City. During the Initial Review, the Landscape Administrator shall make recommendations to ensure the proposed subdivision or development complies with the requirements of this chapter. These recommendations shall be non-binding. However, Applicants proceed at the risk of higher costs due to changes required by a noncompliant submittal should they choose not to have the Initial Review or to disregard the recommendations of the Landscape Administrator.

2. Letter of Confirmation. The Landscape Administrator shall document whether the Applicant participated in the Initial Review meeting in a Letter Of Confirmation to the Applicant. If the Applicant chose to attend an Initial Review meeting, the letter shall also document any recommendations made. The Landscape Administrator shall ensure that a copy of the letter becomes part of the permanent file for the project.

H. Submittal of Plans. Applicants should bear in mind that all plans will be evaluated according to the Tree Preservation Criteria and Percent Minimum Canopy requirements as set forth under §167.04(B) & (C).

1. Site Analysis Plan. On sites with existing tree canopy, the Applicant shall conduct a Site Analysis to determine the approximate age, health, size and species distribution of the trees, noting each on a Site Analysis Plan, and clearly showing the locations and types of all natural features on a site, including features one hundred feet (100') beyond the property lines. The Site Analysis Plan shall also specifically depict the applicable Preservation Priority level for each tree or group of trees on the site. The plan should include, but need not be limited to, delineation of the following features as they exist on the site:

EXHIBIT "B"

a. The existing topography of the site highlighting slopes of 15% or greater and indicating the natural drainage patterns.

b. The property line boundaries of the site.

c. Soils identified according the Unified Soil Classification System.

d. Any Significant Trees existing on the site, and the location of trunks, spread of the canopy, species, Diameter at Breast Height (DBH), and the overall health of each Significant Tree.

e. Groupings of trees, delineating the edges of the overall canopy, noting the predominate species, average height, Diameter at Breast Height (DBH), and general health of the trees.

f. All existing utilities and utility easements.

g. All perennial and intermittent streams and creeks that exist on the site or within one hundred feet (100') of the site.

h. Floodplains and floodways on the site.

i. All existing rights of way within and surrounding the project site including any designated trails or bike paths.

j. Any other factors that may impact the design of the site.

2. Tree Preservation Plan. The Applicant shall indicate all proposed site improvements, and delineate in the Tree Preservation Plan the trees to be retained on-site, and the measures to be implemented for their protection. These measures shall include, but need not be limited to fencing, limits of root pruning, as well as restrictions on traffic and material storage. The Plan shall also clearly depict the limits of soil disturbance to include all areas to be graded both on and off site, as well as the proposed location of utilities. The Applicant should consult the City of Fayetteville Tree Preservation, Protection and Landscape Manual for details, examples and specific checklists.

3. Abbreviated Tree Preservation Plan. Applicants requesting approval of development projects that require Building, Grading or Parking Lot permits, but that do not fall under the requirements for Large Scale Developments or Subdivisions, shall prepare and submit an Abbreviated Tree Preservation Plan. The information for this plan may be combined with the Site Plan, Plat Drawing or Grading Plan. The Applicant is expected to show the general location of all existing groups of trees, individual Significant Trees, and to clearly depict the limits of soil disturbance to include all areas to be graded, both on and off site, as well as the proposed location of utilities. Protective measures such as fencing, limits of root pruning, restrictions on traffic and materials storage shall be depicted on the plan. A preliminary site visit with the Landscape Administrator is highly recommended before applying for any of the above-mentioned permits. The Applicant should consult the City of Fayetteville Tree

EXHIBIT "B"

Preservation, Protection, and Landscape Manual for details, examples and specific checklists. Applicants submitting Abbreviated Tree Preservation Plans shall not be required to submit either a Site Analysis Plan or Analysis Report, nor shall they be required to hire architects, engineers, or landscape architects to prepare their Plans.

4. Analysis Report. The Applicant shall submit an Analysis Report detailing the design approaches used to minimize damage to or removal of existing canopy that were considered in arriving at the proposed design. Written justification shall be presented as to why individual trees or canopy must be removed. The report shall also detail proposed On-Site Mitigation options or Off-Site Alternatives, as detailed below.

5. Grading and Utility Plans. All subsequent Grading and Utility Plans shall depict the Tree Preservation Areas on the site, to include the preserved trees and the physical limits of all protective measures required during construction.

6. Submittal Requirements. The Applicant shall submit two (2) copies of a Site Analysis Plan and Analysis Report to the Landscape Administrator, concurrently with their Tree Preservation Plan. Applicants submitting Abbreviated Tree Preservation Plans shall not be required to submit either a Site Analysis Plan or Analysis Report.

7. Conservation Easements. The City shall encourage the use of conservation easements for the added protection of trees preserved or planted to meet Percent Minimum Canopy requirements in those instances where such would be of mutual benefit to the Applicant and the City.

I. Request for On-Site Mitigation. If an Applicant is able to demonstrate to the Landscape Administrator's satisfaction that a site's physical or spatial constraints prevent the preservation of the Percent Minimum Canopy, the Applicant may request On-Site Mitigation. Trees that are required to be planted in compliance with other development chapters shall not be counted for the purpose of satisfying the On-Site Mitigation or Off-Site Alternative requirements of this chapter.

1. Timing of Request for On-Site Mitigation. Requests to remove trees below the Percent Minimum Canopy requirement must be incorporated in, and submitted concurrently with the Applicant's Tree Preservation Plan.

2. Plan Requirements. The Tree Preservation Plan must graphically represent the species and location for all trees to be planted on-site. It shall also include a chart clearly stating the following information:

a. The number of trees requested for removal;

b. The percentage below the Percent Minimum Canopy requirement they represent; and,

c. The species and number of trees to be planted, based on the Forestation Requirements below.

EXHIBIT "B"

3. Planting Details and Notes. Planting details and notes shall be included on the Tree Preservation Plan as set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

4. Forestation Requirements. The number and species of trees required for forestation shall be based upon the quality of the canopy lost:

a. High Priority Canopy. When removing High Priority canopy below the Percent Minimum Canopy required, the canopy square footage removed shall be forested at a Base Density of two hundred (200) two inch (2″) caliper trees per acre removed.

b. Mid-Level Priority Canopy. When removing Mid-Level Priority canopy below the Percent Minimum Canopy required, the canopy square footage removed shall be forested at a Base Density of one hundred fifty (150) two inch (2″) caliper trees per acre removed.

c. Low Priority Canopy. When removing Low Priority canopy below the Percent Minimum Canopy required, the canopy square footage removed shall be forested at a Base Density of one hundred (100) two inch (2″) caliper trees per acre removed.

5. Base Density. Compensating for the environmental damage caused by removing tree canopy shall be accomplished by forestation on a per acre basis. The Base Density formula used above is based on two inch (2″) caliper trees. However, the Landscape Administrator may approve the use of trees with less than two inch (2″) caliper for the planting of smaller tree species required by spatial constraints on the site. In such cases, the number of trees to be planted may be adjusted in accordance with the Species Density Table to be found in the City of Fayetteville Tree Preservation, Protection and Landscape Manual, along with examples for using the Base Density formula.

6. Preferred Species. All trees to be planted shall be species native to the region, when available, and selected from the list of preferred tree species set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual. Species selection shall be based upon the amount of space available for proper growth on the site, and must be approved by the Landscape Administrator.

7. Placement of Trees. The Applicant is expected to plant trees in locations on the site where the environmental benefits of canopy cover are most likely to offset the impact of development. Trees shall not be placed within utility easements, or in other locations where their future protection cannot be assured.

8. On-Site Mitigation Incentive. If all of the required trees can be located on-site, the Landscape Administrator may approve up to a twenty percent (20%) reduction in the number of trees to be planted. Any incentive reductions allowed shall be based upon the following factors:

a. The species of the mitigation trees; and,

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b. The space needed for the healthy growth of the trees.

J. Request for Off-Site Alternatives. If an Applicant is able to demonstrate to the Landscape Administrator's satisfaction that neither preservation, nor On-Site Mitigation can be achieved, the Applicant may request Off-Site Alternatives. For Non-Residential Subdivisions and Large Scale Developments, Off-Site Alternatives shall be allowed only if On-Site Mitigation is proven impossible due to environmental or spatial constraints. Trees that are required to be planted in compliance with other development chapters shall not be counted for the purpose of satisfying the On-Site Mitigation or Off-Site Alternative requirements of this chapter.

1. Timing of Request for Off-Site Alternatives. Requests for Off-Site Alternatives must be incorporated in, and submitted concurrently with the Applicant's Tree Preservation Plan.

2. Off-Site Preservation. The Applicant may seek approval from the Landscape Administrator to preserve an equal or greater amount of canopy cover at a site within the City limits.

3. Off-Site Forestation. If Off-Site Preservation cannot be achieved, the Applicant may seek approval from the Landscape Administrator to plant the required number of trees on another site owned by the Applicant and located within the City limits.

4. Tree Escrow Account. Large Scale Development Applicants requesting Off-Site Alternatives, all Residential Subdivision Applicants requesting tree removal below the Percent Minimum Canopy requirement, and any other Applicant unable to achieve either On-Site Mitigation, Off-Site Preservation or Off-Site Forestation, shall make a payment to the City of Fayetteville Tree Escrow Account for each tree required to meet the Base Density requirements set forth above. The amount of money to be paid shall be based on the fair market value of materials and labor at the time of planting. The Applicant shall submit cost estimates to the Landscape Administrator for approval.

a. All Residential Subdivisions requesting tree removal below the Percent Minimum Canopy requirement are required to contribute to the Tree Escrow Account, due to the fact that the health and survival of the trees may be adversely affected as individual lots are developed. The City shall use the money paid into the Tree Escrow Account to plant street trees within the subdivision, when possible, once the subdivision is built out.

b. Money contributed in lieu of On-Site Mitigation or Off-Site Forestation shall be paid prior to issuance of a Building Permit on all Commercial, Industrial, or Multi-Family Residential buildings and prior to Final Plat acceptance for all Residential and Non-Residential Subdivisions.

c. Money contributed under this section:

(1) May be used for canopy mitigation, including planting site identification, tree acquisition, planting, and

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maintenance, utilizing either City Staff or contract labor;

(2) Shall be deposited in a separate interest-bearing Tree Escrow Account; and

(3) Shall not revert to the general fund for ongoing operations.

d. Planting locations will be sought in appropriate sites within a one (1) mile radius of where the original project is located, but if this cannot be achieved, the moneys shall be used to plant the trees in the quadrant in which the development took place, and if that cannot be achieved, anywhere in the City limits. The location of appropriate planting spaces is to be derived from the Fayetteville Tree Inventory to be updated every seven (7) to ten (10) years.

5. Maintenance Agreement and Landscape Establishment Guarantee. All Plans requesting On-Site Mitigation or Off-Site Forestation shall include a binding three (3) year maintenance and monitoring plan, which shall hold the Applicant responsible for the health of all planted trees.

a. Approval of a Plan requesting On-Site Mitigation or Off-Site Forestation shall be contingent upon the Applicant depositing with the City either currency, bond, irrevocable letter of credit or other surety, in an amount equal to the estimated cost of materials and labor for all trees at the time of planting. The bond, irrevocable letter of credit or other surety must cover the entire three (3) year maintenance and monitoring period. Applicant shall submit cost estimates to the Landscape Administrator for approval.

b. Upon completion of the three year landscape establishment period, the Landscape Administrator shall inspect the site and determine whether ninety percent (90%) of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the City shall release the currency, bond or letter of credit.

c. In the absence of such a finding, the Applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the Landscape Administrator. If the Applicant does not take remedial steps to bring the property into compliance, the City shall use the necessary moneys from the Landscape Establishment Guarantee to do so.

d. Special consideration shall be given the Applicant in the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the actions of third parties.

K. Tree Preservation Plan Review Form. The Landscape Administrator shall use a standardized form for all Recommendations or Administrative Determinations made regarding an Applicant's Tree Preservation Plan.

1. The form shall clearly indicate whether the Landscape Administrator is making a final Administrative Determination, or a Recommendation to the Planning Commission or City Council.

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2. The form shall also clearly indicate whether the Applicant's plan is "Approved," "Disapproved" or "Conditionally Approved," and explain the reasoning therefore.

3. A statement shall appear on the form explaining the process by which a final Administrative Determination may be appealed in accordance with Chapter 155 of the Unified Development Ordinance.

4. The Landscape Administrator shall sign and date the form, and ensure that a copy becomes part of the permanent file for the project.

L. Continuing Preservation and Protection Under Approved Tree Preservation Plans. No person shall damage, destroy, transplant or remove any tree or group of trees once preserved or planted under an approved Tree Preservation Plan, without the express approval of the City Council.

1. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such damage, destruction, transplantation or removal is in the best interest of the of the residents of Fayetteville.

2. Such requests shall be submitted to the Landscape Administrator, who shall ask the City Clerk to placed it on the agenda of the next regularly scheduled City Council meeting.

3. In order to ensure that an Applicant's heirs, successors, assigns or any subsequent purchasers of the subject property are put on notice as to the existence and extent of an approved Tree Preservation Plan, Tree Preservation Areas shall be clearly depicted on all Easement Plats and Final Plats, accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the Landscape Administrator. If it is impractical to include the actual depiction of the canopy to be preserved on the Easement Plat or Final Plat itself, a note cross-referencing an accompanying document shall suffice.

§167.05 TREE PROTECTION MEASURES AND CONSTRUCTION.

A. Site Inspection. A preliminary site inspection followed by periodic inspections will be conducted by the Landscape Administrator to ensure compliance with the Tree Preservation Plan.

B. Tree Protection. Tree Preservation Areas shall be protected from construction activity to prevent impingement by or the storage of construction vehicles, materials, debris, spoils or equipment in Tree Preservation Areas. No filling, excavating or other land disturbance shall take place in Tree Preservation Areas. Before commencing any construction activity, the Applicant shall construct tree protection barriers on the site along the tree dripline or ten feet (10') from the trunk, whichever is greater. The Applicant shall also post signs at each tree preservation area in accordance with the standards, specifications and guidelines provided in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual. The Landscape Administrator may require other protective measures based upon the individual

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characteristics of the site and the proposed construction methods. Tree protection measures shall also protect any off-site trees the roots of which extend onto the site of the proposed construction. Any Applicant damaging or destroying an off-site tree shall be required to mitigate such damage or destruction as prescribed by the Landscape Administrator. If the required barriers surrounding the tree preservation areas are not adequately maintained and protected during construction, the Landscape Administrator shall prescribe remedial measures, and may issue a Stop Work Order in accordance with §153.07(C). All remedial measures shall be completed within the specified amount of time and shall be considered prior to granting Final Plat approval or issuing a Certificate of Occupancy.

§167.06 TREE PLANTING, MAINTENANCE, AND REMOVAL ON STREET RIGHTS-OF-WAY AND OTHER PUBLIC GROUNDS.

A. Follow Tree Preservation, Protection, and Landscape Manual. All tree planting, maintenance or removal on public grounds shall follow the standards, specifications and guidelines provided in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

B. Tree Planting. Trees may be planted within street rights-of-way or on other public grounds only after notification to the Landscape Administrator; and, provided the selection and location of said trees is in accordance with the requirements of this chapter.

C. Tree Removal. Trees shall not be removed from a street right-of-way or other public grounds unless approval is received from the Landscape Administrator, with the exception that City employees may remove trees when necessary to accomplish emergency repairs to sewer or water systems, or in order to alleviate flooding.

D. Damage to Trees. It shall be a violation of this chapter to damage, destroy or mutilate any tree in a public right-of-way or on other public grounds, or attach or place any rope or wire (other than one to support a young or broken tree or limb), sign, poster, handbill or any other thing to any such tree.

E. Top or Cutback to Stubs. It shall be unlawful for any person to top or cut back to stubs the crown of any tree in street rights-of-way or on other public grounds.

F. Reserved Rights. The City reserves the right to plant, preserve, prune, maintain or remove any tree within the street rights-of-way, alleys, squares, and all public grounds when such interferes with the proper spread of light along the street from a street light, or interferes with visibility of any traffic control device or sign, or, as may be necessary to preserve or enhance the symmetry and beauty of such public grounds.

G. Line of Sight. Trees shall not be planted to conceal a fire hydrant from the street or impede the line of sight on any street.

H. Storm Damage. Trees severely damaged by storms or other accidental

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causes, where required pruning practices are impractical, are exempt from this chapter.

I. City Employees. Before cutting, pruning, removing or trimming any tree, City employees performing tree work on public grounds shall attend an educational workshop on basic tree science and the proper techniques of tree pruning. A certificate will be issued when an individual has successfully completed the workshop.

J. Public Utilities. Nothing in this section shall be construed to prohibit public utilities from pruning or removing trees that encroach upon electric, telephone, or cable television transmission lines, or gas, sewer or water pipes.

§167.07 COMMERCIAL TREE PRUNER/ SERVICE: CERTIFICATE AND INSURANCE REQUIRED.

A. Certificate Required. Before cutting, pruning, removing or trimming any tree within the City of Fayetteville, the owner and supervisory personnel of each business performing commercial tree work shall obtain a City issued Commercial Tree Pruner/Service Certificate.

B. Liability Insurance. Each business performing commercial tree work, to include tree surgery, within the City of Fayetteville, shall be required to carry liability insurance in the following minimum amounts:

General Aggregate: $100,000

Personal & Advertising: $100,000

Each Occurrence: $100,000

Proof of coverage shall include the name of the insurance company issuing the policy, the name of the insured, the policy number, effective and expiration dates, and the signature of an authorized representative of the insurance company.

C. Workshop. Owners and supervisory personnel shall attend an educational workshop on basic tree science and the proper techniques of tree pruning; or shall demonstrate sufficient knowledge of basic tree science and the proper techniques of tree pruning by scoring 75% or higher on a test provided by the International Society of Arboriculture (ISA).

D. Certificate Issuance. A certificate shall be issued when an individual has successfully completed the workshop or scored adequately on the test.

E. Job Site. It shall be the responsibility of the business owner to ensure that a copy of the certificate is maintained at each job site.

F. Supervision. All persons engaged in the business of trimming trees shall be under the supervision of a certified tree pruner/service.

G. Workers Compensation. Those individuals performing commercial tree work on public grounds shall comply with all workers compensation requirements as set forth under Arkansas law and shall hold a City issued Commercial Tree Pruner/Service Certificate.

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H. Licensure. Those individuals performing tree surgery shall comply with licensure requirements as set forth under Arkansas law.

§167.08 HAZARDOUS TREES.

A. Pruning. Every owner of any tree overhanging a street or sidewalk within the city is responsible for pruning the branches so that such branches shall not obstruct vehicles or pedestrians.

B. Order of Removal. The Mayor, or his/her duly authorized representative, is hereby authorized to order the owner of any real property within the City to cause the removal of any dead or diseased trees on their property, and further, to order compliance, when such trees constitute a hazard to life and property, or harbor insects which constitute a potential threat to other trees. Whenever any such condition is found to exist, the Mayor, or his/her duly authorized representative, shall send written notice via First Class mail to the property owner ordering the performance of such acts within twenty (20) days. If the property owner's identity or whereabouts are unknown, a copy of the written notice shall be posted upon the premises.

C. Non-compliance. It shall be unlawful for any person to fail or refuse to comply with any order and notice given pursuant to this section.

D. Removal By City. If the conditions described in a notice given, as set forth above, are not removed or corrected within twenty (20) days after such notice is given, the Mayor, or his/her duly authorized representative, is hereby authorized to enter upon the property and do whatever is necessary to correct or remove the conditions described in the notice. The costs of correcting said conditions shall be charged to the owner or owners of the property, and the City shall have a lien against such property for such costs. Enforcement of the lien shall be as set forth in section 95.03 of the Fayetteville Code of Ordinances. Such action shall not be taken if the owner has evidenced a willingness to comply by hiring a qualified tree service before the expiration of the twenty (20) day period.

§167.09 LOCAL DISASTER EMERGENCY. If it becomes necessary for the Mayor to declare a local disaster emergency pursuant to A.C.A. 12-75-108(b)(2), the provisions of this chapter may be suspended for up to thirty (30) days, if strict compliance with its provisions would prevent, hinder, or delay actions necessary to cope with the disaster emergency.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

CITY ATTORNEY DIVISION
113 WEST MOUNTAIN, 72701
PHONE: 501-575-8313
FAX: 501-575-8315

Kit Williams
CITY ATTORNEY

DATE: 8/24/2001

TO: Robert Reynolds, Brenda Thiel, Cyrus Young, Randy Zurcher, Trent Trumbo, Bob Davis, Kevin Santos, Lioneld Jordon

CC: Mayor Coody, Ted Webber, Hugh Earnest, Tim Conklin, Kim Hesse

FROM: David J. Whitaker, Assistant City Attorney

RE: PROPOSED CHAPTER 167

During the course of the Public Q & A and the special Planning Commission hearing, problems with two (2) sections of the proposed revision surfaced. Subsequently, members of the Subcommittee contacted this office and the Landscape Administrator to ask if there were some avenue available to offer corrections. At my request, Kim Hesse polled the membership via e-mail as to whether they approved of the changes. This memo summarizes the suggestions that they have overwhelmingly approved.

The first recommendation concerns **§167.04(A)(2) Grading Permits.** This section inadvertently includes single-family dwelling units and duplexes in the regulatory scheme. It has never been the intention of the Subcommittee to do so. Evidence of this can be found in the very next paragraph dealing with Building Permits. The language there was clearly drafted to exclude both housing types when applying for Building Permits. It would therefore be an absurdity to include them under the Grading Permit requirements. The Subcommittee is therefore recommending that the following language be inserted after the first sentence of §167.04(A)(2): ***"Single-Family dwelling units and duplexes are specifically exempt from the provisions of the chapter."***

The Subcommittee further recommends that the definition of **Relic Orchard** be changed to read as follows: ***"Groups of fruit trees originally planted for agricultural purposes, but since taken out of production."*** No one from the Subcommittee can seem to recall when the reference to nut trees found its way into the text, and all wish to see it removed.

This office will also furnish each of you with "mark-up" copies of the proposed ordinance; one reflecting the revisions made since the Subcommittee's final version of July 11; and the other showing all of the revisions made to the text of our current ordinance.

DJW

ATTACHMENTS

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TO: Mayor Coody, City Council

COPY: Planning Department, City Attorney's Office

THRU: Hugh Ernest, Urban Development Director

FROM: Kim J. Hesse, Landscape Administrator

DATE: August 23, 2001

SUBJECT: An Ordinance enacting the revisions proposed to the Fayetteville Tree Protection and Preservation Ordinance.

Background:
Beginning in June 2000, the Tree and Landscape Advisory Committee began reviewing the city's current Tree Protection and Preservation Ordinance. A diverse committee was selected to serve on an Ad-Hoc committee to review needed revisions to the ordinance. The revisions were completed by the committee on July 11, 2001. Assistant City Attorney David Whitaker, who was involved in the process from the beginning, codified the proposed language providing a smooth transition from the language suggested by the Ad Hoc Committee to the format required as a part of Unified Development Ordinance.

Current Status:
The proposed revisions have been through two public hearing:

- On Tuesday, August 14th, the Ad-Hoc Committee hosted a Question and Answer Session for the general public. This meeting included a presentation of the major changes and additions to the current ordinance and a open format for members of the public to ask questions directly to the committee making the revisions.

- On Monday, August 20th, the Planning Commission recommended approval of the revised ordinance. That recommendation came with conditions to include suggested additions discussed by the Planning Commissioners and to forward the revision to the City Council. Those changes are reflected in your copy of the revision.

Recommendation:
The staff recommends approval of the Ordinance.

MINUTES OF A MEETING OF THE PLANNING COMMISSION

A regular meeting of the Fayetteville Planning Commission was held on August 20, 2001, at 5:30 p.m. in Room 219 of the City Administration Building, 113 W. Mountain, Fayetteville, Arkansas.

ITEMS CONSIDERED		ACTION TAKEN
ADM 01-32.00:	Administrative Item (Tree Preservation and Protection Ordinance)	Forwarded

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MEMBERS PRESENT	MEMBERS ABSENT
Nancy Allen	Don Marr
Lorel Hoffman	Alice Bishop
Bob Estes	
Lee Ward	
Donald Bunch	
Sharon Hoover	
Loren Shackelford	

STAFF PRESENT	STAFF ABSENT
Tim Conklin	Dawn Warrick
David Whitaker	
Sheri Metheney	
Hugh Earnest	

ROLL CALL

Estes: Good evening and welcome to the special meeting of your Fayetteville Planning Commission for August 20, 2001. There is one item on the agenda and that is administrative item 01-32.00, the Tree Preservation and Protection Ordinance, an ordinance amending Title 15, Unified Development Ordinance of the Code of Fayetteville to provide amendments to and clarification of various provisions concerning tree preservation and protection. As an introduction, if I may begin with a brief explanation of why we are here this evening and the purpose of this meeting, it is that there is a legislative mandate that we hold this meeting. In Title 14, Chapter 56 of our Arkansas Statutes is the provision regarding municipal building and zoning regulations and planning. A part of that statute is that one of the purposes of this Commission is to prepare and transmit to the legislative body, that is the City Council, recommended ordinances implementing plans. The specific ordinance or adoption of plans, ordinances and regulations, provides that the Planning Commission shall hold a public meeting on the plans, ordinances and regulations proposed under this statute. Notice of the public hearing shall be published in a newspaper of general circulation in the city at least one time, 15 days prior to the hearing. Following the public hearing, proposed plans may be adopted and proposed ordinances and regulations may be recommended as presented or, in modified form, by a majority vote of the entire Planning Commission. Following it's adoption of plans and recommendations of ordinances and regulations, the Planning Commission shall certify adopted plans or recommended ordinances and regulations to the legislative body of the city for it's adoption. The legislative body of the city, that is the City Council, may return the plans and recommended ordinances and regulations to the Planning Commission for further study or recertification or, by a majority vote of the entire membership, may by ordinance or resolution, adopt the plans and recommended ordinances or regulations submitted by the Planning Commission. Following adoption by the legislative body, that is the City Council, the adopted plans, ordinances and regulations shall be filed in the office of the City Clerk, spread of record with the County Recorder of the counties in which territorial jurisdiction is being exercised and then shall then become law. The proposed ordinance that we have before us this evening has been presented to us after much effort and much work. I would like to take a brief moment and mention how the drafting committee was formed and then the members of the drafting committee. Letters were sent to various members of the community to seek participants to guide the revision of the ordinance. Those contacted included architects, Chamber of Commerce members, citizen groups, contractors, developers, engineers, environmentalists, lawyers, planners, professors and realtors. 25 members of the community were selected of which 15 were chosen to serve as the core group which

met weekly and reported to the full committee monthly. This has been an ongoing process for approximately one year. Assistant City Attorney, David Whitaker served as Chairman until employed with the City and than served as Legal Assistant and drafted the ordinance. Those members of the drafting committee who participated in writing the ordinance that we have before us this evening were Audrey Lack of Miller, Boskus and Lack, Fran Alexander with The Friends of Fayetteville, John Duvall with We've Had Enough, Jim Neal with McClinton-Anchor, Matthew Bottishball with Navaho, Richard Alexander, Kirk Elsass, Andy Feinstein, Dr. Gerald Clingerman, Missy Lefler, Celia Scott-Silkwood, Beverly Milton and Jim Wilson, Tree and Landscape Advisory Committee and other members who contributed to the core group meetings included Jo Bennett with The League of Women Voters, John Harbison with the Sierra Club, Bob Hill with Nickel-Hill Group, Bill Keating and Chris Brackett with Jorgensen and Associates, and Jim Key. Before we begin the meeting this evening, Sheri would you call the roll please?

ROLL CALL:

Upon roll call there were 7 Commissioners present with Commissioners Marr and Bishop absent.

ADM 01-32.00 Administrative Item Tree Preservation & Protection

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT ORDINANCE, OF THE CODE OF FAYETTEVILLE, TO PROVIDE AMENDMENTS TO AND CLARIFICATION OF VARIOUS PROVISIONS CONCERNING TREE PRESERVATION AND PROTECTION.

Estes: A quorum is present and we will begin the special meeting of your Fayetteville Planning Commission. Let me tell you how we will proceed and what the order of business will be. First I would like to take public comment. As you come forward and address the Commission if you would state your name and give us your address. If you would please speak to that specific section of the ordinance to which you wish to comment. What that will do is allow us to go to that specific section and make appropriate notes as you speak. If you wish to make a general policy statement, would you please identify whether that general policy statement is one of a definitional issue, a procedural issue or a substantive issue. If it is something that is in the ordinance that you would like to see taken out, again refer us to that specific section. If it's something that is not in the ordinance that you would like included in the ordinance, please tell us the section where you would like to see that particular provision included. Ask questions, if I am not able to answer your questions, which in all probability I will not, we have Mrs. Kim Hesse, our Landscape Administrator with us this evening, we have Mr. Tim Conklin who is our City Planner, we have Mr. Hugh Earnest who is our Urban Development Director and we have several members of the drafting committee who participated in actually writing the ordinance that we have before that can perhaps speak to your questions. After we have heard public comment I will then close the floor to public comment and I will bring the matter back to the full Commission and we will go through section by section and discuss the comments that have been made and then once our discussion is completed, I will ask for a motion as to the entire ordinance.

PUBLIC COMMENT:

Estes: With that said, is there any member of the audience that wishes to provide public comment? If so, please come forward, give us your names and address and tell us that specific ordinance for which you wish to speak.

Israel: My name is Ben Israel, I live at 1501 Starr Road, Fayetteville. I am a commercial developer and would like to address several issues. I'm not sure I can give you what you are asking for as far as the particular section but I will try. First of all let me say

that Fayetteville needs developers. I know we sometimes don't do a good job and sometimes we do a good job but Fayetteville needs developers. I just started a project on the corner of Joyce and Old Missouri Road that the taxes on that property a year ago were $800. The taxes on that property next year will be $55,000 and I think our school system can certainly use the revenue. The thing I find most disheartening about any ordinance is the inability of the staff to carry it out in a timely fashion. Fayetteville is a very difficult place to do business in as a developer. For example, on our latest project it took 89 days from the submittal of our last documentation to the City employees before we were able to get a grading permit. When you have two million dollars borrowed at 9% interest, that's about $45,000 additional cost that we would not have had had we developed in a City that had the infrastructure to support the ordinances they pass. Your people aren't sitting around on their thumbs, they just don't have enough help to enforce the current ordinances so that developers are put in a position of supplying an enormous amount of information. Then City staff, not only do they have to look at that information, they have to attend other meetings to provide similar advice to other developers. To wait 90 days from the time you submit your last detail to the City to get a permit to start grading is quite ridiculous. I encourage you, if you pass the ordinance I hope that you provide staff to evaluate the plans so that we don't wait another 90 days before we can have access to go forward. There are two or three things about the ordinance that I would like to see you change. Right now it is somewhat discriminatory. If you are going to require 20% canopy of trees on a tree lot, why not require it on every lot? A lot without trees doesn't have to have any trees other than those that are called for in the parking arrangement. I would suggest if you are in a position of requiring a 20% canopy on some lots, the person who owns a lot who has trees on it is at a disadvantage. A developer determines a price of a given piece of property by how many square feet he can build on that property. If I have to preserve 20% of the property for trees that are already existing on the property than it's worth less to me as a developer than it is if there are no trees at all. I would encourage you to say let's make it a level playing field, let's say that any lot that's developed commercially must have a 20% tree canopy. That's only fair. It's also unfair that downtown only needs a 10% tree canopy. Why is downtown any more special than any other part of the City? Is a tree less deserving downtown than one that's out in the countryside? Or the citizens of downtown Fayetteville are less likely to appreciate the fact that 20% of the ground is covered with trees. The difficulty I have as a developer is that the plans are not administered evenly. One developer is not required to leave any trees, while another developer is required to leave 20%. I think that if you had an ordinance that said every lot regardless of whether it had a tree on it to start with and it's a commercial development, should have trees on it and it should have 20% canopy. If I was a landowner in the growth area of Fayetteville, the first thing I would do is go

clear-cut it, if I thought I wanted to sell it for retirement and wait five years and then sell it to a developer. I know I would make more money on it. But if I knew as a developer that even if it was clear-cut, I had to replace that 20% trees than I wouldn't want to do that. I think that anytime an administrator, whether it is this administrator or another administrator, has the ability to make a decision that you don't need 20% trees, you only need 17% trees, that's a mistake. If it say's 20%, it should say 20% and let's go vertical with the buildings and not horizontal. Fayetteville is a horizontal developing city, you don't see very many vertical buildings except downtown and that's crazy. We would like to develop vertically but nobody will rent them. People don't want to be on the 4th flood. If we start demanding that they leave a 20% tree canopy, then let's do that and we will build vertical buildings because we will have to in order to get the return on the investment that we are looking for. I live off of the 45 Highway. There was a lot there that has some beautiful, gorgeous trees on it and now there is a convenient store on that with one scraggly little ole tree in it's place. I don't understand how they do that. As a developer I'm held to a different standard than that, I don't know why isn't held to the same standard. I've got a new development on Joyce Street apart from the other one I mentioned and they've required me to set aside 630 feet in length by 55 feet in depth that I can't even park in a car into that tree. I don't see how the next developer on a given corner can take down every tree on it and not plant anything back, it's not fair. As I said, anything that's fair, honest and non-discriminatory, I'll live with it if you tell me what it is. Fayetteville is still a hard place to develop property in. It costs about 20% more to develop property in Fayetteville than any other city we develop in. The other thing I have difficulty with is, if there is an existing tree canopy, let's say it's this one acre that I am setting aside, I can't go on that one acre and make the better trees healthier because I can't cut any trees out of it. If there is a persimmon grove in the middle of it, I can't remove the persimmon grove and put in oak trees. They won't let me cut them. The national forest burns to achieve undergrowth destruction so that healthy trees will have a chance to survive. I don't know where we are reading that no trees should be cut. The ordinance indicates that any tree already existing is better than any new tree I can plant and that's just not true. I went out on 45 Highway, we had 30 acres, we cleared of a bunch of scrub brush and we planted maples and we planted everything else you could plant that's going to be a beautiful tree someday. A persimmon tree is going to be a persimmon tree until it falls over. That's what it is and it's not going to be a beautiful tree. I'm sure it has it's advantage but I don't like them. I can't choose the trees I want to plant. You are telling me that here's a list you can choose from and if you plant one that's not on this list, we are not going to let you count it towards your canopy. I don't like that. It also states that after a tree is preserved, in order for me to remove that tree, I've got to come before the City Council and convince the City Council that is in the best interests

of the citizens of Fayetteville to remove that tree. How in the world could I do that? How can get before the City Council and convince them that it's in the best interest of the City of Fayetteville? If it's in the best interest of the tree, I can understand that. Do we have a vote? Do we take a public opinion poll to determine how it's in the best interest of the citizens of Fayetteville? That's on page 13 "such damage, destruction, transplantation or removal is in the best interest of the residents of Fayetteville". That's just too far reaching for me.

Estes: What subsection is that?

Israel: It's exhibit "A", Technical Corrections for Planning Commission...

Estes: I'm on page 13.

Israel: It's under L1. I received from the Administrator and I like her, I have nothing against her, she is doing a great job and I believe in what she's doing. It's just I don't believe in the manner in which we are doing it. It's a good opportunity to work together but I don't get an opportunity to work together, I get directives. I says that if I damage a root of a tree, you know when you got bulldozers and men from everywhere in the country bringing in materials you are going to damage a root of a tree. Somehow I've got to cover that tree root with 4 inches of mulch and water it every day. This is a construction site, we are doing everything in the world we can we can to protect it. If that tree is protected were outside the dripline has a root that extends another 20 feet over here, I don't know how to do that. I got a letter the other day that if I was to prune a tree that I had to use a special sharpened something and that if I used one that was dull, I wonder if I would be fined. I don't mean to be facetious, it's just that we don't have to have that much instruction. Give me 20% tree canopy and say protect, preserve, replant or replace it and we'll do that. Just don't let somebody else not do that and get away with it but you are doing that. Maybe you are not doing that but somebody is doing that. That's about all I have to say. I have one other thing. You are asking me to ensure that tree will live 3 years. I've got to put up money or a bond that says that tree will live for 3 years. If I know that I have to maintain 20% canopy, would I purposely destroy a tree or not take care of a tree? That's an expense to a developer to have to guarantee the life of a tree for three years or whoever the assigned of the developer is, it travels with the property. I don't think that's necessary. If you tell me I have to maintain 20% canopy, I'm going to do the best I can not to have to spend a lot of money two or three times to replace trees. Doesn't that make more sense than you tying up my money for 3 years, me having to charge the tenant more, I'm already having to charge them more because it costs more here. I just ask that you

use common sense and not get so carried away that we lose sight of the fact that this is still America and we still have individual rights and part of our individual rights are that pursuit of life, liberty and the pursuit of happiness. I'm not real happy right now but I will do whatever we have to do to develop. I like Fayetteville, been here 35 years and I want to stay here. Thank you.

Estes: Is there any other member of the audience that would like to provide public comment on the ordinance amending Title 15?

COMMISSION DISCUSSION:

Estes: Seeing none, I will bring it back to the Commission for discussion and motions. Commissioners, let's begin working off of the technical corrections draft dated August 17, 2001? Let's begin with section 1, the definitional section. Is there any discussion regarding any item of section 1?

Hoffman: I do have one suggestion and I have just about 3 or 4 throughout the ordinance. I have one for the definition section. Before I start on that I just want to say thanks to the Committee because I realize that it was made of all segments of the community, as you stated before, and a lot of work has gone into it. It's a difficult process once a lightening rod or seminole issue like Kohl's development began this, to go through and put together an ordinance that's as far reaching as this and it's implications. With that being said, I'll throw in my two cents worth on some of the text. Under the definition of significant tree, I would like to add, I'll pass my copy of this down for the record later so we don't have to worry about typing everything. Under the definition of significant tree at the end you've got "endangered species" add ", or due to it's location on a site designated as historic by local, state or federal authority". I'm adding historic sites into the definition of significant trees. I'm doing this because I can think of other locations where treaties have been signed under trees that are given historic markers, I'm not aware of any particular sites like that in Fayetteville but there may be that I'm not aware of. There are tree groves in the confederate cemetery that if someone wanted to add a structure one day, those trees shall be considered because of their location on a historic site. That's all.

Estes: Any other discussion regarding section one? Seeing none, we'll go to section 155.05, Appeals From Planning Commission Decisions. Any discussion? Seeing none, we'll to go section 156.03, Development, Consideration by the Planning Commission. Any discussion? Seeing none, we'll go to the tree and preservation ordinance section 167.01, Purpose, which includes both Objectives and Principals. Any discussion?

Hoffman: Under objectives A7 "To stabilize soil and prevent erosion" add ", with emphasis on maintaining tree canopy on hillsides as defined in canopied slopes under the definition section". I like the format that you used following the question and answer session and I would just like to throw them in the mix.

Estes: Any other discussion?

Bunch: One of the things that appears to be missing is stabilization of riparian areas. It does say stream beds, "preserve river and stream beds and present sedimentation". Possibly under item 7, in addition to what Commissioner Hoffman suggested, on stabilizing soil and preventing erosion, add a comment about riparian areas. It just seems that is one item that appears to have been overlooked.

Hesse: I would think we could add that to either number 7 or number 9, "Preserve river and stream beds and banks and riparian buffers to prevent sedimentation". The idea was basically that objective.

Estes: Commissioner Bunch do you have a comment regarding whether you would like to see that included in item A7 or item A9?

Bunch: For clarity it would probably be better to have it in item 9.

Estes: Any other discussion regarding section 167.01? Seeing none, section 167.02, City of Fayetteville Tree Preservation, Protection, and Landscape Manual, any discussion? Seeing none, we will go to section 167.03, Tree Registry, any comments or discussion?

Allen: I wondered if there needed to be a clarification under A, the tree registry that this registration goes with the landowner and not with the property?

Hesse: I tried to cover that in B. Did you see the underlined statement in B, "Registration of trees shall be voluntary and may be done by the owner(s) of the property on which the tree is located. I guess it doesn't really discuss into the future as this property is sold.

Whitaker: I think it would probably be in order to put some sort of disclaimer in it, if your reading of it raises that ambiguity in your mind and it's a fear that it would for others as well. I don't think there would be any problem adding some sort of disclaimer there to that affect.

Estes: Before we go to that, can we have more definition where that should be included and

how should the language read?

Whitaker: I'm thinking probably almost immediately after the corrections in B which Mrs. Hesse just read and something to the affect that "registration shall affect only the owner who sought registration and shall not run with the land". I can clean this up a bit. Something to that affect.

Hoffman: "Shall not run with the land unless designated by the seller." They might do that.

Whitaker: Yes, they certainly could voluntary put a trust on that. Yes, I think something like that would be appropriate.

Estes: Any other discussion regarding this section?

Allen: I also wondered, how it would be determined whether or not a tree would be registered? Supposing I have a magnolia tree, I can just register it or does someone have to come look at the tree and determine that it's a significant tree or it fits into some category or is it just at the owner's discretion?

Hesse: It's basically at the owner's discretion. If the tree or group of trees that are documented that are of uncommon or endangered species regardless of the size, that are of extraordinary value due to their age, size or type. Really although we were going along with the significant tree definition, we would allow some flexibility to that. The idea is, this is a tool to raise awareness and pride of homeowner's trees. We didn't want to eliminate somebody who really wanted to put a tree on the registry that we somehow had to come up with a mechanism the owner, in the future on the website or something, they could actually be able to view theses trees. We would like to try to do something to encourage that kind of pride. I didn't want to eliminate the ability to put a tree on the registry if for that homeowner it meant something to them.

Allen: Conceivably, if a person was a real conservationist, they could register every tree on their property?

Whitaker: They certainly could but I don't know, other than the fact that they could brag to all of their neighbors that all their trees are registered , I don't think it would have any real affect.

Allen: I just had some question about it.

Whitaker: I want to reassure you that one of the changes that was made was trying to pull the registration process away from the development regulation process so that the only real affect would be that the person we would have or the registry of the trees and people would develop some pride in the trees on their land. Theoretically someone could, if they wanted to, register every tree on their land, yes.

Allen: Thank you.

Estes: Any other discussion regarding section 167.03? Seeing none, section 167.04, Tree Preservation and Protection During Development. Any discussion or comments?

Allen: Sorry to keep asking questions but I wondered if there might be something added since we have had a situation since I have been on the Planning Commission where there were some discussion as to whether something was a large scale development, whether or not it was an acre or not and the trees were cut. Whether there could be something included that would make the developer or the City need to measure the area. I don't know quite how to put this. I just don't want to see trees cut in an area until we determine whether or not that is over or under an acre.

Estes: The application of paragraph 167.04 provides that this section applies to proposed subdivisions, large scale developments and developments required by other chapters to go through the City's permitting process. By definition this section applies to proposed subdivisions, large scale developments and other developments required by other chapters of the UDO to go through the City's permitting process.

Hesse: On that specific type of situation, most of the time grading permits are always required which is why we put a grading permit. They will fall into this ordinance if they require a grading permit. It used to be for an acre or more but now that is no longer there. It's basically all grading permits. Than also what is included are multi-family from three units and up and then all non-residential buildings. If they had to get a building permit, other than single family and duplex, it would fall under the ordinance. It still doesn't keep them from cutting trees prior to building permit.

Allen: Thank you.

Estes: If required to go through the City's permitting process than this subsection applies, is that correct?

Hesse: To everything that is listed in here. I'm sure there are processes through permitting that

we do not see.

Conklin: On a duplex, you wouldn't see those unless it's on a slope or floodplain.

Estes: Any further discussion regarding this section?

Hoover: On section 167.04(C), Canopy Area, I was noticing that we've got in zoning designation, a C-4 for downtown and that's a 10% canopy and in our administration and management draft they don't show a C-4 on here. How much C-4 is there downtown?

Conklin: It's primarily the square and surrounding streets around the square, it's not very much.

Hoover: What is downtown district as far as zoning?

Conklin: If you are talking about the square and surrounding buildings, that's zoned C-4. Dickson Street is primarily zoned C-3, in between the Square and Dickson Street we have everything from R-0 to C-2, R-2 multi-family and many different zoning districts.

Hoover: Do we need to show the C-4 on this? There is not a C-4 listed in here, I was just curious.

Hesse: That is a draft, I'll make sure it's included.

Hoover: I have a question on C-4 and 10% in the downtown area. For instance if we have a lot down here and we are trying to build zero lot lines then what do we do when we have trees that are actually going to be in tree wells out on the sidewalk. Does the developer go for a variance for this?

Hesse: I think that's a good point to bring up. In the most situations on Dickson Street, if you went through this criteria we wouldn't be saving any trees. That was from the original ordinance.

Whitaker: Yes. I actually have it in the latest draft.

Hesse: Didn't we discuss the change in the percentages so we didn't go through it individually. That's a very good point because of the density downtown area.

Hoover: There wasn't any discussion during all the meetings about the difference? I see the

downtown area from Dickson to Archibald Yale and this whole area is being different than developing out on 45 and 260, especially if we are encouraging higher density. Don't we have smaller setbacks?

Conklin: Yes, in C-4 setbacks are up against the sidewalk.

Hoover: It would be impossible to do any canopy.

Conklin: Depending on the lot size. Typically it would be very difficult to preserve canopy unless you have a large enough lot that maybe back behind the building save a few trees.

Hoover: I don't think that would be what we are wanting to encourage. I don't have any language or anything, I'm just bringing that up as a question. I don't know how to address it. I don't know if other cities tree ordinances separate the downtown area from other areas?

Hesse: A majority that we reviewed didn't go by percentage, it's by zone. Those that did definitely did define them but I didn't really point out or look for that high density commercial. I do agree.

Estes: Any other discussion?

Ward: You are talking about 10% on basically zero lot lines and buildings that shouldn't even be in there.

Hoover: On C-4 but also in our area we have lots of C-3 which is 15%. It would be like Dickson Street.

Hoffman: I think there is other wording in the ordinance like technically and feasible or something like that that the Landscape Administrator makes that determination and makes the recommendation to the Planning Commission.

Hesse: In the criteria, basically if your building footprint fills the site then I wouldn't recommend making them preserve a tree. It's actually section B of the same subsection.

Hoffman: We could look in the future at taking it out or something. If this ordinance is eventually passed it's going to go through some evolution of it's own. Things are going to be dropped and changed as we go along and start implementing various things. I would like to incorporate Dr. Israel's request that we look at an equal playing field for all lots.

I'm sure the committee had talked about that and if you have a bare lot, if it's worth more or less and should we require the 20% of it be planted? I am concerned and, I'm not sure where you came up with the figure of 20% more, development cost in Fayetteville with impact fees coming in in Bentonville right now. I would want, before this goes forward to City Council to investigate and see if that has been discussed in any of the committee meetings about the completely bare lots.

Whitaker: I can tell you it definitely was discussed. The subcommittee spent a good deal of time on the subject at one point during it's career. My impression of having watched discussions and participated in numerous ones until late March. There was a sense that might be going too far. We had never previously had what we referred to as an A4 station requirement. Certainly I think that's being a policy question is certainly something within your power to adopt and recommend to the Council.

Hoffman: What you said is just my feeling. We are talking about a far reaching ordinance and to make it too overbearing at one time seems to me to be putting more pressure on the development community than I would prefer to at this time.

Whitaker: That was my impression of the subcommittees sentiment as well. Better to make progress than to overreach.

Hoover: I have a couple more questions on the section on prior tree removal. I frankly didn't think that that was severe enough. Is this different than what we had before?

Hesse: What we used to have is replacement which is now mitigation or off-site alternatives. Those are a lot stricter. To have to replace your canopy by your zone plus 10% and has to all be done on site...

Hoover: I'm talking about the prior tree removal. You are saying if it was removed without...

Hesse: Basically. They have to mitigate on site for what's removed. If it where a 20% requirement, they would have to mitigate 30%. It would all have to be on site. If they would have to provide the amount of area for those trees to mature which will limit any chance for the size of the property they have to develop on. By removing those trees suddenly they are limited, versus 20%, they are limited to 70% of the site.

Hoover: Was there any discussion as far as, this probably wouldn't be very popular, I'm assuming we took out the option of paying a fee for the tree removal? Was there any discussion of maybe a delay of being eligible to apply for a permit if you did tree

removal without a tree preservation plan or any permit?

Whitaker: Not specifically, I don't believe.

Hesse: I don't remember discussing it.

Hoover: I was trying to think of what would be a significant reprimand for not going through the proper procedures.

Hesse: I think that it is a little bit presumptuous to assume they would only be able to utilize 70% of their land. The canopy would have to be replaced on that land through mitigation measures.

Hoover: I'm thinking of a particular one we have that's been come through Planning Commission lately. That doesn't seem to be enough incentive. To me, a time delay would be incentive for a developer not to do that or for anyone not to do that.

Estes: Commissioners, with regard to subsection E, Tree Preservation Priorities, we've been provided with a memo from Mrs. Hesse that contains suggested additions and she speaks to section 167.04(E), Preservation Priorities. Mrs. Hesse, would you like to comment on your suggestion change to this particular subsection?

Hesse: Basically, versus using the language undesirable, we would change that to less desirable. Mainly because most of the trees that are listed there as undesirable, they all have benefits to them. They all provide some sort of function on the land. They considered undesirable in an urban setting where maybe they have a lot of pedestrian use underneath them or cars are parked near them or that sort of situation. In every case they may not be really undesirable, they may be utilized for their canopy if they are in a location that works well with the development where they possibly don't have a sidewalk next to the tree, or parking next to the tree. Also, say you have a willow in there, the willow may function to stabilize the bank of the stream. I want to point out the fact that even though they are listed as undesirable, if they are functioning as a high priority, we will view them as that. If they are holding up a stream bank per se, or if they are in the floodway they would be considered more desirable. I really was uncomfortable with the use of the word undesirable. Throughout that section we talk about the preservation of high and mid level priority trees and we do not talk about the preservation of the low level trees. Like I said, in some situations that that's your only canopy, if it works well on the site we would want that canopy protect and we do require that it be mitigated if you have to remove it all. It is of value. I just prefer we

use the word canopy in those situations where we are talking about protection of high and mid level. The canopy would include all canopy that was being preserved. That we use the word less desirable versus undesirable.

Estes: What is the numbered paragraph where you are suggesting the undesirable and less desirable language?

Hesse: Actually it's utilized in table 2 on page 6.

Estes: In table 2, column 3, undesirable you would like to see changed to less desirable?

Hesse: Yes.

Estes: Your second revision canopy versus the high and mid level priority trees, where would that language change be made?

Hesse: On page 5 under E-1, the bottom of that paragraph.

Estes: Paragraph E-1, last sentence, ..."routed wherever possible to avoid high and mid level priority trees", and how would you like that changed?

Hesse: "Such utilities shall be routed wherever possible to avoid canopy."

Estes: Any other changes?

Hesse: On page 6 under F, paragraph one, again the last sentence. "Trees in the utility easements shall not be counted towards percent minimum canopy requirement, and such utilities shall be routed to avoid canopy."

Estes: Any other changes?

Hesse: On page 9, paragraph 4, Analysis Report, "The applicant shall submit an analysis report detailing the design approaches used to minimize damage to or removal of canopy that were considered in arriving at the proposed design."

Estes: Any other suggested changes?

Hesse: No sir.

Estes: Commissioners any other discussion regarding section 167.04, Tree Preservation and Protection during development?

Hoover: I have one other question for Kim. Was there any discussion about civic trees, that a canopy that's along the street edge gets any more credit than a canopy in the rear as a buffer? Or, was there any discussion about is all canopy equal on the site or do we see one being more desirable than another if possible?

Hesse: That's basically it's preservation priorities, identify more valuable trees on the site based on the function. Actually we started out looking at more environmental issues like canopy slopes, floodway, riparian buffers and we also put in the large significant trees as being high priority. A second level priority would include the use buffers and we define those in the definitions. I don't know if we discussed them along the right-of-way but in our discussions that was kind of part of that, buffering between land uses as well as between vehicular and pedestrian. We may need to further design that.

Hoover: I see under use buffer incompatible land uses, unwanted light or noise. I guess I would be interested if you could include in the public realm what you are going to see as being pointed out. Do you know what I mean? In my viewpoint, I would rather see if they have to do tree canopy in the front of the building rather than in the back that maybe has 300 feet before it gets to the next lot.

Conklin: That issue does come up about where it's more desirable to preserve tree canopy and where we view trees from the public realm, the civic space or from our streets. I don't think it's in the ordinance but I do agree with you that we do want to try to preserve trees that the public will be able to enjoy from our streets.

Hoover: Even if it's replacement canopy, I would prefer to see it out in the front more so. I've noticed on some things that have come through Planning Commission will be like 14 new trees in the rear which 4 would have taken care of screening to the next neighbor but it would have been nice to have more than 2 trees up front.

Whitaker: Right-of-ways and public grounds are addressed in 167.06.

Conklin: I think what Commissioner Hoover is suggesting is, should we place a higher priority on trees that you will be able to see in a development to be up front versus back behind the building?

Whitaker: On private land as opposed to city right-of-way.

Conklin: Not on city right-of-way, on the development site, should we have a priority where trees that you preserve, should there be a higher priority for those trees that you can view from public space versus back behind the building.

Hoover: Possibly as an incentive if you put larger trees in that public realm than you don't need as many. Some kind of incentive. I don't want to make it even harder, I would like it to be an either/or kind of thing so there is a trade-off there.

Hesse: I see a couple of ways we could incorporate that into use buffers between pedestrian use and vehicle use. We can incorporate that into that definition. Oftentimes, just through my experiences, it's sometimes more difficult to preserve them along there but it doesn't mean it's impossible. If it's a commercial development the Commercial Design Standards require the trees along the right-of-way every 30 feet. One thing we have done, when they do mitigate on site, obviously we are looking for a space where they have room for the trees to grow. Oftentimes you find that setback allows for that room and I have a feeling we will find a lot of mitigation going in that area in the front setback especially because there is more space.

Hoover: What about when you mentioned the utility easement? Are we allowed now to plant trees in the utility easement? I'm thinking again along in the front where there is often utilities.

Hesse: We have continued to plant in the utility easements. It's the preservation in the utility easement that we don't count as preservation. We have no control over the utilities, they come in and dig out. That's also true for those that have been planted. We have been planting in utility easements and I haven't seen it as being a major problem.

Hoover: They are not going to get any credit for their canopy in the utility easement, or are they?

Hesse: Not for their preservation. They do get credit for what they plant in Commercial Design Standards, they can plant those in the utility easement. They would not count that as replacement in the utility easements, you've got a point there.

Hoover: I don't know, is that a good or bad thing? I'm seeing a lot of trees are being setback 50 or 60 feet from the road which is not helping shade the road or sidewalk at all. I am just wondering how to get to that point?

Hesse: We have a couple of issues to deal with as far as water and sewer as well. The water and sewer Superintendent feels strongly about the repairs that has to occur in that area

and they prefer that we keep it at a minimum 6 to 8 feet from that line. Sometimes that will pull us back. There is a lot of situations that cause us to pull it back, sight distance from the driveways. I can see where aesthetically and also functionally we have benefits by putting the trees near the streets, it seems like we do have a lot of obstacles. I don't know if there is a good answer for that.

Estes: There has been provided a written comment to us from Ms. Colene Gaston and copies of her comments have been distributed to you and I would like to pass the original to Sheri to be made a permanent part of the record. With regard to those comments, in section 167.04A, that change has been made in the technical correction draft that we have and that section now reads "Canopy to be preserved shall be noted on the final plat and shall be protected as set forth in section 167.04L below." The comment provided as to section 167.04 F.2.b and let me give you an opportunity to go to that, Preservation Plan for Infrastructure Only, the comment that Ms. Gaston has provided is "This second option for a preservation plan (for infrastructure only) should also include the mandatory filing of a "Tree Protection Easement or other recorded device, which provides a permanent record of the protection afforded under this chapter." Any discussion? In section 167.04 I, which is titled Request for On-site Mitigation, Ms. Gaston is "I believe that the test for allowing on-site mitigation should be clarified to provide that the applicant must demonstrate to the Landscape Administrator's satisfaction that a site's physical or spacial constraints prevent any development of the property that would preserve the Percent Minimum Canopy." Any discussion? As to section 167.04 J, Request for Off-site Alternatives, at the bottom of page 10 of your technical correction draft, in column 2. The comment made is "I recommend that this option for off-site alternatives also require demonstration that the property would not in any way be developed and also meet the Percent Minimum Canopy." Any discussion? In 167.04 L.3, which is found on page 13 in the left hand column, the comment is "This provision regarding continuing preservation and protection should include the same language as recommended above for UDO 167.04F.2.a and 167.04F.2.b that would require the filing of a Tree Protection Easement or other recorded device." Any comment or discussion? Is there any other comment or discussion regarding section 167.04?

Shackelford: On the site analysis plan, which I believe is somewhat of a new document trying to combine other things, 167.04H subset 1, Site Analysis Plan, page 7. My concern is, if this does not apply to LSD only then it would apply to the individual developer who was wanting to build a triplex on a so zoned piece of property. If that is the case, I assume it is the applicant's responsibility to complete this plan at his cost. My concern is that as a developer trying to build a piece of property, I'm going to have to do a plan

showing the approximate age, health and size of every tree on the lot, a plan including all natural features including features beyond 100 feet beyond the property line, a plan showing the topography highlighting slopes 15% or greater and I'm going to have to identify all the soil on the property according to soil classification system. My concern is that if this is held outside the LSD on just developments that are not excluded by the overall ordinance, it's going to be a requirement that the developer on smaller scale may not have the professionalism to do. My concern is who's going to do this type of study and at what cost is it going to add to the developer on that project?

Estes: Mrs. Hesse, would you comment and before you do, let me sort of add a little footnote to that. We have the abbreviated tree preservation plan which is in subpart 3, is that what we are talking about, subsection H, Submittal of Plans?

Hesse: Yes, for abbreviated tree preservation plans, those are the required of building permits, grading permits and parking lot permits. Anything that does not go through the full review of this Commission would not be required to do a site analysis or analysis report. They would be required to only do an abbreviated tree plan, which could actually be done with a hand drawing, it does not have to be a computer generated drawing. The intent was not to have to require them to hire somebody to do this.

Whitaker: Also, on page 9 the very end of the abbreviated tree preservation plan section, the committee asked that I put in the specific disclaimer that applicants submitting abbreviated plans shall not be required to submit either a site analysis plan or analysis report.

Shackelford: Thank you.

Hoffman: Do you want to get any more specific and say that professional engineers or architects will not be required for abbreviated tree preservation plan?

Whitaker: I could.

Estes: Commissioner Hoffman where would you suggest that language be included?

Hoffman: Just add it on page 9 on 167.04H.3, the end. Add "An architects or engineers seal is not required for an abbreviated tree preservation plan."

Conklin: You might want to add landscape architects also.

Hoffman: Architects, landscape architects or engineers seal is not required.

Estes: Is there any further discussion regarding section 167.04?

Shackelford: The changes that Ms. Gaston has referenced that you read earlier, are those being read into the document as it exists?

Estes: No, my intention was to read those and ask for comment. If my memory is correct, there was no comment or discussion. It was certainly not my intent to read those in as a change to be considered. It was my intention to read those and offer them for discussion.

Shackelford: The only reason I ask that is because it would be in conflict with number 7 but if those are not changes that have been made then we are okay there.

Estes: It was only my intent to bring those to your attention by reading them and asking for comment. Any other discussion?

Hoover: I have a general question that I was wondering if the committee discussed. I appreciate all the ordinances that we have and making them more stringent but were there any tree ordinances around that gave incentives to developers so that if they did one thing they would get something else? It seems like reading through here this is pretty in depth. Have other cities approached it from that direction?

Hesse: I'm sure they have. I can't think of anything at this point. The only incentive we built into this ordinance was for the mitigation aspect of it. If they were able to mitigate all on-site, they would only have to mitigate 80% of what's required. That was just trying to encourage them to do that. I don't believe we had any other built in mechanisms.

Hoover: From the developers in the group, did they think that was enough incentive or would they want to see more?

Hesse: I'm sure they would want more.

Hoover: In general, did they think that was an incentive or did that mean nothing?

Hesse: That was an incentive. That was brought up by one of the engineering representatives of the committee. At our committees we had a mixed bag, we almost always has some from the construction industry, some from engineering. We did not always have a

developer there, we had representatives for them but we did always physically have a developer on the committee at every meeting. As we went through this they may have missed an opportunity to question something.

Allen: I had a like concern as I read through, there are so many rules that if you are abiding by everything there ought to be more incentive built into the ordinance. Did you have any thoughts or ideas as you were working on it about other things that could be added?

Whitaker: I must tell you that on that it came up from time to time but no one really brought forward any concrete plans or specific schemes for incentives other than the 20% allowance that made it into the final draft. There are such things elsewhere but it's subject to pretty complex schemes. Some things are earning development points and things like that but who tracks that over time? How many tree compliance points do you have? Did you use them up on the last one? Do you get into a regime where you have all these points so you could come in and clear 300 acres and not put any trees on it because you've earned up enough bonus points. Those are some of the things that you encounter when you start talking about these incentive programs. I think that at some point the subcommittee felt like it had enough work over the 14 months that it just wasn't ready to move there in any of those complex parts.

Allen: I was thinking about on the piece of property that they were developing, not accumulating points. Maybe they would have an additional parking space. There might be something that could be a real incentive for people to want to comply.

Whitaker: I would defer to the Planning Director when you start giving away parking spaces and things of that nature.

Conklin: I think one of the biggest changes I've seen since we went through the ordeal with Kohl's that resulted this ordinance, the development community is meeting with staff up front prior to the applicant submittal. They understand that when you do meet the ordinance requirements and you do work with out Landscape Administrator and you meet our ordinance requirements, you can get through the process on time. There are very few developments now that we are unaware that they are coming into the Planning Division for processing. It's almost always a preapplication conference. Even with the new tree ordinance where it encourages preapplication conferences, that has been happening for about a year now. I think it's evident at our Planning Commission meetings lately that development community and staff are working closely together to make sure these projects come to you meeting our ordinances. The biggest incentive that we can give the development community is an ordinance that's clear, the ability for

staff to communicate with them and bring in projects that meet our ordinance requirements. I think this will be a positive step.

Estes: Any other discussion regarding this section? Seeing none, Section 167.05, Tree Protection measures and construction. Let me direct your attention to Ms. Hesse suggested additions to the technical corrections regarding section 167.05B, Tree Protection. Mrs. Hesse could you speak to your suggested change please?

Hesse: Yes, just from experiences on projects, oftentimes I think anyone that has dealt with construction realizes that once you design a plan on a sheet of paper that there is quite a few differences when you get out into the real world on the site. There are a lot of construction changes that happen during construction. Oftentimes we find ourselves, even prior to or during construction allowing them to encroach on some of the protected trees, into the dripline. Basically they find themselves boxed in or a utility has to run in a different location. In situations like that I would like to have the ability to require them to do root pruning or add mulch to the base. Oftentimes you can allow them to get under that dripline if you put a thick layer of mulch and then that tree will not be impacted like it would be if there was nothing there to cushion the weight of the compaction of the soil. My suggestion was that under tree protection that we would include a statement saying that the Landscape Administrator may require other protective measures based upon the individual characteristic of the site and the proposed construction methods. Very often I find, especially on tight sites with commercial buildings, if you look at it on a drawing it may look perfectly fine but if you looked at the details of their footing plan you would realize that they are having to excavate beyond that tree. Typically you need to keep 10 feet from the building in order to build the building and oftentimes I'm being more flexible on the site and allowing them to move into that tree. I do so by asking them to do some additional measures and it has worked for many sites. I was uncomfortable that without this language I may not be able to make those changes.

Estes: Any discussion regarding this section?

Hoffman: I have some elaboration or expansion on your idea. That is that we implement tree preservation measures for trees that are actually located off the site but have a root zone on the site. I've come up with some wording that you are welcome to change but this is the idea. At the end of 167.05B to say "Tree preservation measures must also adequately protect off-site trees with root structures extending into a site for proposed construction. If damage or destruction to an off-site tree occurs, the applicant or developer will be required to mitigate that damage as prescribed by the Landscape

Administrator."

Estes: Any discussion? Any other discussion regarding Section 167.05? Seeing none, Section 167.06, Tree Planting Maintenance and Removal on Street Right-of-ways and Other Public Grounds, any discussion? Seeing none, Section 167.07, Commercial Tree Pruner/Service:Certificate and Insurance Required, any discussion? Seeing none, Section 167.08, Hazardous Trees, any discussion? Seeing none, Section 167.09, Local Disaster Emergency, any discussion?

Hoffman: I only have one question about that, the ice storm brings it to mind. Is there anything in our ordinance or UDO that covers trees down on power lines? Does SWEPCO or the utility company have to come and cut the trees off the power line, should we address that or is that a separate disaster issue?

Hesse: I think that there laws would probably override these and they don't allow anyone get near those lines when there is a tree on them. It's something that the utility wants to maintain for safety reasons. No, it's not addressed in here. We discuss it in some section.

Whitaker: Section 167.06J, talks about public utilities rights.

Hesse: It basically states that nothing in this section shall be construed to prohibit public utilities from pruning or removing trees that encroach upon electric, phone, cable, television transmission lines, gas, sewer or water pipes.

Conklin: Most of those utilities are probably within our rights-of-way where they have franchise agreements to be there or within utility easements which they already have the right to go in there and remove the trees.

Estes: Any other discussion? Seeing none, if we could refer back to Section 167.02 for just a moment. The comment letter that Ms. Gaston provided with regard to this section reads "The Landscape Administrator...shall promulgate and periodically revise forms, procedures, and regulations to implement this chapter...", I do not believe that the Landscape Administrator has the legal authority to promulgate regulations. Any discussion? David, would you speak to that please?

Whitaker: This ordinance would be the enabling legislation. It would be the governing body of the City telling a particular city official to promulgate regulations to enforce the chapter.

Estes: The chair will now entertain motions, any further discussion or comments. Let me say this, I do not want to limit the discussion in any way nor do I want to limit the motions. We have had several comments by Commissioners. Rather than require that we go back through and discuss each of those individually, let me suggest this, any motion incorporate by reference those changes. They have been recorded by our clerk and will be duly made a part of the record. I do not in any way limit your ability or capacity to make motions. If you would like to go to some specific comment that's been made and discuss it more fully and completely remove it, modify it, do so.

MOTION:

Hoffman: I would like move for recommendation of approval to City Council of Administrative Item 01-32.00, with reference to all Commissioners and public comments recorded today that they be duly considered prior to the ordinance reaching City Council as so recorded.

Estes: We have a motion by Commissioner Hoffman to approve Administrative Item 01-32.00 which would be forwarded to the City Council an ordinance amending title 15 of the Unified Development Ordinance of the Code of Fayetteville to provide amendments to and clarification of various provisions concerning tree preservation and protection, is there a second?

Allen: I'll second.

Estes: We have a motion by Commissioner Hoffman and second by Commissioner Allen, is there any discussion?

Bunch: I ask Commissioner Hoffman just how you were including the various portions of the public comment and the letters that have been read into the public record? Are you suggesting these be in the form of suggestion in minutes or that they be incorporated into the document as substantive changes?

Hoffman: If I understand our Chairman correctly and by looking at the memorandum from Mr. Whitaker, I think that as this goes forward it's a good idea to go ahead and have staff and the City Attorney's office incorporate all of the discussion that has been made here tonight by the public and by the Commission. It seems that there was some discussion on various wordings and various legal issues and so forth, in the technical memorandum following the question and answer question. I would assume a similar format or similar action would be taken by the staff prior to it reaching the Council level. Am I right or

wrong?

Whitaker: My only concern is that, if we gather every comment that was made both here in the chambers and from letters and such and attempt to incorporate in the draft, we are going to have some incredible inconsistencies. Some folks opposed you and I wonder how you would want the City Attorney's office to reconcile that?

Estes: My thought was that the amendments made by the individual Commissioners be incorporated and be the modified draft that goes to the City Council. Not public comments and not Ms. Gaston's letter which I read simply for the purpose of inviting comment but that those changes and modifications to the technical draft include only those changes made by individual Commission members. If there is a disagreement or question by any individual Commissioner as to whether that specific provision should go forward that it be discussed and proliferated at this time. Commissioner Hoffman, was that the intent of your motion?

Hoffman: Not really but I understand. Otherwise we will be here all night rewriting and trying to get the opposing views in. Understanding that, not having a great legal brain, I would say that there is still time for public comment to City Council and that those people that wish to make it will have further opportunity. We should go ahead and incorporate our comments and leave the public to the next meeting as those go forward. Does that sound better?

Whitaker: Yes. I believe the Council will get a copy of the minutes.

Hoffman: I understand now. Colene's letter has some definite legal terminology that I'm certainly not prepared to deal with tonight.

Estes: Commissioner Allen, was that the intent of your second?

Allen: Yes.

Hoover: Will the tree committee be meeting again before this goes to City Council and revising or what?

Whitaker: It had not been planned.

Hoover: I guess I'm concerned if we are just making the motion with new language, I didn't make any new language. I want my points to be considered.

Conklin: There will be an opportunity, I believe this is going to go to the Ordinance Review Committee and there will be opportunity there to have that committee make the final recommendations to City Council.

Hoover: When will that be do you think?

Conklin: The City Council will have to set that up, I'm not sure.

Hoover: Thank you.

Estes: The statute provides that following the public hearing proposed plans may be adopted and proposed ordinances and regulations may be recommended as presented or in modified form by a majority vote of the entire Commission. That's what we are doing. That's the purpose that we are charged with this evening. There is a motion by Commissioner Hoffman, second by Commissioner Allen to approve Administrative Item 01-32.00, is there any other discussion?

Shackelford: I would just like to make some comments for the record as well. While I agree we need consistency and clarification beyond what our current ordinance offers, I feel that we need to do this without infringing on property owner's rights. I am somewhat troubled that we are adding more restrictive covenants that will further add to the difficulty of development in Fayetteville and add to the gap between here and our neighboring communities. I'm concerned that this might push more development and tax revenue outside our City limits. I know that many hours have gone into rewriting this ordinance and it's merits were good. My concern is, it may be somewhat intrusive and could possibly cost the City of Fayetteville a great deal of lost tax revenue going forward. I think we need to be very careful going forward to keep from further increasing the gap in development costs between the City of Fayetteville and other communities. If this ordinance is passed, I feel that we need to keep an open mind on appeals that are brought before either the Planning Commission or City Council. We need to continue to look at these things on a case by case basis and not let this ordinance stop proposed developments in Fayetteville.

Ward: There is a lot of gestapo about the landscape establishment guarantees that we are putting in this ordinance, how we picked out a three year maintenance and monitoring period and all this type of thing. I think we are really pushing legal, property rights and constitution as far as some of these things we are asking to do here. For the most part I think the tree ordinance is fantastic. A lot of good stuff in here. I'm just kind of worried about going too far. We all want to have beautiful real estate, we all want the

trees, we all want to preserve what we have but there is two sides to all this.

Estes: Any further discussion, comments? We have a motion by Commissioner Hoffman to approve administrative item 01-32.00 and a second by Commissioner Allen, Sheri would you call the roll?

ROLL CALL:

Upon roll call administrative item 01-32.00 is approved by a vote of 7-0-0 and will be forwarded to City Council for consideration.

Estes: In closing, let me speak on behalf of the entire Commission and thank each of you for your participation in this process. As I have attend various meetings and as I look out over the audience this evening, I see architects, I see engineers, I see lawyers. There have literally been over 1,000 hours of time put into the preparation and drafting of this ordinance. On behalf of your Commission I thank you. It's been a very noble effort and we appreciate it very much. Is there any other business?

Conklin: There is no further business.

Earnest: I did want to make sure, we did spend a lot of time last week mailing out a notice to everybody about the meeting on September 11th and I hope you have all gotten that in the mail. If you haven't, please let me know. We are proceeding. We did mail out over 900 letters to people in the region. It went out last Friday.

Estes: What is the meeting?

Earnest: It's the presentation by Mayor Brent Coles from Boise, Idaho, speaking about smart growth and his perspective on it as a past president of the U.S. Conference of Mayors.

Estes: Thank you, any other announcements? We will be adjourned until our next regularly called meeting.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TENTATIVE AGENDA
CITY COUNCIL
SEPTEMBER 4, 2001

A meeting of the Fayetteville City Council will be held on September 4, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

– **CADIS GROUP:** Presentation from Cadis Group.

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:** Approval of the minutes from the August 21, 2001 meeting.

2. **SFCDC:** A resolution approving the transfer of the property located at 1035 S. Washington Avenue to the South Fayetteville Community Development Corporation.

3. **ARVEST BANK:** A resolution accepting a proposal from Arvest Bank to provide banking services for the City of Fayetteville for one year, renewable for four years.

4. **TOWN CENTER DECK:** A resolution approving an agreement between the City of Fayetteville and the Fayetteville A&P Commission for the City to operate ~~and manage~~ the Town Center Deck in exchange for forty parking spaces.

B. OLD BUSINESS

1. **CONDITIONAL USE APPEAL:** An ordinance amending Chapter 155, Appeals, to allow an appeal by three aldermen of a decision by the Planning Commission to approve or deny a conditional use. The ordinance was tabled on the third reading at the July 17, 2001 meeting until the Attorney General's opinion was received.

113 WEST MOUNTAIN 72701 501 521-7700
FAX 501 575-8257

C. NEW BUSINESS

1. **RZN 01-14.00:** An ordinance approving rezoning request RZN 01-14.00 submitted by Donna Treat on behalf of Greg and April Robinson for property located at 1245 N. 51 street. The property is zoned A-1, Agricultural and contains approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential.

2. **VA 01-6.00:** An ordinance approving vacation request VA 01-6.00 submitted by Andy Feinstein on behalf of Marriott Courtyard for property located on Lot 17 CMN Business Park Phase I. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on Lot 17 of CMN Business Park.

3. **VA 01-7.00:** An ordinance approving vacation request VA 01-7.00 for property located at 2483-2485 Jeremiah Place, Lot 7, Coyote Trail Subdivision. The request is to vacate a portion of a 25' wide utility easement.

4. **BID WAIVER:** An ordinance establishing a formal process to allow the purchase of used equipment. The ordinance waives competitive bidding on equipment types. Passenger vehicles, pick-up trucks and vans are excluded.

5. **TREE ORDINANCE:** An ordinance amending Title XV, Unified Development Ordinance of the Code of Fayetteville, to provide amendments to and clarification of various provision concerning tree preservation and protection.

DRAFT TENTATIVE AGENDA
CITY COUNCIL
SEPTEMBER 4, 2001

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CADIS Group. - presentation / info.

A. CONSENT AGENDA

1. APPROVAL OF THE MINUTES

2. SFCDC: A resolution approving the transfer of the property located at 1035 S. Washington Avenue to the South Fayetteville Community Development Corporation.

3. ARVEST BANK: A resolution accepting a proposal from Arvest Bank to provide banking services for the City of Fayetteville for one year, renewable for four years.

B. OLD BUSINESS

C. NEW BUSINESS

1. RZN 01-4.00: An ordinance approving rezoning request RZN 01-4.00 submitted by Donna Treat on behalf of Greg and April Robinson for property located at 1245 N. 51 street. The property is zoned A-1, Agricultural and contains approximately 2.26 acres. The request is to rezone to R-1, Low Density Residential.

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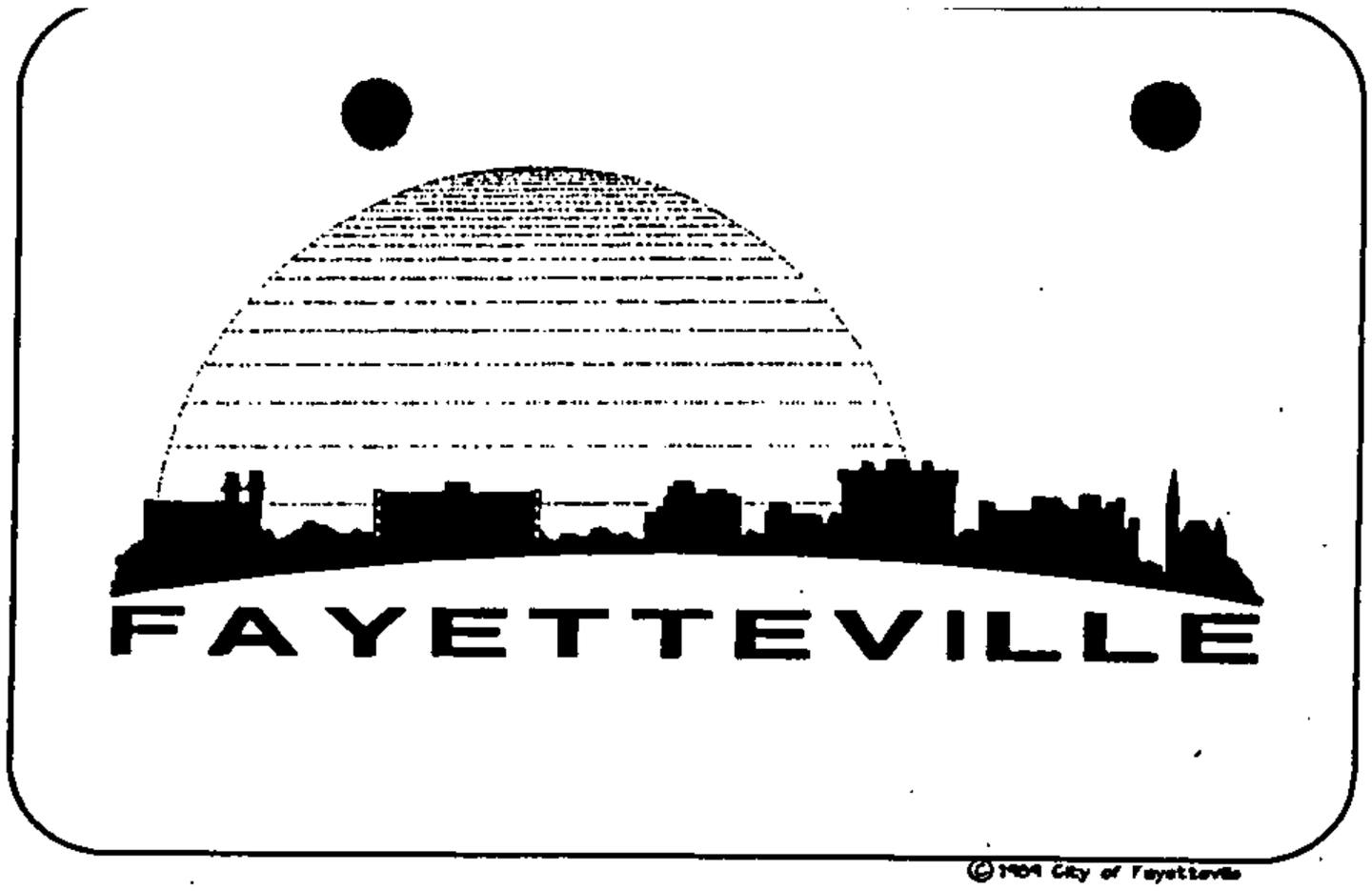
SEE GREG - Eng contract WWTP, 3 contracts.



City of Fayetteville

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CITY OF FAYETTEVILLE

FINAL AGENDA CITY COUNCIL

SEPTEMBER 4,2001

A meeting of the Fayetteville City Council will be held on September 4, 2001 at 6:30 p.m. in Room 219 of the city Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

CADIS GROUP: Presentation from CADIS Group.

A. CONSENT AGENDA

1. APPROVAL OF THE MINUTES: Approval of the minutes from the August 21, 2001 meeting.

2. SFCDE: A resolution approving the transfer of the property located at 1035 s. Washington Avenue from the City of Fayetteville to the South Fayetteville Community Development Corporation. The funding source for this property purchase was the 2001 HUD Community Development Block Grant.

3. ARVEST BANK: A resolution accepting a proposal from Arvest Bank to provide banking services for the City of Fayetteville for one year, renewable for four years.

4. GRANT ACCEPTANCE: A resolution accepting 2001 Local Law Enforcement Block Grant Award and agreement to the assurances and certifications and the approval of a budget adjustment.

5. AIRFIELD PAVEMENT REHABILITATION: A resolution accepting the low bid of $2,555,442.65 from McClinton-Anchor for the Airfield Pavement Rehabilitation Project. A 5% contingency fee is also included in the total cost of the project. The total project cos is $2, 849,608 and approval of a budget adjustment.

B. OLD BUSINESS

1. CONDITIONAL USE APPEAL: An ordinance amending Chapter 155, Appeals, to allow an appeal by three aldermen of a decision by the Planning Commission to approve or deny a conditional use. The ordinance was tabled on the third reading at the July 17, 2001 meeting until the Attorney General's opinion was received.

C. NEW BUSINESS

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2. VA 01-6.00: An ordinance approving vacation request VA 01-6.00 submitted by Andy Feinstein on behalf of Marriott Courtyard for property located on Lot 17 CMN Business Park Phase I. The request is to vacate a 15' water and sewer easement and also a portion of a 20' general utility easement on Lot 17 of CMN Business Park.

3. VA 01-7.00: An ordinance approving vacation request VA 01-7.00 for property located at 2483-2485 Jeremiah Place, Lot 7 Coyote Trail Subdivision. The request is to vacate a portion of a 25' wide utility easement.

4. BID WAIVER: An ordinance establishing a formal process to allow the purchase of used equipment types. Passenger vehicles, pick-up trucks and vans are excluded.

5. TREE ORDINANCE: An ordinance amending Title XV, Unified Development Ordinance of the Code of Fayetteville, to provide amendments to and clarification of various provisions concerning tree preservation and protection.

6.TOWN CENTER DECK: A resolution approving an agreement between the City of Fayetteville and the Fayetteville A&P Commission for the City to operate and manage the Town Center Deck in exchange for forty parking spaces.

NORTHWEST ARKANSAS TIMES

Monday, September 3, 2001

CITY OF FAYETTEVILLE

FINAL AGENDA CITY COUNCIL

SEPTEMBER 4,2001

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4. BID WAIVER: An ordinance establishing a formal process to allow the purchase of used equipment types. Passenger vehicles, pick-up trucks and vans are excluded.

5. TREE ORDINANCE: An ordinance amending Title XV, Unified Development Ordinance of the Code of Fayetteville, to provide amendments to and clarification of various provisions concerning tree preservation and protection.

6.TOWN CENTER DECK: A resolution approving an agreement between the City of Fayetteville and the Fayetteville A&P Commission for the City to operate and manage the Town Center Deck in exchange for forty parking spaces.