FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA
CITY COUNCIL
OCTOBER 2, 2001

A meeting of the Fayetteville City Council will be held on October 2, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain, Fayetteville, Arkansas.

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:** Approval of the minutes from September 4 and 18, 2001 meetings.

2. **VLASIC:** A resolution approving an offer from the LLC Manger in the Vlasic Bankruptcy Case.

B. OLD BUSINESS

1. **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. The ordinance was left on the second reading as amended at the September 18, 2001, meeting.

2. **RESIDENTIAL YARD WASTE:** An ordinance amending Chapter 50: Garbage and Trash, of the Code of Fayetteville, to amend definitions; and to amend the services requirements pertaining to residential yard waste. The ordinance was left on the first reading at the September 18, 2001, meeting.

C. NEW BUSINESS

1. **RUPPLE ROAD:** A resolution authorizing the acceptance of a contract between WHM and the City of Fayetteville that details the terms and conditions of the Rupple Road cost sharing agreement.

2. **THUNDER VALLEY SPEEDWAY:** A resolution authorizing the City Attorney to file a suit, if necessary, against the owner of the land and the manger of the Thunder Valley Speedway as a public nuisance.

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

City Council October 2, 2001

	Roll		Consent B 7		
Zurcher	✓		✓		
Trumbo	✓		✓		
Davis	✓		✓		
Santos	✓		✓		
Jordan	✓		✓		
Reynolds	✓		✓		
Thiel	✓		✓		
Young	✓		✓		
Coody	✓				

TREE ORD.	BT KS.	BT. BD.	BT 17.04 RZ.	KS "C" RZ	BD	
Zurcher	✓	✓	✓	✓	✓	
Trumbo	✓	✓	✓	✓	✓	
Davis	✓	✓	✓	✓	✓	
Santos	✓	✓	✓	✓	✓	
Jordan	✓	✓		✓	✓	
Reynolds	✓	✓	✓	✓	✓	
Thiel	✓	✓	✓	✓	✓	
Young	✓	✓	✓	✓	✓	
Coody					✓	

5-4-0

City Council October 2, 2001

free ordinance	KS LJ. 3RD	PASS			
Zurcher	✓	✓			
Trumbo	✓	✓			
Davis	✓	✓			
Santos	✓	✓			
Jordan	✓	✓			
Reynolds	✓	✓			
Thiel	✓	✓			
Young	✓	✓			
Coody					

5-3-0

Res. yard waste	H LJ 2ND	DS LJ 3RD	PASS		
Zurcher	~~✓~~	✓	✓		
Trumbo	✓	✓	✓		
Davis	✓	✓	✓		
Santos	✓	✓	✓		
Jordan	✓	✓	✓		
Reynolds	✓	✓	✓		
Thiel	~~✓~~	✓	✓		
Young	✓	✓	✓		
Coody					

City Council October 2, 2001

Perry Road	K52.				
Zurcher	✓				
Trumbo	✓				
Davis	✓				
Santos	✓				
Jordan	✓				
Reynolds	✓				
Thiel	✓				
Young	✓				
Coody					

Thunder Valley Speed Way	CU table for 2 weeks.	BT pass Resolution	CU table 2 weeks. RZ.		
Zurcher			✓		
Trumbo			✓		
Davis			✓		
Santos			✓		
Jordan			✓		
Reynolds			✓		
Thiel			✓		
Young			✓		
Coody					

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA
CITY COUNCIL
OCTOBER 2, 2001

A meeting of the Fayetteville City Council will be held on October 2, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain, Fayetteville, Arkansas.

A. CONSENT AGENDA (Passed)

Remove Dept

1. **APPROVAL OF THE MINUTES:** Approval of the minutes from September 4 and 18, 2001 meetings.

Res. 133-01

2. **VLASIC:** A resolution approving an offer from the LLC Manger in the Vlasic Bankruptcy Case.

B. OLD BUSINESS

Ord. 4340

1. **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. The ordinance was left on the second reading as amended at the September 18, 2001, meeting.

Ord. 4341

2. **RESIDENTIAL YARD WASTE:** An ordinance amending Chapter 50: Garbage and Trash, of the Code of Fayetteville, to amend definitions; and to amend the services requirements pertaining to residential yard waste. The ordinance was left on the first reading at the September 18, 2001, meeting.

C. NEW BUSINESS

Res. 134-01

1. **RUPPLE ROAD:** A resolution authorizing the acceptance of a contract between WHM and the City of Fayetteville that details the terms and conditions of the Rupple Road cost sharing agreement. Need copies for - memo from Hoge. !!

Tabled Until next C.C. Mtg. 10-16-01

2. **THUNDER VALLEY SPEEDWAY:** A resolution authorizing the City Attorney to file a suit, if necessary, against the owner of the land and the manger of the Thunder Valley Speedway as a public nuisance.

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

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.

STAFF REVIEW FORM

__X__ AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

FOR: COUNCIL MEETING OF OCTOBER 2, 2001 **MAYOR'S APPROVAL** _____

FROM:

Kit Williams	Legal	City Attorney
Name	Division	Department

ACTION REQUIRED: Approval of A Resolution To Approve An Offer From The LLC Manager In The Vlasic Bankruptcy Case

COST TO CITY:

None		
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	Internal Auditor	Date
City Attorney	Date 9/17/01	ADA Coordinator	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION:

Division Head	Date
Department Director	Date
Administrative Services Director	Date 9/18/01
Mayor	Date 9/18/01

CROSS REFERENCE

New Item: **Yes** No

Previous Ordinance/Resolution No.: _____

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

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

FROM: **Kit Williams**, City Attorney

DATE: **September 17, 2001**

RE: **Vlasic Bankruptcy Case – Distribution of Bankruptcy Estate**

As you remember, Vlasic filed for Bankruptcy protection in late January or early February this year. Accordingly a check payable to Fayetteville in the amount of $71,677.66 had its payment stopped.

The City was also owed $55,964.21 for an unbilled balance on the date of bankruptcy filing. In short, **Fayetteville was out $127,474.27**.

Frequently, unsecured creditors like Fayetteville get little if anything when a debtor goes bankrupt. We received some unsolicited offers to pay us 12 or 17 cents on the dollar for our $127,756.93 claim if we would assign our rights to these speculators. I did not accept these offers of $15,330.83 (Argo Partners) and $21,718.68 (Newstart Factors, Inc.), but instead filed a long shot Request For Adequate Assurance with the Bankruptcy Court. Happily, the City received a check for $70,000.00 as a result of my Motion and subsequent negotiations with the Trustee.

That reduced our Claim to $57,756.93. I filed a Proof of Claim in that amount and have waited for the preparation of the Joint Plan of Distribution of VF Brands, Inc. and Affiliates which I finally received today. I have also received another solicitation to assign our $57,756.93 claim to Liquidity Solutions, Inc. for $8,663.54 (or 15% of our remaining claim).

Attached are copies of page Plan – 10 of the First Amended Joint Plan of Distribution and page ii of the Disclosure Statement and Summary of Plan Distribution. The proposed plan states that the LLC Manager may offer to pay between 20% - 25% of each Allowed Claim. There is a limit on how large a claim the LLC Manager would pay (but since ours was reduced by $70,000.00 for the initial payment, we should not be effected by that limitation). We must agree in writing to accept this offer and not pursue any further claims against the debtor.

I recommend we do **NOT** object to the Amended Joint Plan and **do accept** the 20-25% offer on our remaining claim. If the offer were 20%, we would receive $11,551.38. However since we already have received $70,000.00 our actual payments have been $81,551.38 out of the initial debt of $127,756.93. Thus instead of receiving only **20%**, we actually have received **63.8%** of the full debt owed at the time of Vlasic's bankruptcy filing.

I believe the Mayor can decide upon my advice not to object to the Amended Joint Plan. (Any objection would probably be futile anyway.) However, I will prepare a Resolution for your first meeting in October to accept an offer by the LLC Manager to pay 20-25% of our Allowed Claim.

c. *Post-Confirmation Redemption of Certain Claims.* Notwithstanding anything contained herein, the VFI LLC Members' Agreement shall provide that on or from time to time after the Effective Date until the date that is ninety days after the Effective Date, the LLC Manager may, in its sole discretion, offer all holders of Class 5 Claims whose Allowed Claims do not exceed an amount to be determined by the LLC Manager (the "Offer Amount"), in its sole discretion, a Cash payment equal to between 20% and 25% (the exact amount within that range to be determined by the LLC Manager, the "Redemption Percentage") of each such holder's Allowed Claim. No distribution pursuant to this offer shall be made to any holder of a Class 5 Claim who does not accept such offer in writing, and no such holder may accept the offer with respect to any amount less than the entire amount of such holder's Claim. In the event that any such offer is oversubscribed as determined by the LLC Manager in its sole discretion, the LLC Manager may choose to either reduce the Offer Amount and recognize acceptances corresponding to such reduced Offer Amount, or pay the Redemption Percentage of a prorated amount of each such holder's Class 5 Claim while leaving the balance of each such Class 5 Claim intact.

6. *Class 6 - Subordinated Claims*

a. *Interests in Class:* Class 6 consists of all Subordinated Claims against the Debtors.

b. *Treatment:* Each holder of an allowed Class 6 Subordinated Claim shall not receive or retain any property or interest in property on account of their Class 6 Subordinated Claim.

7. *Class 7 - Interests*

a. *Interests in Class:* Class 7 consists of all Interests in the Debtors.

b. *Treatment:* On the Effective Date, all Class 7 Interests shall be cancelled and the Interest holders shall not receive or retain any property or interest in property on account of their Class 7 Interests.

D. Allowed Claims

Notwithstanding any provision herein to the contrary, the VFI LLC shall only make distributions to holders of Allowed Claims. No holder of a Disputed Claim will receive any distribution on account thereof until and to the extent that its Disputed Claim becomes an Allowed Claim. The LLC Manager may, in its sole discretion, withhold distributions otherwise due hereunder to the holder of a Claim until the Claims Objection Deadline, to enable the LLC Manager to file a timely objection thereto. The LLC Manager will establish a reserve for Disputed Claims in accordance with Article VI.B hereof. The presence of a Disputed Claim in any Class will not be a cause to delay distribution to Allowed Claims in that Class or in junior Classes, so long as a reserve is created for the Disputed Claim in accordance herewith. Any holder of a Disputed Claim that becomes an Allowed Claim after the Distribution Date will receive its distribution, without Postpetition Interest (except as otherwise expressly provided in the Plan), on the next Periodic Distribution Date in accordance with the provisions of this Plan.

E. Full Satisfaction

The VFI LLC shall make, and each holder of an allowed Claim shall receive, the distributions provided for in the foregoing provisions of this Article III in full satisfaction and discharge of all Claims against the Debtors.

F. Postpetition Interest

In accordance with section 502(b)(2) of the Bankruptcy Code, the amount of all Claims against the Debtors shall be calculated as of the Petition Date. Except as otherwise explicitly provided herein, no holder of a Claim shall be entitled to or receive Postpetition Interest.

G. Alternative Treatment

Notwithstanding any provision herein to the contrary, any holder of an Allowed Claim may receive, instead of the distribution or treatment to which it is entitled hereunder, any other distribution or treatment to which it and, prior to the Effective Date, the Debtor obligated on its Claim or, on or after the Effective Date, the LLC Manager, may agree in writing.

Classes 2A, 2B, 2C, etc. -- Secured Claims *Unimpaired*	• On the later of (i) the Distribution Date, and (ii) the date on which the Secured Claim becomes due under any agreement governing its payment, each holder of an Allowed Secured Claim will either (a) receive deferred Cash payments totaling at least the allowed amount of such Secured Claim, of a value, as of the Effective Date, of at least the value of such holder's interest in the respective Debtor's interest in such Collateral, (b) receive the subject Collateral upon abandonment by a Debtor, (c) receive payments or liens amounting to the indubitable equivalent of the value of such holder's interest in the respective Debtor's interest in such Collateral, (d) be Reinstated, meaning that the Claim will not be impaired (as defined in section 1124 of the Bankruptcy Code), or (e) receive such other treatment as the respective Debtor and such holder shall agree upon in writing. To the extent that the value of any Collateral securing a Secured Claim exceeds the amount of the Secured Claim, its holder shall receive interest, fees, costs, and charges as may be payable under section 506(b) of the Bankruptcy Code.
Class 3 -- Intercompany Claims *Impaired*	• On the Effective Date, Intercompany Claims will be cancelled and holders of Intercompany Claims will not receive any distribution on account of their Claims.
Class 4 -- Convenience Claims *Impaired*	• Each holder of a General Unsecured Claim that is Allowed in an amount that is less than or equal to the Convenience Cap Amount shall be deemed to have elected to treat such Claim as a Convenience Claim. On the Distribution Date, each holder of an Allowed Convenience Claim will receive Cash equal to 40% of its Allowed Claim.
Class 5 -- General Unsecured Claims *Impaired*	• Class 5 consists of Senior Subordinated Note Claims and General Unsecured Claims, other than Convenience Claims and Intercompany Claims. Each holder of an Allowed Class 5 Claim will receive its Pro Rata share of the LLC Membership Interests. • The VFI LLC Members' Agreement will provide that on or from time to time after the Effective Date until the date that is ninety days after the Effective Date, the LLC Manager may, in its sole discretion, offer all holders of Class 5 Claims whose Allowed Claims do not exceed an amount to be determined by the LLC Manager (the "Offer Amount"), in its sole discretion, a Cash payment equal to between 20% and 25% (the exact amount within that range to be determined by the LLC Manager, the "Redemption Percentage") of each such holder's Allowed Claim. No distribution pursuant to this offer shall be made to any holder of a Class 5 Claim who does not accept such offer in writing, and no such holder may accept the offer with respect to any amount less than the entire amount of such holder's Claim. In the event that any such offer is oversubscribed as determined by the LLC Manager in its sole discretion, the LLC Manager may choose to either reduce the Offer Amount and recognize acceptances corresponding to such reduced Offer Amount, or pay the Redemption Percentage of a prorated amount of each such holder's Class 5 Claim while leaving the balance of each such Class 5 Claim intact.
Class 6 -- Subordinated Claims *Impaired*	• A holder of a Class 6 Subordinated Claim shall not receive or retain any property or interest in property on account of such Class 6 Subordinated Claim.
Class 7 -- Interests *Impaired*	• All Class 7 Interests shall be cancelled and the Interest holders shall receive or retain any property or interest in property on account of such Class 7 Interests.

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE THE MAYOR TO ACCEPT A POSSIBLE OFFER TO PAY THE CITY A PERCENTAGE OF ITS REMAINING DEBT OWED BY VLASIC, INC. THROUGH THE BANKRUPTCY COURT

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor to accept a cash payment at the "Redemption Percentage" determined by the LLC Manager in the Vlasic, Inc. Bankruptcy Case in complete settlement of the City's allowed claim ($57,756.93) currently owed the City for pre-petition water and sewer services provided to Vlasic.

PASSED and **APPROVED** this the 2nd day of October, 2001.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

I request that staff review the recommended changes and Consider them as they are presented in a constructive manner.

for
Appeals process should be described.

SUMMARY OF REQUEST

The National Association of Realtors® ("NAR") has requested that we comment on proposed amendments to the City of Fayetteville Tree Preservation and Protection Ordinance ("the Ordinance"). In particular, the Metro Area Board of Realtors® ("MABOR"), through NAR, has asked that we provide comments on the Ordinance, as currently proposed, that will assist MABOR in evaluating the Ordinance and that will identify potential impacts from the Ordinance on area real estate interests. We have been provided with a copy of the Ordinance as newly proposed. We have not been provided with, nor reviewed, the Ordinance that is currently in force or the Tree Preservation, Protection, and Landscape Manual, which provides specifics on implementation of the Ordinance.

EXECUTIVE SUMMARY

The Ordinance is generally similar to tree preservation initiatives that are becoming increasing common in communities nationwide and does not contain provisions that we would consider "extreme" for regulation of this type. Nevertheless, the Ordinance is likely to increase development costs in the community and may have an adverse effect on housing affordability. As a result, Realtors® should request that the City Council fully evaluate and consider the Ordinance's potential economic effects before adopting it. The Ordinance focuses on requiring that a Minimum Tree Canopy be retained during development of both Residential and Non-Residential Subdivisions and Large Scale Developments. Although Single-Family and Duplex homes are generally exempt, they are subject to tree preservation requirements if average lot slope equals at least fifteen percent (15%). This is consistent with the Ordinance's stated

Changed - no longer
Affected

objectives of reducing stormwater runoff and stabilizing soil to prevent erosion. While the Ordinance stresses preservation of "high priority trees," which include "significant" or "specimen" trees, there appears to be significant flexibility built into the approval process to accommodate site and design constraints. However, a key issue will be whether *in practice* the Landscape Administrator uses this flexibility to reasonably accommodate development.

In addition, there are certain provisions in the Ordinance that we believe should be modified or clarified. Specifically, the Ordinance should be revised to include a clear provision for the appeal of adverse decisions by the Landscape Administrator. In addition, the standards articulated for the approval of Off-Site Alternatives and of post-development alterations to trees covered by Tree Preservation Plans are unreasonably restrictive and should be revised. It is also unclear whether the Ordinance's continuing preservation requirements are intended to apply to residential subdivision lots once the homes are sold. If so, this would represent a significant intrusion on personal property rights. Arguably, the Ordinance is not intended to constrain homeowners in this way and Realtors® should request that it be revised to clarify this point. Finally, we recommend that the Ordinance be revised to allow trees related to the project at issue that are planted under other development regulations, to count toward either On-Site Mitigation or Off-Site Forestation, as appropriate.

BACKGROUND

Commonly Identified Benefits of Tree Preservation

Tree preservation ordinances have become increasing common. Among the environmental reasons often cited in their support are: (1) protection against soil erosion through stabilization of the soil and the creation of wind breaks; (2) stabilization of steep slopes and a reduction in water pollution from runoff; (3) enhancement of air quality; (4) energy conservation through the cooling effects of tree canopy; (5) water conservation by reducing evaporation and decreasing the amount of water that runs off a site rather than infiltrating back into the ground; (6) serving as buffers against noise; (7) maintenance of woodland and wetland wildlife habitat and ecology; and (8) providing resistance against colonization of an area by non-native plant species.[1] Other reasons given for tree preservation include aesthetic, psychological, and quality of life benefits. Proponents also cite economic studies showing that people are often willing to pay more for properties with trees than for cleared lots.

Variety of Tree Preservation Approaches

As a result of the wide range of purposes attributed to tree protection, tree protection regulations vary significantly in scope and applicability. Some communities focus on protecting significant large or particular species of trees. Others concentrate on preserving tracts of woodlands by regulating the percentage of canopy that must be preserved. Regulations on canopy preservation range from protecting 15% to as high as 70%, depending on the jurisdiction. Canopy preservation regulations often impose costly and time-consuming permit application requirements, including a site vegetation inventory. It is common, as well, for tree conservation

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[1] See Robinson & Cole, "Growth Management Fact Book," pp. 73-78 (NAR 2001) for more information on Tree Preservation.

ordinances to require m[redacted]ation for trees removed from a developme[redacted]e, either by re-planting replacement trees on-site or off-site, or by requiring payment into a tree planting fund.

The effectiveness of tree preservation ordinances varies widely. However, in general, those that are most effective attempt to tailor regulations to the particular tree species and woodland conditions found in that area. For example, tree ordinances that use trunk size to identify trees subject to regulation should specify criteria for each species of tree subject to protection. Ordinances aimed at protecting particular types of woodlands should provide planning staff with specific guidance as to what areas to preserve. In each case, it is most effective to provide specific guidance, while at the same time leaving planning staff the discretion and flexibility to work with developers to achieve community goals in the context of particular site constraints.

Impact on Property Values and Development Costs

Proponents of tree preservation requirements often defend them on economic grounds based on the observation that trees can significantly add to property values. However, restrictive regulations can have a negative effect on property values as they tend to limit the extent to which property can be developed. The degree to which property values may be negatively affected is likely to depend on the amount of flexibility built into the tree protection ordinance. Where ordinances are particularly rigid, for example, by providing few or no alternatives for a landowner to develop a property on which significant or specimen trees are located, property value may be so dramatically affected that a landowner may be able to assert a claim for an unconstitutional regulatory *taking*.

Tree preservation ordinances can significantly affect development costs. For example, some ordinances require developers to plant trees to establish a certain percentage of tree cover on a property even though that tree cover did not exist prior to development. Similarly, requirements to replace removed trees, either on-site or off-site, can add to development costs. Viewed purely from a development cost perspective, any prohibition or limitation on tree clearing, and even requirements to use best management practices to avoid damaging trees during construction, can prevent a developer from undertaking the lowest cost methods of development, for example, by making it more difficult to bring large construction equipment on-site or by constraining site design. Many modern tree preservation ordinances mandate detailed tree surveys encompassing every part of even a large development parcel. Typically these surveys must be completed and certified by a qualified professional and can add considerably to the costs of development.

Impact on Housing Affordability

Tree preservation requirements will generally increase development costs, which will in turn be passed on to the purchaser to some extent depending on the structure of the local housing market. Despite the potential for negative impacts on individual property rights discussed above, one of the main purposes cited by communities that impose tree preservation requirements is the preservation of property values across the community as a whole. All else being equal, neighborhoods or jurisdictions in which trees are preserved and planted will tend to be more attractive and desirable, and consequently support higher housing prices, than equivalent neighborhoods lacking trees. In regions where attitudes towards tree preservation vary from jurisdiction to jurisdiction, these market effects may make it more difficult to provide affordable

housing in communities with strict mandates concerning trees, without the use of other regulatory techniques, such as density bonuses or inclusionary zoning, to counteract these market effects.

SUMMARY OF FAYETTEVILLE ORDINANCE

Applicability

The Fayetteville Tree Preservation and Protection Ordinance shares many of the common characteristics of tree preservation regulations from other jurisdictions. Pursuant to Section 167.04, "Tree Preservation and Protection During Development," developers of subdivisions, either residential or non-residential, or of "large-scale developments" are subject to the full scope of the Ordinance's regulation. This includes preparing a Site Analysis Plan,[2] a full Tree Preservation Plan,[3] and an Analysis Report.[4] Although single-family or duplex residences are generally exempt from the Ordinance, single-family or duplex development that requires a grading permit, because average lot slope is at least fifteen percent (15%) or because grading is proposed within a floodplain, must comply with the Abbreviated Tree Preservation Plan requirement.[5] Developers of multi-family residential developments of at least three units and parking lots of five or more spaces also must prepare an Abbreviated Tree Preservation Plan.[6]

Preservation Requirements During Development

Tree Preservation Plans are submitted to the Landscape Administrator, who is required to evaluate the Plans with respect to a set of fifteen Tree Preservation Criteria. Among these is the extent to which the development design incorporates the "required Tree Preservation Priorities."[7] Among the Preservation Priorities is the requirement that developments meet the Percent Minimum Canopy for the particular zoning designation, as set out in Table 1 of the Ordinance. Minimum canopy requirements vary from ten percent (10%) to twenty-five percent (25%). There is generally no requirement to plant trees to reach a canopy minimum if less than the minimum existed prior to development. If, however, trees were removed from a property within

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[2] Site Analysis Plans must show "the location and types of all natural features on a site, including features one hundred feet (100') beyond the property lines" and must note the "approximate age, health, size and species distribution of trees," along with "the applicable Preservation Priority level for each tree or group of trees on the site." Ordinance § 167.04(H)(1).

[3] Tree Preservation Plans must indicate "all proposed site improvements, and delineate . . . the trees to be retained on-site, and the measures to be implemented for their protection." Ordinance § 167.04(H)(2).

[4] Ordinance § 167.04(A)(1). Analysis Reports must describe "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." Ordinance § 167.04(H)(4).

[5] Ordinance § 167.04(A)(2) and Ordinance No. 4313, amending Code of Fayetteville Physical Alteration of Land § 169.03(B)(4). An Abbreviated Tree Preservation Plan is defined as 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." Abbreviated Plans must show "the general location of all existing groups of trees, individual Significant Trees, and . . . clearly depict the limits of soil disturbance . . . [and] [p]rotective measures [to be taken during construction]." Ordinance § 167.04(H)(3).

[6] Ordinance § 167.04(A)(3)-(4).

[7] Ordinance § 167.04(B)(2); *see also* Ordinance § 167.04(E), Table 2, "Preservation Priorities."

the five years immediately preceding development, not only must minimum canopy requirements be met, but an *additional* ten percent (10%) tree coverage will be required.[8]

In addition to the minimum canopy requirement, Tree Preservation Plans must emphasize the preservation of "High Priority" trees.[9] High Priority trees are defined to include those on canopied slopes, in floodways or riparian buffers, native woodlands, and "significant trees," which are principally defined by size according to species growth rate.[10] High Priority Trees must be protected first in order to meet the Minimum Canopy requirement and lower priority trees can be substituted only when justification is presented in the Analysis Report and approved by the Landscape Administrator.[11] Residential subdivisions that require Tree Preservation Plans must meet the minimum canopy requirement in project areas that are least likely to be impacted by installation of utilities and homes.[12] Trees within utility easements may not be counted in meeting minimum canopy requirements. Non-residential subdivision developers have two options for meeting tree preservation requirements. They may propose a Preservation Plan for the entire subdivision, in which case tree canopy to be preserved must be noted on the Final Plat as protected under the Ordinance.[13] Alternatively, non-residential subdivision developers may propose a Preservation Plan only for areas to be impacted by the construction of infrastructure, in which case individual lots will be required to submit separate Preservation Plans.[14]

Mitigation Options

Under the Ordinance, the Landscape Administrator is given substantial flexibility in evaluating whether a Tree Preservation Plan adequately addresses Tree Preservation Criteria within the site's constraints.[15] If a developer is unable to meet the applicable Percent Minimum Canopy requirement because of physical constraints on the site, the Landscape Administrator is empowered to approve either On-Site Mitigation or Off-Site Alternatives.[16] On-Site Mitigation is achieved by re-forestation at the development site. The number and species of trees that must be planted depends on the quality of the canopy lost due to development – high priority canopy lost requires more trees to be planted than for mid- or low-level priority canopy lost.[17] In order to encourage On-Site Mitigation, a twenty percent (20%) reduction in the number of trees to be planted to compensate for lost canopy is available if all the required trees will be located at the development site.

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[8] Ordinance § 167.04(D).
[9] Ordinance § 167.04(E)(1).
[10] "Significant tree" is defined as a "tree with a diameter at breast height (DBH) of 24" or more for Fast Growth Species, 18" or more for Slow or 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."
[11] Ordinance § 167.04(E)(4).
[12] Ordinance § 167.04(F)(1).
[13] Ordinance § 167.04(F)(2)(a).
[14] Ordinance § 167.04(F)(2)(b).
[15] *See* Ordinance § 167.04(B).
[16] Ordinance § 167.04(I).
[17] *Id.*

For Applicants who can demonstrate that neither preservation, nor On-Site Mitigation can be achieved, the Landscape Administrator is authorized to approve Off-Site Alternatives, including preservation of canopy cover or planting of trees (forestation) at another site within the city.[18] However, this option does not appear to be as readily available to Non-Residential Subdivisions or Large Scale Developments, as it is to Residential Subdivisions. Non-Residential Subdivisions or Large Scale Developments will not be able to utilize Off-Site Alternatives unless it is shown that On-Site Mitigation is "impossible due to environmental or spatial constraints."[19] Moreover, the Ordinance provides that, "[t]rees 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."[20]

For either On-Site Mitigation or Off-Site Forestation, Applicants are required to enter into a "Maintenance Agreement and Landscape Establishment Guarantee" with the city.[21] Under this Agreement, Applicants are required to deposit currency, a bond, or an irrevocable letter of credit "in an amount equal to the estimated cost of materials and labor for all trees at the time of planting." Applicants will be released from this requirement after three years, provided ninety percent (90%) of planted trees are "healthy and have a reasonable chance of surviving to maturity."[22] If the city must take remedial steps to ensure the survivability of planted trees (at the 90% level), then it will use money deposited under the guarantee.[23]

Finally, canopy preservation requirements can be met by contribution to the Tree Escrow Account under some circumstances. This option is available to Residential Subdivisions requesting tree removal below Percent Minimum Canopy requirements, Large Scale Developments seeking Off-Site Alternatives, and "any other Applicant unable to achieve either On-Site Mitigation, Off-Site Preservation or Off-Site Forestation."[24] The amount of contribution is to be based on "the fair market value of materials and labor at the time of planting," and Applicants are to "submit cost estimates to the Landscape Administrator for approval."

Continuing Preservation Requirements

Although Section 167.04 of the Ordinance principally addresses tree preservation during development, it also provides that, "[n]o 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."[25] Furthermore, "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 [*sic*] residents of Fayetteville."[26] This provision does not appear to be limited in any way. However, we note that Section 167.04(F), which addresses tree preservation requirements for proposed residential and

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[18] Ordinance § 167.04(J).
[19] Ordinance § 167.04(I).
[20] Ordinance § 167.04(J).
[21] Ordinance § 167.04(J)(5).
[22] Ordinance § 167.04(J)(5)(b).
[23] The Ordinance provides that "special consideration shall be given the Applicant in the event trees are injured or destroyed by natural disasters." Ordinance § 167.04(J)(5)(d).
[24] Ordinance § 167.04(J)(4).
[25] Ordinance § 167.04(L).
[26] Ordinance § 167.04(L)(1).

non-residential subdivisions, specifically provides that canopy protected in *non*-residential subdivisions *is* subject to the continuing preservation requirements, while no such constraint is mentioned with respect to canopy protected in residential subdivisions.

COMMENTS AND RECOMMENDATIONS

General Comments

The Ordinance appears to be similar in nature and scope with tree preservation regulations that are becoming increasingly common in communities nationwide. In general, its provisions are not extreme in comparison to tree preservation requirements in other communities. Nevertheless, the Ordinance is likely to increase development costs in the community and may have an adverse effect on housing affordability. As a result, Realtors® should request that the City Council fully evaluate the Ordinance's potential economic effects before it is adopted.

The minimum canopy requirements, which are the principle focus of the Ordinance, vary between ten and twenty-five percent. There is no requirement to add trees to a project site if they did not exist prior to development. These provisions are within the usual range of canopy requirements imposed by other jurisdictions, and are less onerous on landowners than provisions in jurisdictions that require on-site afforestation (tree planting) of sites that are not wooded prior to development. While the Ordinance stresses the preservation of "high priority trees," which include "significant" or "specimen" trees, there appears to be significant flexibility built into the approval process to accommodate site and design constraints. A key issue may be whether *in practice* the Landscape Administrator uses this flexibility to reasonably accommodate development. In addition, there are certain provisions in the Ordinance that we believe should be modified or clarified.

Recommendation: ***An Appeals process should be described***

The Ordinance does not specify a process by which Applicants may appeal an adverse decision by the Landscape Administrator. In order to address questions of administrative authority and possible abuse of administrative discretion, the Ordinance should clearly describe a timely and efficient process for appealing decisions made by the Landscape Administrator within the administrative process.

Recommendation: ***Trees planted by developers due to separate development requirements should not be discounted***

The Ordinance specifically prohibits trees planted by a developer pursuant to other regulatory requirements from counting toward meeting either On-Site Mitigation or Off-Site Alternatives.[27] If the trees planted under separate regulatory provisions are also related to the proposed development project, then we see no reason why they should not also satisfy requirements for tree preservation under the Ordinance. Using the same newly planted trees to satisfy two or more requirements would not undercut the stated objectives of the Ordinance.[28]

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[27] Ordinance § 167.04(J).
[28] *See* Ordinance § 167.01.

Recommendation: ***The Standard for approving Off-Site Alternatives for Non-Residential Subdivisions and Large Scale Developments should be modified.***

The Ordinance specifies that Off-Site Alternatives for Non-Residential Subdivisions and Large Scale Developments may be allowed only if On-Site Mitigation is "proven impossible due to environmental or spatial constraints."[29] This is an inordinately restrictive standard and may have a substantial negative impact on commercial development. In addition, the standard does not provide sufficient guidance as to how it should be applied. For example, does it mean that an Applicant need show that, given the design of the project as proposed, it is not possible to perform On-Site Mitigation, or does it mean that the Applicant must prove that there is *no* design of the project that would allow for On-Site Mitigation? The latter approach would not appear to allow the Landscape Administrator to take into account potentially unreasonable costs that could be associated with an alternate project design. It would provide the Landscape Administrator and commercial developers more flexibility, while still meeting the stated goals of the Ordinance, if the standard is changed from "impossible" to "impractical" and clarified to apply to the project as proposed. A standard of impracticality would allow factors such as cost and building and site design considerations to be taken into account, whereas the standard of impossibility implies that such factors may not be considered.

Recommendation: ***The Ordinance should be modified to clarify that Continuing Preservation requirements do not affect residential owners after lot development.***

The Ordinance's Continuing Preservation and Protection requirement provides that, "[n]o 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."[30] By its terms, this provision appears to encompass Residential and Non-Residential Subdivisions, as well as Large Scale Developments, as each of these must prepare and receive approval of a Tree Preservation Plan. However, we note some ambiguity on that point because the "Tree Preservation Requirements for Proposed Residential and Non-Residential Subdivisions" section of the Ordinance references continuing preservation requirements for Non-Residential Subdivisions, but not for Residential Subdivisions.[31] In addition, it is unclear whether the continuing preservation requirement is meant to apply to trees described in Abbreviated Tree Preservation Plans, which are required for single-family and duplex homes on lots with average slopes of fifteen percent (15%) or more. If the continuing preservation requirements are intended to apply to lots in residential subdivisions after the sale of homes, it represents substantial interference with a homeowner's freedom to maintain his or her property as he or she sees fit, assuming that such maintenance does not constitute a nuisance to others. For example, such a requirement would prevent a homeowner from moving or removing a tree on his or her own property so that a vegetable garden or flower bed could receive more sunlight, to improve a view, or to change the amount of sun on a backyard deck. Moreover, requiring City Council approval for homeowners to remove or move trees would be inordinately burdensome from an administrative standpoint. Given these considerations and the ambiguity in the Ordinance, we

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[29] Ordinance § 167.04(J).
[30] Ordinance § 167.04(I).
[31] Ordinance § 167.04(F).

recommend that the Ordinance be revised to clarify that the continuing preservation requirements do not apply to individual homeowners.

Recommendation: ***The standard for approving the removal or moving of trees covered by Tree Preservation Plans should be revised.***

Even if the Ordinance is revised to clarify that the continuing preservation requirement applies only to Non-Residential Subdivisions and Large Scale Developments, the standard for approving changes to trees covered by Tree Preservation Plans should be revised. The Ordinance provides that, "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 [*sic*] residents of Fayetteville."[32] This standard appears to prevent a landowner from making alterations to trees on his or her property unless he or she can prove that such alterations would actually benefit other city residents. This is precisely backwards. Landowners should be able to make changes to tree cover unless such changes would adversely impact others or would undercut the legitimate objectives of the Ordinance. At a minimum, landowners should be able to alter tree cover, even if protected under a Tree Preservation Plan, as long as appropriate mitigation is provided. This would be consistent with the objectives of the Ordinance and would acknowledge that site conditions, tree cover, and landowner preferences and needs change over time.

Recommendation: ***The Landscape Establishment Guarantee provision for "special consideration" in the event of natural disasters should be clarified and may not be commercially reasonable.***

Applicants availing themselves of either On-Site Mitigation or Off-Site Forestation must enter into a "Maintenance Agreement and Landscape Establishment Guarantee" with the city.[33] This provision ensures that developers planting trees as mitigation for the removal of trees below minimum canopy requirements remain responsible for the health of the trees planted until they are fully established. Applicants will be released from this requirement after three years, provided that at least ninety percent (90%) of planted trees are healthy at that time. The Ordinance provides an exception to the 90% survivability requirement by stating that "special consideration shall be given the Applicant in the event trees are injured or destroyed by natural disasters."[34] This exception is vague and should be clarified. What is meant by "special consideration?" It seems unfair to impose the burden of reforestation on a landowner whose trees are destroyed by a fire, tornado, hurricane, or the like. The Ordinance should be revised to provide that trees destroyed or damaged as a result of a natural will be exempted from the survivability requirement.

Furthermore, it is not clear that local developers would consider this provision commercially reasonable. A developer typically wishes to complete its project, sell it, and move on to other proposals. This provision would have the effect of tying the developer to the project for a three year period after its completion and tying up a security deposit for the same period. While the developer could negotiate with the purchaser of affected lots or units over the ultimate financial

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[32] Ordinance § 167.04(I).
[33] Ordinance § 167.04(J)(5).
[34] Ordinance § 167.04(J)(5)(d).

responsibility for the guarantee, most developers would prefer not to have the inconvenience and expense associated with this type of post-development requirement. To the extent that other comparable jurisidiction do not have such a requirement, this provision may help to discourage development from locating in Fayetteville, all else equal.[35]

[35] We note in this regard the comments of local real estate developers reported in the news article you forwarded to us from the Northwest Arkansas Times.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

CITY ATTORNEY DIVISION
113 WEST MOUNTAIN, 72701
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Kit Williams
CITY ATTORNEY

DATE: 9/28/2001

TO: **Robert Reynolds, Brenda Thiel, Cyrus Young, Randy Zurcher, Trent Trumbo, Bob Davis, Kevin Santos, Lioneld Jordon**

CC: Mayor Coody, Hugh Earnest, Kit Williams, Kim Hesse, Tim Conklin

FROM: **David J. Whitaker, Assistant City Attorney**

RE: **ALTERNATIVE AGRICULTURAL LANGUAGE AND RESPONSE TO METRO AREA BOARD OF REALTORS' MEMO**

Per your request, this office has prepared several possible re-wordings of the Prior Tree Removal – Agricultural Exemption section of the proposed Tree Preservation and Protection Ordinance. We would also like to take this opportunity to comment and make recommendations based upon our reading of the National Association of Realtors' Memorandum of September 18.

You will find four (4) pages attached to the end of this Memo. Page 1 contains both the language you adopted at your last meeting, and the language originally presented in the Subcommittee Draft. Pages 2-4 present three (3) possible variations, each of which would require the addition of another definition in Exhibit "A".

In all candor, the Realtors' memo is for the most part a fair characterization of the proposed ordinance. Each recommendation will be addressed below in the order in which it appeared in their memo.

Recommendation: An Appeals process should be described

Response: The process for appealing an adverse decision by the Landscape Administrator is set forth at §155.06(D)(4) of the UDO, and the new language of §167.04(K)(3) requires that "[a] statement shall appear on the [Tree Preservation Plan Review] form explaining the process by which" such an appeal may be taken.

Recommendation: Trees planted by a developer pursuant to other regulatory requirements should not be discounted

Response: The Subcommittee purposely crafted this language for three reasons:

1. *After much study, the Subcommittee came to the conclusion that allowing trees planted for parking lots and commercial design standards to count for mitigation would result in the steady loss of mature canopy throughout the City, and contrary to the Memo's assertions, would be counter to the ordinance's highest stated purpose of tree preservation.*

2. *The Subcommittee considered across-the-board increases in the required canopy percentages in order to ensure a meaningful level of preservation, but chose to exclude parking lot and design standard trees as a less severe method of achieving the ordinance's highest stated purpose.*

3. *The trees required by the other development ordinances serve a different set of purposes than do mitigation trees. Mitigation trees are required to ameliorate the damage caused to the land by the development process, and to maximize the gross canopy percentage throughout the City.*

Recommendation: The Standard for approving Off-Site Alternatives for Non-Residential Subdivisions and Large Scale Developments should be modified.

Response: After consulting with the Landscape Administrator, we offer the following amendment to §167.04(J) at page 11 of EXHIBIT "B":

D.B.
D.K.

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, after taking into consideration the proposed design of the project, On-Site Mitigation is deemed impossible due to environmental or spatial constraints.*

Recommendation: The Ordinance should be modified to clarify that Continuing Preservation requirements do not affect residential owners after lot development.

Response: After consulting with the Landscape Administrator, we offer the following amendment to §167.04(L)(1) at page 13 of EXHIBIT "B":

L. Continuing Preservation and Protection Under Approved Tree Preservation Plans.

D.
B.
D.

1. 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 *the* Easement Plats *for Large Scale Developments* and *the* Final Plats *for Non-Residential Subdivisions. This shall be* accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the Landscape Administrator. *Lots in Residential Subdivisions are expressly exempt from these requirements.*

Recommendation: The standard for approving the removal or moving of trees should be revised.

Response: This problem was resolved by the amendments to §167.04(L) you approved at your last regular meeting.

Recommendation: The Landscape Establishment Guarantee provision for "special consideration" in the event of natural disasters should be clarified and may not be commercially reasonable.

Response: After consulting with the Landscape Administrator, we offer the following amendment to §167.04(J)(5)(d) at page 13 of EXHIBIT "B":

3. B7. R2

d. 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 independent actions of third parties, *the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.*

As to the second part of the recommendation, the three (3) year period was specifically chosen because every specialist in arboriculture and forestry that the Subcommittee consulted stressed that this was the very minimum amount of time needed to provide proper maintenance of planted trees during the critical period of early growth, ensuring the best chance for survival to maturity.

As for concerns over any inconvenience which might arise from being tied to the project for the duration of Guarantee period, the Realtors' Memo correctly points out that "the developer could negotiate with the purchaser of the affected lots or the units over the ultimate financial responsibility for the guarantee."

If you have any questions concerning any of the contents of this Memo or the Attached Agricultural Exemption language, please feel free to ask.

DJW

ATTACHMENTS

CURRENT LANGUAGE

D. Prior Tree Removal. If, due to non-agricultural reasons, 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.

SUBCOMMITTEE DRAFT LANGUAGE

D. Prior Tree Removal.

1. 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.

2. **Agricultural Exemption.** If an applicant is able to demonstrate to the Landscape Administrator's satisfaction that the trees were removed for a legitimate agricultural purpose, and not with the intent to thwart enforcement of this chapter, the above sanction shall not apply.

NEW DRAFT LANGUAGE –VARIANT "A"

D. Prior Tree Removal.

1. 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 requirements set forth in 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.

2. If an Applicant is able to demonstrate to the Planning Commission's satisfaction that the trees were removed for a bona fide agricultural purpose, and not with the intent to thwart enforcement of this chapter, the above sanction shall not apply.

This language would require the addition in Exhibit "A" of the following definition:

Bona Fide Agricultural Purpose. (Tree Preservation and Protection) The aim or goal of facilitating the ongoing commercial pursuit of farming, dairying, pasturage, horticulture, viticulture, or the keeping or raising of livestock or poultry, not otherwise prohibited by city ordinance.

NEW DRAFT LANGUAGE -VARIANT "B"

D. Prior Tree Removal.

1. 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 requirements set forth in Table 1. The number of trees required to be planted shall be calculated using the Base Density for High Priority trees.

2. If an Applicant is unable to demonstrate to the Planning Commission's satisfaction that the trees were removed for a bona fide agricultural purpose, and not with the intent to thwart enforcement of this chapter, the Applicant must reforest, above and beyond the Percent Minimum Canopy requirements, 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.

This language would also require the addition in Exhibit "A" of the following definition:

Bona Fide Agricultural Purpose. (Tree Preservation and Protection) The aim or goal of facilitating the ongoing commercial pursuit of farming, dairying, pasturage, horticulture, viticulture, or the keeping or raising of livestock or poultry, not otherwise prohibited by city ordinance.

4 4). KS RK

NEW DRAFT LANGUAGE -VARIANT "C"

D. Prior Tree Removal.

1. 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 requirements set forth in 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.

2. If an Applicant is able to demonstrate to the Planning Commission's satisfaction that the trees were removed for a bona fide agricultural purpose, and not with the intent to thwart enforcement of this chapter, the additional ten percent (10%) reforestation requirement shall be waived.

This language would require the addition in Exhibit "A" of the following definition:

Bona Fide Agricultural Purpose. (Tree Preservation and Protection) The aim or goal of facilitating the ongoing commercial pursuit of farming, dairying, pasturage, horticulture, viticulture, or the keeping or raising of livestock or poultry, not otherwise prohibited by city ordinance.

As amended by action of the City Council-09/18/2001

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 their strict application would work an injustice as applied to the proposed development due to a situation unique to 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" – ***As amended by action of the City Council-09/18/2001***

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.

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 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.

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" – *As amended by action of the City Council-09/18/2001*

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.

§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. Persons seeking to build one (1) single-family dwelling unit or one (1) duplex are

specifically exempt from the provisions of this section.

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 and approved.

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 and approved.

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 and approved.

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 and approved.

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.

EXHIBIT "B" – ***As amended by action of the City Council-09/18/2001***

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
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, due to non-agricultural reasons, 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, ***Native Woodlands,*** ***Floodways & Riparian Buffers,*** *and* ***Significant Trees.***	***Contiguous Woodlands,*** ***Non-native Woodlands,*** *and,* ***Use Buffers.***	***Invasive Species,*** ***Relic Orchards,*** *and* ***Less Desirable 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. All Residential Subdivisions requesting tree removal below the Percent Minimum Canopy requirement are required to contribute to the Tree Escrow Account as set forth in §167.04(J)(4)(a). 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 Landscape Administrator shall recommend to the Planning Commission the option that will potentially preserve the largest amount of priority canopy based upon the Tree

Preservation Criteria set forth at §167.04(B) above. The Landscape Administrator may, when appropriate, recommend approval of a plan that contains some of the features of both options, provided 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. Lot lines, streets, and easements shall be located to avoid placing a disproportionate percentage of existing canopy in any one (1) proposed lot. 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 compensate for the canopy removed from this defined area by making the appropriate payment into the Tree Escrow Account. 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:

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 the Abbreviated Tree Preservation Plan.

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.

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,

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 park 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 independent 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.

1. 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.

2. The geographic extent and location of Tree Preservation Areas, once recorded, may only be modified or abolished with the express approval of the City Council. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such modification or abolition is in the best interest of the ~~residents~~ CITY of Fayetteville. Such requests shall be submitted to the Landscape Administrator, who shall ask the City Clerk to place it on the agenda of the next regularly scheduled City Council meeting.

3. Property owners wishing to remove diseased or dead trees from within a recorded Tree Preservation Area, shall seek prior approval from the Landscape

Administrator, who shall determine if such removal is consistent with sound arboricultural and horticultural practices, as well as the intent of this chapter. Any tree so removed shall be replaced with a tree of like or similar species, unless the Landscape Administrator determines that natural replacements of sufficient health and vigor are already present in the Tree Preservation Area.

§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.

TO: Fayetteville City Council

FROM: Fayetteville Environmental Concerns Committee

DATE: September 19, 2001

The Environmental Concerns Committee recommends the use of compostable paper bags for the disposal of yard waste.

Annee Littel, Chairperson
Randy Zurcher, Vice Chairperson
Roxy Willis, Recorder

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FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: Mayor and City Council

From: Gary Dumas

Date: Friday, September 28, 2001

Subject: Solid Waste Programs and Composting Operation

The Solid Waste Division performs several large complex activities including of course the weekly residential trash pickup, the weekly residential recycling program pickup, the small container commercial trash pickup on a weekly and as needed schedule, the limited commercial and school recycling program, the operation of the materials recovery facility and the disposition of all the recycled material collected, and the weekly pickup of yard waste for the subscribers to that program and then the handling of that material to create a usable compost or mulch product. These activities all require significant equipment and personnel to perform. With growth of the City during the past 5-years, these resources, which have not equally grown, are being taxed to the extreme. The Staff will be presenting these issues for Council discussion within the next 75-days.

With any organization, especially one as large and complex as the Solid Waste Division, one of the priorities of the management structure is to constantly review processes and practices to make certain that they are efficient, cost effective and accomplishing the tasks that need to be performed. Without this constant monitoring of efficiency, revenue loss may be likely.

According to the draft Solid Waste Rate Study prepared by DMG-Maximus in the fall and winter of 2000-2001, the rate each residential customer pays for monthly service is subsidized $4.71 per month by non-residential waste disposal fees. According to this rate study, the annual subsidy is approximately $1.02 million. This cross-user funding may be appropriate, however, it may also seem appropriate to attempt to minimize the growth of the subsidy.

The Division is evaluating several possible improvements to operations and will be providing the City Council with a discussion of those possible improvements in the coming weeks; one activity that needed an immediate evaluation simply because of the massiveness of the problem and the public comment concerning the quality of the final product, is the composting operation. The need for this timely review is exacerbated by the season and the upcoming influx of new raw compostable material. The initial reason for the composting operation is that in the early 1990's the State mandated that yard

waste be removed from the landfill waste disposal stream.

The current yard waste program allows yard waste to be placed in 30-33 gallon plastic bags or bundled appropriately for collection service. The current city ordinance does not prohibit the use of 30-33 gallon reusable cans.

At present, the City provides finished compost to the public twice a year in the spring and fall. This product is provided free, but with a loading fee if the staff mechanically loads the vehicle. Even with a free product, there are complaints about the quality and the amount of foreign material (trash and plastic) in the finished compost. The foreign material lessens the usable quality of finished compost.

The product ready for this year's autumn compost sale has been improved by screening the ready material. The screening machine will be purchased by the 4 County Solid Waste District and will be available for member agency rental on an as needed basis next year. The improvement in the appearance of the finished product was exceptional, though some plastic debris and the debagging costs remain.

As the prior paper to Council indicated, the cost of debagging to clear the stockpile is approximately $46,000 plus 1,744 hours of community service worker time. The fy2001 budget for yard waste collection and composting is $262,016. The revenue generated by the yard waste subscription program is approximately $67,500 per year.

The proposal before the Council is to require the use of a compostable paper bag for yard waste pickup - this would still permit the use of 30-33 gallon reusable cans. The reusable container is an option that many may find adequate for most of the year. The $2.00 subscription fee would be dropped and yard waste collection would become a part of the normal residential service.

The approximate $67,500 in revenue from the subscription service would be lost, as would the need for the debagging operation at the approximate annual cost of $46,000 plus 1,744 hours of work release time from the City and County jails. Additionally, the current resources expended on the debagging operation would be reallocated to those areas currently being severely overtaxed, such as the residential recycling operation, community recycling drop-off site and the materials recovery facility. This would avoid a part of the cost of providing additional resources in those activities.

One of the concerns expressed at the last City Council meeting concerned the costs to the existing yard waste subscriber. Currently the subscriber pays $24 per year, or $2.00 per month, for the annual subscription. Additionally, most subscribers purchase plastic bags in order to dispose of the yard waste. As was mentioned during the meeting of September 18th those bags may range in price from $0.10 to $0.43 per bag depending on quality of bag. The prices will probably vary somewhat depending upon the retailer. The following is a table indicating various carton sizes, cost per carton, cost per bag and average bag costs that were available at one retailer. Again, these prices may vary at other retailers.

Table 1

Average Plastic Bag Cost

Carton size	Cost	Cost/bag	Average
20	$2.09	$0.10	
10	$4.29	$0.43	
10	$3.39	$0.34	
50	$5.59	$0.11	
27	$7.65	$0.28	
8	$2.05	$0.26	
12	$4.05	$0.34	
10	$3.99	$0.40	
		$2.26	$0.28

During the presentation of September 18th, an assumption was outlined that stated that 84 bags would generally accommodate the annual need of a typical residential yard waste subscriber. The presentation then compared the customer cost with the proposed program and the current program, using the currently available compostable bag cost of $0.46 and the average cost per bag found at a local retailer of $0.28. Using these costs, from the following table, when 134 compostable bags are purchased, the current program becomes more cost effective for the subscriber. At 84 compostable bags the proposed program would save the subscriber $8.88.

Concerns have been raised that at the lowest cost per plastic bag that the program would be more costly to the subscriber. A table has been prepared which traces the costs at $0.10 per plastic bag. At 67 plastic bags, the two programs are essentially equal in cost. At 84 bags, the compostable paper bag program will cost the subscriber an additional $6.24 per year.

Table 2

Cost Comparison of $0.46 Compostable Bag vs. Average Plastic Bag Cost of $0.28 and Subscription

Unit cost	Number	Total cost		Unit cost	Number	Subscription	Total cost
$0.46	1	$0.46		$0.28	1	$24.00	$24.28
$0.46	2	$0.92		$0.28	2	$24.00	$24.56
$0.46	3	$1.38		$0.28	3	$24.00	$24.84
$0.46	4	$1.84		$0.28	4	$24.00	$25.12
$0.46	5	$2.30		$0.28	5	$24.00	$25.40
$0.46	6	$2.76		$0.28	6	$24.00	$25.68
$0.46	7	$3.22		$0.28	7	$24.00	$25.96
$0.46	8	$3.68		$0.28	8	$24.00	$26.24
$0.46	9	$4.14		$0.28	9	$24.00	$26.52
$0.46	10	$4.60		$0.28	10	$24.00	$26.80

$0.46	11	$5.06		$0.28	11	$24.00	$27.08
$0.46	12	$5.52		$0.28	12	$24.00	$27.36
$0.46	13	$5.98		$0.28	13	$24.00	$27.64
$0.46	14	$6.44		$0.28	14	$24.00	$27.92
$0.46	15	$6.90		$0.28	15	$24.00	$28.20
$0.46	16	$7.36		$0.28	16	$24.00	$28.48
$0.46	17	$7.82		$0.28	17	$24.00	$28.76
$0.46	18	$8.28		$0.28	18	$24.00	$29.04
$0.46	19	$8.74		$0.28	19	$24.00	$29.32
$0.46	20	$9.20		$0.28	20	$24.00	$29.60
$0.46	21	$9.66		$0.28	21	$24.00	$29.88
$0.46	22	$10.12		$0.28	22	$24.00	$30.16
$0.46	23	$10.58		$0.28	23	$24.00	$30.44
$0.46	24	$11.04		$0.28	24	$24.00	$30.72
$0.46	25	$11.50		$0.28	25	$24.00	$31.00
$0.46	26	$11.96		$0.28	26	$24.00	$31.28
$0.46	27	$12.42		$0.28	27	$24.00	$31.56
$0.46	28	$12.88		$0.28	28	$24.00	$31.84
$0.46	29	$13.34		$0.28	29	$24.00	$32.12
$0.46	30	$13.80		$0.28	30	$24.00	$32.40
$0.46	31	$14.26		$0.28	31	$24.00	$32.68
$0.46	32	$14.72		$0.28	32	$24.00	$32.96
$0.46	33	$15.18		$0.28	33	$24.00	$33.24
$0.46	34	$15.64		$0.28	34	$24.00	$33.52
$0.46	35	$16.10		$0.28	35	$24.00	$33.80
$0.46	36	$16.56		$0.28	36	$24.00	$34.08
$0.46	37	$17.02		$0.28	37	$24.00	$34.36
$0.46	38	$17.48		$0.28	38	$24.00	$34.64
$0.46	39	$17.94		$0.28	39	$24.00	$34.92
$0.46	40	$18.40		$0.28	40	$24.00	$35.20
$0.46	41	$18.86		$0.28	41	$24.00	$35.48
$0.46	42	$19.32		$0.28	42	$24.00	$35.76
$0.46	43	$19.78		$0.28	43	$24.00	$36.04
$0.46	44	$20.24		$0.28	44	$24.00	$36.32
$0.46	45	$20.70		$0.28	45	$24.00	$36.60
$0.46	46	$21.16		$0.28	46	$24.00	$36.88
$0.46	47	$21.62		$0.28	47	$24.00	$37.16
$0.46	48	$22.08		$0.28	48	$24.00	$37.44
$0.46	49	$22.54		$0.28	49	$24.00	$37.72
$0.46	50	$23.00		$0.28	50	$24.00	$38.00
$0.46	51	$23.46		$0.28	51	$24.00	$38.28
$0.46	52	$23.92		$0.28	52	$24.00	$38.56
$0.46	53	$24.38		$0.28	53	$24.00	$38.84
$0.46	54	$24.84		$0.28	54	$24.00	$39.12
$0.46	55	$25.30		$0.28	55	$24.00	$39.40
$0.46	56	$25.76		$0.28	56	$24.00	$39.68

$0.46	57	$26.22		$0.28	57	$24.00	$39.96
$0.46	58	$26.68		$0.28	58	$24.00	$40.24
$0.46	59	$27.14		$0.28	59	$24.00	$40.52
$0.46	60	$27.60		$0.28	60	$24.00	$40.80
$0.46	61	$28.06		$0.28	61	$24.00	$41.08
$0.46	62	$28.52		$0.28	62	$24.00	$41.36
$0.46	63	$28.98		$0.28	63	$24.00	$41.64
$0.46	64	$29.44		$0.28	64	$24.00	$41.92
$0.46	65	$29.90		$0.28	65	$24.00	$42.20
$0.46	66	$30.36		$0.28	66	$24.00	$42.48
$0.46	67	$30.82		$0.28	67	$24.00	$42.76
$0.46	68	$31.28		$0.28	68	$24.00	$43.04
$0.46	69	$31.74		$0.28	69	$24.00	$43.32
$0.46	70	$32.20		$0.28	70	$24.00	$43.60
$0.46	71	$32.66		$0.28	71	$24.00	$43.88
$0.46	72	$33.12		$0.28	72	$24.00	$44.16
$0.46	73	$33.58		$0.28	73	$24.00	$44.44
$0.46	74	$34.04		$0.28	74	$24.00	$44.72
$0.46	75	$34.50		$0.28	75	$24.00	$45.00
$0.46	76	$34.96		$0.28	76	$24.00	$45.28
$0.46	77	$35.42		$0.28	77	$24.00	$45.56
$0.46	78	$35.88		$0.28	78	$24.00	$45.84
$0.46	79	$36.34		$0.28	79	$24.00	$46.12
$0.46	80	$36.80		$0.28	80	$24.00	$46.40
$0.46	81	$37.26		$0.28	81	$24.00	$46.68
$0.46	82	$37.72		$0.28	82	$24.00	$46.96
$0.46	83	$38.18		$0.28	83	$24.00	$47.24
$0.46	84	$38.64		$0.28	84	$24.00	$47.52
$0.46	85	$39.10		$0.28	85	$24.00	$47.80
$0.46	86	$39.56		$0.28	86	$24.00	$48.08
$0.46	87	$40.02		$0.28	87	$24.00	$48.36
$0.46	88	$40.48		$0.28	88	$24.00	$48.64
$0.46	89	$40.94		$0.28	89	$24.00	$48.92
$0.46	90	$41.40		$0.28	90	$24.00	$49.20
$0.46	91	$41.86		$0.28	91	$24.00	$49.48
$0.46	92	$42.32		$0.28	92	$24.00	$49.76
$0.46	93	$42.78		$0.28	93	$24.00	$50.04
$0.46	94	$43.24		$0.28	94	$24.00	$50.32
$0.46	95	$43.70		$0.28	95	$24.00	$50.60
$0.46	96	$44.16		$0.28	96	$24.00	$50.88
$0.46	97	$44.62		$0.28	97	$24.00	$51.16
$0.46	98	$45.08		$0.28	98	$24.00	$51.44
$0.46	99	$45.54		$0.28	99	$24.00	$51.72
$0.46	100	$46.00		$0.28	100	$24.00	$52.00
$0.46	101	$46.46		$0.28	101	$24.00	$52.28
$0.46	102	$46.92		$0.28	102	$24.00	$52.56

$0.46	103	$47.38		$0.28	103	$24.00	$52.84
$0.46	104	$47.84		$0.28	104	$24.00	$53.12
$0.46	105	$48.30		$0.28	105	$24.00	$53.40
$0.46	106	$48.76		$0.28	106	$24.00	$53.68
$0.46	107	$49.22		$0.28	107	$24.00	$53.96
$0.46	108	$49.68		$0.28	108	$24.00	$54.24
$0.46	109	$50.14		$0.28	109	$24.00	$54.52
$0.46	110	$50.60		$0.28	110	$24.00	$54.80
$0.46	111	$51.06		$0.28	111	$24.00	$55.08
$0.46	112	$51.52		$0.28	112	$24.00	$55.36
$0.46	113	$51.98		$0.28	113	$24.00	$55.64
$0.46	114	$52.44		$0.28	114	$24.00	$55.92
$0.46	115	$52.90		$0.28	115	$24.00	$56.20
$0.46	116	$53.36		$0.28	116	$24.00	$56.48
$0.46	117	$53.82		$0.28	117	$24.00	$56.76
$0.46	118	$54.28		$0.28	118	$24.00	$57.04
$0.46	119	$54.74		$0.28	119	$24.00	$57.32
$0.46	120	$55.20		$0.28	120	$24.00	$57.60
$0.46	121	$55.66		$0.28	121	$24.00	$57.88
$0.46	122	$56.12		$0.28	122	$24.00	$58.16
$0.46	123	$56.58		$0.28	123	$24.00	$58.44
$0.46	124	$57.04		$0.28	124	$24.00	$58.72
$0.46	125	$57.50		$0.28	125	$24.00	$59.00
$0.46	126	$57.96		$0.28	126	$24.00	$59.28
$0.46	127	$58.42		$0.28	127	$24.00	$59.56
$0.46	128	$58.88		$0.28	128	$24.00	$59.84
$0.46	129	$59.34		$0.28	129	$24.00	$60.12
$0.46	130	$59.80		$0.28	130	$24.00	$60.40
$0.46	131	$60.26		$0.28	131	$24.00	$60.68
$0.46	132	$60.72		$0.28	132	$24.00	$60.96
$0.46	133	$61.18		$0.28	133	$24.00	$61.24
$0.46	134	$61.64		$0.28	134	$24.00	$61.52
$0.46	135	$62.10		$0.28	135	$24.00	$61.80
$0.46	136	$62.56		$0.28	136	$24.00	$62.08
$0.46	137	$63.02		$0.28	137	$24.00	$62.36
$0.46	138	$63.48		$0.28	138	$24.00	$62.64
$0.46	139	$63.94		$0.28	139	$24.00	$62.92
$0.46	140	$64.40		$0.28	140	$24.00	$63.20

Table 3

Cost Comparison of $0.46 Compostable Bag vs. Least Costly Plastic Bag Cost of $0.10 and Subscription

Unit cost	Number	Total cost		Unit cost	Number	Subscription	Total cost
$0.46	1	$0.46		$0.10	1	$24.00	$24.10
$0.46	2	$0.92		$0.10	2	$24.00	$24.20
$0.46	3	$1.38		$0.10	3	$24.00	$24.30
$0.46	4	$1.84		$0.10	4	$24.00	$24.40
$0.46	5	$2.30		$0.10	5	$24.00	$24.50
$0.46	6	$2.76		$0.10	6	$24.00	$24.60
$0.46	7	$3.22		$0.10	7	$24.00	$24.70
$0.46	8	$3.68		$0.10	8	$24.00	$24.80
$0.46	9	$4.14		$0.10	9	$24.00	$24.90
$0.46	10	$4.60		$0.10	10	$24.00	$25.00
$0.46	11	$5.06		$0.10	11	$24.00	$25.10
$0.46	12	$5.52		$0.10	12	$24.00	$25.20
$0.46	13	$5.98		$0.10	13	$24.00	$25.30
$0.46	14	$6.44		$0.10	14	$24.00	$25.40
$0.46	15	$6.90		$0.10	15	$24.00	$25.50
$0.46	16	$7.36		$0.10	16	$24.00	$25.60
$0.46	17	$7.82		$0.10	17	$24.00	$25.70
$0.46	18	$8.28		$0.10	18	$24.00	$25.80
$0.46	19	$8.74		$0.10	19	$24.00	$25.90
$0.46	20	$9.20		$0.10	20	$24.00	$26.00
$0.46	21	$9.66		$0.10	21	$24.00	$26.10
$0.46	22	$10.12		$0.10	22	$24.00	$26.20
$0.46	23	$10.58		$0.10	23	$24.00	$26.30
$0.46	24	$11.04		$0.10	24	$24.00	$26.40
$0.46	25	$11.50		$0.10	25	$24.00	$26.50
$0.46	26	$11.96		$0.10	26	$24.00	$26.60
$0.46	27	$12.42		$0.10	27	$24.00	$26.70
$0.46	28	$12.88		$0.10	28	$24.00	$26.80
$0.46	29	$13.34		$0.10	29	$24.00	$26.90
$0.46	30	$13.80		$0.10	30	$24.00	$27.00
$0.46	31	$14.26		$0.10	31	$24.00	$27.10
$0.46	32	$14.72		$0.10	32	$24.00	$27.20
$0.46	33	$15.18		$0.10	33	$24.00	$27.30
$0.46	34	$15.64		$0.10	34	$24.00	$27.40
$0.46	35	$16.10		$0.10	35	$24.00	$27.50
$0.46	36	$16.56		$0.10	36	$24.00	$27.60
$0.46	37	$17.02		$0.10	37	$24.00	$27.70
$0.46	38	$17.48		$0.10	38	$24.00	$27.80
$0.46	39	$17.94		$0.10	39	$24.00	$27.90
$0.46	40	$18.40		$0.10	40	$24.00	$28.00
$0.46	41	$18.86		$0.10	41	$24.00	$28.10

$0.46	42	$19.32		$0.10	42	$24.00	$28.20
$0.46	43	$19.78		$0.10	43	$24.00	$28.30
$0.46	44	$20.24		$0.10	44	$24.00	$28.40
$0.46	45	$20.70		$0.10	45	$24.00	$28.50
$0.46	46	$21.16		$0.10	46	$24.00	$28.60
$0.46	47	$21.62		$0.10	47	$24.00	$28.70
$0.46	48	$22.08		$0.10	48	$24.00	$28.80
$0.46	49	$22.54		$0.10	49	$24.00	$28.90
$0.46	50	$23.00		$0.10	50	$24.00	$29.00
$0.46	51	$23.46		$0.10	51	$24.00	$29.10
$0.46	52	$23.92		$0.10	52	$24.00	$29.20
$0.46	53	$24.38		$0.10	53	$24.00	$29.30
$0.46	54	$24.84		$0.10	54	$24.00	$29.40
$0.46	55	$25.30		$0.10	55	$24.00	$29.50
$0.46	56	$25.76		$0.10	56	$24.00	$29.60
$0.46	57	$26.22		$0.10	57	$24.00	$29.70
$0.46	58	$26.68		$0.10	58	$24.00	$29.80
$0.46	59	$27.14		$0.10	59	$24.00	$29.90
$0.46	60	$27.60		$0.10	60	$24.00	$30.00
$0.46	61	$28.06		$0.10	61	$24.00	$30.10
$0.46	62	$28.52		$0.10	62	$24.00	$30.20
$0.46	63	$28.98		$0.10	63	$24.00	$30.30
$0.46	64	$29.44		$0.10	64	$24.00	$30.40
$0.46	65	$29.90		$0.10	65	$24.00	$30.50
$0.46	66	$30.36		$0.10	66	$24.00	$30.60
$0.46	67	$30.82		$0.10	67	$24.00	$30.70
$0.46	68	$31.28		$0.10	68	$24.00	$30.80
$0.46	69	$31.74		$0.10	69	$24.00	$30.90
$0.46	70	$32.20		$0.10	70	$24.00	$31.00
$0.46	71	$32.66		$0.10	71	$24.00	$31.10
$0.46	72	$33.12		$0.10	72	$24.00	$31.20
$0.46	73	$33.58		$0.10	73	$24.00	$31.30
$0.46	74	$34.04		$0.10	74	$24.00	$31.40
$0.46	75	$34.50		$0.10	75	$24.00	$31.50
$0.46	76	$34.96		$0.10	76	$24.00	$31.60
$0.46	77	$35.42		$0.10	77	$24.00	$31.70
$0.46	78	$35.88		$0.10	78	$24.00	$31.80
$0.46	79	$36.34		$0.10	79	$24.00	$31.90
$0.46	80	$36.80		$0.10	80	$24.00	$32.00
$0.46	81	$37.26		$0.10	81	$24.00	$32.10
$0.46	82	$37.72		$0.10	82	$24.00	$32.20
$0.46	83	$38.18		$0.10	83	$24.00	$32.30
$0.46	84	$38.64		$0.10	84	$24.00	$32.40

Summary

The staff recommends that the compostable paper bag program be implemented this fall and that the subscription fee be discontinued. Rather than subscribing, customers will place their yard waste at the curb on their regular waste and recycling collection day.

Customers not wanting to purchase compostable bags will be able to use 30-33 gallon containers, providing that the weight of the container when in use does not exceed current safety standards of 50 pounds.

Currently, only 14% of Fayetteville residents participate in the Yard Waste subscription program. Additional revenue will be generated as the projected participation rates increase through education and outreach programs that inform customers about services available through the City of Fayetteville's compost facility. Additionally, homeowners will become more aware of home composting techniques and through an educational program to be developed by composting/recycling staff and the Washington County Cooperative Extension Service.

Projected revenue will also increase as the City begins to generate a valuable compost and mulch product that can be marketed.

STAFF REVIEW FORM

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

For the Fayetteville City Council meeting of October 1, 2001.

FROM:

Tim Conklin	Planning	Public Works
Name	Division	Department

ACTION REQUESTED: To adopt a resolution authorizing the Mayor and City Clerk to execute the Rupple Road cost sharing agreement

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 recommends approval of this request. The Planning Commission unanimously voted 9-0-0 to forward this to the City Council.

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

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FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

Date: September 21, 2001

To: The Mayor and Council

From: Hugh Earnest, Urban Development Director
Tim Conklin, City Planner

Subject: Contractual Agreement

Background

The Fayetteville Planning Commission, in March of this year, had set a number of conditions and requirements as part of their deliberations relative to a preliminary plat covering properties owned by WHM Investments. The property in question is adjacent to the Rupple road extension to serve the new location of the Fayetteville Boys and Girls Club. One of the conditions was that the applicant would file a final plat covering the properties in question. Filing of this plat would enable the City to complete the acquisition of all parcels needed at their new site.

However, it became apparent several months later that the applicant was dissatisfied with the terms and conditions required of him by the Planning Commission. In order to move this important project along, discussions were initiated with several attorneys' representing Mr. McIlroy's interests.

Current Situation

On September 10, the Fayetteville Planning Commission heard the request for approval of the final plat from the applicant. The terms and conditions proposed by the staff are attached to this memo. The Commission, after some debate, granted the final plat after deletion of items 7 and 8. Both of the items that were deleted dealt with language setting up a mechanism to equitably assess a formula by which the applicant would assist in the construction of Rupple Road. The formula is predicated on use of a rational nexus formula between build out of the respective properties owned by Mr. McIlroy and impact on the proposed road. We have also attached to this memo a copy of the calculations used by our engineering department in developing the solution to this particular issue of public-private partnership. The Planning Commission, while generally supportive of this

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FAX 501 575-8257

approach, determined that this type of financial relationship between parties requires a contract between the city and the applicant. It was for that reason that items 7 and 8 were deleted from the final plat.

Recommendation

We have prepared a contract incorporating the terms and conditions that have been agreed to by both parties. Approval of this contract will complete the discussions with Mr. McIlroy and will enable the City to secure the last parcel that is needed in their site acquisition efforts. The city attorney has approved the contract as to form and substance. A number of key city staff participated in these negotiations and this contract comes to you with their endorsement.

STAFF REVIEW FORM

__X__ AGENDA REQUEST
_____ CONTRACT REVIEW
_____ GRANT REVIEW

FOR: COUNCIL MEETING OF October 2, 2001

FROM:

Alderman Brenda Thiel & Alderman Robert Reynolds

Name | Division | Department

ACTION REQUIRED: Resolution To Authorize The City Attorney To File Suit If Necessary Against The Owner Of The Land And The Manager Of The Thunder Valley Speedway As A Public Nuisance

COST TO CITY:

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 | Internal Auditor | Date

City Attorney | Date | ADA Coordinator | Date

Purchasing Officer | Date

STAFF RECOMMENDATION:

Division Head | Date

Department Director | Date

Administrative Services Director | Date

Mayor | Date

CROSS REFERENCE

New Item: **Yes** No

Previous Ordinance/Resolution No.: _____

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE THE CITY ATTORNEY TO FILE SUIT IF NECESSARY AGAINST THE OWNER OF THE LAND AND THE MANAGER OF THE THUNDER VALLEY SPEEDWAY AS A PUBLIC NUISANCE

WHEREAS, the Thunder Valley Speedway had been enjoined from operation after 10:00 P.M. as a nuisance in Case Number E 22719 on September 13, 1972; and

WHEREAS, it would be difficult or impossible to enforce that old Decree at this time; and

WHEREAS, in recent years the Thunder Valley Speedway is again operating after 10:00 P.M. in such close proximity to residential homes in Fayetteville as to significantly disturb Fayetteville citizens and disrupt their activities for several hours during its operation; and

WHEREAS, the Fayetteville City Police have taken noise level readings in late July and determined that the noise coming from the Thunder Valley Speedway (located immediately south of the City Limits) "were far in excess of what we would allow in Fayetteville even in an Industrial Zone." (August 9, 2001 Memo)

WHEREAS, more than 100 Fayetteville citizens have signed petitions asserting they have been "disturbed frequently, and late at night by the stockcar racetrack located at 301 E. Willoughby Road, Fayetteville, a/k/a/ Thunder Valley Speedway. We agree that said stockcar racetrack is a public nuisance and that the City of Fayetteville should file a lawsuit to enjoin them as such."

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 declares that the Thunder Valley Speedway off Willoughby Road has been operating without proper regulation of noise and at too late an hour such that it is a continuing public nuisance to the citizens of Fayetteville.

Section 2. That the City Council of the City of Fayetteville, Arkansas authorizes the Fayetteville City Attorney to file an injunctive suit against the operators of the Thunder Valley Raceway and the owners of the land upon which this raceway operates in an attempt to reduce the noise, dust, fumes and hours of operation of the raceway and to seek any other relief the City or citizens of Fayetteville may be entitled to.

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

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

MEMORANDUM

TO: Alderwoman Brenda Thiel

THRU: Dan Coody, Mayor

FROM: Rick Hoyt, Assistant Chief of Police

DATE: August 9, 2001

RE: Noise Measurement – Thunder Valley Speedway

In late July, Alderwoman Thiel requested the Police Department take some noise meter readings in regard to the noise coming from the Thunder Valley Speedway located south of Willoughby Road. This assignment was given to Lieutenant William Brown of our department and he has prepared the attached memorandum and copies of our Sound Level Meter report forms. The locations Lieutenant Brown took the readings from are all within the City limits of Fayetteville. As you know, the Thunder Valley Speedway itself is located outside the City limits.

With only one exception, all noise readings were far in in excess of what we would allow in Fayetteville even in an Industrial zone. An Industrial zone allows up to 80 Decibels (dB) between the hours of 7:00AM and 11:00 PM. Eight out of nine readings taken one week apart showed the noise level to be exceeding 80 dB. One reading at 11:26 PM was still at 88.1 dB. Residential zoning requirements only allow 60 dB from 7:00am until 11:00 PM and the level drops to 55 dB after 11:00.

It is important to note that for every 3 dB increase in sound level, sound pressure is approximately doubled. In other words, an 83 dB sound is twice as loud as an 80 dB sound. One of the readings taken on July 28, 2001 at approximately 10:54 PM showed the sound level to be 89.4 dB. This would be approximately three times higher than even an Industrial zoning would allow.

If Thunder Valley Speedway was located in the City limits we would apply the Residential zoning sound levels (City Ordinance § 96.04) to this situation. This would mean a reading of 89.4 dB would exceed allowable levels by almost ten times.

I hope this information is of value to you in any further examination of this issue.

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

MEMORANDUM

TO: ACOP R. Hoyt

FROM: Lt. W. Brown

DATE: July 28, 2001

SUBJECT: Sound readings at Thunder Valley Speedway

As per your instructions, I have taken sound level meter readings in the area of Thunder Valley Speedway the past two weekends. On Saturday 7-21-01, I arrived at 10:00pm because of complainant comments that the sound got louder as it got later. The races ended at 10:30 that night and I was only able to obtain readings on the last three races. Because of this, I returned on Saturday 7-28-01 at 9:00pm and obtained readings on the last six races. I have packaged the data and a diagram and attached it to this memo. I also obtained an aerial photograph of the area and included it. I have spoken to Mrs. Theil about a deadline for needing this information. Apparently there is a petition circulating that will not be completed until the end of August. This gives us a little more time in case there is anything you feel needs to be added or done differently.

Fayetteville Police Department

Sound Level Meter Survey Report

COPY

Date (DDMY): 07-21-01 | Time: 10:00pm | Call #: N/A | Report No.: 01-07

Officer(s) Making Report: Lt. William Brown #128

COMPLAINT INFORMATION

Name: N/A Special Assignment | Phone:

Address:

Zoning: Residential ■ Commercial □ Industrial □

Complaint (Describe location and source of noise disturbance)

Assigned to take sound level readings of races at Thunder Valley Speedway and surrounding area.

PRETEST CHECK

			Time	Weighting (circle)
QUEST 214	Cal Date:		Battery Check	A or C
QUEST 2400	Cal Date: 1-29-01		Battery Check 10:02pm	(A) or C

Ambient	Temp.	Wind	Precipitation	Other
54.8	88°	None	Humid	

SLM SURVEY

Reading Number	Time Beg.	Time End	Location	Max. Level Decibel
1	10:05pm	10:10pm	Location "A" @ 200 E. Willoughby(See map)	80.8
2	10:15pm	10:21pm	Location "A"	85.2
3	10:27pm	10:30pm	Location "A"	85.4

COPY

Fayetteville Police Department

Sound Level Meter Survey Report

Date (DDMY): 07-28-01 | Time: 9:20pm | Call #: N/A | Report No.: 01-08

Officer(s) Making Report: Lt. William Brown #128

COMPLAINT INFORMATION

Name: N/A Special Assignment | Phone:

Address:

Zoning: Residential ☒ Commercial ☐ Industrial ☐ Agricultural ■

Complaint (Describe location and source of noise disturbance)

Assigned to take sound level readings of races at Thunder Valley Speedway and surrounding area.

PRETEST CHECK

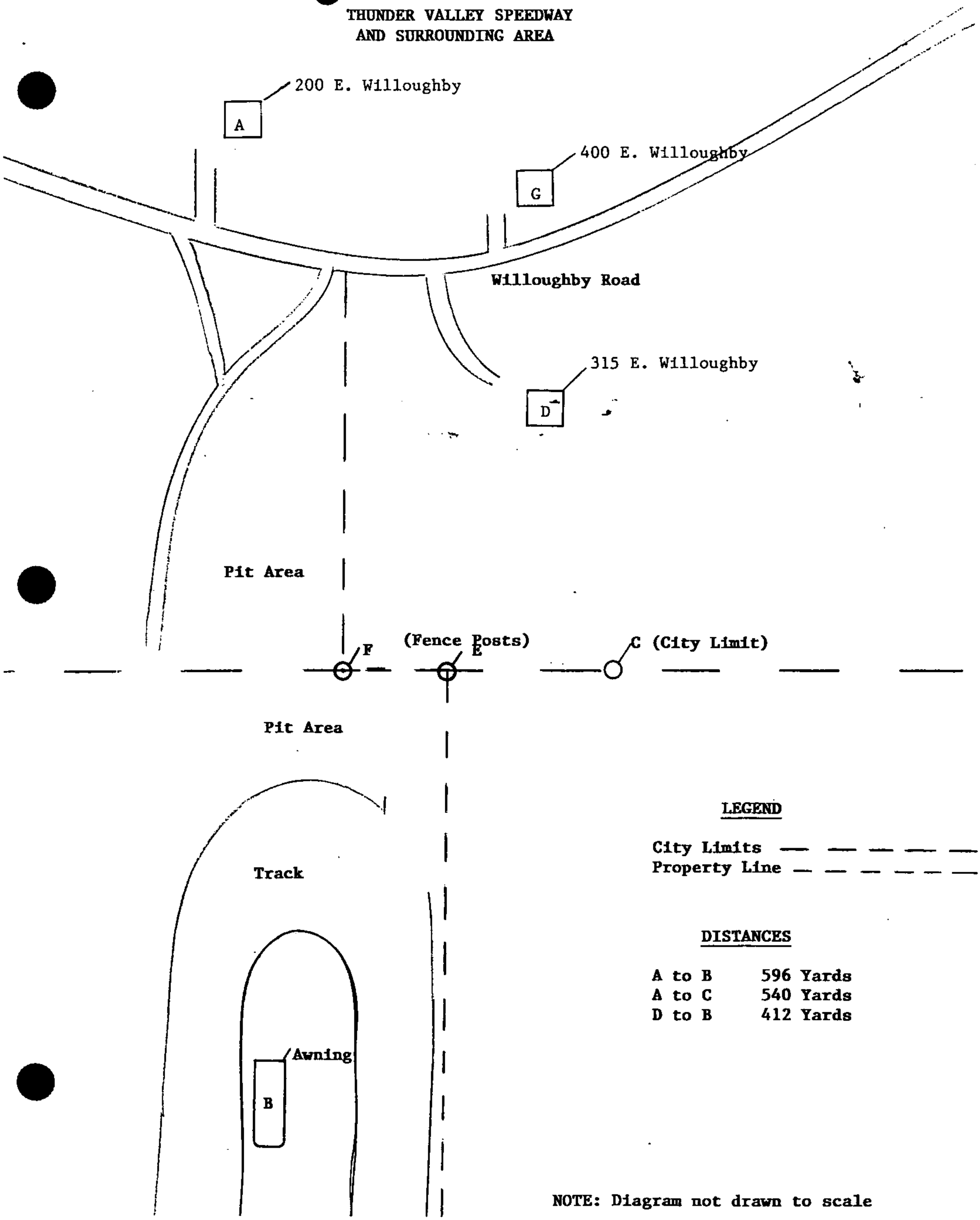
			Time	Weighting (circle)
QUEST 214	Cal Date:		Battery Check	A or C
QUEST 2400	Cal Date: 01-29-01		Battery Check 9:05pm	(A) or C

Ambient	Temp.	Wind	Precipitation	Other
53.7	74°	None	Rain	Rain was off and on drizzle

SLM SURVEY

Reading Number	Time Beg.	Time End	Location	Max. Level Decibel
1	9:27pm	9:31pm	Location "E" See attached map Agricultural Zone	78.8
2	9:37pm	9:41pm	Location "F" " "	84.4
3	10:08pm	10:15pm	Location "D" " "	83.8
4	10:20pm	10:26pm	Location "A" "	80.3
5	10:39pm	10:54pm	Location "G" "	89.4
6	10:58pm	11:26pm	Location "G" "	88.1

THUNDER VALLEY SPEEDWAY
AND SURROUNDING AREA



LEGEND

City Limits — — — — —
Property Line — — — — —

DISTANCES

A to B	596 Yards
A to C	540 Yards
D to B	412 Yards

NOTE: Diagram not drawn to scale

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

Date: September 21, 2001

To: The Mayor and Council

From: Hugh Earnest, Urban Development Director
Tim Conklin, City Planner

Subject: Contractual Agreement

Background

The Fayetteville Planning Commission, in March of this year, had set a number of conditions and requirements as part of their deliberations relative to a preliminary plat covering properties owned by WHM Investments. The property in question is adjacent to the Rupple road extension to serve the new location of the Fayetteville Boys and Girls Club. One of the conditions was that the applicant would file a final plat covering the properties in question. Filing of this plat would enable the City to complete the acquisition of all parcels needed at their new site.

However, it became apparent several months later that the applicant was dissatisfied with the terms and conditions required of him by the Planning Commission. In order to move this important project along, discussions were initiated with several attorneys' representing Mr. McIlroy's interests.

Current Situation

On September 10, the Fayetteville Planning Commission heard the request for approval of the final plat from the applicant. The terms and conditions proposed by the staff are attached to this memo. The Commission, after some debate, granted the final plat after deletion of items 7 and 8. Both of the items that were deleted dealt with language setting up a mechanism to equitably assess a formula by which the applicant would assist in the construction of Rupple Road. The formula is predicated on use of a rational nexus formula between build out of the respective properties owned by Mr. McIlroy and impact on the proposed road. We have also attached to this memo a copy of the calculations used by our engineering department in developing the solution to this particular issue of public-private partnership. The Planning Commission, while generally supportive of this

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FAX 501 575-8257

approach, determined that this type of financial relationship between parties requires a contract between the city and the applicant. It was for that reason that items 7 and 8 were deleted from the final plat.

Recommendation

We have prepared a contract incorporating the terms and conditions that have been agreed to by both parties. Approval of this contract will complete the discussions with Mr. McIlroy and will enable the City to secure the last parcel that is needed in their site acquisition efforts. The city attorney has approved the contract as to form and substance. A number of key city staff participated in these negotiations and this contract comes to you with their endorsement.

STAFF REVIEW FORM

_X_ Agenda Request
____ Contract Review
____ Grant Review

For the Fayetteville City Council meeting of October 1, 2001.

FROM:

Tim Conklin	Planning	Public Works
Name	Division	Department

ACTION REQUESTED: To adopt a resolution authorizing the Mayor and City Clerk to execute the Rupple Road cost sharing contract with WHM Investments for the final plat(FPL 01-7.00) as approved by the Planning Commission..

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: Budget impact for Rupple Road is planned for 2002. ____ Budgeted Item ____ Budget Adjustment Attached

X Faith Davis 9-25-01
Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

Marsha Tarkington 9/25/01
Accounting Manager Date

9/25/01
City Attorney Date

Purchasing Officer Date

GRANTING AGENCY: ____

ADA Coordinator Date

Darcy Smith 9/25/01
Internal Auditor Date

STAFF RECOMMENDATION: Staff recommends approval of this request. The Planning Commission unanimously voted 9-0-0 to forward this to the City Council.

9.17.01
Division Head Date

9-24-01
Department Director Date

Administrative Services Director Date

9/25/01
Mayor Date

Cross Reference

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

Prev Ord/Res#: ____

Orig Contract Date: ____

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A CONTRACT
WITH WHM LAND INVESTMENTS, INC.
CONCERNING PAYMENT FOR A PORTION OF
THE COST OF EXTENDING RUPPLE ROAD
FROM WEDINGTON ROAD TO PERSIMMON

WHEREAS, the City of Fayetteville has agreed to extend and construct Rupple Road (designated on the Master Street Plan as an Arterial) from Wedington Road south to Persimmon as a standard city street; and

WHEREAS, WHM Land Investments, Inc. has agreed to pay $176,724.25 toward its share to make this a four-lane road if necessary within the next six years.

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 approves the Contractual Agreement between the City and WHM Land Investments, Inc. and authorizes the Mayor to sign said Contract.

PASSED and **APPROVED** this the 2nd day of October, 2001.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

CONTRACTUAL AGREEMENT

This Agreement, made and entered into this ___ day of September, 2001, by and between the City of Fayetteville, Arkansas, (hereinafter called "City") and WHM Land Investments, Inc. (hereinafter called "WHM"),

W I T N E S S E T H:

WHEREAS, on September 10, 2001 the City Planning Commission approved the final plat of WHM, located at City Atlas Page 439, but referred the establishment of an impact fee to the City Council for its approval.

WHEREAS, WHM desires to have an executed agreement formalizing the current understanding before transferring Tract 5 to the City.

NOW, THEREFORE, the City and WHM agree as follows:

1. The City has agreed to build Rupple Road, classified as a minor arterial, in order to provide access to the proposed Fayetteville Boys and Girls Club. WHM shall pay, based on the rational nexus formula, an impact fee for a proportionate share of the cost of Rupple Road as a Minor Arterial. Based on the formula, the applicant shall be assessed $176,724.25 for a road impact fee. The impact fee was based on the projected future residential development of Tracts 3 & 7 that shall be using Rupple Road.

At the time the Boys and Girls Club meet all requirements to obtain the Reynolds grant, WHM shall pay the entire $176,724.25 if the City Council approves and completes construction of Rupple Road as a four (4) lane street with curbs, gutters, and storm sewer.

If the City Council approves construction of a two (2) lane street with plans for future widening, then at the time the Boys and Girls Club meet all requirements to obtain the Reynolds grant, WHM shall:

a) Pay to the City $100,000.00 (non-refundable, not dependant on any development of vacant lots),

b) Provide the City a letter of credit in the amount of $76,724.25 with additional principal to be added each year based on the increase in the Consumer Price Index during the previous calendar year, as quoted in the Wall Street Journal on January 2 of the previous year and the year of the increase. Such letter of credit shall run for a term of six (6) years from date of when all conditions are met for the Fayetteville Boys and Girls Club to

obtain the Reynolds grant and shall be due upon the City completing the widening of Rupple Road to four (4) lanes with curbs, gutters, and storm sewer. In the event, Rupple Road is not improved to such standards within six (6) years, the letter of credit shall expire.

2. The projected future development of Tracts 3 & 7 are 81 single family units, 28 duplex units, and 260 apartment units. If during the six year period indicated above a development is approved by the Planning Commission in excess of any of the above indicated units WHM shall pay an additional impact fee for each unit in excess of the above as follows:

a) For each excess single family unit $231.30 in cash and a letter of credit for $154.20, total being $385.50. The total amount will be paid in cash if Rupple Road has been completed as a four (4) lane road with curbs, gutters, and storm sewers.

b) For each excess duplex unit $141.64 in cash and a letter of credit for $94.43, total being $236.07. The total amount will be paid in cash if Rupple Road has been completed as a four (4) lane road with curbs, gutters, and storm sewers.

c) For each excess apartment unit $320.51 in cash and a letter of credit for $213.67, total being $534.18. The total amount will be paid in cash if Rupple Road has been completed as a four (4) lane road with curbs, gutters, and storm sewers.

The cash impact fee and letter of credit shall be delivered upon the Planning Commission approving the final plat or large scale development. Any letters of credit received during the six (6) year period from the date the Boys and Girls Club meet all requirements, shall be returned back to WHM if the road is not widened to four (4) lanes with curbs, gutters, and storm sewers during the six (6) year period.

If after the six (6) year period WHM presents a preliminary plat to the Planning Commission in excess of the projected units, WHM shall pay an additional impact fee for each unit in excess of the projections based on whether or not Rupple Road is completed at that time as a four (4) lane road, with curbs, gutters and storm sewer. If completed, the total amount indicated above shall be paid for each excess unit. If not complete, the cash amount indicated above shall be paid for each excess unit.

If during the six (6) year period indicated above WHM has a final plat approved for less than the projected units indicated above the $76,724.25 letter of credit shall be reduced for each unit less than the projected units indicated above.

WHM shall receive a reduction for each unit less as follows:

a) For each less unit of single family in tract 7, a reduction in the letter of credit of $154.20.

b) For each less unit of duplex in tract 7, a reduction in the letter of credit of $94.43.

c) For each less unit of apartments in tract 3, a reduction in the letter of credit of $213.67.

3. Upon the Boys and Girls Club meeting all requirements to obtain the Reynolds grant, all on-site and off-site improvements and fees, for any development by WHM, or its assigns, within the approved final plat area shall be based upon the above provisions and terms. The above provisions and terms will apply to WHM and any subsequent assigns. In consideration for this Agreement by the City, WHM shall deed Tract 5 to the City.

4. In the event the Boys and Girls Club fails to meet all requirements to obtain the Reynolds grant and is not constructed within the approved final plat area, all on-site and off-site improvements and fees for any development on tracts within the approved final plat area shall be based on current ordinance requirements at the time of development approval. Also, the City shall deed Tract 5 back to WHM.

IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE, WE SIGN BELOW:

CITY OF FAYETTEVILLE

By:_____
Dan Coody, Mayor

By:_____
Heather Woodruff, City Clerk

WHM LAND INVESTMENTS, INC.

By:_____
Hayden McIlroy

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FAYETTEVILLE

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

TO: **Fayetteville Planning Commission**
FROM: **Tim Conklin, City Planner**
THRU: **Hugh Earnest, Urban Development Director**
Kit Williams, City Attorney
DATE: **September 10, 2001**

FPL 01-7.00: Final Plat (WHM Investments, pp 439) was submitted by Mike Anderson of Engineering Design Associates on behalf of Hayden McIlroy for property located on Rupple Road south of Wedington Drive. The property is zoned A-1, Agricultural, R-1, Low Density Residential, R-1.5, Moderate Density Residential, R-2, Medium Density Residential, C-1, Neighborhood Commercial and contains approximately 90 acres with 7 lots proposed.

Findings: The Planning Division required the subject property to be processed through the preliminary and final plat process in order to bring into compliance past lot splits that have not been approved through the required planning process and to allow for the subdivision of additional tracts. The initiation of this process was a result of the need to subdivide appropriate tracts that will be developed with the Fayetteville Boys and Girls Club. Furthermore, this final plat has been submitted in order to approve the sale of property to the Fayetteville Boys and Girls Club and the legal transfer of ownership to the City of Fayetteville.

Tract 4 is currently owned by the Fayetteville Boys and Girls Club. Tract 6 is owned by the City of Fayetteville. Tracts 1,2,3,5 and 7 are owned by WHM Land Investments. Tracts 4, 5, and 6 are the future site of the Fayetteville Boys and Girls Club. Tract 5 will be given to the City to meet future Parks Land Dedication requirements for this property which has already been approved by the Planning Commission. Tract 6 has already been deeded to the City for a Parks Land Dedication requirement related to the Meadowlands Development.

Pursuant to the Master Street plan 90 feet of right-of-way is being dedicated to the City for Rupple Road as well as 35 feet for Persimmon Street. The city is not recommending any public improvements as part of this subdivision due to past discussions and understandings with the former Administration and Street Committee. In order to honor the past discussions and understandings, the preliminary plat was approved varying the subdivision requirements with a finding by the Planning Commission that an undo hardship unique to this property does exists "that this project is in the best interest to the City, that due to the limited grant money it would be

an undo financial hardship to acquire these buildings due to the uniqueness of this project being funded by grant money, that it would make financial constraints."

Recommendation: Approval by the full Planning Commission subject to the conditions listed below.

Conditions of Approval:

1. A minimum 25' wide utility easement shall be provided from Meadowlands Drive located in The Meadowlands, Phases I & II, to the Rupple Road right-of-way.

2. At the time of development on Tract 7, the developer will be required to improve, build, or be assessed for the construction of half of Persimmon along the south boundary of Tract 7 based on current ordinances.

3. The final plat shall show the right-of-way dedication for Rupple Road, Wedington Drive and Persimmon Street as required by the Master Street Plan. Dedication of right-of-way on Wedington Drive shall be made by warranty deed to the City of Fayetteville.

4. A note shall be placed on the plat indicating that lots 1, 2, 3, & 7 may not use Rupple Road right-of-way for access until the street is completed. Fines may be accessed to the property owners by the City if damage to road work occurs prior to completion. The City will construct a haul road to the Fayetteville Boys and Girls Club prior to construction of Rupple Road.

5. Water will not be available to tracts 3, 4, 5, and 6 and sewer will not be available to tracts 3 and 4. Water and sewer shall be extended to these tracts at the time of development of each tract. The City will extend water to tract 4 from Meadowlands Subdivision. Sewer exists along the southern boundary of subdivision. At the time of development for each tract, the tract developer shall evaluate the existing water and sewer capacity and shall provide any upgrades or extensions if needed to serve each development.

6. All utilities shall be placed underground. Temporary overhead power may be installed to serve the Fayetteville Boys and Girls Club construction for a maximum period of 24 months from the date of final plat approval.

7. The City has agreed to build Rupple Road, classified as a minor arterial, in order to provide access to the proposed Fayetteville Boys and Girls Club. Staff is recommending the developer pay, based on the rational nexus formula, an impact fee for a proportionate share of the cost of Rupple Road as a Minor Arterial. Based on the formula, the applicant will be assessed $176,724.25 for a road impact fee . The impact fee was based on the projected future residential development of Tracts 3 & 7 that will be using Rupple Road.

   At the time the Boys and Girls Club meet all requirements to obtain the Reynolds grant,

WHM Investments shall pay the entire $176,724.25 if the City Council approves construction of Rupple Road as a four lane street with curbs, gutters, and storm sewer.

If the City Council approves construction of a 2 lane street with plans for future widening and at the time the Boys and Girls Club meet all requirements to obtain the Reynolds grant, the developer shall:

a) Pay to the City $100,000.00 (non-refundable, not dependant on any development of vacant lots),

b) Provide the City a letter of credit in the amount of $76,724.25 with additional principal to be added each year based on the increase in the Consumer Price Index during the previous calendar year, Such letter of credit will run for a term of six years from date of when all conditions are met for the Fayetteville Boys and Girls Club to obtain the Reynolds Grant and will be due upon the City completing the widening of Rupple Road to four lanes with curbs, gutters, and storm sewer. In the event, Rupple Road is not improved to such standards within six years, the letter of credit shall be allowed to expire.

8. The projected future development of Tracts 3 & 7 are 81 single family units, 28 duplex units, and 260 apartment units: If during the six year period indicated above in condition #7 a development is approved by the Planning Commission in excess of any of the above indicated units the developer will pay an additional impact fee for each unit in excess of the above as follows:

a) For each excess single family unit $231.30 in cash and a letter of credit for $154.20, total being $385.00. The total amount shall be paid if the road is four lanes.

b) For each excess duplex unit $141.64 in cash and a letter of credit for $94.43, total being $236.07. The total amount shall be paid if the road is four lanes.

c) For each excess apartment unit $320.51 in cash and a letter of credit for $213.67, total being 534.18. The total amount shall be paid if the road is four lanes.

The cash impact fee and letter of credit will be delivered upon the Planning Commission approving the final plat or large scale development. Any letters of credit received during the six year period from the date the Boys and Girls Club meet all requirements, shall be returned back to the developer if the road is not widened to four lanes with curbs, gutters, and storm sewers during the six year period.

If after the six year period the developer presents a preliminary plat to the Planning Commission in excess of the projected units, the developer will pay an additional impact

fee for each unit in excess of the projections based on whether or not Rupple Road is completed at that time as a four lane road, with curbs, gutters and storm sewer. If completed, the total amount indicated above will be paid for each excess unit. If not complete, the cash amount indicated above will be paid for each excess unit.

If during the six year period indicated above the developer has a final plat approved for less than the projected units indicated above the $76,724.25 letter of credit will be reduced for each unit less than the projected units indicated above. The developer will receive a reduction for each unit less as follows:

a) For each less unit of single family in tract 7, a reduction in the letter of credit of $154.20.

b) For each less unit of duplex in tract 7, a reduction in the letter of credit of $94.43.

c)For each less unit of apartments in tract 3, a reduction in the letter of credit of $213.67.

9. Upon the Boys and Girls Club meeting all requirements to obtain the Reynolds grant, all on-site and off-site improvements for any development within this subdivision shall be based upon the above provisions and terms. The above provisions and terms will apply to WHM Investments and any subsequent assigns.

10. In the event the Boys and Girls Club fails to meet all requirements to obtain the Reynolds grant and is not constructed within this subdivision, all on-site and off-site improvements for any development on tracts within this subdivision shall be based on current ordinance requirements at the time of development approval.

11. Plat Review and Subdivision comments (to include written staff comments mailed to the applicant or his representative, and all comments from utility representatives - AR Western Gas, SWBT, Ozarks, SWEPCO, Cox Communications)

Background:

The Preliminary Plat was reviewed at the February 28, 2001 Technical Plat review and the March 15, 2001 Subdivision Committee meeting. The Final Plat was reviewed at the August 29, 2001 Technical Plat Review meeting and August 30, 2001 Subdivision Committee meeting.

Staff has recommended a revised condition of approval regarding the developers responsibilities related to Rupple Road based on the rational nexus formula and recommends this final plat be presented to the full Commission.

INFRASTRUCTURE:

a) Water. See Conditions of Approval.

b) Sanitary sewer. Existing.

c) Streets. See Conditions of Approval.

d) Grading and Drainage. Not applicable for this project.

PLANNING COMMISSION ACTION: __yes__Required
_____Approved _____Denied

Date: _____

Comments:

_____
_____
_____
_____

CITY COUNCIL ACTION: _____Required
_____Approved _____Denied

Date: __/__/__

The "CONDITIONS OF APPROVAL", beginning on page one of this report, are accepted in total without exception by the entity requesting approval of this development item.

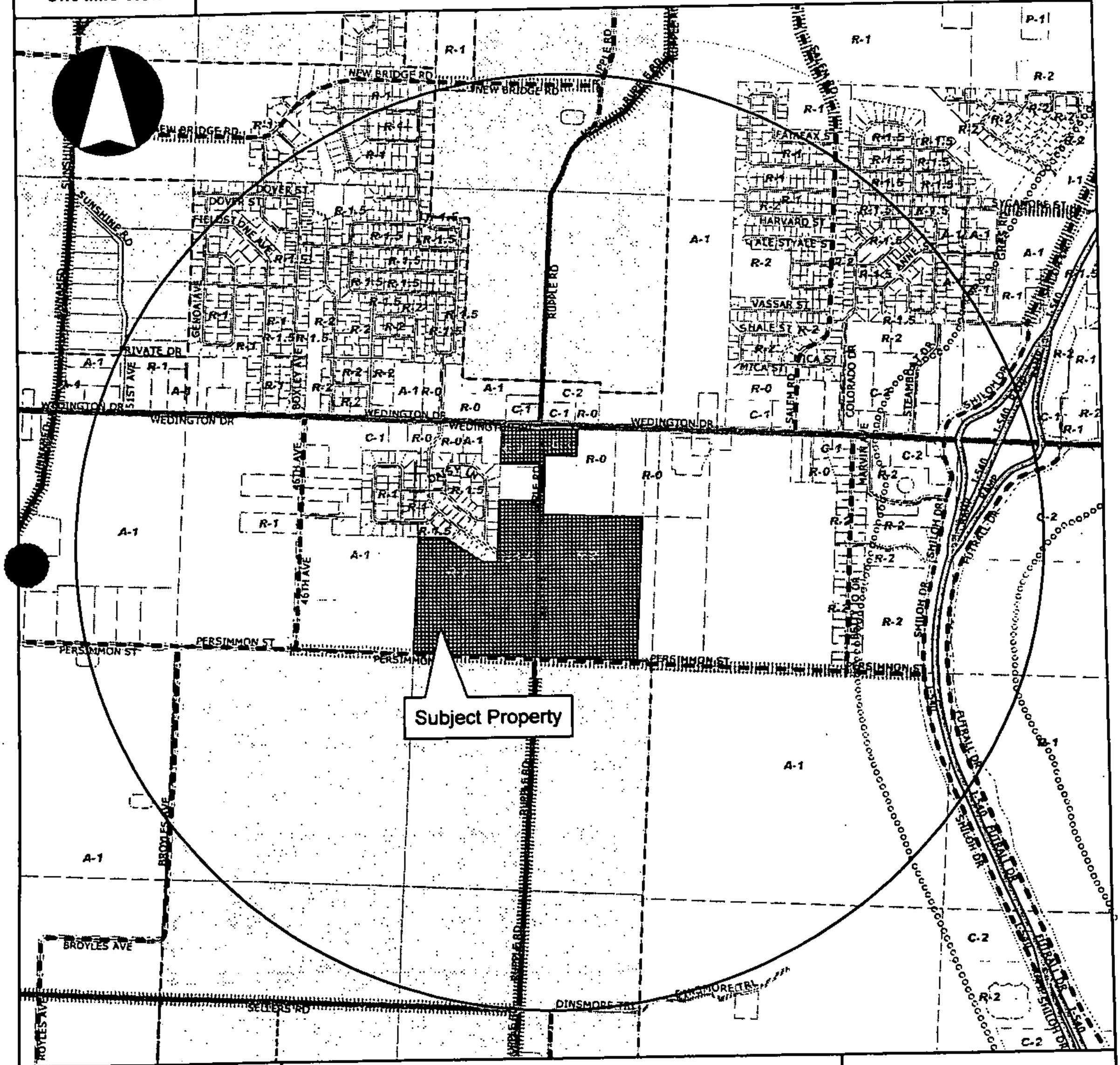
Deborah Scafton
by
Agent for WHM Coral Investments, Inc.
title

9-10-01
date

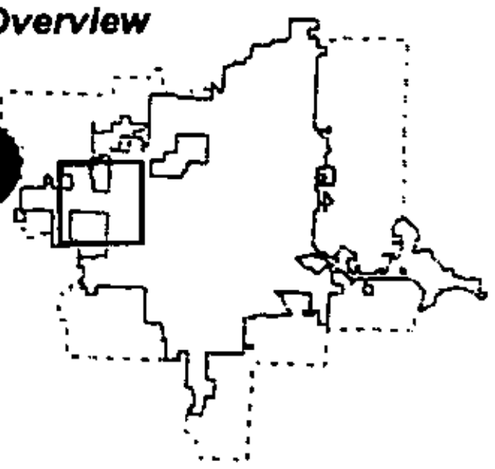
FPL 01-7.00

One Mile View

WHM



Overview



Legend

Subject Property
- FPL01-7.00

Streets
- Existing
- Planned

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

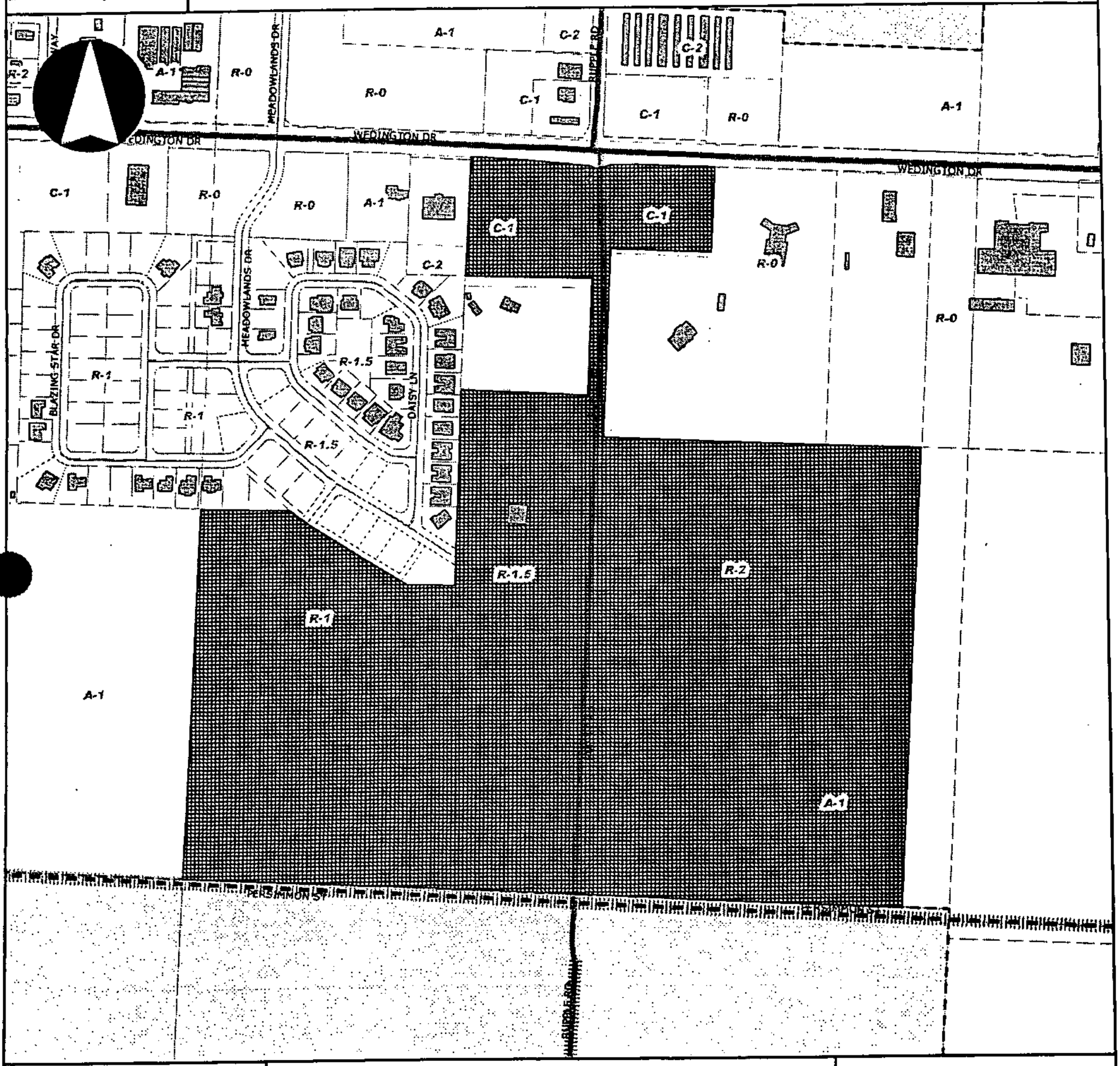
Master Street Plan
- Freeway/Expressway
- Principal Arterial
- Minor Arterial
- Collector
- Historic Collector

Planning Commission
September 10, 2001
FPL01-7 WHM Invest.

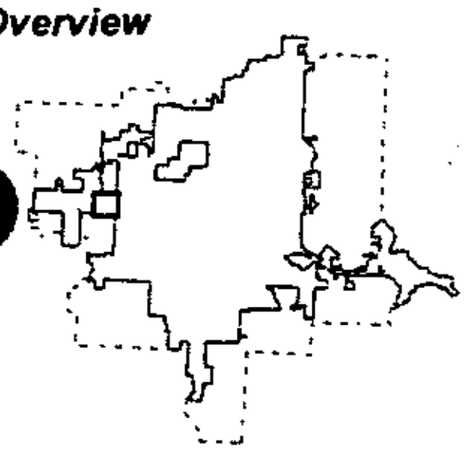
FPL01-7.00

Close Up View

WHM



Overview



Legend

Subject Property
- FPL01-7.00

Streets
- Existing
- Planned

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

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

0 125 250 500 750 1,000 1,250 Feet

	# of Units	Trips	Total Trips	$ per trip	$ per unit	Total Fee
Half of trips use Meadowlands Dr. for SFD and Duplex						
Single Family (81 Total D.U.)	40.5	9.57	387.585	$80.57	$771.05	**$31,227.72**
Duplex/Townhouse (28 total D.U.)	14	5.86	82.04	$80.57	$472.14	**$6,609.96**
Apartments	260	6.63	1723.8	$80.57	$534.18	**$138,886.57**
Amount of units Fee is based on	314.5		2193.425			**$176,724.25**

					Per Unit SFD	Half of Cost	60%
Total Cost	$1,192,500.00	Cost per Trip	80.57432	SFD	$771.10	$385.50	$231.30
				Duplex	$472.14	$236.07	$141.64
Max Trips	14,800						
Total Trips	2193.425						

McIlroy
Summary of Trip Generation Calculation
For 20 Dwelling Units of Apartments
August 13, 2001

	Average Rate	Standard Deviation	Adjustment Factor	Driveway Volume
Avg. Weekday 2-Way Volume	6.63	2.98	1.00	133
7-9 AM Peak Hour Enter	0.08	0.00	1.00	2
7-9 AM Peak Hour Exit	0.43	0.00	1.00	9
7-9 AM Peak Hour Total	0.51	0.73	1.00	10
4-6 PM Peak Hour Enter	0.42	0.00	1.00	8
4-6 PM Peak Hour Exit	0.20	0.00	1.00	4
4-6 PM Peak Hour Total	0.62	0.82	1.00	12
Saturday 2-Way Volume	6.39	2.99	1.00	128
Saturday Peak Hour Enter	0.00	0.00	1.00	0
Saturday Peak Hour Exit	0.00	0.00	1.00	0
Saturday Peak Hour Total	0.52	0.74	1.00	10

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

TRIP GENERATION BY MICROTRANS

McIlroy
Summary of Trip Generation Calculation
For 40 Dwelling Units of Residential Condominium / Townhouse
August 13, 2001

	Average Rate	Standard Deviation	Adjustment Factor	Driveway Volume
Avg. Weekday 2-Way Volume	5.86	3.09	1.00	234
7-9 AM Peak Hour Enter	0.07	0.00	1.00	3
7-9 AM Peak Hour Exit	0.37	0.00	1.00	15
7-9 AM Peak Hour Total	0.44	0.69	1.00	18
4-6 PM Peak Hour Enter	0.36	0.00	1.00	14
4-6 PM Peak Hour Exit	0.18	0.00	1.00	7
4-6 PM Peak Hour Total	0.54	0.76	1.00	22
Saturday 2-Way Volume	5.67	3.10	1.00	227
Saturday Peak Hour Enter	0.25	0.00	1.00	10
Saturday Peak Hour Exit	0.22	0.00	1.00	9
Saturday Peak Hour Total	0.47	0.71	1.00	19

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

TRIP GENERATION BY MICROTRANS

McIlroy
Summary of Trip Generation Calculation
For 20 Dwelling Units of Single Family Detached Housing
August 13, 2001

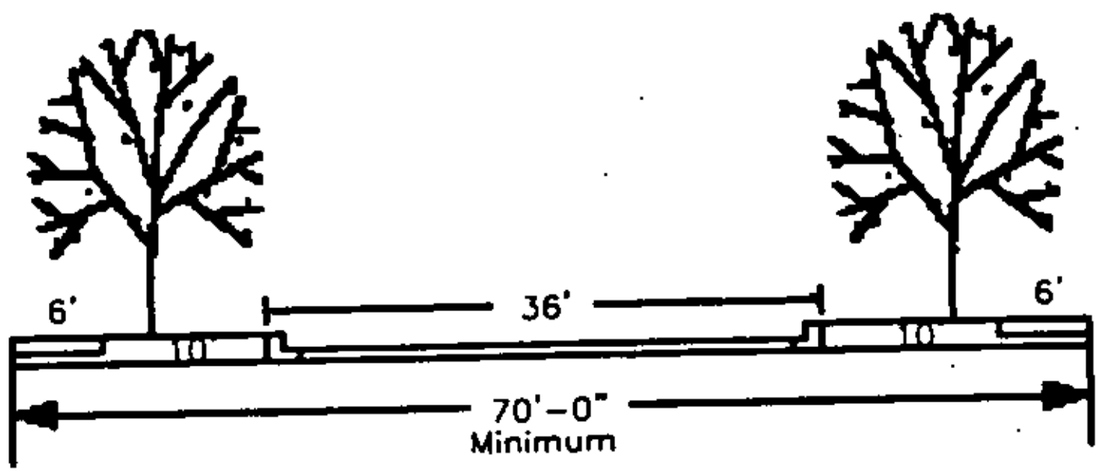
	Average Rate	Standard Deviation	Adjustment Factor	Driveway Volume
Avg. Weekday 2-Way Volume	9.57	3.69	1.00	191
7-9 AM Peak Hour Enter	0.19	0.00	1.00	4
7-9 AM Peak Hour Exit	0.56	0.00	1.00	11
7-9 AM Peak Hour Total	0.75	0.90	1.00	15
4-6 PM Peak Hour Enter	0.65	0.00	1.00	13
4-6 PM Peak Hour Exit	0.36	0.00	1.00	7
4-6 PM Peak Hour Total	1.01	1.05	1.00	20
Saturday 2-Way Volume	10.09	3.67	1.00	202
Saturday Peak Hour Enter	0.51	0.00	1.00	10
Saturday Peak Hour Exit	0.43	0.00	1.00	9
Saturday Peak Hour Total	0.94	0.99	1.00	19

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

TRIP GENERATION BY MICROTRANS

COLLECTOR STREETS provide traffic circulation within residential, commercial, and industrial areas. They collect traffic from local or residential streets in neighborhoods and channel it into the arterial system. Connections between arterials should be indirect to discourage use by traffic from outside the neighborhood. In residential neighborhoods, frontage along collectors is discouraged; houses should front on local or residential streets.

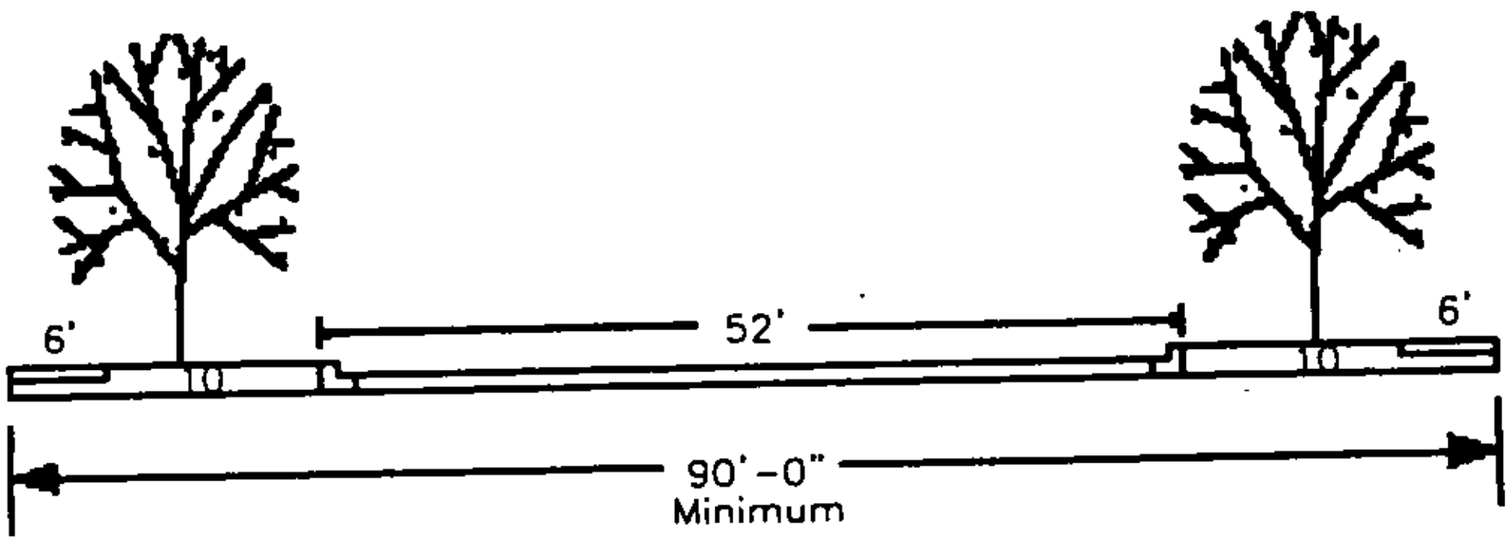
Design Service Volume:	4,000 vpd, 6,000 vpd with left turn bays
Speed:	25-30 mph
Traffic Lanes:	Two 11' travel lanes, 10' turn bays where warranted
Parking Lanes:	Two lanes provided. None when turn bay exists
Paved Width:	36' from back of curb
Right of Way:	At least 70'
Multi-use trail:	Two at least 6' wide, at least 10' from curb
Tree Planting areas:	Two, at least 10' wide



Collector

MINOR ARTERIAL STREETS connect higher functional class facilities, etc. Residential frontage is strongly discouraged. Access should be from perpendicular local or residential streets.

Design Service Volume:	12,200 vpd, 14,800 vpd with left turn bays
Speed:	35-40 mph
Traffic Lanes:	Four 12' travel lanes, 11' turn lanes possible at intersections
Parking Lanes:	None
Paved Width:	52' from back of curb, 59' with turn lane
Right of Way:	At least 90'
Multi-use Trail:	Two at least 6' wide, at least 10' from curb
Tree Planting Areas	Two, at least 10' wide



Minor Arterial

STAFF REVIEW FORM

__X__ AGENDA REQUEST
_____ CONTRACT REVIEW
_____ GRANT REVIEW

FOR: COUNCIL MEETING OF October 2, 2001

FROM:

Alderman Brenda Thiel & Alderman Robert Reynolds

Name | Division | Department

ACTION REQUIRED: Resolution To Authorize The City Attorney To File Suit If Necessary Against The Owner Of The Land And The Manager Of The Thunder Valley Speedway As A Public Nuisance

COST TO CITY:

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

STAFF RECOMMENDATION:

Division Head	Date
Department Director	Date
Administrative Services Director	Date
Mayor	Date

CROSS REFERENCE

New Item: **Yes** No

Previous Ordinance/Resolution No.: _____

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE THE CITY ATTORNEY TO FILE SUIT IF NECESSARY AGAINST THE OWNER OF THE LAND AND THE MANAGER OF THE THUNDER VALLEY SPEEDWAY AS A PUBLIC NUISANCE

WHEREAS, the Thunder Valley Speedway had been enjoined from operation after 10:00 P.M. as a nuisance in Case Number E 22719 on September 13, 1972; and

WHEREAS, it would be difficult or impossible to enforce that old Decree at this time; and

WHEREAS, in recent years the Thunder Valley Speedway is again operating after 10:00 P.M. in such close proximity to residential homes in Fayetteville as to significantly disturb Fayetteville citizens and disrupt their activities for several hours during its operation; and

WHEREAS, the Fayetteville City Police have taken noise level readings in late July and determined that the noise coming from the Thunder Valley Speedway (located immediately south of the City Limits) "were far in excess of what we would allow in Fayetteville even in an Industrial Zone." (August 9, 2001 Memo)

WHEREAS, more than 100 Fayetteville citizens have signed petitions asserting they have been "disturbed frequently, and late at night by the stockcar racetrack located at 301 E. Willoughby Road, Fayetteville, a/k/a/ Thunder Valley Speedway. We agree that said stockcar racetrack is a public nuisance and that the City of Fayetteville should file a lawsuit to enjoin them as such."

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 declares that the Thunder Valley Speedway off Willoughby Road has been operating without proper regulation of noise and at too late an hour such that it is a continuing public nuisance to the citizens of Fayetteville.

Section 2. That the City Council of the City of Fayetteville, Arkansas authorizes the Fayetteville City Attorney to file an injunctive suit against the operators of the Thunder Valley Raceway and the owners of the land upon which this raceway operates in an attempt to reduce the noise, dust, fumes and hours of operation of the raceway and to seek any other relief the City or citizens of Fayetteville may be entitled to.

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

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

MEMORANDUM

TO: Alderwoman Brenda Thiel

THRU: Dan Coody, Mayor

FROM: Rick Hoyt, Assistant Chief of Police

DATE: August 9, 2001

RE: Noise Measurement – Thunder Valley Speedway

In late July, Alderwoman Thiel requested the Police Department take some noise meter readings in regard to the noise coming from the Thunder Valley Speedway located south of Willoughby Road. This assignment was given to Lieutenant William Brown of our department and he has prepared the attached memorandum and copies of our Sound Level Meter report forms. The locations Lieutenant Brown took the readings from are all within the City limits of Fayetteville. As you know, the Thunder Valley Speedway itself is located outside the City limits.

With only one exception, all noise readings were far in in excess of what we would allow in Fayetteville even in an Industrial zone. An Industrial zone allows up to 80 Decibels (dB) between the hours of 7:00AM and 11:00 PM. Eight out of nine readings taken one week apart showed the noise level to be exceeding 80 dB. One reading at 11:26 PM was still at 88.1 dB. Residential zoning requirements only allow 60 dB from 7:00am until 11:00 PM and the level drops to 55 dB after 11:00.

It is important to note that for every 3 dB increase in sound level, sound pressure is approximately doubled. In other words, an 83 dB sound is twice as loud as an 80 dB sound. One of the readings taken on July 28, 2001 at approximately 10:54 PM showed the sound level to be 89.4 dB. This would be approximately three times higher than even an Industrial zoning would allow.

If Thunder Valley Speedway was located in the City limits we would apply the Residential zoning sound levels (City Ordinance § 96.04) to this situation. This would mean a reading of 89.4 dB would exceed allowable levels by almost ten times.

I hope this information is of value to you in any further examination of this issue.

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

MEMORANDUM

TO: ACOP R. Hoyt

FROM: Lt. W. Brown

DATE: July 28, 2001

SUBJECT: Sound readings at Thunder Valley Speedway

As per your instructions, I have taken sound level meter readings in the area of Thunder Valley Speedway the past two weekends. On Saturday 7-21-01, I arrived at 10:00pm because of complainant comments that the sound got louder as it got later. The races ended at 10:30 that night and I was only able to obtain readings on the last three races. Because of this, I returned on Saturday 7-28-01 at 9:00pm and obtained readings on the last six races. I have packaged the data and a diagram and attached it to this memo. I also obtained an aerial photograph of the area and included it. I have spoken to Mrs. Theil about a deadline for needing this information. Apparently there is a petition circulating that will not be completed until the end of August. This gives us a little more time in case there is anything you feel needs to be added or done differently.

Fayetteville Police Department

Sound Level Meter Survey Report

COPY

Date (DDMY): 07-21-01

Time: 10:00pm

Call #: N/A

Report No.: 01-07

Officer(s) Making Report: Lt. William Brown #128

COMPLAINT INFORMATION

Name: N/A Special Assignment

Phone:

Address:

Zoning: Residential ■ Commercial □ Industrial □

Complaint (Describe location and source of noise disturbance)

Assigned to take sound level readings of races at Thunder Valley Speedway and surrounding area.

PRETEST CHECK

			Time	Weighting (circle)
QUEST 214	Cal Date:		Battery Check	A or C
QUEST 2400	Cal Date: 1-29-01		Battery Check 10:02pm	(A) or C

Ambient	Temp.	Wind	Precipitation	Other
54.8	88°	None	Humid	

SLM SURVEY

Reading Number	Time Beg.	Time End	Location	Max. Level Decibel
1	10:05pm	10:10pm	Location "A" @ 200 E. Willoughby(See map)	80.8
2	10:15pm	10:21pm	Location "A"	85.2
3	10:27pm	10:30pm	Location "A"	85.4

NARRATIVE (Use this space to document survey findings, diagram references, enforcement action, and other relevant information)

On 7-21-01, I was assigned to conduct a sound level survey for the area surrounding Thunder Valley Speedway. The races ended early that night and I was only able to obtain readings on three races. All readings were taken from the west side of the residence located at 200 E. Willoughby. See attached diagram for further.

*NOTE: No enforcement action was taken due to sound source location outside city limits.

Officer(s) Signature Lt. William K. Brown #128 Time 10:00pm Date 07-21-01

COPY

Fayetteville Police Department

Sound Level Meter Survey Report

Date (DDMY): 07-28-01 | Time: 9:20pm | Call #: N/A | Report No.: 01-08

Officer(s) Making Report: Lt. William Brown #128

COMPLAINT INFORMATION

Name: N/A Special Assignment | Phone:

Address:

Zoning: Residential ■ Commercial □ Industrial □ Agricultural ■

Complaint (Describe location and source of noise disturbance)

Assigned to take sound level readings of races at Thunder Valley Speedway and surrounding area.

PRETEST CHECK

			Time	Weighting (circle)
QUEST 214	Cal Date:		Battery Check	A or C
QUEST 2400	Cal Date: 01-29-01		Battery Check 9:05pm	(A) or C

Ambient	Temp.	Wind	Precipitation	Other
53.7	74°	None	Rain	Rain was off and on drizzle

SLM SURVEY

Reading Number	Time Beg.	Time End	Location	Max. Level Decibel
1	9:27pm	9:31pm	Location "E" See attached map Agricultural Zone	78.8
2	9:37pm	9:41pm	Location "F" " "	84.4
3	10:08pm	10:15pm	Location "D" " "	83.8
4	10:20pm	10:26pm	Location "A" "	80.3
5	10:39pm	10:54pm	Location "G" "	89.4
6	10:58pm	11:26pm	Location "G" "	88.1

NARRATIVE (Use this space to document survey findings, diagram references, enforcement action, and other relevant information)

On 7-28-01, I was assigned to conduct sound level readings in the area of Thunder Valley Speedway. There was off and on drizzle most of the night and the track appeared to be wet. There were warm-up laps before several races, I was told, to pack down the wet dirt.

The first race checked was unknown type cars and readings were taken from City Limit where it intersects with the northeast corner of the South Pit Area. (See attached diagram for reading locations)

Race #2 - Modified "B" Class cars with readings taken from the fence at southwest corner of North Pit Area.

Race #3 - "Pro-4's with readings taken from the southwest corner of the residence at 315 E. Willoughby.

Race #4 - Factory Stock "A" Class cars and readings taken from the west side of the residence at 200 E. Willoughby.

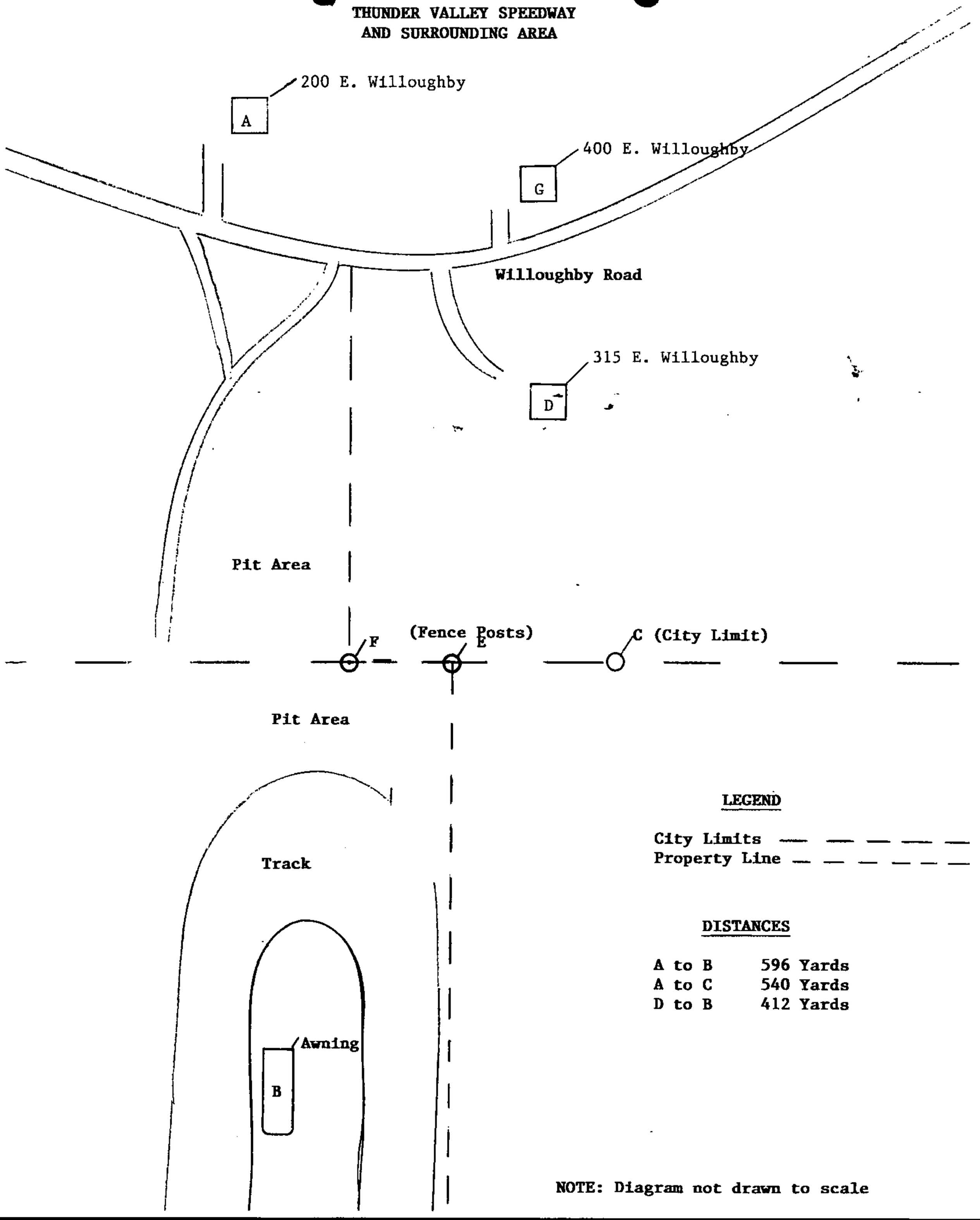
Race #5 - Super Stock "A" Class cars and readings taken from the porch of the residence at 400 E. Willoughby.

Race #6 - Modified "A" Feature Class cars and readings were again taken from the porch at 400 E. Willoughby

NOTE: Race lengths varied due to cautions and red flags. By the start of race #3 the rain had stopped for good and the pack-down laps were discontinued.

Officer(s) Signature Lt. William K. Brown #128 Time 9:20pm Date 07-28-01

THUNDER VALLEY SPEEDWAY
AND SURROUNDING AREA



LEGEND

City Limits — — — — — —
Property Line — — — — — —

DISTANCES

A to B	596 Yards
A to C	540 Yards
D to B	412 Yards

NOTE: Diagram not drawn to scale

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TENTATIVE AGENDA
CITY COUNCIL
OCTOBER 2, 2001

A meeting of the Fayetteville City Council will be held on October 2, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain, Fayetteville, Arkansas.

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:** Approval of the minutes from September 4 and 18, 2001 meetings.

B. OLD BUSINESS

1. **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. The ordinance was left on the second reading as amended at the September 18, 2001, meeting.

2. **RESIDENTIAL YARD WASTE:** An ordinance amending Chapter 50: Garbage and Trash, of the Code of Fayetteville, to amend definitions; and to amend the services requirements pertaining to residential yard waste. The ordinance was left on the first reading at the September 18, 2001, meeting.

C. NEW BUSINESS

1. **RUPPLE ROAD:** A resolution authorizing the acceptance of a contract between WHM and the City of Fayetteville that details the terms and conditions of the Rupple Road cost sharing agreement. *(information will be given at agenda session)*

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

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TENTATIVE AGENDA
CITY COUNCIL
OCTOBER 2, 2001

A meeting of the Fayetteville City Council will be held on October 2, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain, Fayetteville, Arkansas.

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:** Approval of the minutes from September 4 and 18, 2001 meetings.

2. VLASIC -

B. OLD BUSINESS

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C. NEW BUSINESS

1. **RUPPLE ROAD:** A resolution authorizing the acceptance of a contract between WHM and the City of Fayetteville that details the terms and conditions of the Rupple Road cost sharing agreement. *(information will be given at agenda session)*

2). THUNDER VALLEY SPEEDWAY.

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

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

SPECIAL CITY COUNCIL
AGENDA
SEPTEMBER 25, 2001

A special meeting of the Fayetteville City Council will be held on Tuesday, September 25, 2001, following Agenda Session, approximately 5:00 p.m. in Room 326 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

1. **FAA / AIP GRANT:** A resolution accepting and approving a grant agreement in the amount of $2,442,201 with the FAA for runway improvements at Drake Field.

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

September 25, 2001

AGENDA SESSION
CITY COUNCIL
OCTOBER 2, 2001

NEW ITEMS:

1. **VLASIC:** A resolution approving an offer from the LLC Manager in the Vlasic Bankruptcy Case.

2. **THUNDER VALLEY SPEEDWAY:** A resolution to authorize the City Attorney to file a suit, if necessary, against the owner of the land and the manager of the Thunder Valley Speedway as a public nuisance.

ADDITIONAL INFORMATION:

1. **RUPPLE ROAD:** A resolution authorizing the Mayor and City Clerk to execute the Rupple Road cost sharing contract with WHM Investments for the final plat as approved by the Planning Commission.

STAFF REVIEW FORM

__X__ AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

FOR: COUNCIL MEETING OF OCTOBER 2, 2001 **MAYOR'S APPROVAL** _____

FROM:

Kit Williams	Legal	City Attorney
Name	Division	Department

ACTION REQUIRED: Approval of A Resolution To Approve An Offer From The LLC Manager In The Vlasic Bankruptcy Case

COST TO CITY:

None		
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	Internal Auditor	Date
City Attorney	9/17/01 Date	ADA Coordinator	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION:

Division Head	Date
Department Director	Date
Administrative Services Director	9/18/01 Date
Mayor	9/18/01 Date

CROSS REFERENCE

New Item: **Yes** No

Previous Ordinance/Resolution No.: _____

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

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

FROM: **Kit Williams**, City Attorney

DATE: **September 17, 2001**

RE: **Vlasic Bankruptcy Case – Distribution of Bankruptcy Estate**

As you remember, Vlasic filed for Bankruptcy protection in late January or early February this year. Accordingly a check payable to Fayetteville in the amount of $71,677.66 had its payment stopped.

The City was also owed $55,964.21 for an unbilled balance on the date of bankruptcy filing. In short, **Fayetteville was out $127,474.27**.

Frequently, unsecured creditors like Fayetteville get little if anything when a debtor goes bankrupt. We received some unsolicited offers to pay us 12 or 17 cents on the dollar for our $127,756.93 claim if we would assign our rights to these speculators. I did not accept these offers of $15,330.83 (Argo Partners) and $21,718.68 (Newstart Factors, Inc.), but instead filed a long shot Request For Adequate Assurance with the Bankruptcy Court. Happily, the City received a check for $70,000.00 as a result of my Motion and subsequent negotiations with the Trustee.

That reduced our Claim to $57,756.93. I filed a Proof of Claim in that amount and have waited for the preparation of the Joint Plan of Distribution of VF Brands, Inc. and Affiliates which I finally received today. I have also received another solicitation to assign our $57,756.93 claim to Liquidity Solutions, Inc. for $8,663.54 (or 15% of our remaining claim).

Attached are copies of page Plan – 10 of the First Amended Joint Plan of Distribution and page ii of the Disclosure Statement and Summary of Plan Distribution. The proposed plan states that the LLC Manager may offer to pay between 20% - 25% of each Allowed Claim. There is a limit on how large a claim the LLC Manager would pay (but since ours was reduced by $70,000.00 for the initial payment, we should not be effected by that limitation). We must agree in writing to accept this offer and not pursue any further claims against the debtor.

I recommend we do **NOT** object to the Amended Joint Plan and **do accept** the 20-25% offer on our remaining claim. If the offer were 20%, we would receive $11,551.38. However since we already have received $70,000.00 our actual payments have been $81,551.38 out of the initial debt of $127,756.93. Thus instead of receiving only **20%**, we actually have received **63.8%** of the full debt owed at the time of Vlasic's bankruptcy filing.

I believe the Mayor can decide upon my advice not to object to the Amended Joint Plan. (Any objection would probably be futile anyway.) However, I will prepare a Resolution for your first meeting in October to accept an offer by the LLC Manager to pay 20-25% of our Allowed Claim.

c. *Post-Confirmation Redemption of Certain Claims.* Notwithstanding anything contained herein, the VFI LLC Members' Agreement shall provide that on or from time to time after the Effective Date until the date that is ninety days after the Effective Date, the LLC Manager may, in its sole discretion, offer all holders of Class 5 Claims whose Allowed Claims do not exceed an amount to be determined by the LLC Manager (the "Offer Amount"), in its sole discretion, a Cash payment equal to between 20% and 25% (the exact amount within that range to be determined by the LLC Manager, the "Redemption Percentage") of each such holder's Allowed Claim. No distribution pursuant to this offer shall be made to any holder of a Class 5 Claim who does not accept such offer in writing, and no such holder may accept the offer with respect to any amount less than the entire amount of such holder's Claim. In the event that any such offer is oversubscribed as determined by the LLC Manager in its sole discretion, the LLC Manager may choose to either reduce the Offer Amount and recognize acceptances corresponding to such reduced Offer Amount, or pay the Redemption Percentage of a prorated amount of each such holder's Class 5 Claim while leaving the balance of each such Class 5 Claim intact.

6. *Class 6 - Subordinated Claims*

a. *Interests in Class:* Class 6 consists of all Subordinated Claims against the Debtors.

b. *Treatment:* Each holder of an allowed Class 6 Subordinated Claim shall not receive or retain any property or interest in property on account of their Class 6 Subordinated Claim.

7. *Class 7 - Interests*

a. *Interests in Class:* Class 7 consists of all Interests in the Debtors.

b. *Treatment:* On the Effective Date, all Class 7 Interests shall be cancelled and the Interest holders shall not receive or retain any property or interest in property on account of their Class 7 Interests.

D. Allowed Claims

Notwithstanding any provision herein to the contrary, the VFI LLC shall only make distributions to holders of Allowed Claims. No holder of a Disputed Claim will receive any distribution on account thereof until and to the extent that its Disputed Claim becomes an Allowed Claim. The LLC Manager may, in its sole discretion, withhold distributions otherwise due hereunder to the holder of a Claim until the Claims Objection Deadline, to enable the LLC Manager to file a timely objection thereto. The LLC Manager will establish a reserve for Disputed Claims in accordance with Article VI.B hereof. The presence of a Disputed Claim in any Class will not be a cause to delay distribution to Allowed Claims in that Class or in junior Classes, so long as a reserve is created for the Disputed Claim in accordance herewith. Any holder of a Disputed Claim that becomes an Allowed Claim after the Distribution Date will receive its distribution, without Postpetition Interest (except as otherwise expressly provided in the Plan), on the next Periodic Distribution Date in accordance with the provisions of this Plan.

E. Full Satisfaction

The VFI LLC shall make, and each holder of an allowed Claim shall receive, the distributions provided for in the foregoing provisions of this Article III in full satisfaction and discharge of all Claims against the Debtors.

F. Postpetition Interest

In accordance with section 502(b)(2) of the Bankruptcy Code, the amount of all Claims against the Debtors shall be calculated as of the Petition Date. Except as otherwise explicitly provided herein, no holder of a Claim shall be entitled to or receive Postpetition Interest.

G. Alternative Treatment

Notwithstanding any provision herein to the contrary, any holder of an Allowed Claim may receive, instead of the distribution or treatment to which it is entitled hereunder, any other distribution or treatment to which it and, prior to the Effective Date, the Debtor obligated on its Claim or, on or after the Effective Date, the LLC Manager, may agree in writing.

Classes 2A, 2B, 2C, etc. -- Secured Claims *Unimpaired*	• On the later of (i) the Distribution Date, and (ii) the date on which the Secured Claim becomes due under any agreement governing its payment, each holder of an Allowed Secured Claim will either (a) receive deferred Cash payments totaling at least the allowed amount of such Secured Claim, of a value, as of the Effective Date, of at least the value of such holder's interest in the respective Debtor's interest in such Collateral, (b) receive the subject Collateral upon abandonment by a Debtor, (c) receive payments or liens amounting to the indubitable equivalent of the value of such holder's interest in the respective Debtor's interest in such Collateral, (d) be Reinstated, meaning that the Claim will not be impaired (as defined in section 1124 of the Bankruptcy Code), or (e) receive such other treatment as the respective Debtor and such holder shall agree upon in writing. To the extent that the value of any Collateral securing a Secured Claim exceeds the amount of the Secured Claim, its holder shall receive interest, fees, costs, and charges as may be payable under section 506(b) of the Bankruptcy Code.
Class 3 -- Intercompany Claims *Impaired*	• On the Effective Date, Intercompany Claims will be cancelled and holders of Intercompany Claims will not receive any distribution on account of their Claims.
Class 4 -- Convenience Claims *Impaired*	• Each holder of a General Unsecured Claim that is Allowed in an amount that is less than or equal to the Convenience Cap Amount shall be deemed to have elected to treat such Claim as a Convenience Claim. On the Distribution Date, each holder of an Allowed Convenience Claim will receive Cash equal to 40% of its Allowed Claim.
Class 5 -- General Unsecured Claims *Impaired*	• Class 5 consists of Senior Subordinated Note Claims and General Unsecured Claims, other than Convenience Claims and Intercompany Claims. Each holder of an Allowed Class 5 Claim will receive its Pro Rata share of the LLC Membership Interests. • The VFI LLC Members' Agreement will provide that on or from time to time after the Effective Date until the date that is ninety days after the Effective Date, the LLC Manager may, in its sole discretion, offer all holders of Class 5 Claims whose Allowed Claims do not exceed an amount to be determined by the LLC Manager (the "Offer Amount"), in its sole discretion, a Cash payment equal to between 20% and 25% (the exact amount within that range to be determined by the LLC Manager, the "Redemption Percentage") of each such holder's Allowed Claim. No distribution pursuant to this offer shall be made to any holder of a Class 5 Claim who does not accept such offer in writing, and no such holder may accept the offer with respect to any amount less than the entire amount of such holder's Claim. In the event that any such offer is oversubscribed as determined by the LLC Manager in its sole discretion, the LLC Manager may choose to either reduce the Offer Amount and recognize acceptances corresponding to such reduced Offer Amount, or pay the Redemption Percentage of a prorated amount of each such holder's Class 5 Claim while leaving the balance of each such Class 5 Claim intact.
Class 6 -- Subordinated Claims *Impaired*	• A holder of a Class 6 Subordinated Claim shall not receive or retain any property or interest in property on account of such Class 6 Subordinated Claim.
Class 7 -- Interests *Impaired*	• All Class 7 Interests shall be cancelled and the Interest holders shall receive or retain any property or interest in property on account of such Class 7 Interests.

STAFF REVIEW FORM

__X__ AGENDA REQUEST
_____ CONTRACT REVIEW
_____ GRANT REVIEW

FOR: COUNCIL MEETING OF October 2, 2001

FROM:

Alderman Brenda Thiel & Alderman Robert Reynolds

Name | Division | Department

ACTION REQUIRED: Resolution To Authorize The City Attorney To File Suit If Necessary Against The Owner Of The Land And The Manager Of The Thunder Valley Speedway As A Public Nuisance

COST TO CITY:

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

STAFF RECOMMENDATION:

Division Head	Date
Department Director	Date
Administrative Services Director	Date
Mayor	Date

CROSS REFERENCE

New Item: **Yes** No

Previous Ordinance/Resolution No.: _____

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE THE CITY ATTORNEY TO FILE SUIT IF NECESSARY AGAINST THE OWNER OF THE LAND AND THE MANAGER OF THE THUNDER VALLEY SPEEDWAY AS A PUBLIC NUISANCE

WHEREAS, the Thunder Valley Speedway had been enjoined from operation after 10:00 P.M. as a nuisance in Case Number E 22719 on September 13, 1972; and

WHEREAS, it would be difficult or impossible to enforce that old Decree at this time; and

WHEREAS, in recent years the Thunder Valley Speedway is again operating after 10:00 P.M. in such close proximity to residential homes in Fayetteville as to significantly disturb Fayetteville citizens and disrupt their activities for several hours during its operation; and

WHEREAS, the Fayetteville City Police have taken noise level readings in late July and determined that the noise coming from the Thunder Valley Speedway (located immediately south of the City Limits) "were far in excess of what we would allow in Fayetteville even in an Industrial Zone." (August 9, 2001 Memo)

WHEREAS, more than 100 Fayetteville citizens have signed petitions asserting they have been "disturbed frequently, and late at night by the stockcar racetrack located at 301 E. Willoughby Road, Fayetteville, a/k/a/ Thunder Valley Speedway. We agree that said stockcar racetrack is a public nuisance and that the City of Fayetteville should file a lawsuit to enjoin them as such."

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 declares that the Thunder Valley Speedway off Willoughby Road has been operating without proper regulation of noise and at too late an hour such that it is a continuing public nuisance to the citizens of Fayetteville.

Section 2. That the City Council of the City of Fayetteville, Arkansas authorizes the Fayetteville City Attorney to file an injunctive suit against the operators of the Thunder Valley Raceway and the owners of the land upon which this raceway operates in an attempt to reduce the noise, dust, fumes and hours of operation of the raceway and to seek any other relief the City or citizens of Fayetteville may be entitled to.

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

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

MEMORANDUM

TO: Alderwoman Brenda Thiel

THRU: Dan Coody, Mayor

FROM: Rick Hoyt, Assistant Chief of Police

DATE: August 9, 2001

RE: Noise Measurement – Thunder Valley Speedway

In late July, Alderwoman Thiel requested the Police Department take some noise meter readings in regard to the noise coming from the Thunder Valley Speedway located south of Willoughby Road. This assignment was given to Lieutenant William Brown of our department and he has prepared the attached memorandum and copies of our Sound Level Meter report forms. The locations Lieutenant Brown took the readings from are all within the City limits of Fayetteville. As you know, the Thunder Valley Speedway itself is located outside the City limits.

With only one exception, all noise readings were far in in excess of what we would allow in Fayetteville even in an Industrial zone. An Industrial zone allows up to 80 Decibels (dB) between the hours of 7:00AM and 11:00 PM. Eight out of nine readings taken one week apart showed the noise level to be exceeding 80 dB. One reading at 11:26 PM was still at 88.1 dB. Residential zoning requirements only allow 60 dB from 7:00am until 11:00 PM and the level drops to 55 dB after 11:00.

It is important to note that for every 3 dB increase in sound level, sound pressure is approximately doubled. In other words, an 83 dB sound is twice as loud as an 80 dB sound. One of the readings taken on July 28, 2001 at approximately 10:54 PM showed the sound level to be 89.4 dB. This would be approximately three times higher than even an Industrial zoning would allow.

If Thunder Valley Speedway was located in the City limits we would apply the Residential zoning sound levels (City Ordinance § 96.04) to this situation. This would mean a reading of 89.4 dB would exceed allowable levels by almost ten times.

I hope this information is of value to you in any further examination of this issue.

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

MEMORANDUM

TO: ACOP R. Hoyt

FROM: Lt. W. Brown

DATE: July 28, 2001

SUBJECT: Sound readings at Thunder Valley Speedway

As per your instructions, I have taken sound level meter readings in the area of Thunder Valley Speedway the past two weekends. On Saturday 7-21-01, I arrived at 10:00pm because of complainant comments that the sound got louder as it got later. The races ended at 10:30 that night and I was only able to obtain readings on the last three races. Because of this, I returned on Saturday 7-28-01 at 9:00pm and obtained readings on the last six races. I have packaged the data and a diagram and attached it to this memo. I also obtained an aerial photograph of the area and included it. I have spoken to Mrs. Theil about a deadline for needing this information. Apparently there is a petition circulating that will not be completed until the end of August. This gives us a little more time in case there is anything you feel needs to be added or done differently.

Fayetteville Police Department

Sound Level Meter Survey Report

COPY

Date (DDMY): 07-21-01 | Time: 10:00pm | Call #: N/A | Report No.: 01-07

Officer(s) Making Report: Lt. William Brown #128

COMPLAINT INFORMATION

Name: N/A Special Assignment | Phone:

Address:

Zoning: Residential ■ Commercial □ Industrial □

Complaint (Describe location and source of noise disturbance)

Assigned to take sound level readings of races at Thunder Valley Speedway and surrounding area.

PRETEST CHECK

			Time	Weighting (circle)
QUEST 214	Cal Date:		Battery Check	A or C
QUEST 2400	Cal Date: 1-29-01		Battery Check 10:02pm	(A) or C

Ambient	Temp.	Wind	Precipitation	Other
54.8	88°	None	Humid	

SLM SURVEY

Reading Number	Time Beg.	Time End	Location	Max. Level Decibel
1	10:05pm	10:10pm	Location "A" @ 200 E. Willoughby(See map)	80.8
2	10:15pm	10:21pm	Location "A"	85.2
3	10:27pm	10:30pm	Location "A"	85.4

COPY

Fayetteville Police Department

Sound Level Meter Survey Report

Date (DDMY): 07-28-01 | Time: 9:20pm | Call #: N/A | Report No.: 01-08

Officer(s) Making Report: Lt. William Brown #128

COMPLAINT INFORMATION

Name: N/A Special Assignment | Phone:

Address:

Zoning: Residential ■ Commercial □ Industrial □ Agricultural ■

Complaint (Describe location and source of noise disturbance)

Assigned to take sound level readings of races at Thunder Valley Speedway and surrounding area.

PRETEST CHECK

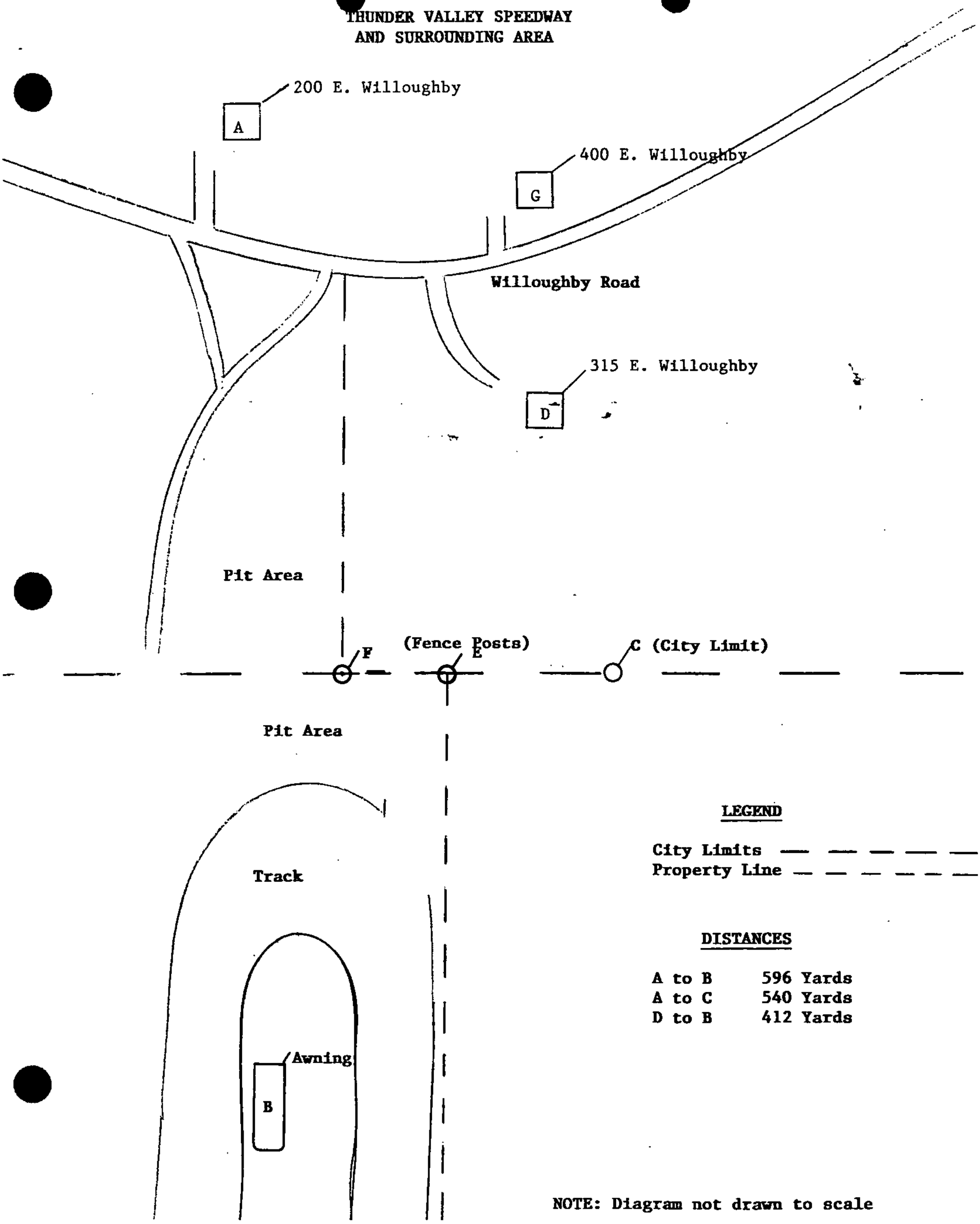
			Time	Weighting (circle)
QUEST 214	Cal Date:		Battery Check:	A or C
QUEST 2400	Cal Date: 01-29-01		Battery Check: 9:05pm	(A) or C

Ambient	Temp.	Wind	Precipitation	Other
53.7	74°	None	Rain	Rain was off and on drizzle

SLM SURVEY

Reading Number	Time Beg.	Time End	Location			Max. Level Decibel
1	9:27pm	9:31pm	Location "E"	See attached map	Agricultural Zone	78.8
2	9:37pm	9:41pm	Location "F"	"	"	84.4
3	10:08pm	10:15pm	Location "D"	"	"	83.8
4	10:20pm	10:26pm	Location "A"	"		80.3
5	10:39pm	10:54pm	Location "G"	"		89.4
6	10:58pm	11:26pm	Location "G"	"		88.1

THUNDER VALLEY SPEEDWAY AND SURROUNDING AREA



LEGEND

City Limits — — — — —
Property Line — — — — —

DISTANCES

A to B	596 Yards
A to C	540 Yards
D to B	412 Yards

NOTE: Diagram not drawn to scale

STAFF REVIEW FORM

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

For the Fayetteville City Council meeting of October 1, 2001.

FROM:

Tim Conklin	Planning	Public Works
Name	Division	Department

ACTION REQUESTED: To adopt a resolution authorizing the Mayor and City Clerk to execute the Rupple Road cost sharing contract with WHM Investments for the final plat(FPL 01-7.00) as approved by the Planning Commission..

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 impact for Rupple Road is planned for 2002.

Budget Coordinator 9-25-01 — Administrative Services Director

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

Accounting Manager 9/25/01 Date — ADA Coordinator Date

City Attorney 9/25/01 Date — Internal Auditor 9/25/01 Date

Purchasing Officer Date

STAFF RECOMMENDATION: Staff recommends approval of this request. The Planning Commission unanimously voted 9-0-0 to forward this to the City Council.

Division Head 9.17.01 Date — **Cross Reference**

Department Director 9-25-01 Date — New Item: **Yes** **No**

Administrative Services Director Date — Prev Ord/Res#: _____

Mayor 9/25/01 Date — Orig Contract Date: _____

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A CONTRACT
WITH WHM LAND INVESTMENTS, INC.
CONCERNING PAYMENT FOR A PORTION OF
THE COST OF EXTENDING RUPPLE ROAD
FROM WEDINGTON ROAD TO PERSIMMON

WHEREAS, the City of Fayetteville has agreed to extend and construct Rupple Road (designated on the Master Street Plan as an Arterial) from Wedington Road south to Persimmon as a standard city street; and

WHEREAS, WHM Land Investments, Inc. has agreed to pay $176,724.25 toward its share to make this a four-lane road if necessary within the next six years.

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 approves the Contractual Agreement between the City and WHM Land Investments, Inc. and authorizes the Mayor to sign said Contract.

PASSED and **APPROVED** this the 2nd day of October, 2001.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

CONTRACTUAL AGREEMENT

This Agreement, made and entered into this ___ day of September, 2001, by and between the City of Fayetteville, Arkansas, (hereinafter called "City") and WHM Land Investments, Inc. (hereinafter called "WHM"),

W I T N E S S E T H:

WHEREAS, on September 10, 2001 the City Planning Commission approved the final plat of WHM, located at City Atlas Page 439, but referred the establishment of an impact fee to the City Council for its approval.

WHEREAS, WHM desires to have an executed agreement formalizing the current understanding before transferring Tract 5 to the City.

NOW, THEREFORE, the City and WHM agree as follows:

1. The City has agreed to build Rupple Road, classified as a minor arterial, in order to provide access to the proposed Fayetteville Boys and Girls Club. WHM shall pay, based on the rational nexus formula, an impact fee for a proportionate share of the cost of Rupple Road as a Minor Arterial. Based on the formula, the applicant shall be assessed $176,724.25 for a road impact fee. The impact fee was based on the projected future residential development of Tracts 3 & 7 that shall be using Rupple Road.

At the time the Boys and Girls Club meet all requirements to obtain the Reynolds grant, WHM shall pay the entire $176,724.25 if the City Council approves and completes construction of Rupple Road as a four (4) lane street with curbs, gutters, and storm sewer.

If the City Council approves construction of a two (2) lane street with plans for future widening, then at the time the Boys and Girls Club meet all requirements to obtain the Reynolds grant, WHM shall:

a) Pay to the City $100,000.00 (non-refundable, not dependant on any development of vacant lots),

b) Provide the City a letter of credit in the amount of $76,724.25 with additional principal to be added each year based on the increase in the Consumer Price Index during the previous calendar year, as quoted in the Wall Street Journal on January 2 of the previous year and the year of the increase. Such letter of credit shall run for a term of six (6) years from date of when all conditions are met for the Fayetteville Boys and Girls Club to

obtain the Reynolds grant and shall be due upon the City completing the widening of Rupple Road to four (4) lanes with curbs, gutters, and storm sewer. In the event, Rupple Road is not improved to such standards within six (6) years, the letter of credit shall expire.

2. The projected future development of Tracts 3 & 7 are 81 single family units, 28 duplex units, and 260 apartment units. If during the six year period indicated above a development is approved by the Planning Commission in excess of any of the above indicated units WHM shall pay an additional impact fee for each unit in excess of the above as follows:

a) For each excess single family unit $231.30 in cash and a letter of credit for $154.20, total being $385.50. The total amount will be paid in cash if Rupple Road has been completed as a four (4) lane road with curbs, gutters, and storm sewers.

b) For each excess duplex unit $141.64 in cash and a letter of credit for $94.43, total being $236.07. The total amount will be paid in cash if Rupple Road has been completed as a four (4) lane road with curbs, gutters, and storm sewers.

c) For each excess apartment unit $320.51 in cash and a letter of credit for $213.67, total being $534.18. The total amount will be paid in cash if Rupple Road has been completed as a four (4) lane road with curbs, gutters, and storm sewers.

The cash impact fee and letter of credit shall be delivered upon the Planning Commission approving the final plat or large scale development. Any letters of credit received during the six (6) year period from the date the Boys and Girls Club meet all requirements, shall be returned back to WHM if the road is not widened to four (4) lanes with curbs, gutters, and storm sewers during the six (6) year period.

If after the six (6) year period WHM presents a preliminary plat to the Planning Commission in excess of the projected units, WHM shall pay an additional impact fee for each unit in excess of the projections based on whether or not Rupple Road is completed at that time as a four (4) lane road, with curbs, gutters and storm sewer. If completed, the total amount indicated above shall be paid for each excess unit. If not complete, the cash amount indicated above shall be paid for each excess unit.

If during the six (6) year period indicated above WHM has a final plat approved for less than the projected units indicated above the $76,724.25 letter of credit shall be reduced for each unit less than the projected units indicated above.

WHM shall receive a reduction for each unit less as follows:

a) For each less unit of single family in tract 7, a reduction in the letter of credit of $154.20.

b) For each less unit of duplex in tract 7, a reduction in the letter of credit of $94.43.

c) For each less unit of apartments in tract 3, a reduction in the letter of credit of $213.67.

3. Upon the Boys and Girls Club meeting all requirements to obtain the Reynolds grant, all on-site and off-site improvements and fees, for any development by WHM, or its assigns, within the approved final plat area shall be based upon the above provisions and terms. The above provisions and terms will apply to WHM and any subsequent assigns. In consideration for this Agreement by the City, WHM shall deed Tract 5 to the City.

4. In the event the Boys and Girls Club fails to meet all requirements to obtain the Reynolds grant and is not constructed within the approved final plat area, all on-site and off-site improvements and fees for any development on tracts within the approved final plat area shall be based on current ordinance requirements at the time of development approval. Also, the City shall deed Tract 5 back to WHM.

IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE, WE SIGN BELOW:

CITY OF FAYETTEVILLE

By:_____
Dan Coody, Mayor

By:_____
Heather Woodruff, City Clerk

WHM LAND INVESTMENTS, INC.

By:_____
Hayden McIlroy

d:\myfiles\copy\mcilroyfyc.ca

FAYETTEVILLE

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

TO: **Fayetteville Planning Commission**
FROM: **Tim Conklin, City Planner**
THRU: **Hugh Earnest, Urban Development Director**
Kit Williams, City Attorney
DATE: **September 10, 2001**

FPL 01-7.00: Final Plat (WHM Investments, pp 439) was submitted by Mike Anderson of Engineering Design Associates on behalf of Hayden McIlroy for property located on Rupple Road south of Wedington Drive. The property is zoned A-1, Agricultural, R-1, Low Density Residential, R-1.5, Moderate Density Residential, R-2, Medium Density Residential, C-1, Neighborhood Commercial and contains approximately 90 acres with 7 lots proposed.

Findings: The Planning Division required the subject property to be processed through the preliminary and final plat process in order to bring into compliance past lot splits that have not been approved through the required planning process and to allow for the subdivision of additional tracts. The initiation of this process was a result of the need to subdivide appropriate tracts that will be developed with the Fayetteville Boys and Girls Club. Furthermore, this final plat has been submitted in order to approve the sale of property to the Fayetteville Boys and Girls Club and the legal transfer of ownership to the City of Fayetteville.

Tract 4 is currently owned by the Fayetteville Boys and Girls Club. Tract 6 is owned by the City of Fayetteville. Tracts 1,2,3,5 and 7 are owned by WHM Land Investments. Tracts 4, 5, and 6 are the future site of the Fayetteville Boys and Girls Club. Tract 5 will be given to the City to meet future Parks Land Dedication requirements for this property which has already been approved by the Planning Commission. Tract 6 has already been deeded to the City for a Parks Land Dedication requirement related to the Meadowlands Development.

Pursuant to the Master Street plan 90 feet of right-of-way is being dedicated to the City for Rupple Road as well as 35 feet for Persimmon Street. The city is not recommending any public improvements as part of this subdivision due to past discussions and understandings with the former Administration and Street Committee. In order to honor the past discussions and understandings, the preliminary plat was approved varying the subdivision requirements with a finding by the Planning Commission that an undo hardship unique to this property does exists "that this project is in the best interest to the City, that due to the limited grant money it would be

an undo financial hardship to acquire these buildings due to the uniqueness of this project being funded by grant money, that it would make financial constraints."

Recommendation: Approval by the full Planning Commission subject to the conditions listed below.

Conditions of Approval:

1. A minimum 25' wide utility easement shall be provided from Meadowlands Drive located in The Meadowlands, Phases I & II, to the Rupple Road right-of-way.

2. At the time of development on Tract 7, the developer will be required to improve, build, or be assessed for the construction of half of Persimmon along the south boundary of Tract 7 based on current ordinances.

3. The final plat shall show the right-of-way dedication for Rupple Road, Wedington Drive and Persimmon Street as required by the Master Street Plan. Dedication of right-of-way on Wedington Drive shall be made by warranty deed to the City of Fayetteville.

4. A note shall be placed on the plat indicating that lots 1, 2, 3, & 7 may not use Rupple Road right-of-way for access until the street is completed. Fines may be accessed to the property owners by the City if damage to road work occurs prior to completion. The City will construct a haul road to the Fayetteville Boys and Girls Club prior to construction of Rupple Road.

5. Water will not be available to tracts 3, 4, 5, and 6 and sewer will not be available to tracts 3 and 4. Water and sewer shall be extended to these tracts at the time of development of each tract. The City will extend water to tract 4 from Meadowlands Subdivision. Sewer exists along the southern boundary of subdivision. At the time of development for each tract, the tract developer shall evaluate the existing water and sewer capacity and shall provide any upgrades or extensions if needed to serve each development.

6. All utilities shall be placed underground. Temporary overhead power may be installed to serve the Fayetteville Boys and Girls Club construction for a maximum period of 24 months from the date of final plat approval.

7. The City has agreed to build Rupple Road, classified as a minor arterial, in order to provide access to the proposed Fayetteville Boys and Girls Club. Staff is recommending the developer pay, based on the rational nexus formula, an impact fee for a proportionate share of the cost of Rupple Road as a Minor Arterial. Based on the formula, the applicant will be assessed $176,724.25 for a road impact fee . The impact fee was based on the projected future residential development of Tracts 3 & 7 that will be using Rupple Road.

At the time the Boys and Girls Club meet all requirements to obtain the Reynolds grant,

WHM Investments shall pay the entire $176,724.25 if the City Council approves construction of Rupple Road as a four lane street with curbs, gutters, and storm sewer.

If the City Council approves construction of a 2 lane street with plans for future widening and at the time the Boys and Girls Club meet all requirements to obtain the Reynolds grant, the developer shall:

a) Pay to the City $100,000.00 (non-refundable, not dependant on any development of vacant lots),

b) Provide the City a letter of credit in the amount of $76,724.25 with additional principal to be added each year based on the increase in the Consumer Price Index during the previous calendar year, Such letter of credit will run for a term of six years from date of when all conditions are met for the Fayetteville Boys and Girls Club to obtain the Reynolds Grant and will be due upon the City completing the widening of Rupple Road to four lanes with curbs, gutters, and storm sewer. In the event, Rupple Road is not improved to such standards within six years, the letter of credit shall be allowed to expire.

8. The projected future development of Tracts 3 & 7 are 81 single family units, 28 duplex units, and 260 apartment units: If during the six year period indicated above in condition #7 a development is approved by the Planning Commission in excess of any of the above indicated units the developer will pay an additional impact fee for each unit in excess of the above as follows:

a) For each excess single family unit $231.30 in cash and a letter of credit for $154.20, total being $385.00. The total amount shall be paid if the road is four lanes.

b) For each excess duplex unit $141.64 in cash and a letter of credit for $94.43, total being $236.07. The total amount shall be paid if the road is four lanes.

c) For each excess apartment unit $320.51 in cash and a letter of credit for $213.67, total being 534.18. The total amount shall be paid if the road is four lanes.

The cash impact fee and letter of credit will be delivered upon the Planning Commission approving the final plat or large scale development. Any letters of credit received during the six year period from the date the Boys and Girls Club meet all requirements, shall be returned back to the developer if the road is not widened to four lanes with curbs, gutters, and storm sewers during the six year period.

If after the six year period the developer presents a preliminary plat to the Planning Commission in excess of the projected units, the developer will pay an additional impact

fee for each unit in excess of the projections based on whether or not Rupple Road is completed at that time as a four lane road, with curbs, gutters and storm sewer. If completed, the total amount indicated above will be paid for each excess unit. If not complete, the cash amount indicated above will be paid for each excess unit.

If during the six year period indicated above the developer has a final plat approved for less than the projected units indicated above the $76,724.25 letter of credit will be reduced for each unit less than the projected units indicated above. The developer will receive a reduction for each unit less as follows:

a) For each less unit of single family in tract 7, a reduction in the letter of credit of $154.20.

b) For each less unit of duplex in tract 7, a reduction in the letter of credit of $94.43.

c)For each less unit of apartments in tract 3, a reduction in the letter of credit of $213.67.

9. Upon the Boys and Girls Club meeting all requirements to obtain the Reynolds grant, all on-site and off-site improvements for any development within this subdivision shall be based upon the above provisions and terms. The above provisions and terms will apply to WHM Investments and any subsequent assigns.

10. In the event the Boys and Girls Club fails to meet all requirements to obtain the Reynolds grant and is not constructed within this subdivision, all on-site and off-site improvements for any development on tracts within this subdivision shall be based on current ordinance requirements at the time of development approval.

11. Plat Review and Subdivision comments (to include written staff comments mailed to the applicant or his representative, and all comments from utility representatives - AR Western Gas, SWBT, Ozarks, SWEPCO, Cox Communications)

Background:

The Preliminary Plat was reviewed at the February 28, 2001 Technical Plat review and the March 15, 2001 Subdivision Committee meeting. The Final Plat was reviewed at the August 29, 2001 Technical Plat Review meeting and August 30, 2001 Subdivision Committee meeting.

Staff has recommended a revised condition of approval regarding the developers responsibilities related to Rupple Road based on the rational nexus formula and recommends this final plat be presented to the full Commission.

INFRASTRUCTURE:

a) Water. See Conditions of Approval.

b) Sanitary sewer. Existing.

c) Streets. See Conditions of Approval.

d) Grading and Drainage. Not applicable for this project.

PLANNING COMMISSION ACTION: __yes__Required
_____Approved _____Denied

Date: _____

Comments:

_____
_____
_____
_____

CITY COUNCIL ACTION: _____Required
_____Approved _____Denied

Date: ___/___/___

The "CONDITIONS OF APPROVAL", beginning on page one of this report, are accepted in total without exception by the entity requesting approval of this development item.

Deborah Scanlon
by
Agent for WHM Land Investments, Inc.
title

9-10-01
date

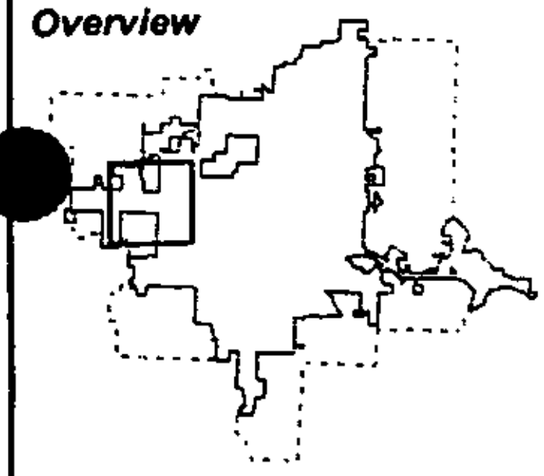
FPL 01-7.00

One Mile View

WHM

Subject Property

Overview



Legend

Subject Property

FPL01-7.00

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

City Limits

Outside City

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

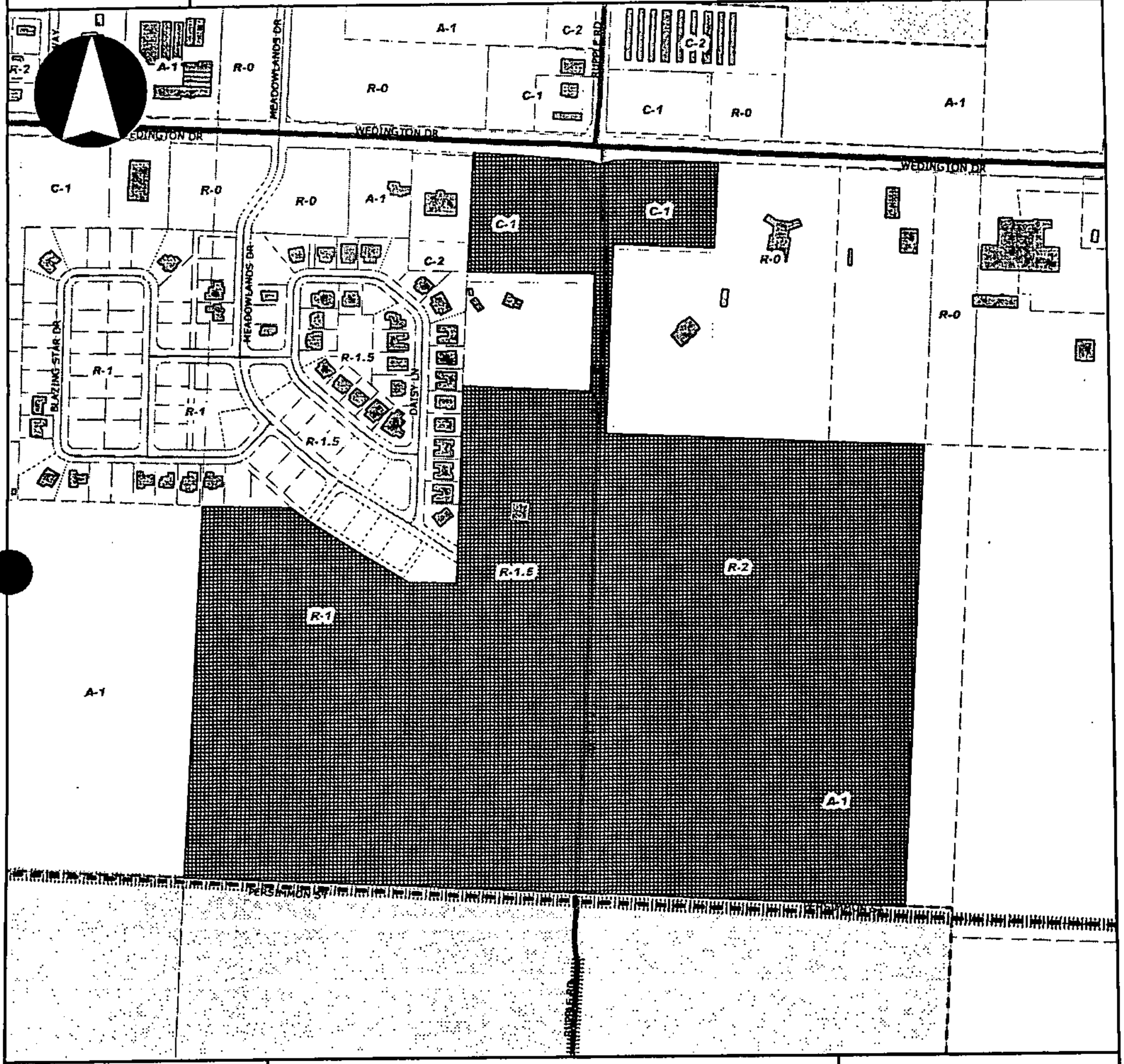
Historic Collector

Planning Commission
September 10, 2001
FPL01-7 WHM Invest.
Page 3.14

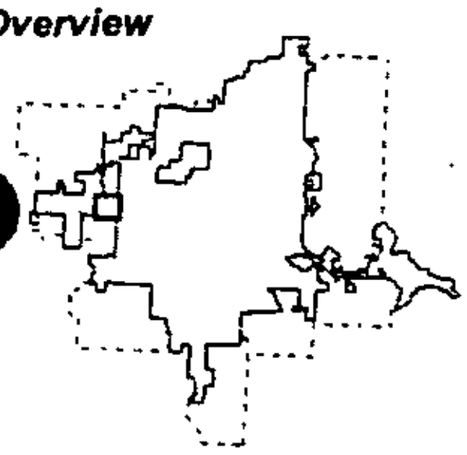
FPL01-7.00

Close Up View

WHM



Overview



Legend

Subject Property
- FPL01-7.00

Streets
- Existing
- Planned

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

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

0 125 250 500 750 1,000 1,250 Feet

	# of Units	Trips	Total Trips	$ per trip	$ per unit	**Total Fee**
Half of trips use Meadowlands Dr. for SFD and Duplex						
Single Family (81 Total D.U.)	40.5	9.57	387.585	$80.57	$771.05	**$31,227.72**
Duplex/Townhouse (28 total D.U.)	14	5.86	82.04	$80.57	$472.14	**$6,609.96**
Apartments	260	6.63	1723.8	$80.57	$534.18	**$138,886.57**
Amount of units Fee is based on	314.5		2193.425			**$176,724.25**

					Per Unit SFD	Half of Cost	60%
Total Cost	$1,192,500.00	Cost per Trip	80.57432	SFD	$771.10	$385.50	$231.30
				Duplex	$472.14	$236.07	$141.64
Max Trips	14,800						
Total Trips	2193.425						

McIlroy
Summary of Trip Generation Calculation
For 20 Dwelling Units of Apartments
August 13, 2001

	Average Rate	Standard Deviation	Adjustment Factor	Driveway Volume
Avg. Weekday 2-Way Volume	6.63	2.98	1.00	133
7-9 AM Peak Hour Enter	0.08	0.00	1.00	2
7-9 AM Peak Hour Exit	0.43	0.00	1.00	9
7-9 AM Peak Hour Total	0.51	0.73	1.00	10
4-6 PM Peak Hour Enter	0.42	0.00	1.00	8
4-6 PM Peak Hour Exit	0.20	0.00	1.00	4
4-6 PM Peak Hour Total	0.62	0.82	1.00	12
Saturday 2-Way Volume	6.39	2.99	1.00	128
Saturday Peak Hour Enter	0.00	0.00	1.00	0
Saturday Peak Hour Exit	0.00	0.00	1.00	0
Saturday Peak Hour Total	0.52	0.74	1.00	10

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

TRIP GENERATION BY MICROTRANS

McIlroy
Summary of Trip Generation Calculation
For 40 Dwelling Units of Residential Condominium / Townhouse
August 13, 2001

	Average Rate	Standard Deviation	Adjustment Factor	Driveway Volume
Avg. Weekday 2-Way Volume	5.86	3.09	1.00	234
7-9 AM Peak Hour Enter	0.07	0.00	1.00	3
7-9 AM Peak Hour Exit	0.37	0.00	1.00	15
7-9 AM Peak Hour Total	0.44	0.69	1.00	18
4-6 PM Peak Hour Enter	0.36	0.00	1.00	14
4-6 PM Peak Hour Exit	0.18	0.00	1.00	7
4-6 PM Peak Hour Total	0.54	0.76	1.00	22
Saturday 2-Way Volume	5.67	3.10	1.00	227
Saturday Peak Hour Enter	0.25	0.00	1.00	10
Saturday Peak Hour Exit	0.22	0.00	1.00	9
Saturday Peak Hour Total	0.47	0.71	1.00	19

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

TRIP GENERATION BY MICROTRANS

McIlroy
Summary of Trip Generation Calculation
For 20 Dwelling Units of Single Family Detached Housing
August 13, 2001

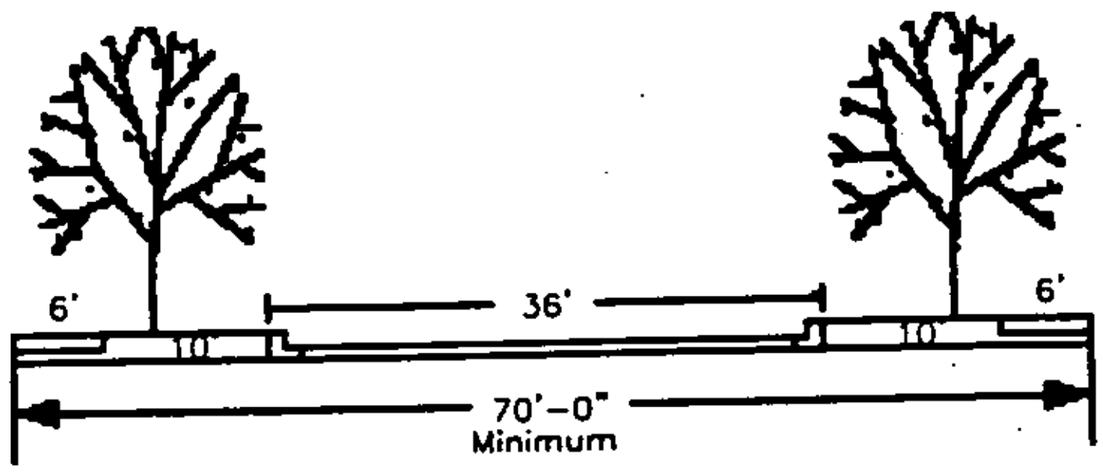
	Average Rate	Standard Deviation	Adjustment Factor	Driveway Volume
Avg. Weekday 2-Way Volume	9.57	3.69	1.00	191
7-9 AM Peak Hour Enter	0.19	0.00	1.00	4
7-9 AM Peak Hour Exit	0.56	0.00	1.00	11
7-9 AM Peak Hour Total	0.75	0.90	1.00	15
4-6 PM Peak Hour Enter	0.65	0.00	1.00	13
4-6 PM Peak Hour Exit	0.36	0.00	1.00	7
4-6 PM Peak Hour Total	1.01	1.05	1.00	20
Saturday 2-Way Volume	10.09	3.67	1.00	202
Saturday Peak Hour Enter	0.51	0.00	1.00	10
Saturday Peak Hour Exit	0.43	0.00	1.00	9
Saturday Peak Hour Total	0.94	0.99	1.00	19

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

TRIP GENERATION BY MICROTRANS

COLLECTOR STREETS provide traffic circulation within residential, commercial, and industrial areas. They collect traffic from local or residential streets in neighborhoods and channel it into the arterial system. Connections between arterials should be indirect to discourage use by traffic from outside the neighborhood. In residential neighborhoods, frontage along collectors is discouraged; houses should front on local or residential streets.

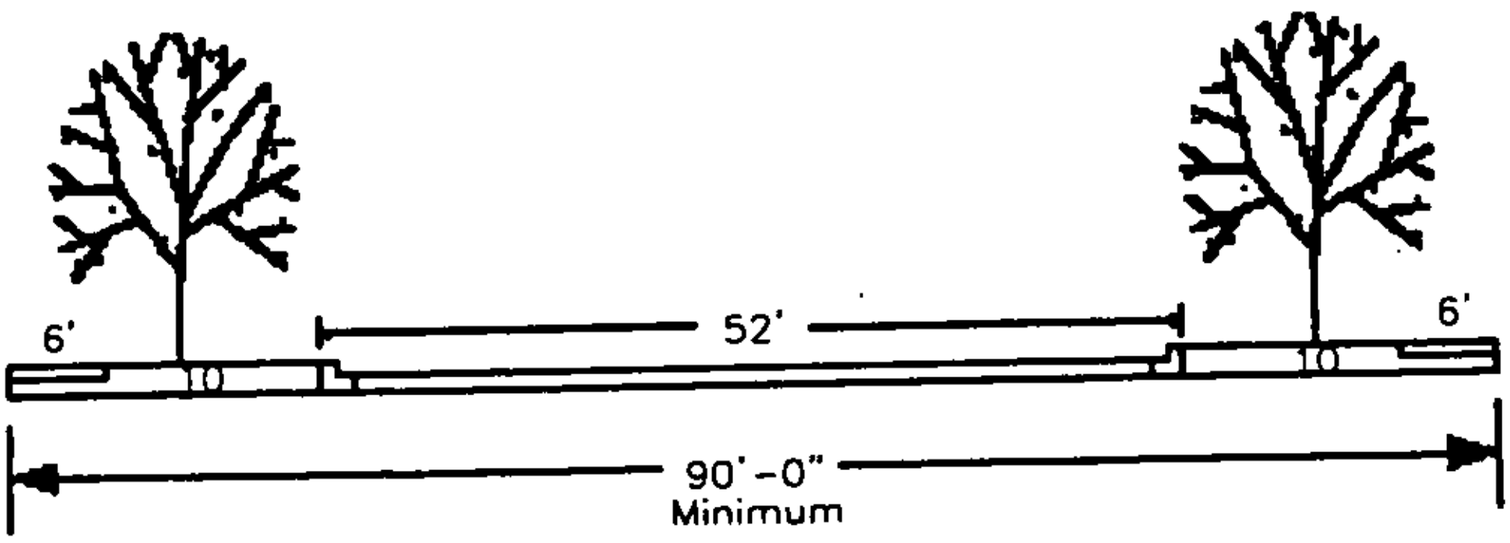
Design Service Volume:	4,000 vpd, 6,000 vpd with left turn bays
Speed:	25-30 mph
Traffic Lanes:	Two 11' travel lanes, 10' turn bays where warranted
Parking Lanes:	Two lanes provided. None when turn bay exists
Paved Width:	36' from back of curb
Right of Way:	At least 70'
Multi-use trail:	Two at least 6' wide, at least 10' from curb
Tree Planting areas:	Two, at least 10' wide



Collector

MINOR ARTERIAL STREETS connect higher functional class facilities, etc. Residential frontage is strongly discouraged. Access should be from perpendicular local or residential streets.

Design Service Volume:	12,200 vpd, 14,800 vpd with left turn bays
Speed:	35-40 mph
Traffic Lanes:	Four 12' travel lanes, 11' turn lanes possible at intersections
Parking Lanes:	None
Paved Width:	52' from back of curb, 59' with turn lane
Right of Way:	At least 90'
Multi-use Trail:	Two at least 6' wide, at least 10' from curb
Tree Planting Areas	Two, at least 10' wide



Minor Arterial

September 25, 2001

AGENDA SESSION
CITY COUNCIL
OCTOBER 2, 2001

NEW ITEMS:

Consent

1. **VLASIC:** A resolution approving an offer from the LLC Manager in the Vlasic Bankruptcy Case.

New Business

2. **THUNDER VALLEY SPEEDWAY:** A resolution to authorize the City Attorney to file a suit, if necessary, against the owner of the land and the manager of the Thunder Valley Speedway as a public nuisance.

ADDITIONAL INFORMATION:

1. **RUPPLE ROAD:** A resolution authorizing the Mayor and City Clerk to execute the Rupple Road cost sharing contract with WHM Investments for the final plat as approved by the Planning Commission.

A meeting of the Fayetteville City Council will be held on October 2, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain, Fayetteville, Arkansas.

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:** Approval of the minutes from September 4 and 18, 2001 meetings.

2. **VLASIC:** A resolution approving an offer from the LLC Manager in the Vlasic Bankruptcy Case

B. OLD BUSINESS

1. **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. the ordinance was left on the second reading as amended at the September 18, 2001, meeting.

2. **RESIDUAL YARD WASTE:** An ordinance amending chapter 50: Garbage and Trash, of the Code of Fayetteville, to amend definitions; and to amend the services requirements pertaining to residential yard waste. The ordinance was left on the first reading at the September 18, 2001, meeting.

C. NEW BUSINESS

1. **RUPPLE ROAD:** A resolution authorizing the acceptance of a contract between WHM and the City of Fayetteville that details the terms and conditions of the Rupple Road cost sharing agreement.

2. **THUNDER VALLEY SPEEDWAY:** A resolution authorizing the City Attorney to file a suit, if necessary, against the owner of the land and the manager of the Thunder Valley Speedway as a public nuisance.

MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
SEPTEMBER 18, 2001

A meeting of the Fayetteville City Council will be held on September 18, 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 Thiel, Young, Zurcher, Trumbo, Davis, Santos, Jordan, and Reynolds, City Attorney Kit Williams, City Clerk Heather Woodruff, Staff, Press, and Audience.

TOWN CENTER REPORT: Annual report regarding the Fayetteville Town Center.

Ms. Denise Bembenek, Facilities Manager, presented a report from the Fayetteville Town Center summarizing their goals, revenues and the condition of the Town Center. Their goals were to increase tourism for Fayetteville, remain financially viable with all debts and obligations paid timely, and to serve the Fayetteville community by use for local non-profit groups and other community events. She presented lists of contracted events and completed events and examples of community involvement. In conclusion the outlook for the Town Center was good. They had been in business for less than three months and were currently at 21% of their 2002 year end revenue goal. Marketing to local and state businesses and associations was their primary objective.

CONSENT

APPROVAL OF THE MINUTES: Approval of the minutes from the September 4, 2001 meeting.

Minutes removed from Agenda.

BLACK AND VEATCH: A resolution approving contract Amendment No. 1 with Black and Veatch for additional engineering services relating to the Fayetteville Wastewater Improvements Project in the amount of $38,809; and approval of a budget adjustment.

RESOLUTION 125-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

GARVER ENGINEERS: A resolution approving contract Amendment No. 2 with Garver Engineers for additional engineering services relating to the Fayetteville Wastewater Improvements Project in the amount of $34,283.

RESOLUTION 126-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RJN GROUP: A resolution approving contract Amendment No. 1 with RJN Group for additional engineering services relating to the Fayetteville Wastewater Improvements Project in the amount of $124,903.

RESOLUTION 127-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

FAYETTE TREE AND TRENCH: A resolution approving a construction contract with Fayette Tree and Trench, Inc. for Hinkle Mobile Home Park Water Line Replacement Project in the amount of $166,441; approval of 15% contingency amount of $25,000; and approval of a budget adjustment in the amount of $28,441.

RESOLUTION 127-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CENTRAL EMS: A resolution approving a contract for services with Central Emergency Medical Services, Inc.

RESOLUTION 128-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

FIRST NIGHT: A resolution approving a contract for services with First Night.

RESOLUTION 129-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

LOADER: A resolution approving the purchase of a 2001 New Holland Articulated Loader from Williams Tractor. This unit will be used by the Solid Waste Division.

RESOLUTION 130-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Davis moved to approve the Consent Agenda. Alderman Reynolds seconded the motion. Upon roll call the motion carried unanimously.

Mayor Coody presented a chart illustrating the options regarding the financing of the Wastewater Treatment Plant and the cost of those different options.

OLD BUSINESS

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-ups and vans are excluded. The ordinance was left on the first reading at the September 4, 2001 meeting.

Alderman Young moved to suspend the rules and go to the second reading. Alderman

Trumbo seconded. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the second time.

Alderman Davis stated he was concerned about giving an open check book for two hundred thousand dollars for any particular item. They were telling citizens and they were being told that they were having budget problems.

Mayor Coody stated the equipment purchases would go through the Equipment Committee. The only difference here would be that they would not have to have the emergency clause and bid wavier.

Mr. Williams stated he was concerned that in the past they had approved a bid waiver with an emergency clause on it. The Supreme Court had looked at these bid waivers and one of the criteria was not saving money. That was not an emergency situation that the Supreme Court has recognized. He thought there needed to be a lot of procedural protection in it. The Equipment Committee would examine the needs and will approve or disapprove whether or not the equipment would be purchased. The Council normally accepts the recommendation of the Equipment Committee. What this would do would be to give the Equipment Committee the right to say within this annual level of two hundred thousand dollars that they had the right to approve it. If they were not on the Equipment Committee and they thought the committee has abused their power, then they could repeal the ordinance or reduce the amount involved. It was not proper for them to continue to say this was an emergency to buy used equipment.

Alderman Trumbo asked if the Equipment Committee did not approve of a purchase would a member of the staff or any other than the Equipment Committee be able to purchase the equipment.

Mr. Williams stated they could not. They could not do it for new equipment. This would only affect used equipment. Used equipment did not stay on the market long enough to go through the whole process. The ordinance was required under State law to waive competitive bidding.

Alderman Reynolds stated they needed to leave it the way it was now. He liked their current process.

Mr. Williams stated what concerned him was that he did not want to be preparing an ordinance that might not pass constitutional mustard. An ordinance waiving competitive biding so that they could save some money to buy some used equipment, concerned him. He did not believe that was the reason the emergency was allowed in their constitution by the Supreme Court. He did not want the Equipment Committee to come to him and ask him to draft an ordinance waiving competitive bidding and put an emergency clause on it so that

they could buy used equipment. His concern was that he did not believe it was legal. This was one legal way to do it. He did not believe that they would be allowed to buy used equipment unless they had an ordinance like this.

Alderman Davis asked if this had gone before the Equipment Committee and had they voted this up or down.

Alderman Reynolds stated the Equipment Committee had discussed this. He thought the decision was to not accept this ordinance.

Alderman Young asked if they had lost any equipment because of their current process.

Alderman Santos replied no, because they had always waived the competitive bidding and placed the emergency clause on it.

Alderman Trumbo asked if this had been tested in court or had someone challenged this in another municipality or did he on his own decide to do this.

Mr. Williams stated the emergency clause had been tested in the past. It has been found invalid when there was a true emergency according to the Supreme Court. Ours had never been challenged.

Alderman Trumbo asked what damages had been rendered.

Mr. Williams stated some citizen might challenge and it was an illegal exaction and they were spending city money on property what was not an emergency there to justify the emergency. He was going to be reluctant to present an ordinance to them with an emergency clause just to waive competitive bidding if it was not a true emergency.

Alderman Trumbo asked what could be their exposure on damages, if they could prove that they paid fair market value for a piece of equipment and they just waived it to expedite the purchase.

Mr. Williams stated even if they did not have a tremendous exposure, he was going to follow the law.

Alderman Zurcher stated to him this seemed to be a bookkeeping measure that could keep them out of trouble. If they did not pass this tonight, he would be very reluctant to pass an ordinance that was a bid waiver.

Alderman Davis stated if the Equipment Committee was not in favor of this, then he was not going to be in favor of this.

Alderman Reynolds stated they like the bidding process. He did not think that they had gotten any good bargains in used equipment.

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

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

Mr. Williams stated if the Equipment Committee did not want to purchase used equipment, then this ordinance was not needed. This was only for used equipment.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance failed by a vote of 3-5-0. Thiel, Young, Davis, Jordan and Reynolds voting nay.

ORDINANCE FAILED.

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. The ordinance was left on the first reading at the September 4, 2001 meeting.

Mr. Williams asked that they not suspend the rules and allow him to read the stylistic changes in the ordinance itself to be approved by amendment, then allow him to read the enacting ordinance in its entirety. The enacting ordinance refers to the exhibits. The changes in the enacting ordinance were stylistic and were not substantial. The changes in the exhibits were substantial and they should consider and debate them.

Alderman Young asked if they made a motion to amend the ordinance and not the attachments, then the two exhibits were still on their original reading and they would have to make motions on individual items to change them.

Mr. Williams stated the exhibits were as they were originally presented. Any changes to the exhibits must be made by amendment by the City Council.

Alderman Santos moved to amend the enacting ordinance that was proposed in memo dated September 7, 2001. Alderman Jordan seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance as amended.

Alderman Davis stated that not everything that had been brought forward last time is in the changes. There were concerns about A-1 property and how it could be used as a commodity.

Mr. Whitaker, Assistant City Attorney, stated on the A-1, he could not reconstruct a particular concert proposal to include that. He did not have any kind of language that he could suggest for that. The purpose of the memo was not to present an exclusive list of the amendments each of them could offer. It was a clerical effort on their part to preserve the suggestions that were made.

Alderman Thiel stated under Exhibit A, Relic Orchard, currently it read, "Group of fruit or nut trees originally planted for agricultural purposes, but since taken out of production". This was the lowest ranking of trees that will be preserved. She wanted to remove "nut bearing trees" from that.

Alderman Young stated if they were to leave nut trees in there, then nut trees would become a low priority. She was not wanting them to be a low priority.

Alderman Santos stated they were planted in rows. They were not preserving anything natural. It interfered with the agricultural use. He thought landowners should be allowed to harvest the wood after the trees were taken out of production. They should give them a higher priority of preservation, for an unnatural system that was worth quiet a bit to the landowner.

Alderman Thiel stated the committee had thought "nut" had been removed from the definition.

Alderman Zurcher stated it came down to what they valued about trees. To him the canopy that they provided was just as important to something pretty to look at.

Alderman Thiel moved to delete "or nut" from the ordinance. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

Alderman Young asked where in the ordinance that they defined the word "development."

Mr. Whitaker stated the legal term is "plan meaning". The way the ordinance has been recrafted, there was no point where the word "development" became a threshold or a trigger mechanism. They had more specific terms such as "large scale development". Those were already well defined in the UDO.

Alderman Santos moved to remove the definition of "development". Alderman Zurcher seconded the motion. Upon roll call the motion carried unanimously.

Alderman Santos stated the next item was 167.04 (a) "persons seeking to build one single family dwelling units or one duplex are specifically exempt from this provision".

Alderman Davis asked why they had used the word, "one". That was not something that had been discussed last time. Where did that come from?

Mr. Williams stated he felt they did not want someone who was going to build a hundred houses.

Alderman Young stated he had also raised the question on two or three duplexes.

Alderman Davis stated most developers and owners realized trees added character and value to the home.

Alderman Young asked if they were to leave that in and if someone built five lots and wanted to build five homes at one time, what would they have to get or do.

Mr. Williams stated this was only an exemption so that they would not have to get a grading permit. If they were not required to do a tree preservation plan, this did not add any more requirements. This was only an exemption section.

Ms. Kim Hesse, Landscape Administrator, stated often times they had builders that would buy five, six, or seven lots. Those were all individual single family homes on single family lots. They did not apply. If a duplex builder came in and bought five lots, then he could build a duplex per lot. If a developer came in and had a large enough project where he was building five duplexes on one lot, it was likely that he would need a grading permit or a large scale. It was more of a derivative of the individual lot that the homes were built on.

Mr. Tim Conklin, Planning Director, stated under the zoning ordinance, as long as they have the required lot width and lot area, then they could build more than one single family home or more than one duplex on one lot. If they had a piece of property zoned R-1, it had 140 feet of lot width and contained 1600 square feet, his office would issue a permit to build another single family home. They had to make sure that when they did issue the permit if they ever wanted to split the property to sell or transfer ownership that it would meet their zoning ordinance requirements.

Alderman Davis stated he thought it would be better for the builder if it stated "one resident per lot".

Alderman Thiel stated defining this by the lot did not clarify this. Sometimes they might build two buildings on one lot.

Alderman Santos stated it exempted the single family home and the duplex and that was what they wanted to do.

Alderman Santos moved to amend the ordinance to exempt single family homes.

Alderman Zurcher seconded the motion.

Mr. Bobby Ferrell, an area resident, stated he wanted to make sure that on a single family or duplex, that even if there would be a fifteen degree slope, that they were still exempt from having to get any kind of tree plan.

Mr. Williams stated this worked as a general exemption from this entire ordinance. The slope of the lot did not make any difference to the tree preservation plan. They might have to do some grading or something like that, but for the tree preservation plan they were exempt.

Alderman Young questioned "section".

Mr. Whitaker stated that related to section 167.04. There were other things outside the realm of development in the other sections of the chapter that did apply to everyone. Even if they lived in a single family home, they could not cut down the city's trees in right-of-way. They were responsible for trees which hung out and blocked the line of sight at intersections. The word "section" was there because it specifically exempted them from 167.04, the development rules, which was basically the core of controversy in this ordinance. This ordinance made no pretense to change the requirements of the grading permit.

Ms. Lou Weiss, an area resident, asked if a person wanted to build a home on a lot, could they cut down every tree.

Mr. Williams stated the council had taken the position that they wanted to preserve the homeowners right to do with his land what he or she sees fit and exempted them from the tree preservation.

Ms. Weiss stated she did not believe the trees on a lot did not belong to the people. She believed they belonged to nature and they were going to be ruining it for someone else down the line. She felt that they needed to be consistent. It was not really theirs. They were just custodians.

Alderman Zurcher stated the person who was going to live there would be more likely to preserve the canopy there because they would benefit from it as opposed to a developer. For the most part people valued trees.

Ms. Missy Leflar, an area resident, stated she had been a member of the committee which had met for thirteen months. It was never the intent of the committee for this ordinance to apply to individual home owners. About half the members on the committee were from the development community. They had decided that they did not want to add extra steps to this process. They decided to always tie any procedures or processes into procedures that already exist. Every time they were asked to submit something, they were already asked to submit

something anyway at that stage. Everything they had done was with a majority vote, including the members from the development community. She stated she thought the section regarding A-1 district could be clarified with better language. She pointed out in July 2001 National Geographic, Fayetteville was in the top fifteen cities in the United States for Urban Sprawl. They needed to have smart growth.

Upon roll call the motion carried unanimously.

Alderman Santos moved to add "and approved" after "inspected". Alderman Thiel seconded. Upon roll call the motion carried unanimously.

Alderman Santos stated under Residential Subdivision, they had added, "all residential subdivisions requesting tree removal below the percent minium canopy requirement are required to contribute to the tree escrow account as set forth in section 167.04(j)(4)."

Ms. Hesse stated they had options for mitigation, off site preservation. It did not make sense at the level of subdivision to ask them to do their own planting, because as houses were built any trees in the right of way would be destroyed thru the construction of new homes. The intent was that the City would come back later and plant the trees that the been removed below the requirement, verse having the developer put them in ahead of time and they loose them during the development of the lot.

Alderman Davis asked if they needed to put in "to be used in their quadrant".

Ms. Hesse stated that was why it was referenced to 167.04(j).

Mr. Williams stated they would most likely be street trees planted within that subdivision or that quadrant.

Alderman Thiel moved to pass the amendment. Alderman Zurcher seconded. Upon roll call the motion carried unanimously.

Alderman Young asked if they needed to specify that by "quadrant" they meant the same as the park quadrant.

Mr. Williams did not believe it was necessary.

Alderman Young stated he wanted it made clear in the minutes that they were intending the quadrants to be the same as the park quadrants.

Alderman Santos stated in Non-residential subdivisions, they had added language, "the landscape administrator shall recommend to the planning commission the option based on tree preservation criteria set forth..."

Mr. Williams stated the basic change was that the Landscape Administrator shall recommend to the Planning Commission the option which would potentially preserve the largest amount of priority canopy based upon the tree preservation criteria set forth in Section 167.04(b). They were placing a requirement on the Landscape Administrator to make the recommendation, before it was encouraged but there was not requirement for the recommendation.

Alderman Young stated it was a recommendation. They did not have to accept it.

Alderman Thiel moved to approve the amendment. Alderman Zurcher seconded. Upon roll call the motion carried unanimously.

Alderman Santos stated the next amendment was adding, "lot lines, streets, and easements shall be located to avoid placing a disproportionate percentage of existing canopy in any one proposed lot...the developer would be required to compensate for the canopy removed from this defined area by making an appropriate payment into the tree escrow account."

Mayor Coody read Mr. Henselman's letter supporting the changes.

Mr. Williams stated this amendment would require the developer to compensate for the canopy removed in non-residential developments, rather than mitigate.

Alderman Santos moved to approve the amendment. Alderman Jordan seconded the motion.

Ms. Francis Langham, an area resident, asked where they would be planting the trees from the escrow account.

Mr. Williams stated the decision would be made by the landscape administrator. She was going to work with the owners.

Ms. Hesse stated typically they would be in the right-of-way. They intended to plant them in the best locations.

In response to questions from Ms. Langham, Ms Hesse stated the homeowner could not cut a tree in the right-of-way. In a hazardous situation the city would ask the homeowner to maintain that tree.

Mr. Ben Israel, an area resident, stated he had a problem with section stating "preservation being first and best standard" he asked who decided if it could not be achieved. Secondly, if on site mitigation could not achieved, who decided that. He referenced the Library project. He did not believe a commercial development would have made it on the library project without a lot of people being upset. He did not believe the tree ordinance people would have

allowed a for-profit business to cut down eight-five healthy trees. Some of those tree were beautiful. There were a lot of lots in Fayetteville where the library could have been built and not destroyed any trees. He wondered where the objectors were to tree removal when it came to the library. If they had one person deciding that it could not be done, then it leans itself to this administrator or another administrator to preferential treatment for some projects like the library or some favored developer.

Alderman Trumbo stated that had been his problem all along, was the amount of discretion that was still in this version as it was in the existing ordinance. It was still the same.

Mr. Israel stated they were cutting all the trees off the library site. He had a lot worst trees and he could not cut them. They were not all dead and they were not all in bad shape.

Ms. Hesse stated in this new ordinance, they had fifteen criteria that established the guidelines for any Landscape Administrator to make these decisions. They had to allow for some discretion. The same steps and criteria and review form will specifically state how or why the project met or did not met the criteria. Her decision was a recommendation in all situations for large scale development. The only time the Landscape Administrator makes that final decision are on the smaller building permit situations, parking lot permits, or grading permits. Most of the time, she would make a recommendation based off those criteria and Planning Commission would make the decision as a committee.

Alderman Trumbo stated it still went back to her discretion like the Saint Paul's church. They could have gone to the east and given up their parking and not cut a single tree.

Ms. Hesse stated they looked at the entire development and needs for each development, the site and the constraints and the situation each development was under. In the dense part of town, it became more difficult to do preservation.

Mr. Israel stated he had presented a plan to the city on Joyce Street, they would like to have built a lot more square footage there. The city had told them to build smaller buildings in order to fit within the tree ordinance. They cut ten thousand square feet out of what would have been economically more feasible. They did have a twenty-three percent tree canopy there. If they had one person making a decision and they allowed variances of that much, where they could cut eight-five trees off a lot in town, but he could not cut ten. He was for the tree ordinance. He was fighting the way it was going to be administered.

Mr. Nick Vandenberg, a builder, stated this was the only place he had seen where trees were considered a separate issue on the property you buy. A tree is a renewable resource. People actually went broke waiting to find out if they could cut trees on the property they had bought. He stood in Lowes and listened to all the conflict and conversation between all the builders. Trees were pretty, but they also cracked sidewalks, caused foundation problems and fell on houses. They were a renewable resource.

Mr. Israel stated he had spoken with some of the developers who were on the committee. They had attended the first two or three meetings, but did not go back. They had felt that it was fruitless. A compromise. This was a tougher ordinance than they had before. If he wanted to cut a tree that had been preserved he had to come before the City Council and explain to them how it would benefit the citizens of Fayetteville for him to cut that tree. How in the world could he ever do that. One of the prettiest sites he could remember about Fayetteville was North College and all those beautiful maple trees. He thought this ordinance did not go far enough in some areas and not enough in others. If they could tell him he could not cut a tree, why can't they tell him he had to plant a tree. There should a minimum canopy that they had to come up with. Let's make an even playing field, it was not that now.

Mr. Williams stated he had seen the same problem. What he thought the committee really wanted was to preserve the tree preservation areas. If they had a dead or diseased tree, they did not have to go before city council. He was recommending that change.

Alderman Trumbo stated the Marriot had not been required to save trees because there were no trees to save. Would they be required to plant trees.

Ms. Hesse replied the intent of the parking lot ordinance was to canopy fifty percent of the pavement. There was the Commercial Design Standard which places a tree every thirty feet. It was a continuous canopy along the street. The Overlay District may interest the number.

Upon roll call the motion carried unanimously.

Alderman Santos moved to add "abbreviated tree preservation plan" to section 167.03 (h)(3). Alderman Jordan seconded. Upon roll call the motion carried unanimously.

Alderman Jordan moved to add "independent" to section (j)(5)(d).

Mr. Williams read the section, "special consideration shall be given the applicant in the event that trees were injured or destroyed by natural disasters, including, but not limited to tornados, straight lien winds, ice storms, fire, flood, hail or lighting strikes or through the independent actions of third parties."

Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams stated the next amendment, the original read, "no person shall damage, destroy or transplant or remove any tree or group of trees once preserved or planted under an approved plan." If a tree fell down, they could not even take it off their land. He thought the idea of the committee and the council was that they wanted to preserve the tree preservation area. The individual trees will occasionally need to be removed if they were diseased or damage. They had supplied a new language, "property owners wishing to remove diseased

or dead trees from within a recorded tree preservation area shall seek prior approval from the Landscape Administrator who shall determine if such removal is consistent with sound arbor cultural and horticultural practices as well as the intent of the chapter. Any tree so removed shall be replaced with a tree of like or similar species unless the Landscape Administer determines that the natural replacement of sufficient health and vigor are already present in the tree preservation area." They did not have to come before the council to remove a tree, but they would have to come to the city council if the "geographical extent and location of any tree preservation area, once recorded may only be modified or abolished with the expressed consent and approval of the city council."If they wanted to move or alter the tree preservation area, they had to come back to this body to get that changed.

Alderman Zurcher moved to approve the amendment. Alderman Santos seconded.

Mr. Israel stated that it seemed like it would be real easy to tell a developer that he had to maintain a twenty percent canopy on your lot. But to go through all this and have it inspected. This was his livelihood. He developed property for a living. This was serious to him. This was private property. For her to come onto his property and tell him a tree was not diseased enough for him to take it down, was not right. They could pass the laws and he could chose whether or not to develop in Fayetteville or not. They had run off a lot of development. He liked Fayetteville. The corner they were developing on now, last year the tax base was eight hundred dollars. Next year, it will be seventy-five thousand two years from now. Fayetteville needed good development. Why didn't they just require twenty percent trees and leave it at that. He could fall within that. It was the administration of bouncing back and forth. It was not fair and they did not play on a level playing field. They should take treeless lots and force people to plant trees on those. That was preserving trees for the next generation. He was for what they were trying to do, but this was not the way to do it.

Mr. Vandenberg stated he had moved his business out of Fayetteville because of the cost of things. They were driving builders away. What they were leaving behind was the high end builders. They were having to charge more for less or they were driving people who would normally be regulated by the city out into the county where they were building sub-grade products.

Upon roll call the motion carried unanimously.

Alderman Davis referring to Exhibit B, subsection Prior Tree Removal, asked if they had come up with better wording.

Mr. Williams stated the proposed amendment would read, "Prior tree removal, if due to non-agricultural reasons trees have been removed below the required minimum within the five years preceding application for development approval the site must be forested to met the percent minimum canopy according to table one, plus an additional ten percent of the total

area of the property." If the trees had been removed for agricultural reasons then this would not apply. It was a very wide exemption.

Alderman Zurcher stated he would call this a loop hole.

Alderman Davis moved to approve the amendment. Alderman Trumbo seconded.

Mr. Israel asked who would determine if it was an agricultural purpose.

Mr. Williams replied it would be the Landscape Administrator, then the Planning Commission. They would make most of the final decisions in this ordinance, but there were a number of actions appealable to the council.

Mr. Whitaker stated this did not change the section of the UDO that already allows appeals. The language that they had added merely made people understand that if they wished to contest the tree preservation plan. The process is to contest the decision pertaining to the whole large scale development or the subdivision.

In response to concerns, Mr. Whitaker stated one of the original things that came out of the subcommittee was a paragraph that actually gave an agricultural exemption, but after their first question and answer session, Mr. Green had brought it to their attention that it was incredibly vague and broad and who would decide what agricultural meant and how would they determine what a legitimate agricultural purpose was. At that point, he recommended that they strike the agricultural exemption because it would be opening a can of worms and they concurred. He could not think of a way to tighten up the wording, unless they could come up with an iron clad definition of "agricultural purpose".

Ms. Leflar stated she thought there could be a way to tighten up the language. She stressed for them not to throw out the entire ordinance because of this one paragraph.

Mr. Israel stated if they made it a level playing field and made them have a twenty percent canopy, there would be no reason for them to cut the trees. What they were doing with the ordinance was setting up a reason for them to go and cut all the trees. If they stated that every new commercial development had to have twenty percent canopy, it would not do them any good to cut the trees. They had taken something so simple and made it so complicated. It was like the bicycle ordinance, six pages.

Mr. Williams stated they were voting on adding language so the first sentence would read, "if due to non-agricultural reasons trees have been removed below the required minimum within the five years preceding the application for development approval the site must be forested to meet the percent minimum canopy according to table one, plus an additional ten percent of the total area of the property."

Alderman Young stated he remembered that during the Planning Commission meeting someone pointed out that harvesting trees was not defined as agricultural relative to trees. There was another aspect of that and that was the replanting of trees. That was the key to the agricultural purposes.

Alderman Davis asked if someone wanted to expand their cattle farm, they would still be using it for agricultural even though they had cut the trees down.

Mr. Williams stated this had been an argument on the committee for a year with several legal minds working on it and they could not come up with language. There would probably be no perfect solution.

Upon roll call the motion carried by a vote of 5-4-0, Thiel, Young, Zurcher, and Jordan voting nay.

Mr. Williams stated they also wanted to add "park quadrant' to the ordinance.

Alderman Thiel moved to approve the amendment. Alderman Davis seconded. Upon roll call the motion carried by a vote of 7-0-1, Reynolds abstaining.

Ms. Lisa Whitaker suggested that rather than trying to define agricultural verses nonagricultural uses, that they put a prohibition of a number of years to request rezoning from agricultural if they clear cut the land.

Alderman Davis stated he was concerned that they had talked about the site analysis plan and that they needed to go one hundred feet beyond the property lines. What happens if they were not able to go across someone's property to do that.

Ms. Hesse stated it was in the current ordinance. The idea was that they could be affecting an adjacent tree.

Alderman Davis stated there were two situations, if they had a surveyor, they could go on the property, State Law allowed them onto the property for the survey. A private individual would be restricted.

Mr. Williams stated there was a variance section. They could grant a variance for such cases. In response to questions from Alderman Santos, Mr. Conklin stated all large scale development required an easement plat. They had already instituted showing tree preservation area. Those were signed by city staff including the Landscape Administrator and filed at the county court house.

Mr. Israel asked what the penalty was.

Mr. Whitaker stated if and when this was enacted and codified there would be a cross reference to section 10.99 of the Code of Fayetteville which was the general penalty. It was basically the same penalty that applied to the violation of any ordinance.

Mr. Williams stated he believed the maximum fine per State Law was five hundred dollars.

ORDINANCE WAS LEFT ON THE SECOND READING AS AMENDED.

NEW BUSINESS

RZN 01-15.00: An ordinance approving rezoning request RZN 01-15.00 submitted by Nick Vandenberg on behalf of Karstetter and Glass Body Shop for property located at 2530 Wedington Drive. The property is zoned R-1, Low Density Residential, and contains approximately 1.76 acres. The request is to rezone to C-2, Thoroughfare Commercial.

Mr. Williams read the ordinance.

Mr. Vendenburg stated the woman who owned the property had been paying commercial property taxes on the property. The land had been used for commercial purposes for years. This was for an expansion of the current business.

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

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

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

ORDINANCE 4338 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

EFFECTIVE DATE OF ORDINANCES: An ordinance amending Section 10.15 of the Code of Fayetteville by deleting the current section and substituting a new section.

Mr. Williams read the ordinance.

Mr. Williams stated they had an incorrect ordinance which stated when the ordinance went into affect. It did not follow State law. It was misleading to someone who would read the

code. He suggested they change the ordinance to make it comply with State Law.

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

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

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

ORDINANCE 4339 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RECYCLE SITE: Discussion of staff proposal to relocate the community drop off site to a monitored area within the Solid Waste Facility.

Ms. Melissa Terry, Solid Waste Division, stated they would like to move the recycle site because there had been a great deal of dumping going on over the weekend and it took a lot of time to clean that up. From an educational point of view, it would be bringing people into closer contact with the materials that were recovered once they were recycled. They were already baled up in the back. It would be interesting for people to see what they looked like.

Alderman Davis asked what the public comment was on moving the site.

Ms. Terry stated the only feed back they had heard had been from the media and from staff. They had not heard much from the community.

Alderman Reynolds stated it needed to be in a more appropriate place.

Ms. Terry stated they were proposing to move the site to the south end of the recovery facility. They would upgrade the signage to make it more visible.

NO ACTION TAKEN.

RESIDENTIAL YARD WASTE: An ordinance amending Chapter 50: Garbage and Trash, of the Code of Fayetteville, to amend definitions; and to amend the services requirements pertaining to residential yard waste.

Mr. Dumas, Utility Services Director, stated only fourteen percent of the resident participated

in the subscription service. It was a small percentage for the type of service that they provided. There was currently a two dollar subscription fee. He presented charts illustrating the current operating cost and projected costs for the reminder of the year. They were looking for ways to streamline the operations. They had looked at three options. One was a cart program, compostable cornstarch bag, and the compostable paper bag. He outlined the advantages and disadvantages of each system along with the projected costs of each system.

Alderman Davis stated some residents in his neighborhood had asked him to leave this on the first reading tonight. They wanted to have the chance to see if they could find the bags.

Mr. Williams read the ordinance for the first time.

Alderman Zurcher stated he wanted to make sure that it was more expensive to throw this stuff in a landfill than to do it this way.

Mr. Dumas replied it was considerably more expensive to compose than it was to throw in a landfill. From a public investment, composting was a very expensive operation. If they did not utilize this system they would be increasing landfill utilization by eleven tons per day. There was a law requiring them to remove this from the landfill.

Mayor Coody stated composting would save them sixty-eight thousand bags out of the waste stream, forty-six thousand dollars per year, seventeen hundred and forty-four hours of labor and free up one employee.

ORDINANCE WAS LEFT ON THE FIRST READING.

The meeting adjourned at 10:10 p.m.