Final Agenda
City Council Meeting
February 3, 2004

A meeting of the Fayetteville City Council will be held on February 3, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

A. CONSENT:

1. **Approval Of The Minutes:** Approval of the January 20, 2004 meeting minutes.

2. **Telecommunications Task Force:** A resolution to establish a Task Force to recommend a plan and an implementation strategy for a Telecommunications Policy and Infrastructure Development.

3. **ADEA Post Closure Trust Fund:** A resolution authorizing the Fayetteville Parks & Recreation Division to apply for a Post Closure Trust Fund Grant from the Arkansas Department of Environmental Quality (ADEQ) for the C & L Landfill study and remediation.

4. **Wastequip May Fab Bid Award:** A resolution approving the purchase of 2 to 8 yard trash containers from Wastequip in an amount not to exceed $63,000.00 to service multi-family and commercial solid waste customers.

5. **Bes-Pac Bid Award:** A resolution approving the purchase of trash compactors and roll-off container/compactors in an amount not to exceed $85,859.00 from Bes-Pac, Inc., and Downing Sales, Inc.

6. **ESRI 2004 Service and Maintenance Fees:** A resolution approving the annual maintenance agreement in the amount of $20,692.30 with ESRI, Inc. for Geographic Information System (GIS) software maintenance and upgrades.

7. **Hansen 2004 Service and Maintenance Fees:** A resolution approving a purchase request to Hansen Technology, Inc. in the amount of $44,852.10 for software service and maintenance fees.

8. **Van Scoyoc Associates:** A resolution approving a memorandum of agreement with Van Scoyoc Associates and a budget adjustment in the amount of $85,000.00 to provide consulting legislative services in the amount of $75,000.00, plus expenses up to $10,000.00.

9. **Rules of Order and Procedure - Handbook Arkansas Municipal Officials:** A resolution to clarify that the Rules of Order and Procedure of the Fayetteville Mayor/City Council should follow the "Procedural Rules for Municipal Officials" by the Arkansas Municipal League.

10. **Rules of Order and Procedure – Voting:** A resolution to modify Section B.4. Voting on the Rules of Order and Procedure of the Fayetteville Mayor/City Council.

B. OLD BUSINESS:

1. **Impact Fees for Road, Police and Fire Improvements:** An ordinance waiving the requirements of competitive bidding and approving a contract with Duncan and Associates to calculate Impact Fees for Road, Police and Fire Improvements in the amount of $25,890.00 with a contingency amount of $1,500.00 and approving a Budget Adjustment of $27,390.00.
This Ordinance was left on the first reading at the January 6, 2004 City Council meeting.
This Ordinance was tabled at the January 6, 2004 City Council meeting until the February 3, 2004 City Council meeting.
Staff will be asking to table this to the February 17, 2004 City Council meeting.

2. **R-PZD 03-6.00; Benton Ridge, Long, LLC:** An ordinance establishing a Residential Planned Zoning District titled (R-PZD 03-6.00) located on the east side of Crossover Road north of Huntsville Road and south of Wyman Road containing 8.34 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the Planning Commission.
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3. **R-PZD 03-7.00; Brophy Condominiums, Ralph Brophy:** An ordinance establishing a Residential Planned Zoning District titled (R-PZD 03-7.00) located east of College Avenue, north of Township on Brophy Circle containing 6.01 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the Planning Commission.
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4. **WIV-Fayetteville Cost-Share:** An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with WIV-Fayetteville, LLC in an amount of $25,512.00 plus a contingency of $3,826.00 for a total of $29,338.00 for the construction of 350 feet of 8-inch water main.
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5. **Mount Sequoyah Woods Conservation Easement:** A resolution to reaffirm its commitment to sell most of its development rights to the Fayetteville Natural Heritage Association, Inc. on the 67 acres of Mount Sequoyah Woods purchased by the City of Fayetteville pursuant to Resolution No. 46-03.
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C. NEW BUSINESS:

1. **R-PZD 04-1.00 – Southern View II:** An ordinance establishing a residential planned zoning district titled (R-PZD 04-1.00) located on Futrall Drive and Old Farmington Road east of I-540 containing 6.713 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the associated residential development plan as approved by the Planning Commission.

2. **Southern View Phase II, Money in Lieu of Land:** A resolution accepting the parks and Recreation Advisory Board's recommendation to accept $40,086.00 cash in lieu of the required park land dedication for Southern View Phase II.

3. **Re-budget 2003 Budget Items:** A resolution approving a budget adjustment to re-appropriate $58,605,226.00 in order to retain project funding for identified and scheduled capital improvements and fund increased workers compensation premiums.

4. **ADM 03-29.00 – Chapter 167 Tree Preservation Amendment:** An ordinance amending Title XV: Unified Development Code, of the Code of Fayetteville, to provide amendments to and clarification of various provisions concerning tree preservation and protection.

5. **Attendance Requirements for Planning Commissioners:** An ordinance to repeal §33.111 removal of Planning Commissioners and enacting §33.300 attendance requirement for all members of citizen committees, boards and commissions.

D. INFORMATIONAL:

Council Tour: February 2, 2004

Fayetteville City Council Meeting [redacted] February 3, 2004

M[redacted]sting Adjourned at

Subject:		Roll		8:09	[redacted] pm
Motion To:					
Motion By: Seconded:					
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Davis	absent			
	Lucas	✓			
	Mayor Coody	✓			

Subject:		Add to Agenda		Water Rate Change	
Motion To:				Fayetteville Water Rate Schedule	
Motion By: Seconded:		Cook / Jordan		Customer Service Charge Revision	
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Davis	absent			
	Lucas	✓			
	Mayor Coody	—			

passed to add to agenda

Fayetteville City Council Meeting February 3, 2004

pull #8 from Consent
Van Scoyoc Associates
move to the end of New Business

Res 12-04 to 19-04

Subject:	Consent				
Motion To:				move of New	to the end Business
Motion By: Seconded:		Jordan / Marr			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Davis	absent			
	Lucas	✓			
	Mayor Coody	—			

#1 Old Business

Left on Second Read

Subject:	Impact Fees for Road, Police Fire				
Motion To:		2nd read			
Motion By: Seconded:		Jordan / Cook			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Davis	absent			
	Lucas	✓			
	Mayor Coody	—			

Fayetteville City Council Meeting February 3, 2004

Subject:	R-PZD-03-6.00 Benton Ridge			
Motion To:	3rd Read	Pass as Amended		
Motion By: Seconded:	Reynolds / Marr			
Jordan	✓	✓		Julie Zimmerman Crafton, Tull & Assoc.
Reynolds	✓	✓		
Thiel	✓	✓		
Cook	✓	N		
Marr	✓	✓		
Rhoads	✓	✓		
Davis	absent	absent		
Lucas	✓	N		
Mayor Coody	—	—		

#2 Old Business 5/2 Davis absent passed as Amended

Subject:	Amend With Changes. R-PZD-03-6.00 Benton Ridge			
Motion To:				
Motion By: Seconded:	Thiel / Reynolds			
Jordan	✓			
Reynolds	✓			
Thiel	✓			
Cook	✓			
Marr	✓			
Rhoads	✓			
Davis	absent			
Lucas	✓			
Mayor Coody	—			

#2 Old Business Amendment passed

Ord. 4538

Fayetteville City Council Meeting February 3, 2004

Subject:	R-PZD-03-7.00 Brophy Condominiums				
Motion To:		3rd Read	Pass		
Motion By: **Seconded:**		Jordan / Marr			
	Jordan	✓	N		
	Reynolds	✓	N		
	Thiel	✓	N		
	Cook	✓	N		
	Marr	✓	N		
	Rhoads	✓	Y		
	Davis	absent	absent		
	Lucas	✓	N		
	Mayor Coody	—	—		

#3 Old Business 1-6

Alderman Davis absent

Failed

Subject:	WIV-Fayetteville Cost Share				
Motion To:		3rd Read	Table until the next meeting		
Motion By: **Seconded:**		Lucas / Marr	Rhoads / Jordan		
	Jordan	✓	✓		
	Reynolds	✓	✓		
	Thiel	✓	✓		
	Cook	✓	✓		
	Marr	✓	✓		
	Rhoads	✓	✓		
	Davis	absent	absent		
	Lucas	✓	✓		
	Mayor Coody	—	—		

#4 Old Business

Tabled until the next City Council Meeting

Fayetteville City Council Meeting February 3, 2004

Subject:	Mount Sequoyah Woods Conservation				
Motion To:		Remove from table			Easement
Motion By: **Seconded:**		Jordan / Thiel			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Davis	absent			
	Lucas	✓			
	Mayor Coody	—			

#5 old Business

passed to remove from the table

Subject:	Amendment to the Resolution				
Motion To:					Mount Sequoyah Woods
Motion By: **Seconded:**		Thiel / Reynolds			Conservation Easement
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Davis	absent			
	Lucas	✓			
	Mayor Coody	—			

#5 old Business

Passed as amended per Kit Williams & Mayor Coody

20-04

Fayetteville City Council Meeting February 3, 2004

Subject:	Van Scoyoc Associates ✓			
Motion To:	Resolution Pass			
Motion By: Seconded:	Marr / Lucas			
Jordan	✓			
Reynolds	✓			
Thiel	✓			
Cook	✓			
Marr	✓			
Rhoads	✓			
Davis	absent			
Lucas	✓			
Mayor Coody	—			

New Business #1 Passed 21-04

Subject:	R-PZD 04-1.00 Southern View II			
Motion To:				
Motion By: Seconded:	—			
Jordan				Kim Fugitt
Reynolds				
Thiel				
Cook				
Marr				
Rhoads				
Davis				
Lucas				
Mayor Coody				

New Business #2 Left on the First Reading

Fayetteville City Council Meeting February 3, 2004

Subject:	Southern View Phase II, Money in				
Motion To:		Table until the next meeting.			
Motion By: Seconded:		Jordan / Cook			
	Jordan ✓	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook ✓	✓			
	Marr	✓			
	Rhoads	✓			
	Davis	absent			
	Lucas	✓			
	Mayor Coody				

#3 New Business Tabled until the next City Council Meeting

Subject:	Re-budget 2003 Budget Items				
Motion To:		Approve			
Motion By: Seconded:		Jordan / Cook			
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Davis	absent			
	Lucas	✓			
	Mayor Coody				

#4 New Business Passed 7-0 22-04

Subject:	ADM 03-29.00 - Chapter 167 Tree				
Motion To:		Second Read	3rd Read	Pass	Preservation
Motion By: Seconded:		Jordan / Marr	Jordan / Cook		Amendment
	Jordan ✓✓	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook ✓	✓	✓	✓	
	Marr ✓	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Davis	absent	absent	absent	
	Lucas	✓	✓	✓	
	Mayor Coody	—	—	—	

#5 New Business

Passed 4539

Subject:	Attendance requirements for Planning Commissioners				
Motion To:			A:	Within	70% attendance
Motion By: Seconded:				12 month period	requirements at the regular &
	Jordan				Special meetings.
	Reynolds		C.	With 12	60% & your &
	Thiel			month period	Agenda Session
	Cook				12 months on
	Marr			add	sub division within their term.
	Rhoads				Planning & Parks
	Davis				Boards only,
	Lucas				not all Boards.
	Mayor Coody				

#6 New Business

Left on the first reading

Sharon Hoover

Nancy

Fayetteville City Council Meeting February 3, 2004

Subject:	Fayetteville Water Rate Schedule				
Motion To:		2nd read	3rd read	Pass Customer Charge	Service Revision
Motion By: **Seconded:**		Reynolds Thiel	~~Reynolds~~ Davis		
	Jordan	✓	✓	✓	
	Reynolds ✓	✓	✓	✓	
	Thiel ✓	✓	✓	✓	
	Cook	✓	✓	✓	
	Marr	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Davis	✓	✓	✓	
	Lucas	✓	✓	✓	
	Mayor Coody	—	—	—	

#7 New Business

Passed

unanimous

4540

Subject:	Emergency Clause Fayetteville Water Rate Schedule				
Motion To:					
Motion By: **Seconded:**					
	Jordan	✓			
	Reynolds	✓			
	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Davis	✓			
	Lucas	✓			
	Mayor Coody	✓			

February 3, 2004

A. CONSENT:

Approval Of The Minutes: Approval of the January 20, 2004 meeting minutes.

12-04 **Telecommunications Task Force:** A resolution to establish a Task Force to recommend a plan and an implementation strategy for a Telecommunications Policy and Infrastructure Development.

13-04 **ADEA Post Closure Trust Fund:** A resolution authorizing the Fayetteville Parks & Recreation Division to apply for a Post Closure Trust Fund Grant from the Arkansas Department of Environmental Quality (ADEQ) for the C & L Landfill study and remediation.

14-04 **Wastequip May Fab Bid Award:** A resolution approving the purchase of 2 to 8 yard trash containers from Wastequip in an amount not to exceed $63,000.00 to service multi-family and commercial solid waste customers.

15-04 **Bes-Pac Bid Award:** A resolution approving the purchase of trash compactors and roll-off container/compactors in an amount not to exceed $85,859.00 from Bes-Pac, Inc., and Downing Sales, Inc.

16-04 **ESRI 2004 Service and Maintenance Fees:** A resolution approving the annual maintenance agreement in the amount of $20,692.30 with ESRI, Inc. for Geographic Information System (GIS) software maintenance and upgrades.

17-04 **Hansen 2004 Service and Maintenance Fees:** A resolution approving a purchase request to Hansen Technology, Inc. in the amount of $44,852.10 for software service and maintenance fees.

Pulled from Consent- add to New Business **Van Scoyoc Associates:** A resolution approving a memorandum of agreement with Van Scoyoc Associates and a budget adjustment in the amount of $85,000.00 to provide consulting legislative services in the amount of $75,000.00, plus expenses up to $10,000.00.

18-04 **Rules of Order and Procedure - Handbook Arkansas Municipal Officials:** A resolution to clarify that the Rules of Order and Procedure of the Fayetteville Mayor/City Council should follow the "Procedural Rules for Municipal Officials" by the Arkansas Municipal League.

19-04 **Rules of Order and Procedure – Voting:** A resolution to modify Section B.4. **Voting** on the Rules of Order and Procedure of the Fayetteville Mayor/City Council.

B. OLD BUSINESS:

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This Ordinance was left on the first reading at the January 6, 2004 City Council meeting.

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Tabled to next meeting - 2/17/04	**Southern View Phase II, Money in Lieu of Land:** A resolution accepting the parks and Recreation Advisory Board's recommendation to accept $40,086.00 cash in lieu of the required park land dedication for Southern View Phase II.
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Left on the first reading	**Attendance Requirements for Planning Commissioners:** An ordinance to repeal §33.111 removal of Planning Commissioners and enacting §33.300 attendance requirement for all members of citizen committees, boards and commissions.
4540 Passed with emergency clause	**Water Rate Schedule:** An ordinance amending Table B. Monthly Meter Service Charge of Section 51.136 of the Fayetteville Code and declaring an emergency.

INFORMATIONAL:
Council Tour: February 2, 2004
Adjourned at 8:09 p.m.

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D. INFORMATIONAL:

Council Tour: February 2, 2004

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: **Mayor Dan Coody and Fayetteville City Council Members**

COPY: Kit Williams, Steve Davis, Greg Boettcher

FROM: Hugh Earnest
Chief Administrative Officer

DATE: February 3, 2004

RE: **Fayetteville Water Rate Schedule**
Customer Service Charge Revision

Recent customer inquiries have revealed an error in the new water rate schedule developed by Black and Veatch. The error centers around the monthly Safe Drinking Water Act Fee of $0.25 per month that is collected and transferred to the State of Arkansas.

In order that the rate structure conforms with the across-the-board rate methodology, the monthly customer charges for water are to all be reduced by $0.28 for each meter size. This charge has been immediately instituted in our billing system; with appropriate credits to be provided to all of the billings (3 weeks) performed before today.

The basis for the customer service charge change is summarized below:

ADOPTED 5/8 -METER CHARGE			
CATEGORY	**2003**	**CHANGE TO CHARGES**	**2004 COST**
METER CHARGE	3.78	0.38	4.16
SWDA FEE	-0-	0.00	0.25
TOTAL	3.78	0.38	4.41

CORRECTED 5/8 RESIDENTIAL METER CHARGE			
CATEGORY	**2003 COST**	**CHANGE TO CHARGES**	**2004 COST**
METER CHARGE	3.53	+ 0.35	$3.88
SWDA FEE	0.25	-0-	0.25
TOTAL	3.78	+0.35	$4.13

This mistake was noted by Mr. Geary Lowery. His diligence in catching this error is much appreciated. In order to formally rectify this situation, our city attorney has prepared an ordinance which corrects the table in our code of ordinances. (A copy is attached)

ORDINANCE NO. ______

AN ORDINANCE AMENDING TABLE B MONTHLY WATER METER SERVICE CHARGE OF SECTION 51.136 OF THE FAYETTEVILLE CODE AND DECLARING AN EMERGENCY

WHEREAS, the Safe Drinking Water Act monthly household fee of 25 cents was mistakenly both included in Table B Monthly Water Meter Service Charge of §51.136 and "added to those Monthly Water Service Charges"; and

WHEREAS, the 10% across the board water rate increase should not have applied to the Safe Drinking Water Act fee..

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals Table B Monthly Water Meter Service Charge of §51.136 of the Fayetteville Code and enacts a replacement Table B Monthly Water Meter Service Charge (attached as Exhibit A) which reduces all rates by 28 cents per month.

Section 2: Emergency Clause. That the City Council of the City of Fayetteville, Arkansas has determined that immediate amendment of the Water Rate Ordinance to reduce the water rates to comply with the Safe Drinking Waster Act and the City's rate study is essential to the public peace, health and safety. Therefore, the City Council of Fayetteville, Arkansas declares this ordinance being necessary to preserve the public peace, health and safety, constitutes an emergency so that this ordinance shall be in full force and effect from the date of its passage and approval.

PASSED and **APPROVED** this the 3rd day of February, 2004.

APPROVED:

DRAFT

By: ______________________

DAN COODY, Mayor

ATTEST:

By: ______________________

SONDRA SMITH, City Clerk

EXHIBIT A

Table B -Monthly Water Meter Service Charge

Meter Size	Inside City	Outside City
5/8 inch	$ 3.88	$ 4.92
3/4 inch	4.14	5.26
1 inch	5.39	6.84
1 ½ inch	9.40	11.94
2 inch	13.69	17.39
3 inch	31.90	40.51
4 inch	52.80	67.05
6 inch	105.60	134.11
8 inch	158.40	201.16

RESOLUTION NO. ____

A RESOLUTION TO ESTABLISH A TASK FORCE TO RECOMMEND A PLAN AND AN IMPLEMENTATION STRATEGY FOR TELECOMMUNICATIONS POLICY AND INFRASTRUCTURE DEVELOPMENT

WHEREAS, the City of Fayetteville, its citizens, businesses, and public offices, will benefit from a coordinated approach to planning for the technology and telecommunications environment that supports vital communication channels and seeks to provide an innovative approach to broadband communications services as a building block for the city's goals and guiding principles.

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, creates the City Technology and Telecommunications Infrastructure Planning Task Force whose charge includes:

A. Reviewing the existing information technology and telecommunications infrastructure used by the city, available telecommunications services, rights-of-way management strategies, and telecommunications regulatory structure.

B. Identifying the telecommunications needs of the community (government, schools, business, public) and how to best meet those needs.

C. Developing a Technology and Telecommunications Infrastructure Vision and Policies statement that provides direction for the plan and guides the implementation of telecommunications technologies in support of community interests, local governance, and consistent with the city's goals and guiding principles.

D. Developing a comprehensive telecommunications strategy and regulatory framework plan to support a coordinated regional information infrastructure that provides accessible and affordable high-speed connectivity for citizens, public institutions, and businesses.

Section 2. That the Mayor shall appoint two Council Members who shall appoint two Fayetteville citizens as Co-Chairs of the City Technology and Telecommunications Infrastructure Planning Task Force.

Section 3. That the Co-Chairs of the City Technology and Telecommunications Infrastructure Planning Task Force shall appoint 8 Fayetteville citizens as members to promote the interests and represent constituents from the government, schools, general

DRAFT

public, and business sectors (two for each area). These appointments will be made by the Co-Chairs after advertising and promotion in local newspapers. At least one member from both the City Administration and the City Telecommunications Board will be named. Staff support will be negotiated by Co-Chairs with City Administration. The Task Force may seek budgetary support from the City Council.

Section 4. That the City Technology and Telecommunications Infrastructure Planning Task Force shall present its strategy and implementation plan to the City Council no later than December, 2004.

PASSED and **APPROVED** this the 3rd day of February, 2004.

APPROVED: DRAFT

By: ______________________________
DAN COODY, Mayor

ATTEST:

By: ______________________________
SONDRA SMITH, City Clerk

ALDERMAN AGENDA REQUEST FORM

FOR: COUNCIL MEETING OF FEBRUARY 3, 2004

FROM:

MAYOR DAN COODY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT WITH VAN SCOYOC ASSOCIATES AND A BUDGET ADJUSTMENT IN THE AMOUNT OF $85,000.00 TO PROVIDE CONSULTING LEGISLATIVE SERVICES IN THE AMOUNT OF $75,000.00, PLUS EXPENSES UP TO $10,000.00

APPROVED FOR AGENDA:

Dan Coody 1/29/04

Dan Coody, Mayor Date

1/29/04

City Attorney (as to form) Date

RESOLUTION NO. ______

A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT WITH VAN SCOYOC ASSOCIATES AND A BUDGET ADJUSTMENT IN THE AMOUNT OF $85,000.00 TO PROVIDE CONSULTING LEGISLATIVE SERVICES IN THE AMOUNT OF $75,000.00, PLUS EXPENSES UP TO $10,000.00

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the attached Memorandum of Agreement with Van Scoyoc Associates for consulting legislative services in the amount of $75,000.00, plus up to $10,000.00 in expenses.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of $85,000.00 attached as Exhibit B.

PASSED and **APPROVED** this the 3rd day of February, 2004.

APPROVED:

DRAFT

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
SONDRA SMITH, City Clerk

MEMORANDUM OF AGREEMENT

Agreement. The City of Fayetteville hereby retains Van Scoyoc Associates, Inc. (VSA) as consultants and advisors with regard to various legislative and administrative matters.

Statement of Work. VSA will assist the City of Fayetteville and its personnel in the following areas:

- Developing a program and strategy towards obtaining federal appropriations and grants for Fayetteville's future economic viability.
- Analyzing and informing the City of contemplated legislative and regulatory changes that may positively or negatively affect programs of interest to the City.
- Educating Members of Congress and their staffs about Fayetteville concerns or opportunities with respect to legislation or regulations.
- Building grassroots support of the projects to demonstrate local interest by finding individuals and groups with goals similar to those of the City.
- Working with the relevant committees to secure enactment of the legislative agenda or otherwise advance the interests of the City.
- Assisting in working with federal agencies and the federal administration to identify, create and secure new federal grant and funding opportunities.

Lobby Disclosure Act. It is understood that VSA will be required to register on behalf of the City of Fayetteville under the terms of the Lobbying and Disclosure Act of 1995 (P.L. 104-65) and any subsequent laws or regulations.

Term. In consideration of the performance of these services, the City of Fayetteville shall pay to VSA the sum of $6,250 per month for the period of February 1, 2004 through January 31, 2005, for a total of $75,000 in retainer expenses.

The City of Fayetteville further agrees to pay all reasonable costs and expenses incurred by VSA in furtherance of its efforts on behalf of the City, including, but not limited to, copies, facsimiles, couriers, telephone, local transportation and meals directly attributable to those efforts. VSA agrees that these expenses, exclusive of out-of-town travel costs taken solely at the City's direction, shall not exceed $10,000 during the contract term.

Notice. The City of Fayetteville shall have the right to terminate this contract after giving VSA 30 days advance written notice. Should the City exercise this option, it agrees to pay VSA all outstanding retainer and expense costs owed through the termination date.

VAN SCOYOC ASSOCIATES

By: H Stewart Van Scoyoc
H. Stewart Van Scoyoc
President

Date: January 28, 2004

CITY OF FAYETTEVILLE

By: ______________________
Dan Coody
Mayor

Date: ______________

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department / Division / Program	Date Requested	Adjustment Number
2004	Department: General Government Division: Miscellaneous Program: Miscellaneous	2/3/2004	

Project or Item Requested:
$85,000 is being requested in the Professional Services account.

Project or Item Deleted:
None. $85,000 from the General Fund Use of Fund Balance.

Justification of this Increase:
The funds are needed for the City of Fayetteville to enter into a contract with Van Scoyoc Associates for Grant Writing services. The amount of the contract is $75,000 with another $10,000 being requested for outside reimbursable expenses.

Justification of this Decrease:
In 2003, there was $6,636,816 in remaining funds not being requested for re-budgeting that will go back to fund balance for other future uses.

The General Fund has sufficient funds available to comply with City Policy.

Increase Budget (Decrease Revenue)

Account Name	Account Number				Amount	Project Number
Professional services	1010	6600	5314	00	85,000	

Decrease Budget (Increase Revenue)

Account Name	Account Number				Amount	Project Number
Use of fund balance	1010	0001	4999	99	85,000	

Approval Signatures

Requested By — Date

Budget Manager — Date 1-29-04

Department Director — Date

Finance & Internal Services Director — Date

Mayor — Date

Budget Office Use Only

Type: A B C D E

Date of Approval — Initial — Date

Posted to General Ledger — Initial — Date

Posted to Project Accounting — Initial — Date

Entered in Category Log — Initial — Date

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

FROM: **Kit Williams**, City Attorney

DATE: **January 29, 2004**

RE: **Conservation Easement for Mt. Sequoyah Woods**

After meeting with several representatives of the Fayetteville Natural Heritage Association, Inc. I revised the proposed Resolution To Reaffirm the commitment to sell a conservation easement. The proposed Resolution is attached.

As you can see, the previously discussed figure of $300,000.00 for the conservation easement is now made a part of this Resolution. We also acknowledge their previous payments that now total $50,000.00. I recommend these changes be made and that you amend the previously submitted draft Resolution by replacing it with this proposed Resolution.

RESOLUTION NO. ______

A RESOLUTION TO REAFFIRM ITS COMMITMENT TO SELL MOST OF ITS DEVELOPMENT RIGHTS TO THE FAYETTEVILLE NATURAL HERITAGE ASSOCIATION, INC. ON THE 67 ACRES OF MOUNT SEQUOYAH WOODS PURCHASED BY THE CITY OF FAYETTEVILLE PURSUANT TO RESOLUTION NO. 46-03

WHEREAS, the City Council of the City of Fayetteville, Arkansas had invited the Fayetteville Natural Heritage Association, Inc. to purchase its development rights to Mount Sequoyah Woods in Resolution No. 46-03 passed unanimously by the Fayetteville City Council on April 1, 2003; and

WHEREAS, the Fayetteville Natural Heritage Association, Inc. has worked diligently and continues to strive to raise contributions to purchase these development rights in the form of a conservation easement to protect Mount Sequoyah Woods so that it will be a nature preserve for all residents of Fayetteville; and

WHEREAS, the Fayetteville Natural Heritage Association, Inc. has already paid to the City Fifty Thousand Dollars ($50,000.00) toward the purchase of these development rights and conservation easement.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby reaffirms its commitment to sell its development rights in the form of a conservation easement for Mount Sequoyah Woods except as necessary to build amenities for Mount Sequoyah Woods such as perimeter parking, walking trails, benches, picnic tables, pavilion, restroom facility and signs for the use of the public when enjoying this wooded hillside for Three Hundred Thousand Dollars ($300,000.00) to the Fayetteville Natural Heritage Association, Inc.

PASSED and **APPROVED** this the 3rd day of February, 2004.

APPROVED:

DRAFT

By: ____________________
DAN COODY, Mayor

ATTEST:

By: ____________________
SONDRA SMITH, City Clerk

BILL OF ASSURANCE
FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In order to attempt to obtain approval of a request for a zoning reclassification, the owner, developer, or buyer of this property, (hereinafter "Petitioner") Ralph Brophy, hereby voluntarily offers this Bill of Assurance and enters into this binding agreement and contract with the City of Fayetteville, Arkansas.

The Petitioner expressly grants to the City of Fayetteville the right to enforce any and all of the terms of this Bill of Assurance in the Chancery/ Circuit Court of Washington County and agrees that if Petitioner or Petitioner's heirs, assigns, or successors violate any term of this Bill of Assurance, **substantial irreparable damage justifying injunctive relief** has been done to the citizens and City of Fayetteville, Arkansas. The Petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will **reasonable rely** upon all of the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

Petitioner hereby voluntarily offers assurances that Petitioner and Petitioner's property shall be restricted as follows **IF** Petitioner's rezoning is approved by the Fayetteville City Council.

1. An evergreen screen shall be established along the west line of the Brophy Condominimum Complex to screen the view between this zone and the adjacent commercial zone prior to issuance of final plat approval.

2. The petitioner and property owners association is to maintain and insure the viability of the screen and monitor health to make sure the screen is properly established.

3. Provisions shall be made in the development covenants to assure item 2.

4. Planting shall coincide with the tree screening plan attached to this Bill of Assurance and approved by the landscape coordinator. Said planting shall consist of 35-2"calliper Loblolly Pines to be placed in two rows as depicted on said screening plan.

5. The evergreen screen shall be established and maintained at the Petitioners expense and maintained by the Developments Property Owners Association and no fund from the City's Tree Mitigation Fees shall be used for this screen.

6. Petitioner specifically agrees that all such restrictions and terms shall **run with the land** and bind all future owners unless and until specifically released by Resolution of the Fayetteville City Council. This Bill of Assurance shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning is effective and shall be noted on any Final Plat or Large Scale Development which includes some or all of Petitioner's property.

IN WITNESS WHEREOF and in agreement with all the terms and conditions stated above, I, Ralph Brophy, as the owner, developer/(Petitioner), **voluntarily offer** all such assurances and sign my name below.

______________________ ______________________
Date Printed Name

______________________ ______________________
Address Signature

NOTARY OATH

STATE OF ARKANSAS }
COUNTY OF WASHINGTON }

And now on this the _____ day of _______________, 200__, appeared before me, _______________ _______________ _______________ and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.

______________________ **NOTARY PUBLIC**

My Commission Expires:

____

WBR ENGINEERING ASSOCIATES, P.A.,

4241 Gabel Dr., Suite 1B
Fayetteville, Arkansas 72703

William B. Rudasill, Jr., P.E.

Phone: (479) 582-2820
Facsimile: (479) 582-1788

January 29, 2004

Mrs. Dawn Warwick
City of Fayetteville
113 West Mountain Street
Fayetteville, Arkansas 72701

RE: Council Comment Responses
R-PZD 03-07.00 (Brophy Condominiums)

Dear Mrs. Warwick,

In response to the comments gathered from the last council meeting regarding above referenced project.

1. Submittal Requirements

- Prepare a tree planting detail for the evergreen screen proposed for the west line of said project..
- Provide bill of assurance with regards to said screen and screen maintenance.
- Revised covenants to address maintenance of screen and maintenance of steets

2. Comments:

- Comments regarding project slopes and why is this development being considered as a PZD.

  First, the project slopes are in general less than 15 percent. With a section in the 15 to 18 percent slope range and a very minor portion above 18 percent. Of the areas above 18 percent, they are located such that very little if any construction will be within these zones. As for the areas 15 to 18 percent the majority of these areas will be filled to accommodate roads and/or drives entering the residences. This being the case, the site is not in major conflict with the current hillside development guidelines being used by the city at this time.

  Secondly, the project is located in a transition zone between commercial and single family residential and is zoned three different densities. Each of which has no geometrical shape to make them viable to a symmetrical layout for the overall property with out changing the site topography. By adjusting the site topography in the multifamily zones currently in place, a density of equal or grater prototypical apartment population can be established but the developer wishes to create a higher end development which better flows with the terrain and will be intermingles with the existing tree canopy. This is not just an attempt to get a duplex development. Location, Terrain, Surrounding development all led to this request.

- Comments regarding the north entrance.

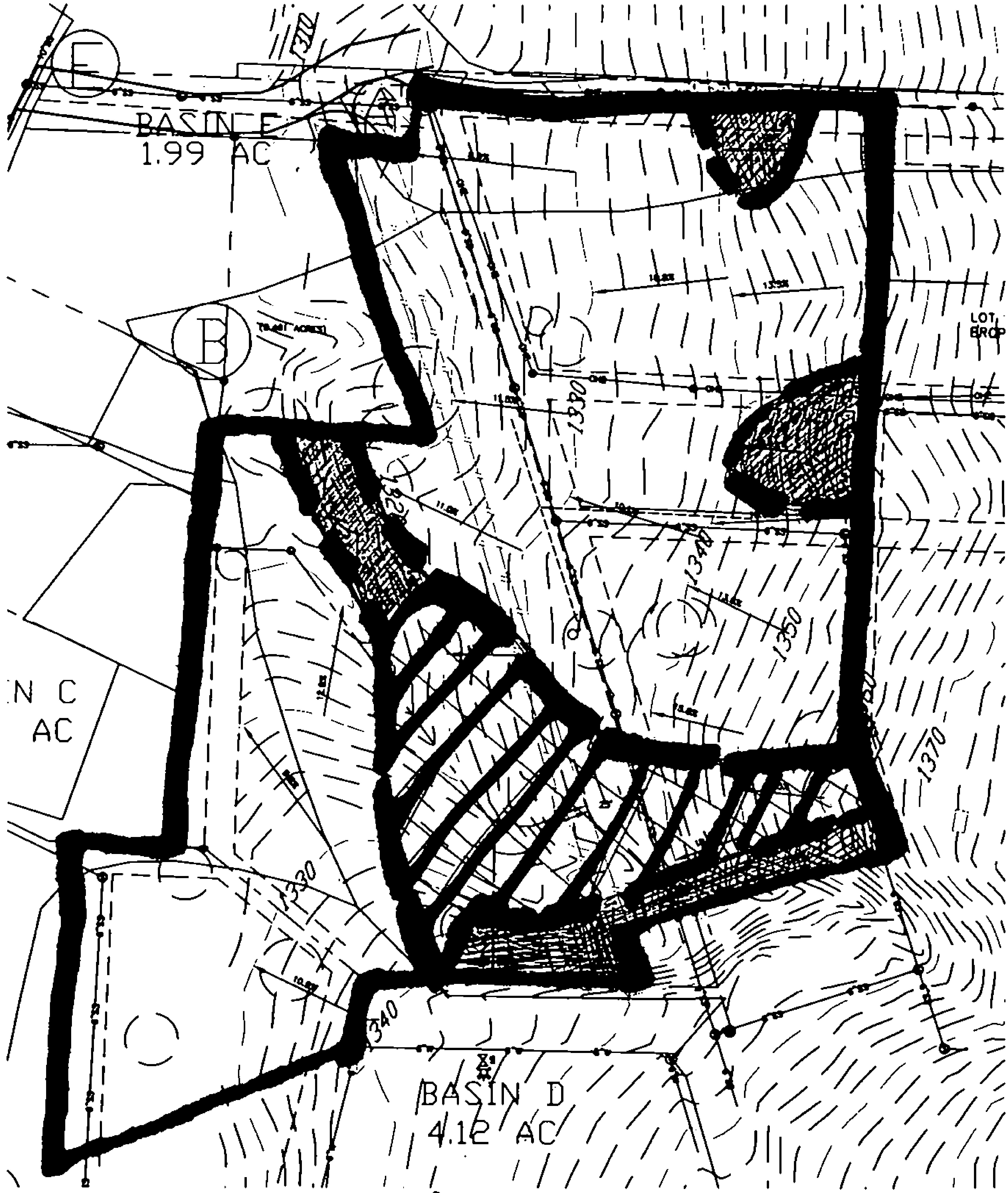
First, I understand you concerns regarding this intersection, however, based on the following data, it is my opinion as a engineer that the drive in question will not increase endangerment at the signal. First the drive is located 190 feet from the center of Sunbridge which is greater that the 150 foot guideline used by the City. Secondly, if you establish a maneuvering zone as shown on the attached exhibit. There is still a 3 three to four car link merging/stopping zone which is a very comfortable distance to accommodate congested traffic, and please note I have personally exited the drive during congested traffic to see if my evaluation is reasonable. Thirdly, the site distance in either direction is very accommodating with no obstructions such as bushes or telephone poles. Fourhly, there is limited traffic which will be using the existing turn lane at Sunbridge as it is only a threeway street intersection. And lastly, as positioned the light provides a traffic break for entrance and exit from the afore mention existing drive. If this distance were 30 to 40 feet closer to the intersection creating a 1 to 2 car distance for maneuvering prior to entering the intersection meaning you are still turning while having to deal with traffic I would agree that further measure would be warranted. However in this case they are not. Also attached is a letter from the police chief stating that in his opinion the population density would not create appreciable increase in traffic danger and traffic congestion.

It has also been requested that a barrier be installed to create or attempt to create a right turn only situation for exiting traffic. In my opinion this would cause a problem for incoming traffic as it places a barrier in the drive for them to deal with also. In order for this to be done properly, the drive would need to be widened and there no right of way to allow for a widening. The street is currently a 31 foot wide street (bc-bc) with a flared entrance which uses the entire available width of road easement. If the council wishes a right turn only sign could be placed at the drive exit, however, as noted above it is my opinion that this drive sufficient as is.

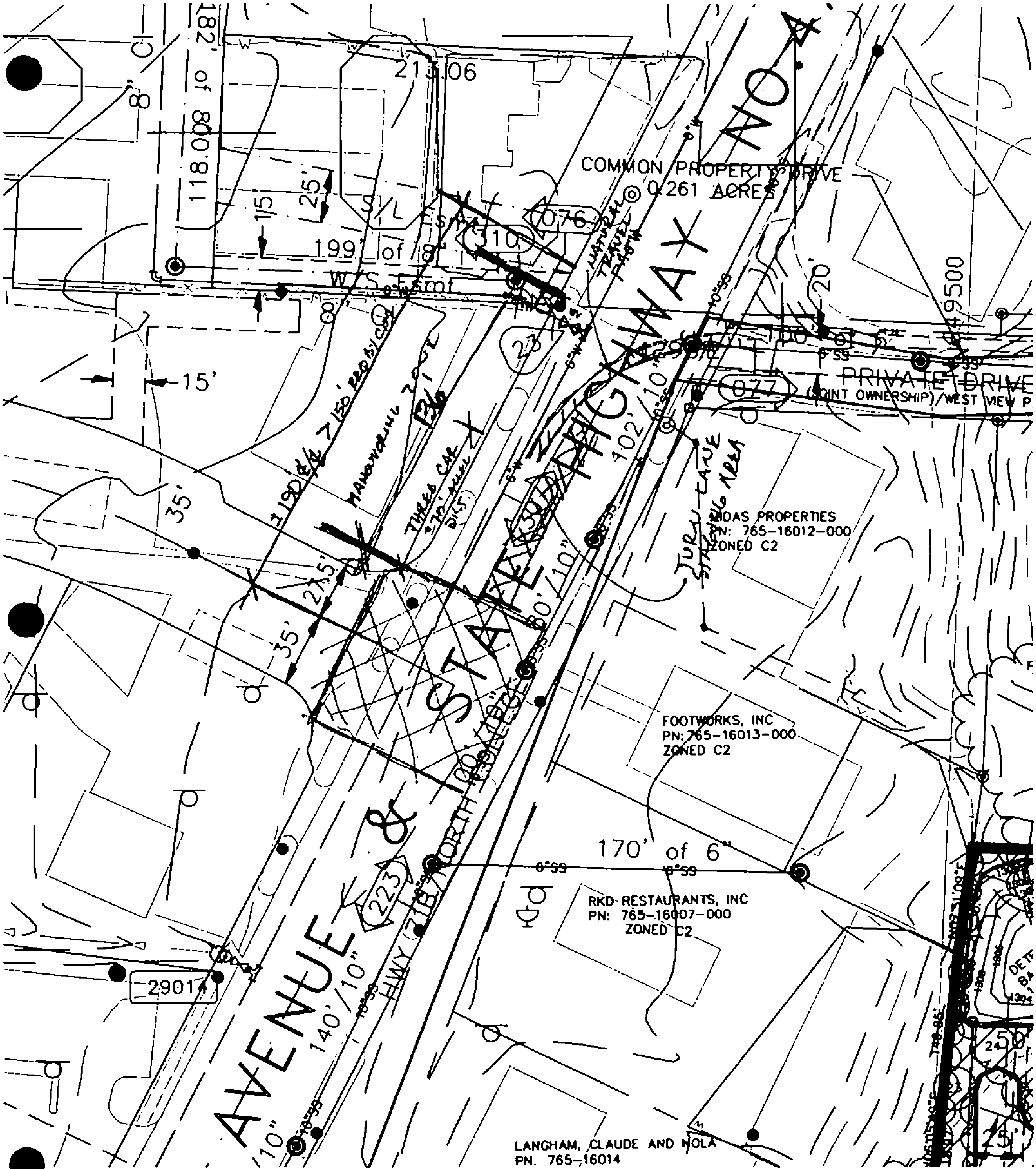
Respectfully Submitted,

William B. Rudasill, Jr., P.E.

WBRJR/
Enclosures



0-15% SLOPES
15-18% SLOPES
18% + SLOPES



COMMON PROPERTY DRIVE
0.261 ACRES
PRIVATE DRIVE
(JOINT OWNERSHIP)/WEST VIEW P
MIDAS PROPERTIES
PN: 765-16012-000
ZONED C2
FOOTWORKS, INC
PN: 765-16013-000
ZONED C2
RKD RESTAURANTS, INC
PN: 765-16007-000
ZONED C2
LANGHAM, CLAUDE AND NOLA
PN: 765-16014
AVENUE
&
STATE HIGHWAY NO 4
213.06
118.008 of 8"
199' of 8"
W/S Esmt
170' of 6"
140'/10"
102'/10"
35'
15'
25'
20'
076
077
223
310
29014

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Declarant is the Declarant of certain property in Fayetteville, Washington County, Arkansas, and has caused certain lands owned by him to be platted into an addition known as Ralph Brophy's Condominiums Association Addition to the City of Fayetteville, Washington County, Arkansas, and the plat thereof appears of record in the office of the Recorder of Washington County, Arkansas, in Plat Book ________ at Page ________; and,

WHEREAS, Declarant desire to provide for the use of property for the highest of residential uses and to restrict its uses as such;

NOW THEREFORE, Declarant hereby adopts the covenants stated herein and agrees that the stated covenants shall apply to all of the property now platted as Ralph Brophy's Condominiums Association Addition to the City of Fayetteville, Washington County, Arkansas, as covenants running with the land. These covenants shall apply in their entirety to the area now known and described as Ralph Brophy's Condominiums Association Addition to the City of Fayetteville, Washington County, Arkansas, as shown on the recorded plat thereof.

1. DEFINITIONS.

A. Association shall mean and refer to Ralph Brophy's Condominiums Association, its successors and assigns.

B. Declarant shall mean and refer to Ralph Brophy until a successor or assign should acquire more than eighty percent (80%) of the undeveloped lots from the Declarant for the purpose of development. In that event, Declarant shall perform all actions necessary to facilitate the transfer to the newly appointed Declarant.

C. Property shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

D. Common Area shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Declarants. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows: see attached Exhibit A.

2. LAND USE AND BUILDING TYPES.

No lot in the addition shall be used for any other purpose than Two-Family Townhouses/Condominiums as that term is defined in the City of Fayetteville Municipal Zoning Ordinance. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached duplex not to exceed THREE ~~two and one-half~~ stories, thirty-five (35) feet in height, and each such dwelling shall have a private garage [redacted] for the storage of not less than one automobile. ALSO NO DWELLING UNIT ALONG THE WEST LINE OF THE DEVELOPMENT SHALL EXCEED TWO STORIES PLUS CRAWL SPACE ([redacted]) OR 35 FEET IN HEIGHT.

No business or commercial use shall be carried on or permitted in any structure or in any portion of this addition in keeping with the general plan to develop this property for the highest class of residential occupancy.

3. DWELLING SIZE AND QUALITY.

Size, design, location and site development of dwellings in this planned development shall be subject to the construction under current city codes and must be sided with either vinyl and/or brick, and shall be approved by the community association. All dwellings shall be constructed within the bounds set forth on the plat of the development and shall utilize hill-side construction methods such as Pier & Beam, etc. to preserve tree cover where practicable. Slab on grade pads shall not exceed the perimeter of the allowable building areas as platted. All dwellings placed upon the premises shall be of new construction and shall be of the highest class workmanship and best quality materials. Approval of plans for construction of principal residences and permitted accessory buildings shall not be unreasonably withheld by the Declarant based upon the style of design of the exterior of such proposed principal residences as long as the same are designed, in whatever style, in accordance with the highest standards of architectural design. All construction shall be completed within one (1) year from the beginning of such construction.

4. ARCHITECTURAL CONTROL.

No residence, permitted accessory building, fence, wall or other structure shall be constructed, created or maintained upon any lot in the addition, nor shall any modification, alteration or change be made in the exterior of any existing residence or permitted accessory building until the construction, grading and drainage and landscape plans and specifications showing the nature, size, shape, dimensions, materials and location of the same shall have been submitted to and approved, in writing by the Declarant, or an authorized agent of Declarant, or the Declarant has waived his right in the manner hereinafter provided.

5. THE ARCHITECTURAL CONTROL COMMITTEE.

The Architectural Control Committee shall consist of Ralph Brophy. Mr. Brophy shall assign a successor in the event of his death or resignation. Any property owner in the addition seeking to obtain the required approval or any plans for construction, modification or alteration or improvements on his, her or its property shall submit the same in two (2) copies to the Declarant or any person designated by him A written receipt from the Declarant shall be prima facie evidence of the delivery of such plans and the date thereof. If, with thirty (30) days from the date of delivery of such plans to a member of it, the Declarant has not stated to the owner deficiencies in the proposal for such construction or alteration or improvements, the owner may proceed with such construction or alterations as though affirmative approval had been received from the Declarant. Notice shall be given to the owner at the address for the property owner indicated in the city telephone directory or as otherwise indicated by the owner, in writing, to the owner by certified mail with return receipt requested. If deficiencies are noted and called to the owner's attention in the proposed plans within the thirty (30) day period following delivery thereof to the owner, the owner shall not proceed with any such construction or alteration until such deficiencies have been corrected to the satisfaction of the Declarant. The Declarant shall have full power to enforce the provisions and restrictions herein

by an action for an injunction as fully as though he were the Declarant of property in the subdivision and whether or not he is actually the Declarant of property in the subdivision.

6. GENERAL RESTRICTIONS.

a. No noxious or offensive activity and no commercial activities of any kind shall be carried on upon any lot in this addition, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

b. No manufactured housing, trailer, recreational vehicle, mobile home, tent, shack, or barn shall be erected on any lot in this subdivision, temporary or permanently, except for temporary use by construction contractors only. Tents used for recreational purposes of a short duration shall not be considered as excluded by this provision.

c. No signs, billboards, posters or advertising devices shall be permitted upon any of the lots in this addition except that the Declarant of each lot may place house numbers and the Declarant's name upon his or her mail box or dwelling; however, each letter thereof shall be no more than 6 inches in height and 6 inches in width; and Declarant may place a sign not more than 4 square feet in size advertising the property for sale should it be offered for sale by the Declarant.

d. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purposes.

e. No trash, ashes or other refuse may be thrown or dumped on any of the lots in the addition.

f. No building material of any kind or character shall be placed or stored upon any lot in the addition until the Declarant is ready to commence construction of the improvements requiring such materials. Building materials shall only be placed or stored between the curb and the property line of the site to be developed and shall be stacked in a decent and proper manner unless contained in a lumber storage container.

g. No privy, cesspool, septic tank field or disposal plant shall be installed or maintained on any lot in the addition, and all residences and permitted accessory buildings shall have the plumbing connected to the city sanitary sewer system.

h. All garages shall be finished inside and shall be fully enclosed with garage doors. Carports are not allowed.

i. All driveways in the addition shall consist of a hard surface acceptable to the Declarant and driveways are to be no less than 18 feet and no more than 24 feet in width.

j. No trucks, mail carts, dune buggies, golf carts, mobile homes, commercial vehicles, travel trailers, campers, boats, motors or trailers shall be kept on the lot or in the street adjacent to any lot except that such items may be stored or parked inside an enclosed garage or similar enclosure so screened with fencing or plant material as not to be visible from the street.

k. Grass, weeds and vegetation shall be kept mowed and cleared at regular intervals on each lot by the HOME Declarant ASSOCIATION thereof so as to maintain the same in a neat and attractive manner. No debris shall be allowed to accumulate upon any lot. Dead trees, shrubs, vines and plants shall be promptly removed from each lot. The Declarant or HomeDeclarants Association shall have the right, privilege and option to cause any unkept lots to be mowed and to remove dead trees, plants or other vegetation and debris from such lot if, after ten days' notice in writing, from the HomeDeclarants Association to the Declarant, the Declarant has failed or neglected to do so, and the HomeDeclarants Association shall be entitled to a lien on such lot for the cost of such work.

l. Each lot Declarant shall provide and maintain a light located in the vicinity of the intersection of the driveway and street, which light shall be in all respects in accordance with the requirements of the Architectural Control Committee.

m. Exterior surfaces of each dwelling place shall be composed of either brick or vinyl siding.

n. All dwelling places will be guttered and all guttering must have leaf guards to prohibit buildup of leaves and other foreign objects from obstructing the gutters.

o. All Declarants of dwelling places in this development are required to furnish their own fire, storm, theft, etc and termite insurance and treatment at their own expense and Declarant reserves the right to demand presentation of termite inspection and protection at reasonable times and places.

p. Any swimming pool plans shall have to be approved by the HomeOwner's Association and meet city code requirements.

q. THE HOME DECLAIRANT ASSOCIATION SHALL MAINTAIN THE EVERGREEN SCREEN ALONG THE WEST LINE IN ACCORDANCE WITH CITY REQUIREMENTS. SHOULD SCREEN BECOME NON-FUNCTIONAL THE CITY MAY ENFORCE FINE ON THE P.O.A

7. BUILDING LOCATION.

Buildings shall be located on lots as shown on the final plat of the planned zoning district.

8. DIVISION OF LOTS.

A "lot" as that word is used herein shall consist of a numbered lot as shown on the plat of the addition.

9. FENCING AND ORNAMENTAL STRUCTURES.

No fences shall be erected on any portion of a lot between the line drawn across the front foundation or building line of the principal dwelling and intersecting the side lot lines and the front lot line. Dog pens properly screened by walls, fences, or plantings may be constructed and maintained in the rear yard portion of any lot. Retaining walls, ornamental fences of less than 3 feet in height, and composed brick, wood or natural stone construction may be permitted on a lot in the front portion as herein described and the front lot line. However, no other structure exceeding 3 feet

in height shall be placed or permitted on the portion of any lot lying nearest to the abutting street and in front of a line extended across the front foundation line of the principal dwelling.

10. DEFINITION OF "PRINCIPAL DWELLING".

The term "principal dwelling," "resident" or "principal residence" as used in these restrictive covenants shall refer to a residence meeting the requirements hereof and approved by the Committee for construction in the Addition.

11. HOMEOWNER'S ASSOCIATION.

For the purpose of maintaining areas to be used in common with some or all of the residents and owner of property in the addition, the streets, the street lights, drainage and such other activities and undertakings as may be for the general use and benefit of owner and residents of the property, each and every lot owner, in accepting a conveyance of any lot in this Addition, agrees to and shall become a member of and be subject to the obligations and duly enacted by-laws and rules of the Ralph Brophy Condominiums Association. STREET MAINTENANCE SHALL BE IN ACCORDANCE WITH FAYETTEVILLE ORD. 166.22 (V, VI, VII) AND ENFORCEMENT OF SUCH IS AVAILABLE TO THE CITY. (SEE ATTACHED EXCERPT.

12. LIEN FOR MEMBERSHIP DUES.

Assessment fees for the development are \$45.00 per month, or \$540.00 per year, payable monthly/yearly as it comes due/in advance, but no assessment fee shall become due and payable on real property until one month after dwelling place has been constructed and occupied. There will be 12 months to complete construction. Assessment fees will start on the 13th month unless construction is finished sooner.

All owners of property in the Addition shall pay the required dues to the HomeOwners Association promptly when the same become due, and in the event of failure to pay the same promptly when the same become due, such dues shall constitute a lien upon the property owned by such owner in the Addition and the same may be enforced in equity as in the case of any lien foreclosure authorized in the State of Arkansas.

All delinquent assessments shall bear interest at the rate of ten percent (10%) per annum from the date the same become due until they are paid, and the association shall be entitled to a reasonable fee for its attorneys when their services become necessary to collect any delinquent assessments, all of which shall be a part of the lien for dues.

13. SUBORDINATION OF LIEN FOR MEMBERSHIP DUES.

The liens herein retained for membership dues to the HomeOwners Association are hereby made expressly inferior and subordinate to valid and bona fide mortgages and deeds of trust or retained vendor's liens securing obligations of owner of any of the lots in the addition up to the time of sale at foreclosure of any such mortgage, deed of trust or vendor's lien and for a period of six (6) months thereafter or until the residence upon such property is occupied, whichever date shall first occur, after which time monthly membership dues shall thereafter accrue as a lien upon such lot in the identical form and manner as prior to the foreclosure sale of the property involved. This subordination shall be construed to apply not only to the original, but to all successive, mortgages, deeds of trust, and vendor's liens given by property owners to secure obligations, together with all

extensions and renewals thereof.

14. EASEMENTS.

No recorded easement shall be used by any company or person, other than the owner of the affected lot or lots, for any purpose other than those designated on the plat of the addition. AND ALL ROADS SHALL BE OPEN TO THE PUBLIC FOR TRAVEL TO AND FROM AND THRU THE DEVELOPMENT

15. PERSONS BOUND BY THESE COVENANTS.

All persons or corporations who now own or shall hereafter acquire any of the lots in this addition shall be deemed to have agreed and covenanted with the Declarant of all other lots in this addition and with its or their heirs, successors and assigns to conform to and observe the restrictions, covenants and stipulations contained herein for a period of 25 years from the date these covenants are recorded, and these covenants shall thereafter automatically extend in effect for successive periods of 10 years unless prior to the end of the original term or any successive term of the application hereof [a majority] of the then owners of lots in the addition agree to the amendment or removal of these covenants in whole or in part. These covenants may be amended at any time by the owners of [80%] of the lots in the addition. No changes in these covenants in the manner herein set forth shall be valid unless the same shall be placed of record in the office of the Recorder of Washington County, Arkansas, duly executed and acknowledged by the requisite number of owners.

17. RIGHT TO ENFORCE.

The covenants, agreements and restrictions herein set forth shall run with the title to the lots in this addition and bind the present Declarant, its heirs, successors and assigns, future owners and their heirs, successors and assigns; and all parties claiming by, through or under them shall be taken to hold, agree and covenant with the owners of other lots in the addition, their heirs, successors and assigns, and with Declarant, as to the covenants and agreements herein set forth and contained. None shall be personally binding on any person, persons, or corporations except with respect to breaches committed during its, his or their holding of title to lots in the addition. Any owner or owners of lots in this Addition, or Declarant, shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of any of the covenants, agreements or restrictions contained herein together with any other rights to which they might otherwise be entitled under the laws of the State of Arkansas. The invalidation of any one of these covenants, restrictions or agreements herein contained by the order of a court of competent jurisdiction shall in no way affect any of the other provisions hereof which will remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has hereunto set his hand and seal this ________ day of ________, 2003.

[ACKNOWLEDGMENT]

(iv) Maximum density served by a cul-de-sac shall be 40 units. Maximum density served by a loop street shall be 80 units.

(v) The plat of the planned development shall designate each private street as a "private street."

(vi) Maintenance of private streets shall be the responsibility of the developer or of a neighborhood property owners association (POA) and shall not be the responsibility of the City. The method for maintenance and a maintenance fund shall be established by the PZD covenants. The covenants shall expressly provide that the City is a third party beneficiary to the covenants and shall have the right to enforce the street maintenance requirements of the covenants irrespective of the vote of the other parties to the covenants.

(vii) The covenants shall provide that in the event the private streets are not maintained as required by the covenants, the City shall have the right (but shall not be required) to maintain said streets and to charge the cost thereof to the property owners within the PZD on a pro rata basis according to assessed valuation for ad valorem tax purposes and shall have a lien on the real property within the PZD for such cost. The protective covenants shall grant the City the right to use all private streets for purposes of providing fire and police protection, sanitation service and any other of the municipal functions. The protective covenants shall provide that such covenants shall not be amended and shall not terminate without approval of the City Council.

(viii) The width of private streets may vary according to the density served. The following standard shall be used:

Paving Width
(No On-Street Parking)

Dwelling Units	One-Way	Two-Way
1 - 20	14'	22'
21+	14'	24'

***Note:** If on-street parking is desired, 6 feet must be added to each side where parking is intended.

(ix) All of the traffic laws prescribed by Title VII shall apply to traffic on private streets within a PZD.

(x) There shall be no minimum building setback requirement from a private street.

(xi) The developer shall erect at the entrance of each private street a rectangular sign, not exceeding 24 inches by 12 inches, designating the street a "private street" which shall be clearly visible to motor vehicular traffic.

(11) *Construction of nonresidential facilities.* Prior to issuance of more than eight building permits for any residential PZD, all approved nonresidential facilities shall be constructed. In the event the developer proposed to develop the PZD in phases, and the nonresidential facilities are not proposed in the initial phase, the developer shall enter into a contract with the City to guarantee completion of the nonresidential facilities.

(12) *Tree preservation.* All PZD developments shall comply with the requirements for tree preservation as set forth in Chapter 167 Tree Preservation and Protection. The location of trees shall be considered when planning the common open space, location of buildings, underground services, walks, paved areas, playgrounds, parking areas, and finished grade levels.

(13) *Commercial design standards.* All PZD developments that contain office or commercial structures shall comply with the commercial design standards as set forth in §166.14 Site Development Standards and Construction and Appearance Design Standards for Commercial Structures.

(14) *View protection.* The Planning Commission shall have the right to establish special height and/or positioning restrictions where scenic views are involved and shall have the

LEGAL DESCRIPTION:

A PART OF THE SE1/4 OF THE SW1/4 AND A PART OF THE SW1/4 OF THE SE1/4 OF SECTION 35, TOWNSHIP 17 NORTH, RANGE 30 WEST, IN THE CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

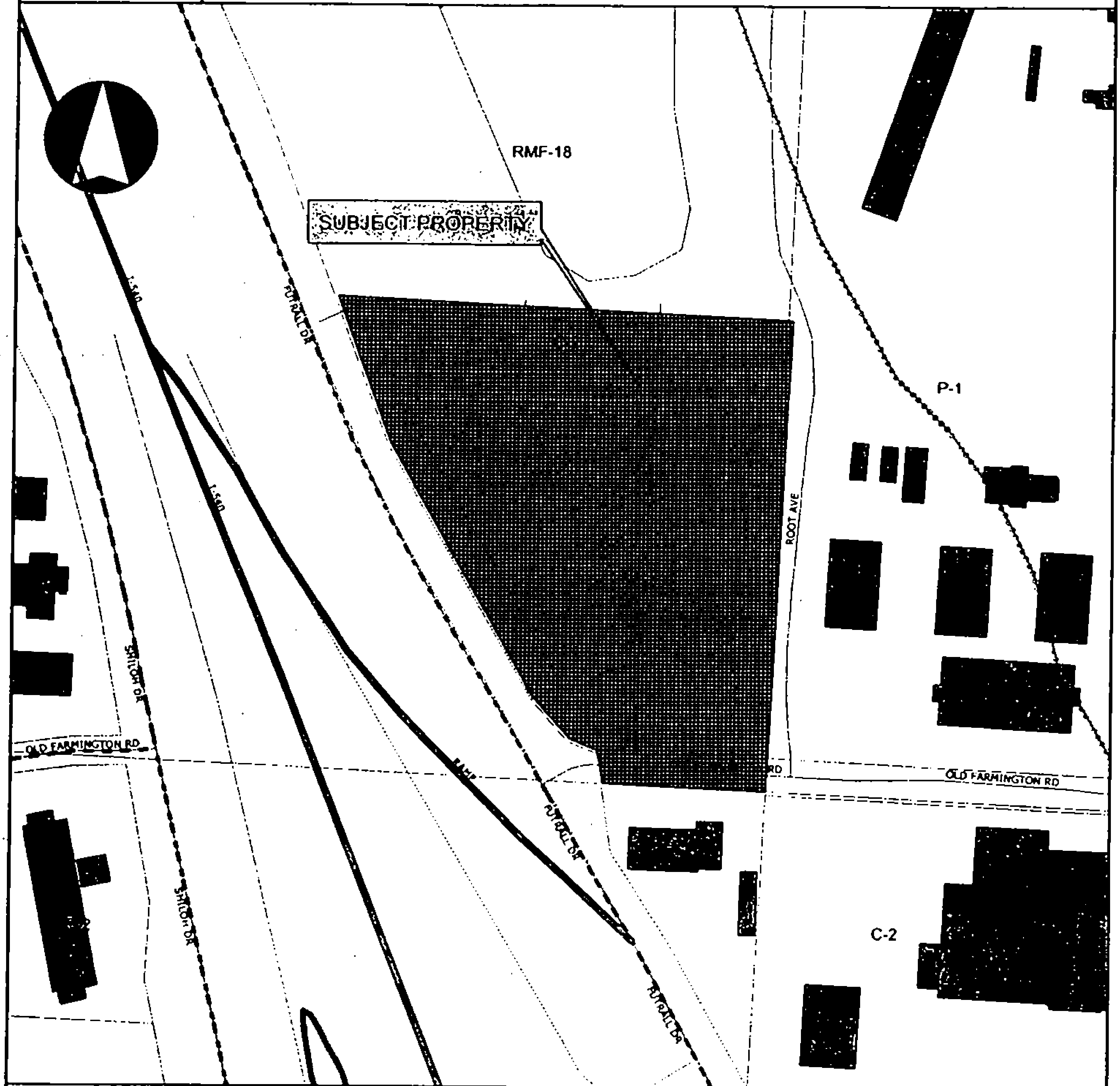
COMMENCING AT THE NE CORNER OF SAID SE1/4, SW1/4, RUN THENCE S02°19'51"W 10.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE S87°36'31"E 78.62 FEET; THENCE S87°41'04"E 226.63 FEET; THENCE S02°26'59"W 430.36 FEET; THENCE S17°19'50"E 84.79 FEET; THENCE S19°01'13"W 52.90 FEET; N89°13'34"W 204.68 FEET; THENCE S14°01'58"W 44.10 FEET; THENCE S67°01'51"W 211.76 FEET; THENCE N02°32'57"E 219.99 FEET; THENCE S87°42'47"E 63.58 FEET; THENCE N05°44'36"E 86.47 FEET; THENCE N06°05'49"E 149.85 FEET; THENCE N07°51'09"E 50.71 FEET; THENCE S87°41'04"E 139.79 FEET; THENCE N17°44'06"W 212.91 FEET; THENCE S87°41'04"E 56.84 FEET; THENCE N01°26'29"E 40.10 FEET; THENCE S87°36'31"W 11.05 FEET TO THE P.O.B., CONTAINING 6.04ACRES, MORE OR LESS, AND SUBJECT TO ALL RIGHTS-OF-WAY AND UTILITY EASEMENTS OF RECORD.

Exhibit 'A'

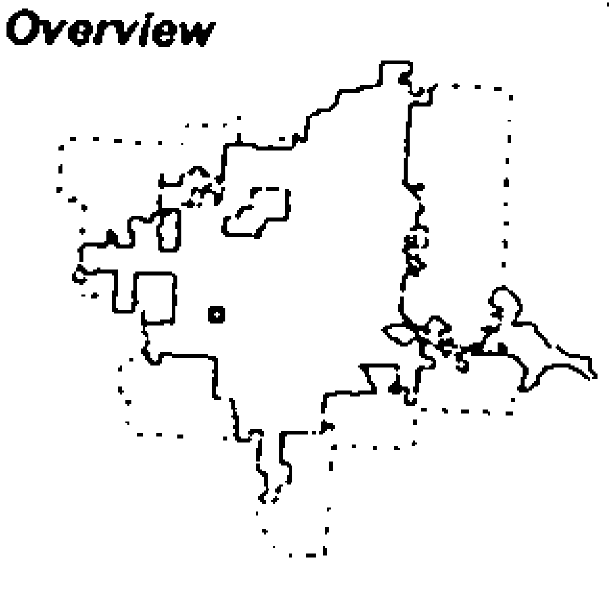
R-PZD04-01.00

Close Up View

SOUTHERN VIEW II



Overview



Legend

- FLOODWAY
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- Baseline Profile
- R-PZD04-01.00
- Overlay District

Master Street Plan

Master Street Plan

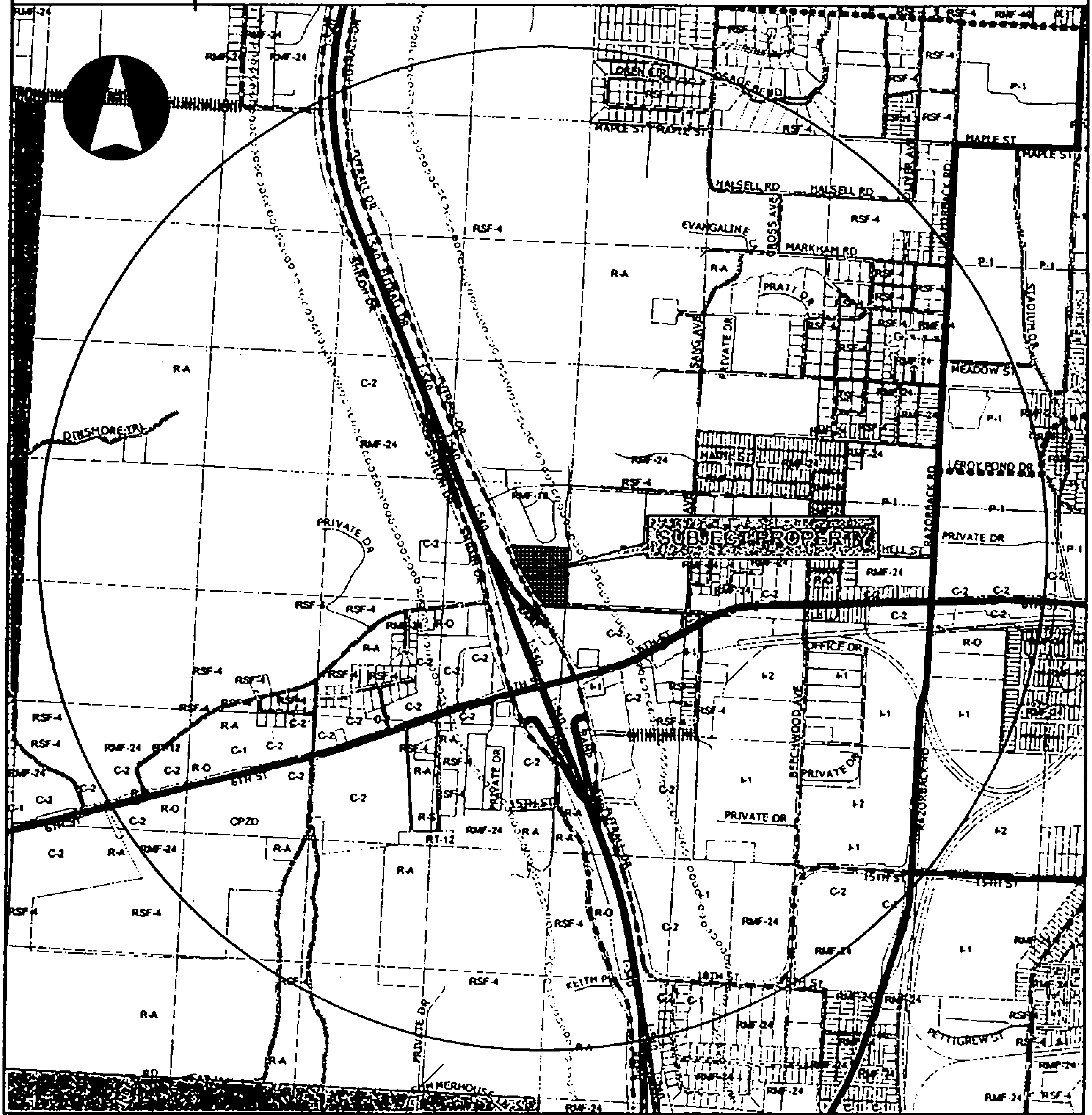
- Freeway/Expressway
- Principal Arterial
- Minor Arterial
- Collector
- Historic Collector
- Planning Area
- City Limits
- Outside City

0 75 150 300 450 600 Feet

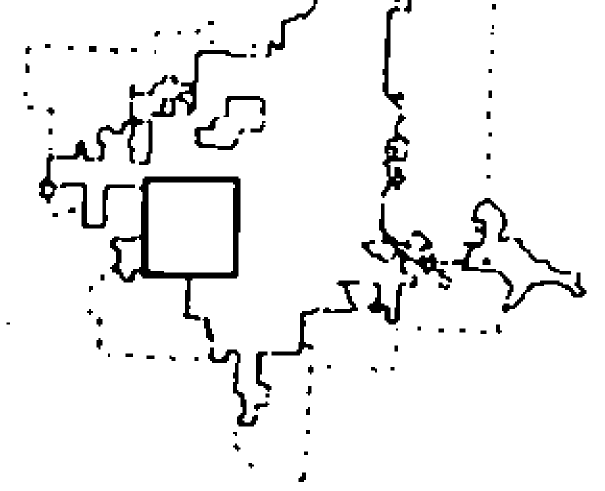
R-PZD04-01.00

One Mile View

SOUTHERN VIEW II



Overview



Legend

Subject Property

R-PZD04-01.00

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

City Limits

Outside City

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

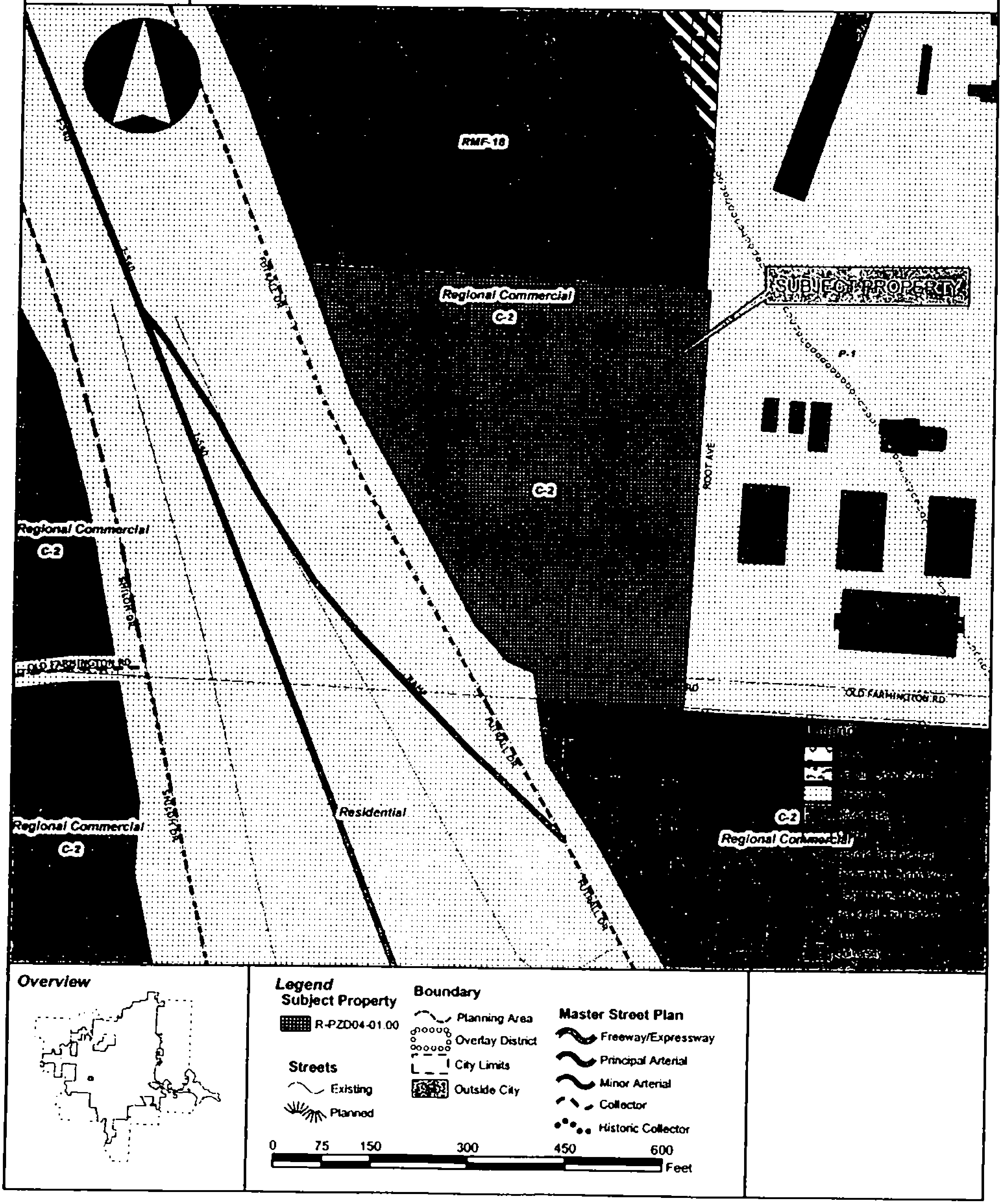
Historic Collector

0 0.1 0.2 0.4 0.6 0.8 Miles

R-PZD04-01.00

Future Land Use

SOUTHERN VIEW II



MINUTES OF A MEETING
OF THE CITY COUNCIL
JANUARY 20, 2004

A meeting of the Fayetteville City Council was held on January 20, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

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

Absent: Mayor Coody

Vice Mayor Bob Davis called the meeting to order.

State of the City Summary:
Hugh Earnest gave a brief summary of the State of the City.

Web Site Award:
Steve Davis presented the Information Technology Department the "Best of Arkansas Web Awards 2004" for the best government/politics site by Arkansas Technology business magazine.

Vice Mayor Bob Davis: I appreciate you and the work that you do, I receive a lot of compliments about our web site and I am sure the other Alderpersons do too. Thank you very much.

Election of Vice Mayor:
Alderman Marr moved to elect Alderman Davis as Vice Mayor. Alderman Jordan seconded the motion. Upon roll call the motion to elect Alderman Davis as Vice Mayor passed 7-0. Alderman Davis abstained.

Addition to the Agenda:
Alderman Cook moved to suspend the rules and add the Meter Operations staffing agenda item to the agenda. Alderman Jordan seconded. Upon roll call the motion passed unanimously.

CONSENT:

Approval Of The Minutes: Approval of the December 30, 2003 and the January 6, 2004 meeting minutes.

Canon Copier Purchase: A resolution approving the purchase of approximately 13 photocopiers from Canon USA at State contract prices in an amount not to exceed $127,000.00; and approving a budget adjustment in the amount of $127,000.00 for same.

Resolution 07-04 as Recorded in the Office of the City Clerk.

Community Access Television (CAT) Contract: A resolution approving a renewal contract in the amount of $69,000.00 with Community Access Television, to provide Public Access Television services through December 31, 2004.

Resolution 08-04 as Recorded in the Office of the City Clerk.

Seven Hills Homeless Center, Inc. Fee Waiver: A resolution to waive the building permit fee and other developmental fees including impact fees for construction and remodeling of a shelter by Seven Hills Homeless Center, Inc.

Resolution 09-04 as Recorded in the Office of the City Clerk.

Community Development Block Grant Fee Waiver: A Resolution to permanently waive the building permit fee and other developmental fees for homes to be constructed by Community Development Block Grants.

Resolution 10-04 as Recorded in the Office of the City Clerk.

Alderman Jordan moved to approve the consent as read. Alderman Reynolds seconded. Upon roll call the motion to approve the consent passed unanimously.

George Weiss asked when the Community Access Television would be paid; they normally are paid the 15th of the month.

Vice Mayor Davis asked Mr. Weiss to contact Hugh Earnest in the morning so he can get that resolved.

OLD BUSINESS:

R-PZD 03-6.00; Benton Ridge, Long, LLC: An ordinance establishing a Residential Planned Zoning District titled (R-PZD 03-6.00) located on the east side of Crossover Road north of Huntsville Road and south of Wyman Road containing 8.34 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Residential

Development Plan as approved by the Planning Commission. ***This ordinance was left on the first reading at the January 6, 2004 City Council meeting.***

Alderman Thiel: This proposed plan has 23 lots with 129 bedrooms, if all these units were three bedroom single family units there would only be 69 bedrooms which is almost half the amount proposed in this PZD.

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

Mr. Williams read the ordinance.

Jerry Kelso with Crafton Tull and Associates gave a brief history of the project. He said they have met with the adjacent property owners. He feels the project is compatible with the area. He also stated the current zoning is RSF-4 and four units per acre could be put on the property at the current zoning which could amount to more bedrooms. We are asking that the City Council support the Planning Commission they approved this unanimously and the Planning Staff has approved it.

Alderman Thiel: I don't see how you could do more lots on that property even if the zoning would allow you more units per acre because of the contour of the land. Why was the single family units not put adjacent to the current single family homes?

Jerry Kelso: Staff recommended and we felt the single family would be better along Highway 265.

Alderman Thiel: I think the residents of the area would be happier if there was less multi-family.

Jerry Kelso: The letters that you have are before we met with them and tried to address their concerns, I thought we had addressed their concerns.

Alderman Thiel: They were also assured that some of those units were one story and now they are one and a half story that are adjacent to the current property owners.

Jerry Kelso: We thought that they had seen this plan and it was our understanding that they were happy with what we have now, if that is not the understanding then we need to talk to them again. We have not heard anything from them; we thought we had taken care of all those issues.

Alderman Reynolds: How much green space are you leaving between the project and Buckner Cemetery?

Jerry Kelso: About 20 to 25 feet.

Alderman Reynolds: The residents are concerned about the cemetery and children playing in the cemetery.

Jerry Kelso: We can install a fence to keep children out.

Alderman Reynolds: I have a hard time seeing this fit in this neighborhood that is so old. Maybe you need to have another meeting with them.

Jerry Kelso: Sure we can do that, again it was our understanding that we had addressed their concerns.

Ilsa Isaacs, a resident of the area, spoke on the PZD and her concern about two story units adjacent to the existing homes. She asked that the single family units be moved adjacent to the existing single family homes.

Jon Brittenum, the owners representative, said they would be happy to meet with the property owners again. He gave a description of the property in the area. He feels this is a nice addition to this area and that it is a need for the area. He stated they had tried to meet every ones needs and wants.

Alderman Thiel: I would like for you to consider the single family against the existing single family and bring the multi-family to the front.

Alderman Marr: We tend to transition density from major roadways, why did we leave the single family along Highway 265?

Dawn Warrick: Part of that was based on the developers' desire because they did want the front of the development to appear to have a single family character. Lot 23 is a Tatum lot and should only have a single family home on it.

Alderman Marr: It seems to be a concern that the single family abuts the current single family if we can do that I would like to see that done.

Jon Brittenum: We will talk with the property owners about that.

Alderman Lucas: This is not compatible with the neighborhood to the east. We need to respect their feelings. She also suggested the density be lower so the development will be more compatible with the area surrounding it.

Jon Brittenum: What type of density? We have taken the PZD and ran full circle with it according to how the ordinance is written with the help of the Planning Staff. We felt we had met the requirements of the ordinance, by saving natural drainage, saving the trees, the setbacks, and the zoning. If it were to be developed as it is currently zoned the natural drainage would not be saved and it would not be here before the Council to make this decision. We feel we are doing what is necessary to get this PZD approved and provide a nice project for the City of Fayetteville and the surrounding property owners.

Alderman Marr: Proposed covenants versus Bill of Assurances, what is the protection difference.

Kit Williams: To change the covenants a majority of the property owners must get together to change the covenants. This PZD process was designed to avoid Bills of Assurances in the future. Bill of Assurances can be enforced by the City, covenants the City does not enforce; those are private agreements among the property owners to ensure that their development is as they like it.

Alderman Thiel: There will be a Ward I meeting at the Buckner Church Fellowship Hall on Monday, January 26 at 6:00 PM it might be a time that you can address these issues.

Alderman Reynolds: We want to talk about the proposed covenants at that meeting so we need a copy of it for the meeting.

Vice Mayor Davis: I am impressed with the proposed covenants.

A discussion followed on the landscape plan.

This ordinance was left on the second reading.

R-PZD 03-7.00; Brophy Condominiums, Ralph Brophy: An ordinance establishing a Residential Planned Zoning District titled (R-PZD 03-7.00) located east of College Avenue, north of Township on Brophy Circle containing 6.01 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the Planning Commission. ***This ordinance was left on the first reading at the January 6, 2004 City Council meeting.***

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

Mr. Williams read the ordinance.

Alderman Thiel: We received a memo from staff stating that we could not request that the developer forego payment into the tree escrow account. In order to plant an evergreen screen, he would be required to submit a full mitigation plan with guarantees to the landscape administrator.

Vice Mayor Davis: Kit, are you in agreement with this memo?

Kit Williams: This came from Planning, I am in agreement with it but you should ask Planning.

Dawn Warrick: This is an action that the Council has taken in the past. That is a waiver that you have granted in the past, it is also an ordinance amendment that staff is proposing and that the Planning Commission has voted unanimously to forward to you.

A discussion followed on the waiver.

Bill Rudasill, Engineer for the project, we are in agreement to the buffer, we are going to do it.

A discussion followed on the screen.

Alderman Lucas: I am concerned about the safety and the traffic. Has that been resolved?

Dawn Warrick: The access easement from North College to this site will be maintained in a permanent access easement providing access to the property.

Vice Mayor Davis expressed his concern about the traffic.

Alderman Rhoads: Whatever else we have for Mr. Rudasill to check out let's state it now so we can make a decision at the next meeting.

Alderman Thiel: You will need to get with the Landscape Administrator.

Alderman Thiel expressed her concerns about the PZD's and the goals and guidelines of a PZD.

This ordinance was left on the second reading.

Council on Aging, Inc.; Lease Senior Center, Walker Park: A resolution to approve a lease and agreement to provide services with the Council on Aging, Inc. for the Fayetteville Senior Activity Center in Walker Park. ***This resolution was tabled at the January 6, 2004 City Council meeting until the January 20, 2004 City Council meeting.***

Janet Linebaugh, Executive Director of the Senior Center spoke on providing additional hours for the Senior Center to be open. She stated they only get a certain amount of money each year; they do not get additional money if they serve additional people. Due to the success of the new center they have tripled the amount of people that come to the center.

A discussion followed on personnel that have been cut from the center due to the increase in the additional services being provided. The money from employees' salaries had to be used to provide the additional services, such as meals.

Janet Linebaugh also explained the Senior Centers budget and the additional cost the Senior Center has incurred.

Alderman Rhoads: You have explained your problems very well; there are some on the Council that would like that facility used to the max. What is your solution?

Hugh Earnest: We would like to review how services are being delivered at that facility. One option is to ask the Public Housing Authority pick up the salary of the individual that is currently assigned by the Council on Aging to provide services at the Public Housing Authority. This is a partial solution. The other suggestion is a survey of the client base to see if there is an interest of having services on Saturday and Sunday. The other conservation is to find the funds from some source to open it more hours.

A discussion followed on the cost estimate to provide services on the weekend that was presented to the Council.

A discussion followed on the current hours of operation and proposed hours of operation.

Paul Vinson, President of the Board, Council on Aging of Washington County said the current hours of operation can not be changed without the approval of the Area Agency on Aging because of the contract that they have with them.

A discussion followed on the hours of use and getting approval for a change on the hours from open all day to open a partial day.
Alderman Rhoads: This is not a reflection on the quality or the job that you are doing. Thank you for what you are doing.

Vice Mayor Davis: Janet, you are doing a tremendous job on limited resources.

Alderman Marr: I would like to know the cost to be open from 8:00 to 1:00 both days and servicing a meal versus being open from 8:00 to 5:00 each both days and serving a meal. Also are these number based on a 12 month period?

Janet Linebaugh: Yes.

Alderman Marr: I would like to know the cost for this additional service until the end of your physical year.

Alderman Lucas: Will you also provide transportation on these extra days?

Janet Linebaugh: That is what we do Monday through Friday; we would have to look at that, it depends on the survey results.

Alderman Davis: I would like to see the numbers for a ten hour time frame split over two days that serves a meal for a half a year.

Alderman Reynolds: What percentage are volunteers? Would they have to work on Saturday and Sunday?

Janet Linebaugh: That is one issue we have discussed, if the volunteers would be there to help us out.

Alderman Reynolds: I had a call from a person that the only meal they get is from the Senior Center. They suggested that you might do a trial period to see if different hours will work.

Alderman Lucas: They do a great service, we must remember they do not charge, they ask for donations, they can't charge a fee if we ask them to do more we need to think about helping them.

A discussion followed on approving the resolution or tabling the resolution until a survey is completed.

Alderman Jordan: I want to stress that if there is more money needed to keep the services to provide the type of employees that you need, I want to know that and I think this Council does too. If changes need to be made I am willing to make those changes. I am here to support you not shut you down.

Paul Vinson: The Library and the Boys and Girls Club are fully funded. We have to get donations for 49% of our budget, we never know if we will have enough money to complete a year. We have lost a couple of sources of revenue if you can help us raise funds we would appreciate that. We would certainly like to do more if we had the funds.
Alderman Jordan moved to table this resolution to the March 2, 2004 City Council meeting. Alderman Marr seconded. Upon roll call the motion to table passed unanimously.

NEW BUSINESS:

WIV-Fayetteville Cost-Share: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with WIV-Fayetteville, LLC in an amount of $25,512.00 plus a contingency of $3,826.00 for a total of $29,338.00 for the construction of 350 feet of 8-inch water main.

Mr. Williams read the ordinance.

Alderman Jordan: The city is asking this development to construct this, is that correct?

Gary Coover, Engineering: Correct.

Gary Coover explained the project.

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

Mr. Williams read the ordinance.

Alderman Thiel: Gary did you have an opportunity to speak with the Northwest Arkansas Mall to see if they were willing to help fund part of this?

Gary Coover: I talked to Kit to see if such an agreement could be worked out and he said that probably wouldn't be a problem, I talked to Mayor Coody and he said to get with him and he would call the mall, but that didn't happen before he left town.

A discussion followed on contacting the Mall to see if they will cost share this and the reason this needs to be constructed.

This item was left on the second reading.

Mount Sequoyah Woods Conservation Easement: A resolution to reaffirm its commitment to sell most of its development rights to the Fayetteville Natural Heritage Committee on the 67 acres of Mount Sequoyah Woods purchased by the City of Fayetteville pursuant to Resolution No. 46-03.

Vice Mayor Davis: We have been asked to table this item tonight by the Fayetteville Natural Heritage Committee.

Alderman Marr moved to table this until the next City Council meeting. Alderman Jordan seconded. Upon roll call the motion to table passed unanimously.

Creation of an Ex Officio, Nonvoting Council Member: A resolution to amend the Rules of Order and Procedure of the Fayetteville Mayor/City Council by adding Section J., creating an Ex Officio, nonvoting Council member designated to be filled by the President of the Associated Student Government of the University of Arkansas.

Alderman Rhoads: I wouldn't do anything to upset what I believe is an incredible chemistry between this Council and the Mayor. I look at this proposal as more of an enhancement to what we can do to achieve one of our principle goals, "A Better Relationship with the University of Arkansas" and in no way is it a suggestion or implication that the Council isn't serving the University very well, it is truly an enhancement.

Jeff Erf: What special rights does this ordinance give a student representative from the University that they don't already have?

Alderman Rhoads: They would be in the pipeline to receive the normal mailings, Council tours and do things the general public normally wouldn't participate in.

Jeff Erf: It is available to the general public.

Alderman Rhoads: When you are appointed to a position you tend to be a little more diligent and more involved.

Jeff Erf: I am opposed to the ordinance. He discussed his concerns about the ordinance.

Price Feland, Secretary of the Associated Student Government at the University of Arkansas expressed his appreciation to Alderman Rhoads for bringing this forward. He spoke in favor of the resolution.

Suzanne Krumpelman, a grad student at the University of Arkansas, spoke in opposition to the resolution.

Dan Oberste, Vice President of the Associated Student Government at the University of Arkansas spoke in favor of the resolution.

Alderman Marr voiced his concerns about the resolution. He voiced his concerns about the lack of participation by university students in the past. He also voiced his concerns about other special interest groups wanting a seat on the Council.

Alderman Jordan said he has had several phone calls against this resolution. He voiced his concerns about the resolution.

Alderman Thiel stated she has had no support for the resolution. She stated her reasons for her opposition to the resolution.

Alderman Lucas stated she has had numerous calls and emails in opposition to this resolution. She stated her reasons for her opposition to the resolution.

Alderman Reynolds stated he had several calls in opposition to this resolution. He stated that he could not support the resolution.

Alderman Rhoads: I feel you have considered this and thought about it. University students don't come as often as they should, I think if we give them a place at the table they will participate more.

He suggested the resolution be changed to read as follows: Whereas the City desires a closer relationship with the University of Arkansas and believes that that relationship will be enhanced with a temporary Ad Hoc student filled Ex-Officio position on its Council. Then change and amend the resolution to read that it would be effective for one year so that it is a temporary position with a realization that we are trying to build our relationship with the University to greater heights and the realization that it's truly something a little bit different than the other groups that have been mentioned.

Alderman Rhoads moved to change the resolution to make the position effective for a period of one year. Alderman Marr seconded.

Price Feland spoke in favor of the change to the resolution.

Susan Krumpelman spoke a second time against the resolution.

David Garcia, a resident, spoke on the resolution. He will ask for other Ex Officio positions to be put on the City Council if this resolution is passed.

Gerald Jordan, a resident, spoke on the ordinance.

Dan Oberste spoke again on the resolution.

Kit Williams read the proposed changes to the resolution.

Alderman Jordan thanked Alderman Rhoads for bringing this forward.

Upon roll call the amendment to the resolution passed 5-3. Alderman Lucas, Jordan, Marr, Rhoads and Davis voting yes. Alderman Reynolds, Thiel and Cook voting no.

Alderman Rhoads moved to approve the resolution. Alderman Marr seconded. Upon roll call the resolution failed 1-7. Alderman Rhoads voting yes. Alderman Lucas, Jordan, Reynolds, Thiel, Cook, Marr and Davis voting no.

Resolution Failed.

Meter Operations Division Additional Staffing: A resolution to approve two full time equivalent positions in the Meter Operations Division and a budget adjustment in the amount of $36,090.00 to pay for those employees.

Greg Boettcher: Two meter operations department employees have been called to active duty. We are requesting that the Council approve two additional full time positions to carry us through the year of service that they have been called in for and a budget adjustment to fund those positions. As the year wears on and we see that our regular employees are coming back we will look at how we either use attrition or transfers to staff back down.

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

Informational Items:

Alderman Reynolds suggested that there be a five minute citizen comment period at the end of each City Council meeting for citizens to come before the Council and express their concerns. He asked the Council to consider his suggestion.

Hugh Earnest: We will receive from the Beaver Water District a refund in the amount of $426,277.

Meeting adjourned at 8:30

Sondra Smith
City Clerk

Final Agenda
City Council Meeting
February 3, 2004

A meeting of the Fayetteville City Council will be held on February 3, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

A. CONSENT:

1. **Approval Of The Minutes:** Approval of the January 20, 2004 meeting minutes.

2. **Telecommunications Task Force:** A resolution to establish a Task Force to recommend a plan and an implementation strategy for a Telecommunications Policy and Infrastructure Development.

3. **ADEA Post Closure Trust Fund:** A resolution authorizing the Fayetteville Parks & Recreation Division to apply for a Post Closure Trust Fund Grant from the Arkansas Department of Environmental Quality (ADEQ) for the C & L Landfill study and remediation.

4. **Wastequip May Fab Bid Award:** A resolution approving the purchase of 2 to 8 yard trash containers from Wastequip in an amount not to exceed $63,000.00 to service multi-family and commercial solid waste customers.

5. **Bes-Pac Bid Award:** A resolution approving the purchase of trash compactors and roll-off container/compactors in an amount not to exceed $85,859.00 from Bes-Pac, Inc., and Downing Sales, Inc.

6. **ESRI 2004 Service and Maintenance Fees:** A resolution approving the annual maintenance agreement in the amount of $20,692.30 with ESRI, Inc. for Geographic Information System (GIS) software maintenance and upgrades.

7. **Hansen 2004 Service and Maintenance Fees:** A resolution approving a purchase request to Hansen Technology, Inc. in the amount of $44,852.10 for software service and maintenance fees.

8. **Van Scoyoc Associates:** A resolution approving a memorandum of agreement with Van Scoyoc Associates and a budget adjustment in the amount of $85,000.00 to provide consulting legislative services in the amount of $75,000.00, plus expenses up to $10,000.00.

9. **Rules of Order and Procedure - Handbook Arkansas Municipal Officials:** A resolution to clarify that the Rules of Order and Procedure of the Fayetteville Mayor/City Council should follow the "Procedural Rules for Municipal Officials" by the Arkansas Municipal League.

10. **Rules of Order and Procedure – Voting:** A resolution to modify Section B.4. Voting on the Rules of Order and Procedure of the Fayetteville Mayor/City Council.

B. OLD BUSINESS:

1. **Impact Fees for Road, Police and Fire Improvements:** An ordinance waiving the requirements of competitive bidding and approving a contract with Duncan and Associates to calculate Impact Fees for Road, Police and Fire Improvements in the amount of $25,890.00 with a contingency amount of $1,500.00 and approving a Budget Adjustment of $27,390.00.
This Ordinance was left on the first reading at the January 6, 2004 City Council meeting.
This Ordinance was tabled at the January 6, 2004 City Council meeting until the February 3, 2004 City Council meeting.
Staff will be asking to table this to the February 17, 2004 City Council meeting.

2. **R-PZD 03-6.00; Benton Ridge, Long, LLC:** An ordinance establishing a Residential Planned Zoning District titled (R-PZD 03-6.00) located on the east side of Crossover Road north of Huntsville Road and south of Wyman Road containing 8.34 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the Planning Commission.
This ordinance was left on the first reading at the January 6, 2004 City Council meeting.
This ordinance was left on the second reading at the January 20, 2004 City Council meeting.

3. **R-PZD 03-7.00; Brophy Condominiums, Ralph Brophy:** An ordinance establishing a Residential Planned Zoning District titled (R-PZD 03-7.00) located east of College Avenue, north of Township on Brophy Circle containing 6.01 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the Planning Commission.
This ordinance was left on the first reading at the January 6, 2004 City Council meeting.
This ordinance was left on the second reading at the January 20, 2004 City Council meeting.

4. **WIV-Fayetteville Cost-Share:** An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with WIV-Fayetteville, LLC in an amount of $25,512.00 plus a contingency of $3,826.00 for a total of $29,338.00 for the construction of 350 feet of 8-inch water main.
This ordinance was left on the second reading at the January 20, 2004 city Council meeting.

5. **Mount Sequoyah Woods Conservation Easement:** A resolution to reaffirm its commitment to sell most of its development rights to the Fayetteville Natural Heritage Association, Inc. on the 67 acres of Mount Sequoyah Woods purchased by the City of Fayetteville pursuant to Resolution No. 46-03.
This resolution was tabled at the January 20, 2004 City Council meeting.

C. NEW BUSINESS:

1. **R-PZD 04-1.00 – Southern View II:** An ordinance establishing a residential planned zoning district titled (R-PZD 04-1.00) located on Futrall Drive and Old Farmington Road east of I-540 containing 6.713 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the associated residential development plan as approved by the Planning Commission.

2. **Southern View Phase II, Money in Lieu of Land:** A resolution accepting the parks and Recreation Advisory Board's recommendation to accept $40,086.00 cash in lieu of the required park land dedication for Southern View Phase II.

3. **Re-budget 2003 Budget Items:** A resolution approving a budget adjustment to re-appropriate $58,605,226.00 in order to retain project funding for identified and scheduled capital improvements and fund increased workers compensation premiums.

4. **ADM 03-29.00 – Chapter 167 Tree Preservation Amendment:** An ordinance amending Title XV: Unified Development Code, of the Code of Fayetteville, to provide amendments to and clarification of various provisions concerning tree preservation and protection.

5. **Attendance Requirements for Planning Commissioners:** An ordinance to repeal §33.111 removal of Planning Commissioners and enacting §33.300 attendance requirement for all members of citizen committees, boards and commissions.

D. INFORMATIONAL:

Council Tour: February 2, 2004

RESOLUTION NO. ____

A RESOLUTION TO ESTABLISH A TASK FORCE TO RECOMMEND A PLAN AND AN IMPLEMENTATION STRATEGY FOR TELECOMMUNICATIONS POLICY AND INFRASTRUCTURE DEVELOPMENT

WHEREAS, the City of Fayetteville, its citizens, businesses, and public offices, will benefit from a coordinated approach to planning for the technology and telecommunications environment that supports vital communication channels and seeks to provide an innovative approach to broadband communications services as a building block for the city's goals and guiding principles.

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, creates the City Technology and Telecommunications Infrastructure Planning Task Force whose charge includes:

A. Reviewing the existing information technology and telecommunications infrastructure used by the city, available telecommunications services, rights-of-way management strategies, and telecommunications regulatory structure.

B. Identifying the telecommunications needs of the community (government, schools, business, public) and how to best meet those needs.

C. Developing a Technology and Telecommunications Infrastructure Vision and Policies statement that provides direction for the plan and guides the implementation of telecommunications technologies in support of community interests, local governance, and consistent with the city's goals and guiding principles.

D. Developing a comprehensive telecommunications strategy and regulatory framework plan to support a coordinated regional information infrastructure that provides accessible and affordable high-speed connectivity for citizens, public institutions, and businesses.

Section 2. That the Mayor shall appoint two Council Members who shall appoint two Fayetteville citizens as Co-Chairs of the City Technology and Telecommunications Infrastructure Planning Task Force.

Section 3. That the Co-Chairs of the City Technology and Telecommunications Infrastructure Planning Task Force shall appoint 8 Fayetteville citizens as members to promote the interests and represent constituents from the government, schools, general

DRAFT

public, and business sectors (two for each area). These appointments will be made by the Co-Chairs after advertising and promotion in local newspapers. At least one member from both the City Administration and the City Telecommunications Board will be named. Staff support will be negotiated by Co-Chairs with City Administration. The Task Force may seek budgetary support from the City Council.

Section 4. That the City Technology and Telecommunications Infrastructure Planning Task Force shall present its strategy and implementation plan to the City Council no later than December, 2004.

PASSED and **APPROVED** this the 3rd day of February, 2004.

APPROVED: DRAFT

By: ______________________________
DAN COODY, Mayor

ATTEST:

By: ______________________________
SONDRA SMITH, City Clerk

ALDERMAN AGENDA REQUEST FORM

FOR: COUNCIL MEETING OF FEBRUARY 3, 2004

FROM:

MAYOR DAN COODY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT WITH VAN SCOYOC ASSOCIATES AND A BUDGET ADJUSTMENT IN THE AMOUNT OF $85,000.00 TO PROVIDE CONSULTING LEGISLATIVE SERVICES IN THE AMOUNT OF $75,000.00, PLUS EXPENSES UP TO $10,000.00

APPROVED FOR AGENDA:

Dan Coody 1/29/04

Dan Coody, Mayor Date

1/29/04

City Attorney (as to form) Date

RESOLUTION NO. ______

A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT WITH VAN SCOYOC ASSOCIATES AND A BUDGET ADJUSTMENT IN THE AMOUNT OF $85,000.00 TO PROVIDE CONSULTING LEGISLATIVE SERVICES IN THE AMOUNT OF $75,000.00, PLUS EXPENSES UP TO $10,000.00

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the attached Memorandum of Agreement with Van Scoyoc Associates for consulting legislative services in the amount of $75,000.00, plus up to $10,000.00 in expenses.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of $85,000.00 attached as Exhibit B.

PASSED and **APPROVED** this the 3rd day of February, 2004.

APPROVED:

DRAFT

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
SONDRA SMITH, City Clerk

MEMORANDUM OF AGREEMENT

Agreement. The City of Fayetteville hereby retains Van Scoyoc Associates, Inc. (VSA) as consultants and advisors with regard to various legislative and administrative matters.

Statement of Work. VSA will assist the City of Fayetteville and its personnel in the following areas:

- Developing a program and strategy towards obtaining federal appropriations and grants for Fayetteville's future economic viability.
- Analyzing and informing the City of contemplated legislative and regulatory changes that may positively or negatively affect programs of interest to the City.
- Educating Members of Congress and their staffs about Fayetteville concerns or opportunities with respect to legislation or regulations.
- Building grassroots support of the projects to demonstrate local interest by finding individuals and groups with goals similar to those of the City.
- Working with the relevant committees to secure enactment of the legislative agenda or otherwise advance the interests of the City.
- Assisting in working with federal agencies and the federal administration to identify, create and secure new federal grant and funding opportunities.

Lobby Disclosure Act. It is understood that VSA will be required to register on behalf of the City of Fayetteville under the terms of the Lobbying and Disclosure Act of 1995 (P.L. 104-65) and any subsequent laws or regulations.

Term. In consideration of the performance of these services, the City of Fayetteville shall pay to VSA the sum of $6,250 per month for the period of February 1, 2004 through January 31, 2005, for a total of $75,000 in retainer expenses.

The City of Fayetteville further agrees to pay all reasonable costs and expenses incurred by VSA in furtherance of its efforts on behalf of the City, including, but not limited to, copies, facsimiles, couriers, telephone, local transportation and meals directly attributable to those efforts. VSA agrees that these expenses, exclusive of out-of-town travel costs taken solely at the City's direction, shall not exceed $10,000 during the contract term.

Notice. The City of Fayetteville shall have the right to terminate this contract after giving VSA 30 days advance written notice. Should the City exercise this option, it agrees to pay VSA all outstanding retainer and expense costs owed through the termination date.

VAN SCOYOC ASSOCIATES

By: H Stewart Van Scoyoc
H. Stewart Van Scoyoc
President

Date: January 28, 2004

CITY OF FAYETTEVILLE

By: ____________________
Dan Coody
Mayor

Date: ____________________

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department / Division / Program	Date Requested	Adjustment Number
2004	Department: General Government Division: Miscellaneous Program: Miscellaneous	2/3/2004	

Project or Item Requested:
$85,000 is being requested in the Professional Services account.

Project or Item Deleted:
None. $85,000 from the General Fund Use of Fund Balance.

Justification of this Increase:
The funds are needed for the City of Fayetteville to enter into a contract with Van Scoyoc Associates for Grant Writing services. The amount of the contract is $75,000 with another $10,000 being requested for outside reimbursable expenses.

Justification of this Decrease:
In 2003, there was $6,636,816 in remaining funds not being requested for re-budgeting that will go back to fund balance for other future uses.

The General Fund has sufficient funds available to comply with City Policy.

Increase Budget (Decrease Revenue)

Account Name	Account Number				Amount	Project Number	
Professional services	1010	6600	5314	00	85,000		

Decrease Budget (Increase Revenue)

Account Name	Account Number				Amount	Project Number	
Use of fund balance	1010	0001	4999	99	85,000		

Approval Signatures

Requested By ______ Date ______

Budget Manager ______ Date 1-29-04

Department Director ______ Date ______

Finance & Internal Services Director ______ Date ______

Mayor ______ Date ______

Budget Office Use Only

Type: A B C D E

Date of Approval ______ Initial ______ Date ______

Posted to General Ledger ______ Initial ______ Date ______

Posted to Project Accounting ______ Initial ______ Date ______

Entered in Category Log ______ Initial ______ Date ______

WBR ENGINEERING ASSOCIATES, P.A.,

4241 Gabel Dr., Suite 1B
Fayetteville, Arkansas 72703

William B. Rudasill, Jr., P.E.

Phone: (479) 582-2820
Facsimile: (479) 582-1788

January 29, 2004

Mrs. Dawn Warwick
City of Fayetteville
113 West Mountain Street
Fayetteville, Arkansas 72701

RE: Council Comment Responses
R-PZD 03-07.00 (Brophy Condominiums)

Dear Mrs. Warwick,

In response to the comments gathered from the last council meeting regarding above referenced project.

1. Submittal Requirements

- Prepare a tree planting detail for the evergreen screen proposed for the west line of said project..
- Provide bill of assurance with regards to said screen and screen maintenance.
- Revised covenants to address maintenance of screen and maintenance of steets

2. Comments:

- Comments regarding project slopes and why is this development being considered as a PZD.

  First, the project slopes are in general less than 15 percent. With a section in the 15 to 18 percent slope range and a very minor portion above 18 percent. Of the areas above 18 percent, they are located such that very little if any construction will be within these zones. As for the areas 15 to 18 percent the majority of these areas will be filled to accommodate roads and/or drives entering the residences. This being the case, the site is not in major conflict with the current hillside development guidelines being used by the city at this time.

  Secondly, the project is located in a transition zone between commercial and single family residential and is zoned three different densities. Each of which has no geometrical shape to make them viable to a symmetrical layout for the overall property with out changing the site topography. By adjusting the site topography in the multifamily zones currently in place, a density of equal or grater prototypical apartment population can be established but the developer wishes to create a higher end development which better flows with the terrain and will be intermingles with the existing tree canopy. This is not just an attempt to get a duplex development. Location, Terrain, Surrounding development all led to this request.

- Comments regarding the north entrance.

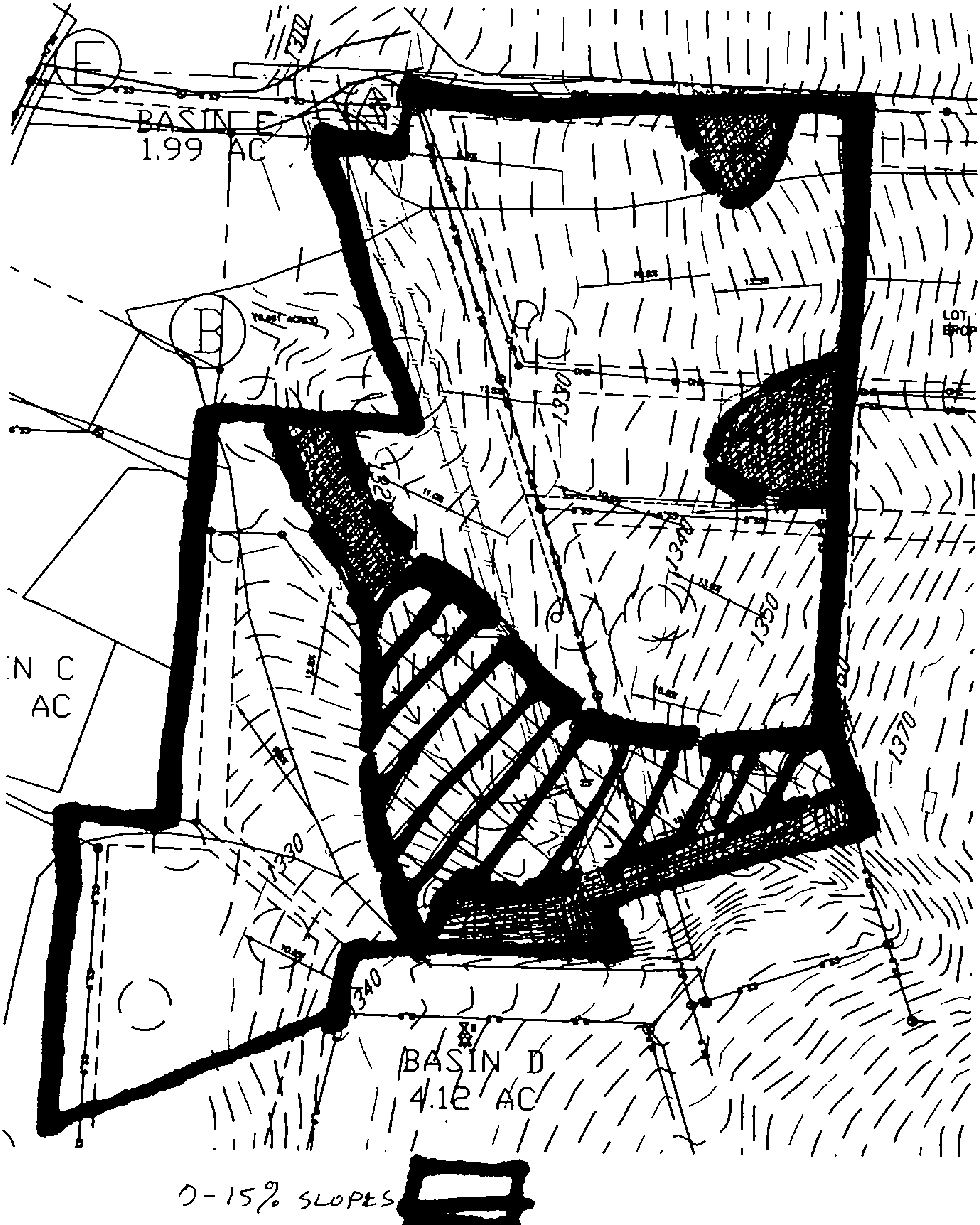
First, I understand you concerns regarding this intersection, however, based on the following data, it is my opinion as a engineer that the drive in question will not increase endangerment at the signal. First the drive is located 190 feet from the center of Sunbridge which is greater that the 150 foot guideline used by the City. Secondly, if you establish a maneuvering zone as shown on the attached exhibit. There is still a 3 three to four car link merging/stopping zone which is a very comfortable distance to accommodate congested traffic, and please note I have personally exited the drive during congested traffic to see if my evaluation is reasonable. Thirdly, the site distance in either direction is very accommodating with no obstructions such as bushes or telephone poles. Fourhly, there is limited traffic which will be using the existing turn lane at Sunbridge as it is only a threeway street intersection. And lastly, as positioned the light provides a traffic break for entrance and exit from the afore mention existing drive. If this distance were 30 to 40 feet closer to the intersection creating a 1 to 2 car distance for maneuvering prior to entering the intersection meaning you are still turning while having to deal with traffic I would agree that further measure would be warranted. However in this case they are not. Also attached is a letter from the police chief stating that in his opinion the population density would not create appreciable increase in traffic danger and traffic congestion.

It has also been requested that a barrier be installed to create or attempt to create a right turn only situation for exiting traffic. In my opinion this would cause a problem for incoming traffic as it places a barrier in the drive for them to deal with also. In order for this to be done properly, the drive would need to be widened and there no right of way to allow for a widening. The street is currently a 31 foot wide street (bc-bc) with a flared entrance which uses the entire available width of road easement. If the council wishes a right turn only sign could be placed at the drive exit, however, as noted above it is my opinion that this drive sufficient as is.

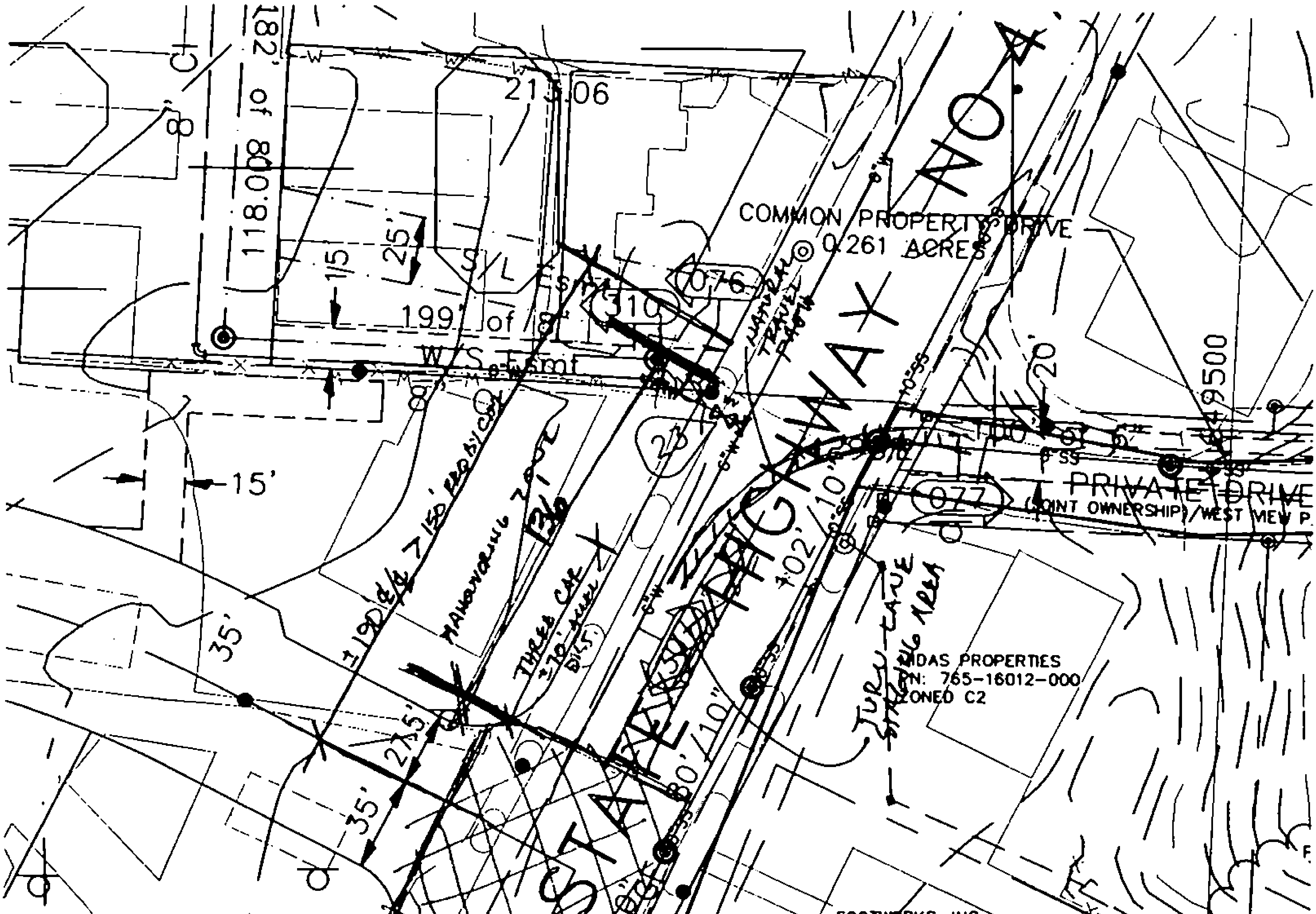
Respectfully Submitted,

William B. Rudasill, Jr., P.E.

WBRJR/
Enclosures



0-15% SLOPES
15-18% SLOPES
18% + SLOPES



COMMON PROPERTY DRIVE
0.261 ACRES
PRIVATE DRIVE
(JOINT OWNERSHIP)/WEST VIEW P
MIDAS PROPERTIES
PN: 765-16012-000
ZONED C2
FOOTWORKS, INC
PN: 765-16013-000
ZONED C2
RKD RESTAURANTS, INC
PN: 765-16007-000
ZONED C2
LANGHAM, CLAUDE AND NOLA
PN: 765-16014
AVENUE & STATE HIGHWAY NO. 4
HWY 7B/NORTH
215.06
118.00' of 8"
199' of 8"
100' of 6"
170' of 6"
140'/10"
80'/10"
102'/10"
W/S Esmt
S/L
35'
27.5'
15'
25'
9500
076
310
077
223
29014

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Declarant is the Declarant of certain property in Fayetteville, Washington County, Arkansas, and has caused certain lands owned by him to be platted into an addition known as Ralph Brophy's Condominiums Association Addition to the City of Fayetteville, Washington County, Arkansas, and the plat thereof appears of record in the office of the Recorder of Washington County, Arkansas, in Plat Book ________ at Page ________; and,

WHEREAS, Declarant desire to provide for the use of property for the highest of residential uses and to restrict its uses as such;

NOW THEREFORE, Declarant hereby adopts the covenants stated herein and agrees that the stated covenants shall apply to all of the property now platted as Ralph Brophy's Condominiums Association Addition to the City of Fayetteville, Washington County, Arkansas, as covenants running with the land. These covenants shall apply in their entirety to the area now known and described as Ralph Brophy's Condominiums Association Addition to the City of Fayetteville, Washington County, Arkansas, as shown on the recorded plat thereof.

1. DEFINITIONS.

A. Association shall mean and refer to Ralph Brophy's Condominiums Association, its successors and assigns.

B. Declarant shall mean and refer to Ralph Brophy until a successor or assign should acquire more than eighty percent (80%) of the undeveloped lots from the Declarant for the purpose of development. In that event, Declarant shall perform all actions necessary to facilitate the transfer to the newly appointed Declarant.

C. Property shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

D. Common Area shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Declarants. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows: see attached Exhibit A.

2. LAND USE AND BUILDING TYPES.

No lot in the addition shall be used for any other purpose than Two-Family Townhouses/Condominiums as that term is defined in the City of Fayetteville Municipal Zoning Ordinance. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached duplex not to exceed THREE ~~two and one-half~~ stories, thirty-five (35) feet in height, and each such dwelling shall have a private garage [redacted] for the storage of not less than one automobile.
ALSO NO DWELLING UNIT ALONG THE WEST LINE OF THE DEVELOPMENT SHALL EXCEED TWO STORIES PLUS CRAWL SPACE (~~[illegible]~~) OR 35 FEET IN HEIGHT.

No business or commercial use shall be carried on or permitted in any structure or in any portion of this addition in keeping with the general plan to develop this property for the highest class of residential occupancy.

3. DWELLING SIZE AND QUALITY.

Size, design, location and site development of dwellings in this planned development shall be subject to the construction under current city codes and must be sided with either vinyl and/or brick, and shall be approved by the community association. All dwellings shall be constructed within the bounds set forth on the plat of the development and shall utilize hill-side construction methods such as Pier & Beam, etc. to preserve tree cover where practicable. Slab on grade pads shall not exceed the perimeter of the allowable building areas as platted. All dwellings placed upon the premises shall be of new construction and shall be of the highest class workmanship and best quality materials. Approval of plans for construction of principal residences and permitted accessory buildings shall not be unreasonably withheld by the Declarant based upon the style of design of the exterior of such proposed principal residences as long as the same are designed, in whatever style, in accordance with the highest standards of architectural design. All construction shall be completed within one (1) year from the beginning of such construction.

4. ARCHITECTURAL CONTROL.

No residence, permitted accessory building, fence, wall or other structure shall be constructed, created or maintained upon any lot in the addition, nor shall any modification, alteration or change be made in the exterior of any existing residence or permitted accessory building until the construction, grading and drainage and landscape plans and specifications showing the nature, size, shape, dimensions, materials and location of the same shall have been submitted to and approved, in writing by the Declarant, or an authorized agent of Declarant, or the Declarant has waived his right in the manner hereinafter provided.

5. THE ARCHITECTURAL CONTROL COMMITTEE.

The Architectural Control Committee shall consist of Ralph Brophy. Mr. Brophy shall assign a successor in the event of his death or resignation. Any property owner in the addition seeking to obtain the required approval or any plans for construction, modification or alteration or improvements on his, her or its property shall submit the same in two (2) copies to the Declarant or any person designated by him A written receipt from the Declarant shall be prima facie evidence of the delivery of such plans and the date thereof. If, with thirty (30) days from the date of delivery of such plans to a member of it, the Declarant has not stated to the owner deficiencies in the proposal for such construction or alteration or improvements, the owner may proceed with such construction or alterations as though affirmative approval had been received from the Declarant. Notice shall be given to the owner at the address for the property owner indicated in the city telephone directory or as otherwise indicated by the owner, in writing, to the owner by certified mail with return receipt requested. If deficiencies are noted and called to the owner's attention in the proposed plans within the thirty (30) day period following delivery thereof to the owner, the owner shall not proceed with any such construction or alteration until such deficiencies have been corrected to the satisfaction of the Declarant. The Declarant shall have full power to enforce the provisions and restrictions herein

by an action for an injunction as fully as though he were the Declarant of property in the subdivision and whether or not he is actually the Declarant of property in the subdivision.

6. GENERAL RESTRICTIONS.

a. No noxious or offensive activity and no commercial activities of any kind shall be carried on upon any lot in this addition, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

b. No manufactured housing, trailer, recreational vehicle, mobile home, tent, shack, or barn shall be erected on any lot in this subdivision, temporary or permanently, except for temporary use by construction contractors only. Tents used for recreational purposes of a short duration shall not be considered as excluded by this provision.

c. No signs, billboards, posters or advertising devices shall be permitted upon any of the lots in this addition except that the Declarant of each lot may place house numbers and the Declarant's name upon his or her mail box or dwelling; however, each letter thereof shall be no more than 6 inches in height and 6 inches in width; and Declarant may place a sign not more than 4 square feet in size advertising the property for sale should it be offered for sale by the Declarant.

d. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purposes.

e. No trash, ashes or other refuse may be thrown or dumped on any of the lots in the addition.

f. No building material of any kind or character shall be placed or stored upon any lot in the addition until the Declarant is ready to commence construction of the improvements requiring such materials. Building materials shall only be placed or stored between the curb and the property line of the site to be developed and shall be stacked in a decent and proper manner unless contained in a lumber storage container.

g. No privy, cesspool, septic tank field or disposal plant shall be installed or maintained on any lot in the addition, and all residences and permitted accessory buildings shall have the plumbing connected to the city sanitary sewer system.

h. All garages shall be finished inside and shall be fully enclosed with garage doors. Carports are not allowed.

i. All driveways in the addition shall consist of a hard surface acceptable to the Declarant and driveways are to be no less than 18 feet and no more than 24 feet in width.

j. No trucks, mail carts, dune buggies, golf carts, mobile homes, commercial vehicles, travel trailers, campers, boats, motors or trailers shall be kept on the lot or in the street adjacent to any lot except that such items may be stored or parked inside an enclosed garage or similar enclosure so screened with fencing or plant material as not to be visible from the street..

k. Grass, weeds and vegetation shall be kept mowed and cleared at regular intervals on each lot by the HOME Declarant thereof so as to maintain the same in a neat and attractive manner. No debris shall be ASSOCIATION allowed to accumulate upon any lot. Dead trees, shrubs, vines and plants shall be promptly removed from each lot. The Declarant or HomeDeclarants Association shall have the right, privilege and option to cause any unkept lots to be mowed and to remove dead trees, plants or other vegetation and debris from such lot if, after ten days' notice in writing, from the HomeDeclarants Association to the Declarant, the Declarant has failed or neglected to do so, and the HomeDeclarants Association shall be entitled to a lien on such lot for the cost of such work.

l. Each lot Declarant shall provide and maintain a light located in the vicinity of the intersection of the driveway and street, which light shall be in all respects in accordance with the requirements of the Architectural Control Committee.

m. Exterior surfaces of each dwelling place shall be composed of either brick or vinyl siding

n. All dwelling places will be guttered and all guttering must have leaf guards to prohibit buildup of leaves and other foreign objects from obstructing the gutters.

o. All Declarants of dwelling places in this development are required to furnish their own fire, storm, theft, etc and termite insurance and treatment at their own expense and Declarant reserves the right to demand presentation of termite inspection and protection at reasonable times and places.

p. Any swimming pool plans shall have to be approved by the HomeOwner's Association and meet city code requirements.

q. THE HOME DECLAIRANT ASSOCIATION SHALL MAINTAIN THE EVERGREEN SCREEN ALONG THE WEST LINE IN ACCORDANCE WITH CITY REQUIREMENTS. SHOULD SCREEN BECOME NON-FUNCTIONAL THE CITY MAY ENFORCE FINE ON THE P.O.A

7. BUILDING LOCATION.

Buildings shall be located on lots as shown on the final plat of the planned zoning district.

8. DIVISION OF LOTS.

A "lot" as that word is used herein shall consist of a numbered lot as shown on the plat of the addition.

9. FENCING AND ORNAMENTAL STRUCTURES.

No fences shall be erected on any portion of a lot between the line drawn across the front foundation or building line of the principal dwelling and intersecting the side lot lines and the front lot line. Dog pens properly screened by walls, fences, or plantings may be constructed and maintained in the rear yard portion of any lot. Retaining walls, ornamental fences of less than 3 feet in height, and composed brick, wood or natural stone construction may be permitted on a lot in the front portion as herein described and the front lot line. However, no other structure exceeding 3 feet

in height shall be placed or permitted on the portion of any lot lying nearest to the abutting street and in front of a line extended across the front foundation line of the principal dwelling.

10. DEFINITION OF "PRINCIPAL DWELLING".

The term "principal dwelling," "resident" or "principal residence" as used in these restrictive covenants shall refer to a residence meeting the requirements hereof and approved by the Committee for construction in the Addition.

11. HOMEOWNER'S ASSOCIATION.

For the purpose of maintaining areas to be used in common with some or all of the residents and owner of property in the addition, the streets, the street lights, drainage and such other activities and undertakings as may be for the general use and benefit of owner and residents of the property, each and every lot owner, in accepting a conveyance of any lot in this Addition, agrees to and shall become a member of and be subject to the obligations and duly enacted by-laws and rules of the Ralph Brophy Condominiums Association. STREET MAINTENANCE SHALL BE IN ACCORDANCE WITH FAYETTEVILLE ORD. 166:22 (V, VI, VII) AND ENFORCEMENT OF SUCH IS AVAILABLE TO THE CITY. (SEE ATTACHED EXCERPT.

12. LIEN FOR MEMBERSHIP DUES.

Assessment fees for the development are $45.00 per month, or $540.00 per year, payable monthly/yearly as it comes due/in advance, but no assessment fee shall become due and payable on real property until one month after dwelling place has been constructed and occupied. There will be 12 months to complete construction. Assessment fees will start on the 13th month unless construction is finished sooner.

All owners of property in the Addition shall pay the required dues to the HomeOwners Association promptly when the same become due, and in the event of failure to pay the same promptly when the same become due, such dues shall constitute a lien upon the property owned by such owner in the Addition and the same may be enforced in equity as in the case of any lien foreclosure authorized in the State of Arkansas.

All delinquent assessments shall bear interest at the rate of ten percent (10%) per annum from the date the same become due until they are paid, and the association shall be entitled to a reasonable fee for its attorneys when their services become necessary to collect any delinquent assessments, all of which shall be a part of the lien for dues.

13. SUBORDINATION OF LIEN FOR MEMBERSHIP DUES.

The liens herein retained for membership dues to the HomeOwners Association are hereby made expressly inferior and subordinate to valid and bona fide mortgages and deeds of trust or retained vendor's liens securing obligations of owner of any of the lots in the addition up to the time of sale at foreclosure of any such mortgage, deed of trust or vendor's lien and for a period of six (6) months thereafter or until the residence upon such property is occupied, whichever date shall first occur, after which time monthly membership dues shall thereafter accrue as a lien upon such lot in the identical form and manner as prior to the foreclosure sale of the property involved. This subordination shall be construed to apply not only to the original, but to all successive, mortgages, deeds of trust, and vendor's liens given by property owners to secure obligations, together with all

extensions and renewals thereof.

14. EASEMENTS.

No recorded easement shall be used by any company or person, other than the owner of the affected lot or lots, for any purpose other than those designated on the plat of the addition. AND ALL ROADS SHALL BE OPEN TO THE PUBLIC FOR TRAVEL TO AND FROM AND THRU THE DEVELOPMENT

15. PERSONS BOUND BY THESE COVENANTS.

All persons or corporations who now own or shall hereafter acquire any of the lots in this addition shall be deemed to have agreed and covenanted with the Declarant of all other lots in this addition and with its or their heirs, successors and assigns to conform to and observe the restrictions, covenants and stipulations contained herein for a period of 25 years from the date these covenants are recorded, and these covenants shall thereafter automatically extend in effect for successive periods of 10 years unless prior to the end of the original term or any successive term of the application hereof [a majority] of the then owners of lots in the addition agree to the amendment or removal of these covenants in whole or in part. These covenants may be amended at any time by the owners of [80%] of the lots in the addition. No changes in these covenants in the manner herein set forth shall be valid unless the same shall be placed of record in the office of the Recorder of Washington County, Arkansas, duly executed and acknowledged by the requisite number of owners.

17. RIGHT TO ENFORCE.

The covenants, agreements and restrictions herein set forth shall run with the title to the lots in this addition and bind the present Declarant, its heirs, successors and assigns, future owners and their heirs, successors and assigns; and all parties claiming by, through or under them shall be taken to hold, agree and covenant with the owners of other lots in the addition, their heirs, successors and assigns, and with Declarant, as to the covenants and agreements herein set forth and contained. None shall be personally binding on any person, persons, or corporations except with respect to breaches committed during its, his or their holding of title to lots in the addition. Any owner or owners of lots in this Addition, or Declarant, shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of any of the covenants, agreements or restrictions contained herein together with any other rights to which they might otherwise be entitled under the laws of the State of Arkansas. The invalidation of any one of these covenants, restrictions or agreements herein contained by the order of a court of competent jurisdiction shall in no way affect any of the other provisions hereof which will remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has hereunto set his hand and seal this ________ day of ________, 2003.

[ACKNOWLEDGMENT]

(iv) Maximum density served by a cul-de-sac shall be 40 units. Maximum density served by a loop street shall be 80 units.

(v) The plat of the planned development shall designate each private street as a "private street."

(vi) Maintenance of private streets shall be the responsibility of the developer or of a neighborhood property owners association (POA) and shall not be the responsibility of the City. The method for maintenance and a maintenance fund shall be established by the PZD covenants. The covenants shall expressly provide that the City is a third party beneficiary to the covenants and shall have the right to enforce the street maintenance requirements of the covenants irrespective of the vote of the other parties to the covenants.

(vii) The covenants shall provide that in the event the private streets are not maintained as required by the covenants, the City shall have the right (but shall not be required) to maintain said streets and to charge the cost thereof to the property owners within the PZD on a pro rata basis according to assessed valuation for ad valorem tax purposes and shall have a lien on the real property within the PZD for such cost. The protective covenants shall grant the City the right to use all private streets for purposes of providing fire and police protection, sanitation service and any other of the municipal functions. The protective covenants shall provide that such covenants shall not be amended and shall not terminate without approval of the City Council.

(viii) The width of private streets may vary according to the density served. The following standard shall be used:

Paving Width
(No On-Street Parking)

Dwelling Units	One-Way	Two-Way
1 - 20	14'	22'
21+	14'	24'

***Note:** If on-street parking is desired, 6 feet must be added to each side where parking is intended.

(ix) All of the traffic laws prescribed by Title VII shall apply to traffic on private streets within a PZD.

(x) There shall be no minimum building setback requirement from a private street.

(xi) The developer shall erect at the entrance of each private street a rectangular sign, not exceeding 24 inches by 12 inches, designating the street a "private street" which shall be clearly visible to motor vehicular traffic.

(11) *Construction of nonresidential facilities.* Prior to issuance of more than eight building permits for any residential PZD, all approved nonresidential facilities shall be constructed. In the event the developer proposed to develop the PZD in phases, and the nonresidential facilities are not proposed in the initial phase, the developer shall enter into a contract with the City to guarantee completion of the nonresidential facilities.

(12) *Tree preservation.* All PZD developments shall comply with the requirements for tree preservation as set forth in Chapter 167 Tree Preservation and Protection. The location of trees shall be considered when planning the common open space, location of buildings, underground services, walks, paved areas, playgrounds, parking areas, and finished grade levels.

(13) *Commercial design standards.* All PZD developments that contain office or commercial structures shall comply with the commercial design standards as set forth in §166.14 Site Development Standards and Construction and Appearance Design Standards for Commercial Structures.

(14) *View protection.* The Planning Commission shall have the right to establish special height and/or positioning restrictions where scenic views are involved and shall have the

LEGAL DESCRIPTION:

A PART OF THE SE1/4 OF THE SW1/4 AND A PART OF THE SW1/4 OF THE SE1/4 OF SECTION 35, TOWNSHIP 17 NORTH, RANGE 30 WEST, IN THE CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NE CORNER OF SAID SE1/4, SW1/4, RUN THENCE S02°19'51"W 10.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE S87°36'31"E 78.62 FEET; THENCE S87°41'04"E 226.63 FEET; THENCE S02°26'59"W 430.36 FEET; THENCE S17°19'50"E 84.79 FEET; THENCE S19°01'13"W 52.90 FEET; N89°13'34"W 204.68 FEET; THENCE S14°01'58"W 44.10 FEET; THENCE S67°01'51"W 211.76 FEET; THENCE N02°32'57"E 219.99 FEET; THENCE S87°42'47"E 63.58 FEET; THENCE N05°44'36"E 86.47 FEET; THENCE N06°05'49"E 149.85 FEET; THENCE N07°51'09"E 50.71 FEET; THENCE S87°41'04"E 139.79 FEET; THENCE N17°44'06"W 212.91 FEET; THENCE S87°41'04"E 56.84 FEET; THENCE N01°26'29"E 40.10 FEET; THENCE S87°36'31"W 11.05 FEET TO THE P.O.B., CONTAINING 6.04ACRES, MORE OR LESS, AND SUBJECT TO ALL RIGHTS-OF-WAY AND UTILITY EASEMENTS OF RECORD.

Exhibit "A"

ALDERMAN AGENDA REQUEST FORM

FOR: COUNCIL MEETING OF FEBRUARY 3, 2004

FROM:

MAYOR DAN COODY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT WITH VAN SCOYOC ASSOCIATES AND A BUDGET ADJUSTMENT IN THE AMOUNT OF $85,000.00 TO PROVIDE CONSULTING LEGISLATIVE SERVICES IN THE AMOUNT OF $75,000.00, PLUS EXPENSES UP TO $10,000.00

APPROVED FOR AGENDA:

Dan Coody 1/29/04

Dan Coody, Mayor Date

1/29/04

City Attorney (as to form) Date

RESOLUTION NO. ______

A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT WITH VAN SCOYOC ASSOCIATES AND A BUDGET ADJUSTMENT IN THE AMOUNT OF $85,000.00 TO PROVIDE CONSULTING LEGISLATIVE SERVICES IN THE AMOUNT OF $75,000.00, PLUS EXPENSES UP TO $10,000.00

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the attached Memorandum of Agreement with Van Scoyoc Associates for consulting legislative services in the amount of $75,000.00, plus up to $10,000.00 in expenses.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of $85,000.00 attached as Exhibit B.

PASSED and **APPROVED** this the 3rd day of February, 2004.

APPROVED:

DRAFT

By: ______________________________

DAN COODY, Mayor

ATTEST:

By: ______________________________

SONDRA SMITH, City Clerk

MEMORANDUM OF AGREEMENT

Agreement. The City of Fayetteville hereby retains Van Scoyoc Associates, Inc. (VSA) as consultants and advisors with regard to various legislative and administrative matters.

Statement of Work. VSA will assist the City of Fayetteville and its personnel in the following areas:

- Developing a program and strategy towards obtaining federal appropriations and grants for Fayetteville's future economic viability.
- Analyzing and informing the City of contemplated legislative and regulatory changes that may positively or negatively affect programs of interest to the City.
- Educating Members of Congress and their staffs about Fayetteville concerns or opportunities with respect to legislation or regulations.
- Building grassroots support of the projects to demonstrate local interest by finding individuals and groups with goals similar to those of the City.
- Working with the relevant committees to secure enactment of the legislative agenda or otherwise advance the interests of the City.
- Assisting in working with federal agencies and the federal administration to identify, create and secure new federal grant and funding opportunities.

Lobby Disclosure Act. It is understood that VSA will be required to register on behalf of the City of Fayetteville under the terms of the Lobbying and Disclosure Act of 1995 (P.L. 104-65) and any subsequent laws or regulations.

Term. In consideration of the performance of these services, the City of Fayetteville shall pay to VSA the sum of $6,250 per month for the period of February 1, 2004 through January 31, 2005, for a total of $75,000 in retainer expenses.

The City of Fayetteville further agrees to pay all reasonable costs and expenses incurred by VSA in furtherance of its efforts on behalf of the City, including, but not limited to, copies, facsimiles, couriers, telephone, local transportation and meals directly attributable to those efforts. VSA agrees that these expenses, exclusive of out-of-town travel costs taken solely at the City's direction, shall not exceed $10,000 during the contract term.

Notice. The City of Fayetteville shall have the right to terminate this contract after giving VSA 30 days advance written notice. Should the City exercise this option, it agrees to pay VSA all outstanding retainer and expense costs owed through the termination date.

VAN SCOYOC ASSOCIATES

By: H Stewart Van Scoyoc ____________ Date: January 28, 2004
H. Stewart Van Scoyoc
President

CITY OF FAYETTEVILLE

By: ____________________ Date: ______________
Dan Coody
Mayor

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department / Division / Program	Date Requested	Adjustment Number
2004	Department: General Government Division: Miscellaneous Program: Miscellaneous	2/3/2004	

Project or Item Requested:
$85,000 is being requested in the Professional Services account.

Project or Item Deleted:
None. $85,000 from the General Fund Use of Fund Balance.

Justification of this Increase:
The funds are needed for the City of Fayetteville to enter into a contract with Van Scoyoc Associates for Grant Writing services. The amount of the contract is $75,000 with another $10,000 being requested for outside reimbursable expenses.

Justification of this Decrease:
In 2003, there was $6,636,816 in remaining funds not being requested for re-budgeting that will go back to fund balance for other future uses.

The General Fund has sufficient funds available to comply with City Policy.

Increase Budget (Decrease Revenue)

Account Name	Account Number				Amount	Project Number	
Professional services	1010	6600	5314	00	85,000		

Decrease Budget (Increase Revenue)

Account Name	Account Number				Amount	Project Number	
Use of fund balance	1010	0001	4999	99	85,000		

Approval Signatures

Requested By ______ Date ______

Budget Manager ______ Date 1-29-04

Department Director ______ Date ______

Finance & Internal Services Director ______ Date ______

Mayor ______ Date ______

Budget Office Use Only

Type: A B C D E

Date of Approval ______ Initial ______ Date

Posted to General Ledger ______ Initial ______ Date

Posted to Project Accounting ______ Initial ______ Date

Entered in Category Log ______ Initial ______ Date

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

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

DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

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

FROM: **Kit Williams**, City Attorney

DATE: **January 29, 2004**

RE: **Conservation Easement for Mt. Sequoyah Woods**

After meeting with several representatives of the Fayetteville Natural Heritage Association, Inc. I revised the proposed Resolution To Reaffirm the commitment to sell a conservation easement. The proposed Resolution is attached.

As you can see, the previously discussed figure of $300,000.00 for the conservation easement is now made a part of this Resolution. We also acknowledge their previous payments that now total $50,000.00. I recommend these changes be made and that you amend the previously submitted draft Resolution by replacing it with this proposed Resolution.

RESOLUTION NO. ______

A RESOLUTION TO REAFFIRM ITS COMMITMENT TO SELL MOST OF ITS DEVELOPMENT RIGHTS TO THE FAYETTEVILLE NATURAL HERITAGE ASSOCIATION, INC. ON THE 67 ACRES OF MOUNT SEQUOYAH WOODS PURCHASED BY THE CITY OF FAYETTEVILLE PURSUANT TO RESOLUTION NO. 46-03

WHEREAS, the City Council of the City of Fayetteville, Arkansas had invited the Fayetteville Natural Heritage Association, Inc. to purchase its development rights to Mount Sequoyah Woods in Resolution No. 46-03 passed unanimously by the Fayetteville City Council on April 1, 2003; and

WHEREAS, the Fayetteville Natural Heritage Association, Inc. has worked diligently and continues to strive to raise contributions to purchase these development rights in the form of a conservation easement to protect Mount Sequoyah Woods so that it will be a nature preserve for all residents of Fayetteville; and

WHEREAS, the Fayetteville Natural Heritage Association, Inc. has already paid to the City Fifty Thousand Dollars ($50,000.00) toward the purchase of these development rights and conservation easement.

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

<u>Section 1</u>. That the City Council of the City of Fayetteville, Arkansas hereby reaffirms its commitment to sell its development rights in the form of a conservation easement for Mount Sequoyah Woods except as necessary to build amenities for Mount Sequoyah Woods such as perimeter parking, walking trails, benches, picnic tables, pavilion, restroom facility and signs for the use of the public when enjoying this wooded hillside for Three Hundred Thousand Dollars ($300,000.00) to the Fayetteville Natural Heritage Association, Inc.

PASSED and **APPROVED** this the 3rd day of February, 2004.

APPROVED:

DRAFT

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
SONDRA SMITH, City Clerk

BILL OF ASSURANCE
FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In order to attempt to obtain approval of a request for a zoning reclassification, the owner, developer, or buyer of this property, (hereinafter "Petitioner") Ralph Brophy, hereby voluntarily offers this Bill of Assurance and enters into this binding agreement and contract with the City of Fayetteville, Arkansas.

The Petitioner expressly grants to the City of Fayetteville the right to enforce any and all of the terms of this Bill of Assurance in the Chancery/ Circuit Court of Washington County and agrees that if Petitioner or Petitioner's heirs, assigns, or successors violate any term of this Bill of Assurance, **substantial irreparable damage justifying injunctive relief** has been done to the citizens and City of Fayetteville, Arkansas. The Petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will **reasonable rely** upon all of the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

Petitioner hereby voluntarily offers assurances that Petitioner and Petitioner's property shall be restricted as follows **IF** Petitioner's rezoning is approved by the Fayetteville City Council.

1. An evergreen screen shall be established along the west line of the Brophy Condominimum Complex to screen the view between this zone and the adjacent commercial zone prior to issuance of final plat approval.

2. The petitioner and property owners association is to maintain and insure the viability of the screen and monitor health to make sure the screen is properly established.

3. Provisions shall be made in the development covenants to assure item 2.

4. Planting shall coincide with the tree screening plan attached to this Bill of Assurance and approved by the landscape coordinator. Said planting shall consist of 35-2"calliper Loblolly Pines to be placed in two rows as depicted on said screening plan.

5. The evergreen screen shall be established and maintained at the Petitioners expense and maintained by the Developments Property Owners Association and no fund from the City's Tree Mitigation Fees shall be used for this screen.

6. Petitioner specifically agrees that all such restrictions and terms shall **run with the land** and bind all future owners unless and until specifically released by Resolution of the Fayetteville City Council. This Bill of Assurance shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning is effective and shall be noted on any Final Plat or Large Scale Development which includes some or all of Petitioner's property.

IN WITNESS WHEREOF and in agreement with all the terms and conditions stated above, I, Ralph Brophy, as the owner, developer/(Petitioner), **voluntarily offer** all such assurances and sign my name below.

______________________	______________________
Date	Printed Name
______________________	______________________
Address	Signature

NOTARY OATH

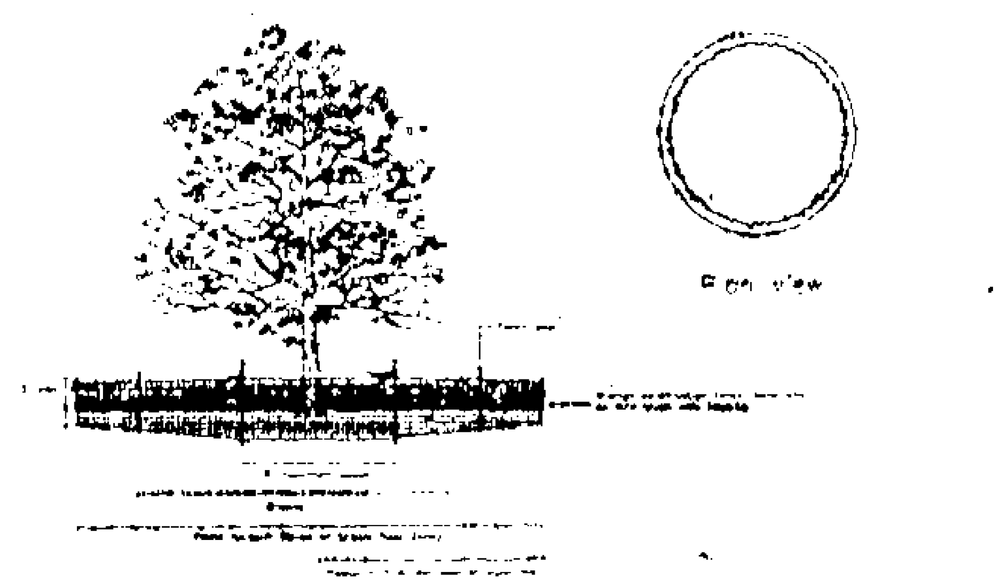
STATE OF ARKANSAS }
COUNTY OF WASHINGTON }

And now on this the _____ day of _______________, 200__, appeared before me, ____ and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.

______________________________**NOTARY PUBLIC**

My Commission Expires:

____



City of Fayetteville Standard Notes For Tree and Natural Area Protection

1. All trees and natural areas shown on this plan to be preserved shall be protected during construction with temporary fencing.

2. Protective fences shall be erected according to City of Fayetteville standards for tree protection.

3. Protective fences shall be installed prior to the start of any site preparation work and shall be maintained throughout all phases of the construction project.

4. Erosion and sedimentation control barriers shall be installed or maintained in a manner which does not result in soil build-up within tree driplines.

5. Protective fences shall surround the trees or group of trees, and will be located at the dripline, for natural areas, protective fences shall follow the limit of construction line, in order to prevent the following:

   A. Soil compaction in the root zone area resulting from vehicular traffic or storage of equipment.
   B. Root zone disturbances due to grade changes (greater than 6") or trenching not reviewed by city arborist.
   C. wounds to exposed roots, trunk or limbs by mechanical equipment.
   D. other activities detrimental to trees such as chemical storage, cement truck cleaning, & fires.

6. Exceptions to installing fences at tree driplines may be permitted in the following cases:

   A. Where there is to be an approved grade change, impermeable paving surface, tree well, or other such site development.
   B. Where permeable paving is to be installed within a tree's dripline, erect the fence at the outer limits of the permeable paving area (prior to site grading so that the area is graded separately prior to paving installation to minimize root damage).
   C. Where trees are close to proposed buildings, erect the fence to allow 6 to 10 feet of work space between the fence and the building.
   D. Where there are severe space constraints due to tract size, or other special requirements.

7. Where any of the above exceptions result in a fence being closer than 4 feet to a tree trunk, protect the trunk with strapped-on planking to a height of 8 feet (or limits of lower branching) in addition to the reduced fencing provided.

8. Trees approved for removal shall be removed in a manner which does not impact trees to be preserved.

9. Any roots exposed by construction activity shall be pruned flush with the soil. Backfill root areas with good quality top soil as soon as possible. If exposed root areas are not backfilled within 2 days, cover them with organic material in a manner which reduces soil temperature and minimizes water loss due to evaporation.

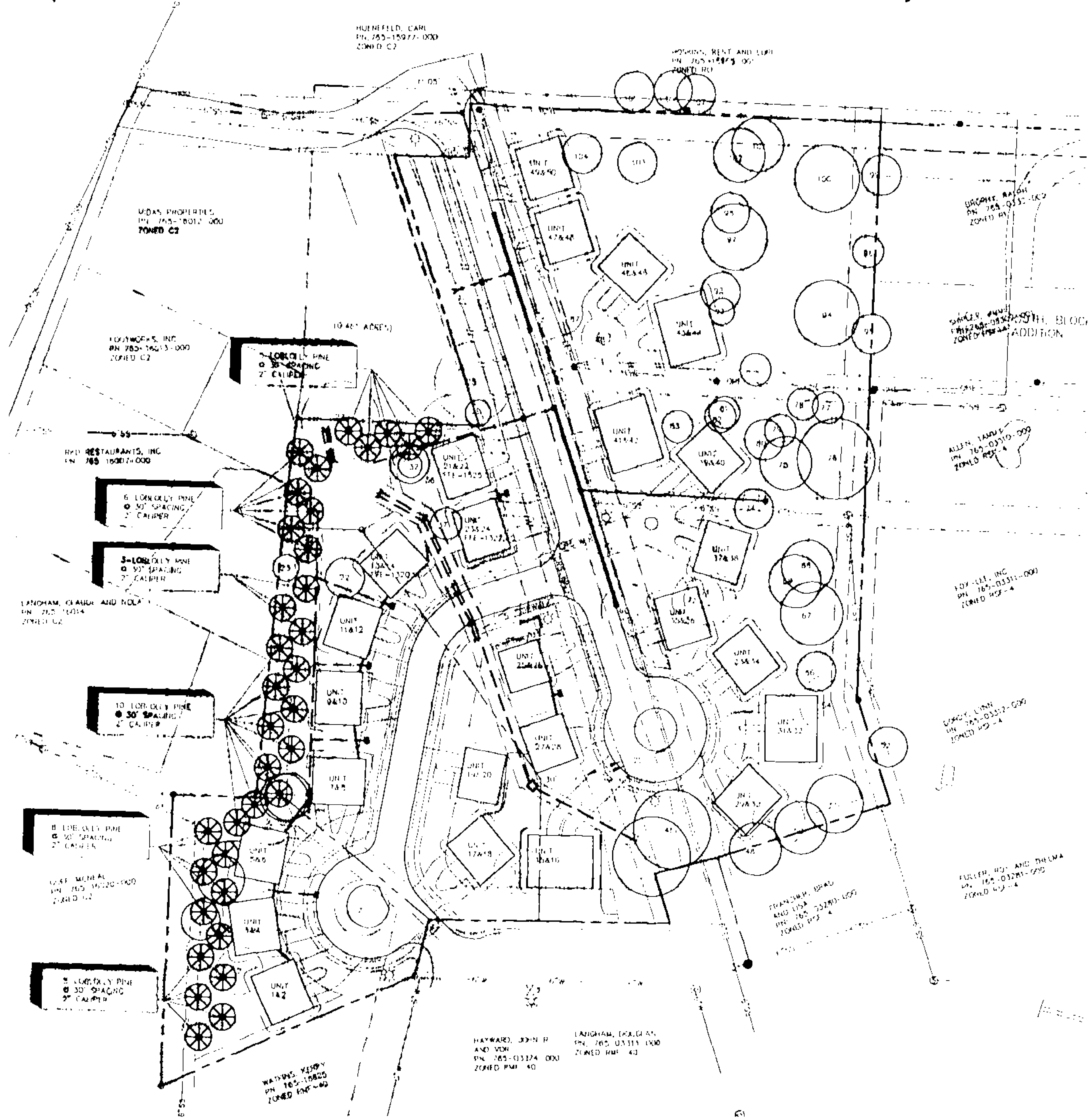
10. Any trenching required for the installation of landscape irrigation shall be placed as far from existing tree trunks as possible.

11. No landscape topsoil dressing greater than 4 inches shall be permitted within the dripline of trees. No soil is permitted on the root flare of any tree.

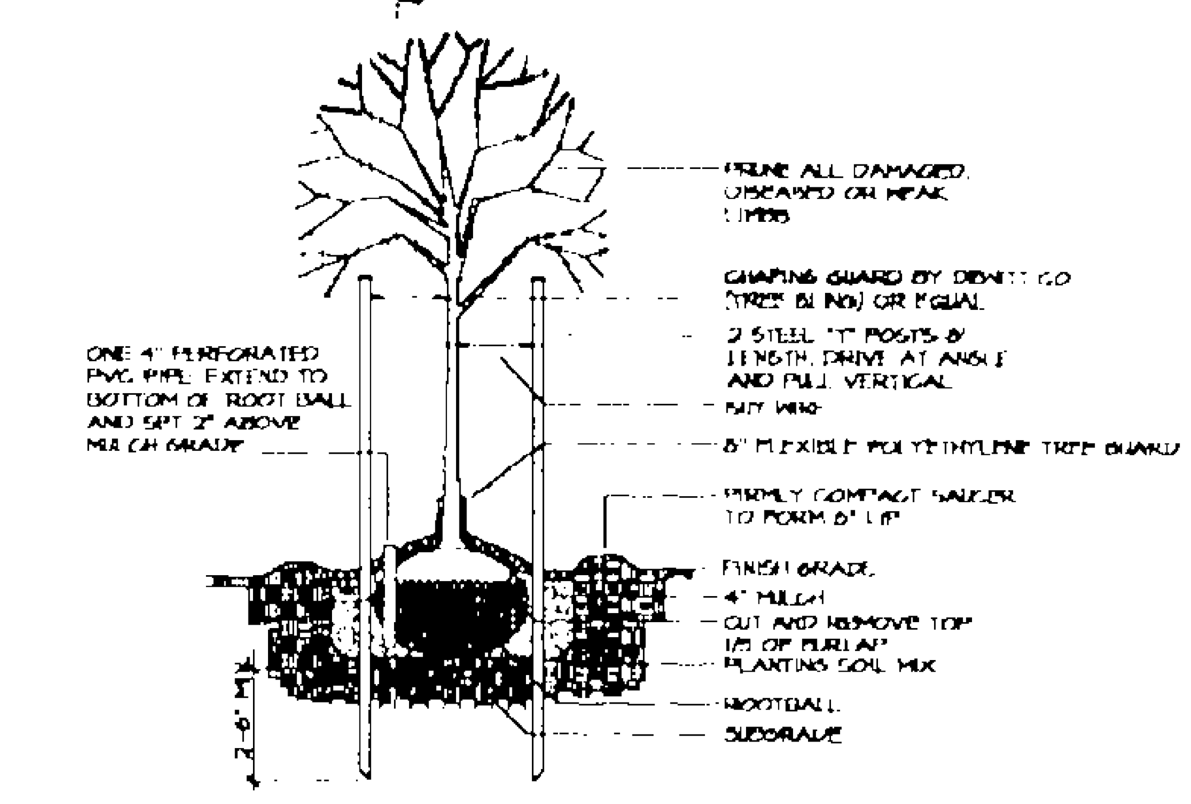
12. Pruning to provide clearance for structures, vehicular traffic, and equipment shall take place before construction begins.

13. All finished pruning must be done according to recognized, approved standards of the industry (reference the National Arborist Association Pruning Standards for Shade Trees available upon request from the city arborist).

14. Deviations from the above notes may be considered ordinance violations if there is substantial non-compliance or if a tree sustains damage as a result.



POST DEVELOPMENT TREE LAYOUT



SECTION-TREE PLANTING

NOT TO SCALE

EXISTING TREE CANOPY

MATURE TREE ASSESSMENT

ID#	TREE DESCRIPTION	CANOPY DIA.	CONDITION	DEV. STATUS
1	20" OAK	54'	FAIR	REMOVE
*2	16" OAK	30'	FAIR	TO REMAIN (W/CANOPY ENCR)
3	18" OAK	30'	FAIR	PRESERVED
4	18" OAK	36'	FAIR	PRESERVED
5	16" OAK	30'	FAIR	REMOVE
6	12" OAK	30'	FAIR	REMOVE
*7	18" OAK	42'	FAIR	TO REMAIN (W/CANOPY ENCR)
8	14" OAK	42'	FAIR	REMOVED
*9	12" OAK	36'	FAIR	TO REMAIN (W/CANOPY ENCR)
10	14" OAK	30'	FAIR	PRESERVED (ESMT)
11	14" OAK	36'	FAIR	PRESERVED (ESMT)
12	16" OAK	30'	FAIR	REMOVED
13	8" PINE	16'	FAIR	REMOVED
*14	18" OAK	36'	FAIR	TO REMAIN (W/CANOPY ENCR)
15	14" OAK	36'	FAIR	REMOVED
16	12" OAK	24'	FAIR	REMOVED
17	14" OAK	36'	FAIR	REMOVED
18	18" OAK	36'	FAIR	REMOVED
19	8" OAK	24'	FAIR	REMOVED
20	12" OAK	30'	FAIR	REMOVED
21	20" OAK	40'	FAIR	REMOVED
22	12" OAK	30'	FAIR	PRESERVED
23	8" OAK	20'	FAIR	PRESERVED
24	8" OAK	20'	FAIR	PRESERVED
25	12" OAK	30'	FAIR	REMOVED

MATURE TREE ASSESSMENT

ID#	TREE DESCRIPTION	CANOPY DIA.	CONDITION	DEV. STATUS
26	16" OAK	20'	FAIR	REMOVED
*27	20" OAK	60'	[illegible]	TO REMAIN (W/CANOPY ENCR)
*28	15" OAK	60'	FAIR	TO REMAIN (W/CANOPY ENCR)
29	8" CEDAR	16'	FAIR	PRESERVED
*30	14" OAK	50'	FAIR	TO REMAIN (W/CANOPY ENCR)
31	12" OAK	30'	FAIR	PRESERVED
32	12" OAK	18'	FAIR	PRESERVED
33	15" OAK	30'	FAIR	REMOVED
34	10" OAK	24'	FAIR	REMOVED
35	14" OAK	60'	FAIR	PRESERVED (W/CANOPY ENCR)
*36	8" OAK	24'	FAIR	TO REMAIN (W/CANOPY ENCR)
37	10" OAK	24'	FAIR	PRESERVED (W/CANOPY ENCR)
38	10" OAK	24'	FAIR	REMOVED
39	16" OAK	40'	FAIR	REMOVED
40	14" OAK	40'	FAIR	REMOVED
41	20" OAK	40'	FAIR	REMOVED
42	20" OAK	20'	FAIR	REMOVED
43	10" PINE	20'	FAIR	REMOVED
44	8" OAK	20'	FAIR	REMOVED
45	14" WILLOW	60'	FAIR	PRESERVED (ESMT)
46	18" WILLOW	60'	FAIR	PRESERVED (ESMT)
47	8" OAK	40'	FAIR	REMOVED
48	12" OAK	40'	FAIR	PRESERVED
*49	12" OAK	40'	FAIR	TO REMAIN (W/CANOPY ENCR)
50	12" OAK	40'	FAIR	PRESERVED (ESMT)
51	12" OAK	44'	FAIR	PRESERVED

MATURE TREE ASSESSMENT

ID#	TREE DESCRIPTION	CANOPY DIA.	CONDITION	DEV. STATUS
52	8" OAK	20'	FAIR	PRESERVED
53	8" OAK	30'	FAIR	REMOVED
*54	12" OAK	22'	FAIR	TO REMAIN (W/CANOPY ENCR)
55	18" OAK	50'	FAIR	REMOVED
56	8" OAK	24'	FAIR	REMOVED
57	8" OAK	24'	FAIR	REMOVED
58	8" OAK	30'	FAIR	REMOVED
59	8" OAK	30'	FAIR	REMOVED
*60	20" OAK	40'	FAIR	TO REMAIN (W/CANOPY ENCR)
61	15" OAK	30'	FAIR	REMOVED
62	12" OAK	36'	FAIR	REMOVED
63	8" OAK	24'	FAIR	REMOVED
64	14" OAK	36'	FAIR	REMOVED
65	8" OAK	30'	FAIR	REMOVED
66	14" OAK	30'	FAIR	PRESERVED
67	15" OAK	45'	FAIR	PRESERVED
68	8" OAK	40'	FAIR	PRESERVED
69	8" OAK	40'	FAIR	PRESERVED
70	16" OAK	60'	FAIR	REMOVED
*71	14" OAK	40'	FAIR	TO REMAIN (W/CANOPY ENCR)
72	14" OAK	40'	FAIR	REMOVED
73	16" OAK	60'	FAIR	REMOVED
74	8" SYCAMORE	30'	FAIR	PRESERVED (ESMT)
75	12" OAK	40'	FAIR	PRESERVED
76	18" OAK	60'	FAIR	PRESERVED
77	8" OAK	22'	FAIR	PRESERVED
78	8" OAK	20'	FAIR	PRESERVED
79	8" OAK	24'	FAIR	PRESERVED

MATURE TREE ASSESSMENT

ID#	TREE DESCRIPTION	CANOPY DIA.	CONDITION	DEV. STATUS
80	8" OAK	30'	FAIR	PRESERVED
81	8" OAK	24'	FAIR	PRESERVED
82	8" OAK	24'	FAIR	PRESERVED
83	8" CEDAR	16'	FAIR	PRESERVED
84	8" OAK	24'	FAIR	REMOVED
85	14" OAK	44'	FAIR	REMOVED
86	14" OAK	44'	FAIR	REMOVED
*87	8" OAK	20'	FAIR	TO REMAIN (W/CANOPY ENCR)
*88	14" OAK	34'	FAIR	TO REMAIN (W/CANOPY ENCR)
89	18" OAK	40'	FAIR	REMOVED
90	10" OAK	30'	FAIR	REMOVED
91	12" OAK	30'	FAIR	REMOVED
92	10" OAK	24'	FAIR	PRESERVED
93	8" OAK	20'	FAIR	PRESERVED
94	14" OAK	50'	FAIR	PRESERVED
95	12" OAK	30'	FAIR	PRESERVED
96	12" OAK	24'	FAIR	PRESERVED
97	16" OAK	50'	FAIR	PRESERVED
98	10" OAK	20'	FAIR	PRESERVED
99	8" OAK	30'	FAIR	PRESERVED
100	15" OAK	50'	FAIR	PRESERVED
101	14" OAK	40'	FAIR	PRESERVED
102	14" OAK	40'	FAIR	PRESERVED
103	12" OAK	30'	FAIR	PRESERVED
104	12" OAK	30'	FAIR	PRESERVED
105	14" OAK	30'	FAIR	PRESERVED
106	14" OAK	30'	FAIR	PRESERVED
107	14" OAK	30'	FAIR	PRESERVED

* TREES BEING SAVED WITH CANOPY ENCROACHMENTS AND CANOPY IN EASEMENTS ARE NOT INCL. IN PRESERVATION NUMBER BUT ARE NOTED SEPARATELY FOR CONSIDERATION

GRAPHIC SCALE
(IN FEET)

PLAT PAGES 290 AND 291

WBR ENGINEERING ASSOCIATES
CIVIL DESIGN AND SURVEY
• COMMERCIAL
• RESIDENTIAL
• MUNICIPAL
FAYETTEVILLE, ARKANSAS

PROJECT NAME
BROPHY CONDOMINIUMS
A PLANNED ZONING DISTRICT
BROPHY CIRCLE NORTH
FAYETTEVILLE ARKANSAS

PROJECT NO.: 2002-024
SCALE: AS SHOWN
ENGINEER: WILLIAM RUDASILL, P.E.
DRAWN BY: MEW
CHECK BY: WJR
PLAN PRODUCTION DATES
START DATE: 05/03/03
FINAL PLAN:

NO.	DATE	REVISIONS	BY
1	1/28/04	PER CITY COMMENTS	FCJ

PLAN
LANDSCAPE LAYOUT PLAN
SHEET 1 OF 1

Tentative Agenda
For
City Council Meeting
February 3, 2004

A meeting of the Fayetteville City Council will be held on February 3, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

A. CONSENT:

1. **Approval Of The Minutes:** Approval of the January 20, 2004 meeting minutes.

2. **Telecommunications Task Force:** A resolution to establish a Task Force to recommend a plan and an implementation strategy for a Telecommunications Policy and Infrastructure Development.

3. **ADEA Post Closure Trust Fund:** A resolution authorizing the Fayetteville Parks & Recreation Division to apply for a Post Closure Trust Fund Grant from the Arkansas Department of Environmental Quality (ADEQ) for the C & L Landfill study and remediation.

4. **Wastequip May Fab Bid Award:** A resolution approving the purchase of 2 to 8 yard trash containers from Wastequip in an amount not to exceed $63,000.00 to service multi-family and commercial solid waste customers.

5. **Bes-Pac Bid Award:** A resolution approving the purchase of trash compactors and roll-off container/compactors in an amount not to exceed $85,859.00 from Bes-Pac, Inc., and Downing Sales, Inc.

6. **ESRI 2004 Service and Maintenance Fees:** A resolution approving the annual maintenance agreement in the amount of $20,692.30 with ESRI, Inc. for Geographic Information System (GIS) software maintenance and upgrades.

7. **Hansen 2004 Service and Maintenance Fees:** A resolution approving a purchase request to Hansen Technology, Inc. in the amount of $44,852.10 for software service and maintenance fees.

8. **Van Scoyoc Associates:** A resolution authorizing the Mayor to negotiate a contract for services with Van Scoyoc Associates.

9. **Rules of Order and Procedure - Handbook Arkansas Municipal Officials:** A resolution to clarify that the Rules of Order and Procedure of the Fayetteville Mayor/City Council should follow the "Procedural Rules for Municipal Officials" by the Arkansas Municipal League.

10. **Rules of Order and Procedure – Voting:** A resolution to modify Section B.4. Voting on the Rules of Order and Procedure of the Fayetteville Mayor/City Council.

11. **Removal of Planning Commissioners:** An ordinance to repeal §33.111 removal of planning Commissioners and enacting §33.300 attendance requirement for all members of citizen committees, boards and commissions.

B. OLD BUSINESS:

1. **Impact Fees for Road, Police and Fire Improvements:** An ordinance waiving the requirements of competitive bidding and approving a contract with Duncan and Associates to calculate Impact Fees for Road, Police and Fire Improvements in the amount of $25,890.00 with a contingency amount of $1,500.00 and approving a Budget Adjustment of $27,390.00.
This Ordinance was left on the first reading at the January 6, 2004 City Council meeting.
This Ordinance was tabled at the January 6, 2004 City Council meeting until the February 3, 2004 City Council meeting.
Staff will be asking to table this to the February 17, 2004 City Council meeting.

2. **R-PZD 03-6.00; Benton Ridge, Long, LLC:** An ordinance establishing a Residential Planned Zoning District titled (R-PZD 03-6.00) located on the east side of Crossover Road north of Huntsville Road and south of Wyman Road containing 8.34 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the Planning Commission.
This ordinance was left on the first reading at the January 6, 2004 City Council meeting.
This ordinance was left on the second reading at the January 20, 2004 City Council meeting.

3. **R-PZD 03-7.00; Brophy Condominiums, Ralph Brophy:** An ordinance establishing a Residential Planned Zoning District titled (R-PZD 03-7.00) located east of College Avenue, north of Township on Brophy Circle containing 6.01 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the Planning Commission.
This ordinance was left on the first reading at the January 6, 2004 City Council meeting.
This ordinance was left on the second reading at the January 20, 2004 City Council meeting.

4. **WIV-Fayetteville Cost-Share:** An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with WIV-Fayetteville, LLC in an amount of $25,512.00 plus a contingency of $3,826.00 for a total of $29,338.00 for the construction of 350 feet of 8-inch water main.
This ordinance was left on the second reading at the January 20, 2004 city Council meeting.

5. **Mount Sequoyah Woods Conservation Easement:** A resolution to reaffirm its commitment to sell most of its development rights to the Fayetteville Natural Heritage Committee on the 67 acres of Mount Sequoyah Woods purchased by the City of Fayetteville pursuant to Resolution No. 46-03.
   This resolution was tabled at the January 20, 2004 City Council meeting.

C. NEW BUSINESS:

1. **Southern View Phase II, Money in Lieu of Land:** A resolution accepting the parks and Recreation Advisory Board's recommendation to accept $40,086.00 cash in lieu of the required park land dedication for Southern View Phase II.

2. **Re-budget 2003 Budget Items:** A resolution approving a budget adjustment to re-appropriate $58,605,226.00 in order to retain project funding for identified and scheduled capital improvements and fund increased workers compensation premiums.

3. **Non-Exclusive Franchise Contracts:** A resolution authorizing the Mayor to execute non-exclusive franchise contracts with Waste Management of Arkansas, Roll-Off Services, Inc., and Ozark Sanitation to collect and transport specific types of solid waste within the city limits of Fayetteville.

4. **R-PZD 04-1.00 – Southern View II:** An ordinance establishing a residential planned zoning district titled (R-PZD 04-1.00) located on Futrall Drive and Old Farmington Road east of I-540 containing 6.713 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the associated residential development plan as approved by the Planning Commission.

5. **ADM 03-29.00 – Chapter 167 Tree Preservation Amendment:** An ordinance amending Title XV: Unified Development Code, of the Code of Fayetteville, to provide amendments to and clarification of various provisions concerning tree preservation and protection.

D. INFORMATIONAL:

Council Tour: February 2, 2004

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: **The Mayor and City Council**

From: **Hugh Earnest**
Chief Administrative Officer

Date: **January 15, 2004**

Subject: **Establishing a Task Force to Address Telecommunications Issues**

Recommendation
That the City Council adopt the resolution as attached.

Background
For several years various individuals on the City Telecommunication Board, as well as many interested citizens, have suggested that the City would be well served by the creation of a task force to address a number of issues revolving around the issue of telecommunications. Most agree that those cities and regions that remain current in the application and use of appropriate technology are far more likely to remain viable and desirable locations in which to live and work. The challenge before this city at this time is how best to address this complex issue in a timely fashion without a high level of expenditure.

Current Situation
The City's Telecommunication Board, under the very capable leadership of Susan Cromwell has developed a charge for a task force and has also participated in the preparation of a resolution that addresses the following items:

- A clear set of directions has been formulated for the task force
- The City Council will appoint two council members who will then name two Fayetteville residents to co-chair the task force
- The co-chairs will then appoint 12 Fayetteville citizens to serve on the task force. These citizens will represent constituents from government, schools, general public and the business sectors.

- Ex-officio representation from City administration and the Telecommunication Board will be chosen.

The task force will be expected to have its report completed by December 2004.

Budget Impact
There will be staff time committed to this effort. In addition, it may be necessary to secure the services of a consultant to assist the committee in working through the issues surrounding this topic. This will depend on input from the task force and a further discussion with the council.

RESOLUTION NO. _____

A RESOLUTION TO ESTABLISH A TASK FORCE TO RECOMMEND A PLAN AND AN IMPLEMENTATION STRATEGY FOR TELECOMMUNICATIONS POLICY AND INFRASTRUCTURE DEVELOPMENT

WHEREAS, the City of Fayetteville, its citizens, businesses, and public offices, will benefit from a coordinated approach to planning for the technology and telecommunications environment that supports vital communication channels and seeks to provide an innovative approach to broadband communications services as a building block for the city's goals and guiding principles.

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, creates the City Technology and Telecommunications Infrastructure Planning Task Force whose charge includes:

A. Reviewing the existing information technology and telecommunications infrastructure used by the city, available telecommunications services, rights-of-way management strategies, and telecommunications regulatory structure.

B. Identifying the telecommunications needs of the community (government, schools, business, public) and how to best meet those needs.

C. Developing a Technology and Telecommunications Infrastructure Vision and Policies statement that provides direction for the plan and guides the implementation of telecommunications technologies in support of community interests, local governance, and consistent with the city's goals and guiding principles.

D. Developing a comprehensive telecommunications strategy and regulatory framework plan to support a coordinated regional information infrastructure that provides accessible and affordable high-speed connectivity for citizens, public institutions, and businesses.

Section 2. That the Mayor shall appoint two Council Members who shall appoint two Fayetteville citizens as Co-Chairs of the City Technology and Telecommunications Infrastructure Planning Task Force.

Section 3. That the Co-Chairs of the City Technology and Telecommunications Infrastructure Planning Task Force shall appoint 12 Fayetteville citizens as members to promote the interests and represent constituents from the government, schools, general

DRAFT

public, and business sectors (three for each area). These appointments will be made by the Co-Chairs after advertising and promotion in local newspapers. At least one member from both the City Administration and the City Telecommunications Board will be named. Staff support will be negotiated by Co-Chairs with City Administration. The Task Force may seek budgetary support from the City Council.

Section 4. That the City Technology and Telecommunications Infrastructure Planning Task Force shall present its strategy and implementation plan to the City Council no later than December, 2004.

PASSED and **APPROVED** this the 3rd day of February, 2004.

APPROVED:

By: DRAFT
DAN COODY, Mayor

ATTEST:

By: ____________________
SONDRA SMITH, City Clerk

MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations GD
Connie Edmonston, Director of Parks and Recreation C.E.

From: Rebecca Ohman, Park Planner RO.

Date: January 15, 2004

Subject: Parks and Recreation recommends approval to pursue the Post Closure Trust fund grant to finance the C & L Landfill study and potential landfill remediation.

RECOMMENDATION

Parks and Recreation Staff recommends approval to pursue the Post Closure Trust Fund grant to finance the C & L Landfill study and potential landfill remediation.

BACKGROUND

In 2000, Parks and Recreation contracted with Lose & Associates to create the Parks and Recreation 10 Year Master Plan. One of the key objectives for conducting a master plan study was to gain a clear understanding of public opinion and desires regarding Parks and Recreation facilities and programs. A citizens' steering committee was formulated, a user survey was distributed, and nine public meetings were conducted throughout the fall of 2000, offering the residents the ability to voice their concerns. A common message was heard from all of these groups: The City of Fayetteville needs a multi-sports complex or Community Park and a city-wide trail network.

Parks and Recreation, in keeping with the recommendation of the Master Plan and on recommendation from the Park and Recreation Advisory Board, conducted a search for Fayetteville's Community Park by evaluating 18 sites on criteria that meets the parks and recreational needs of the citizens of Fayetteville. These 18 sites were reduced to six and again to a top four sites by evaluating their location within the City, total land available, appraised value, and owner's willingness to sell. The four remaining sites were further evaluated utilizing development criteria such as existing infrastructure, accessibility, FEMA floodway and floodplain designations, slopes over 15 percent, tree canopy and major land features.

From this evaluation, it was determined that two sites, the Cummings and Marinoni properties were best suited for the City's Community Park. Land use studies were conducted to analyze each property in terms of active and passive recreation as well as low-impact uses such as hiking and biking.

Based upon these studies, the Parks and Recreation Advisory Board (PRAB) selected the Cummings property as the number one recommendation for the future Community Park. Their recommendation however was contingent upon understanding the nature of an existing, closed landfill, encompassing 33 acres on the Cummings property. On August 4, 2003, PRAB voted to further investigate the landfill area.

In effort to ensure any unknown environmental issues exist on the property and before expending funds for the acquisition and significant development of a conceptual development plan, Parks and Recreation Staff contracted with Terracon of Tulsa, Oklahoma to create a Work Plan for this study. The Work Plan outlines all studies necessary to gain a full understanding of the landfill and a time frame for the Study's completion. The Plan was written to meet the Arkansas Department of Environmental Quality (ADEQ) standards in order to apply for grant funds. A summary of the Plan included in the Request for Proposal (RFP) is attached. The full 200 page report is available at the Parks and Recreation offices.

On December 3, 2003, a Right of First Refusal and Access Agreement with the Cummings Estate was obtained for entry to the site and assurance that the property would not be unknowingly sold while conducting the Study. As is typical with a Right of First Refusal Agreement, the City is guaranteed the possibility of future negotiations for the purchase of the property and will be notified throughout the course of the Agreement of any "bona fide" offers for the purchase of all or part of the Cummings Estates. The Access Agreement allows the City and its consultant to perform the necessary landfill studies, as outlined in Terracon's Work Plan.

The Post Closure Trust fund is administered by the Arkansas Department of Environmental Quality. The Fund was created in 1991 from disposal fees for landfill post-closure action, which is defined as any measures deemed necessary by the Director to prevent or abate contamination of the environment from any landfill which has been certified by the Department as no longer receiving waste. The Fund currently contains $9 million dollars that has been earmarked by the Department for spending.

Parks and Recreation Staff has met with ADEQ on several occasions to review the C & L Landfill. It is the opinion of ADEQ representatives that the C & L Landfill would meet the requirements of and be eligible for the Post Closure Trust Fund. For more information, please see attached application. If accepted, the Grant would provide the majority of funding for the Site Characterization Study described above and on review, potential corrective actions for the landfill. The City's only contribution required by the grant would be $10,000 for the study or corrective action. The Work Plan, valued at $1,500, can be counted to the total $10,000, leaving a remaining $8,500 to be spent. These funds are budgeted in the Parks and Recreation Community Park Development fund. Terracon estimated the total cost of the Study to be $50,000. The City's remaining balance of $8,500 would be applied to this total, leaving approximately $41,500 to be paid by the proposed grant.

A Request for Proposals for the Site Characterization Study described in the Work Plan was advertised January 21, 2004 with a deadline of February 4, 2004. Please see attached RFP. The City's Professional Selection Committee will review and select the most qualified consultant and negotiate the cost of the Study, using an ADEQ representative as an advisor. Upon City Council approval, Staff will complete the application and submit it to ADEQ for review. If awarded, Staff will administer the Study.

DISCUSSION

Proceeding with the Site Characterization Study will provide valuable information to ensure the well being of our community's public and open spaces and surrounding environment. By understanding the condition of the landfill, the City will make better decisions vested in the interest of the health of its residents, open lands, and economy thereby achieving several of our City's guiding principles. This study may reveal that the site is acceptable for use as a community park or it may reveal that the site needs significant remediation and may not be suitable. This work should be done prior to any decision concerning the acquisition of this property.

Parks and Recreation Staff believes the Post Closure Trust Fund provides a wonderful opportunity to study and if necessary, remediate the C & L Landfill at minimum cost to the citizens of Fayetteville. Staff recommends City Council approval of the Application for the Post Closure Trust fund.

If additional information is needed, please contact me at 444-3472.

Attachments:

Post Closure Trust Fund Application
Request for Proposals (RFP): Summary of Work Plan
Cummings Property Map

RESOLUTION NO. ______

A RESOLUTION AUTHORIZING THE FAYETTEVILLE PARKS & RECREATION DIVISION TO APPLY FOR A POST CLOSURE TRUST FUND GRANT FROM THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY (ADEQ) FOR THE C & L LANDFILL STUDY AND REMEDIATION.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Fayetteville Parks & Recreation Division to apply for a Post Closure Trust Fund Grant from the Arkansas Department of Environmental Quality (ADEQ) for the C & L Landfill study and remediation.

PASSED and **APPROVED** this 3rd day of February, 2004.

APPROVED:

By: **DRAFT**
DAN COODY, Mayor

ATTEST:

By: ______________________
SONDRA SMITH, City Clerk

Arkansas Department of Environmental Quality
Solid Waste Management Division

LANDFILL POST-CLOSURE TRUST FUND PROGRAM

Grant Application Package

Submit to
Arkansas Department of Environmental Quality
Solid Waste Management Division
Post Office Box 8913
Little Rock, Arkansas

Arkansas Department of Environmental Quality

Solid Waste Management Division

LANDFILL POST-CLOSURE TRUST FUND PROGRAM

Application Forms and Instructions

TABLE OF CONTENTS

General Information

Act 747 of 1991: The **Landfill Post-Closure Trust Fund Act, A.C.A. §8-6-1001** et seq., as amended, allocates funds to be used for landfill post-closure corrective action. **Regulation 11, The Regulation for Fees, Funds and Grants,** and **Regulation 22, the Regulation for Solid Waste Management,** set forth the procedures and requirements for distribution of the trust funds.

Administration: The Arkansas Department of Environmental Quality (Department) administers the Landfill Post-Closure Trust Fund Program through its Solid Waste Management Division.

Purpose of Act: To be used for landfill post-closure corrective action, which is defined as any measures deemed necessary by the Director to prevent or abate contamination of the environment from any landfill which has been certified by the Department as no longer receiving waste.

Funding for Act: Act 747 of 1991 initiated the Trust Fund with landfill disposal fees of 15¢ per cubic yard of loose waste, 30¢ per cubic yard of compacted waste, and $1.00 per ton collected on wastes disposed of in Arkansas landfills.

Project and Activity Eligibility: The fund shall be used on post-closure corrective action projects and activities, only if the Director determines that:

1. A landfill is no longer receiving waste, regardless of when it ceased operating; has been certified as no longer receiving waste by the Department; and is causing groundwater contamination, or is causing other contamination, that is a hazard to public health or endangers the environment; and . . . .

2. The owner or operator of the landfill site has expended at least ten thousand dollars ($10,000) toward corrective action, unless the owner or operator cannot be located or the Director determines that an emergency exists that necessitates immediate corrective action.

Applicability: The provisions of the trust fund apply only to Class 1, Class 3 Commercial and Class 4 landfill disposal facilities. Class 3 Non-commercial landfills and other solid waste facilities are not eligible for inclusion in the fund.

Class 1 Landfills: Trust funds shall be available for post closure corrective actions for Class 1 landfills, only if the Director determines that:

1. Assessment monitoring results trigger the corrective action assessment provisions of Regulation 22. Trust funds shall not be used for assessment monitoring activities.

2. Other contamination is discovered which in the judgment of the Director threatens health and the environment.

Other Landfill Classes: Trust funds shall be available for post closure corrective actions for Class 3C, 3T, and 4 landfills, only if the Director determines that:

1. There is sufficient evidence of groundwater contamination to warrant further investigation;

2. Other contamination is discovered which in the judgment of the Director threatens health and the environment.

Ineligible Projects and Activities: The following types of projects and activities are not eligible for funding:

1. **Third Party Compensation**: The fund shall not be used to compensate third parties for damages to property caused by the contamination.

2. **Areas Adjacent to Existing Landfills:** The fund shall not be used for closed areas or operational phases contiguous to any permitted landfill which is receiving solid waste when the Director determines that corrective action is necessary.

3. **Routine Activities:** Funds shall not be used to perform routine post closure care and monitoring activities as provided in Regulation 22.

Eligibility Requirements: In order to be eligible for inclusion in the Trust Fund, a facility must:

1. Close the landfill as described in Regulation 22, or in accordance with applicable rules and regulations at the time of closure; and . . . .
2. Obtain or provide documentation that the Department has approved closure of the facility.

When Eligibility Begins: Eligibility begins at initiation of the post closure care period as provided by Regulation 22.

Department Involvement: Unless otherwise required by Regulation 22, or other applicable regulations, corrective action measures shall be selected by the Department and corrective action work shall be administered by the Department.

Personnel Funding Qualifications: The Department reserves the right to rule on qualifications of persons paid with State funds.

Owner/Operator $10,000 Expenditure: The owner or operator shall make his initial contribution of ten thousand dollars ($10,000) to the Department for use in the corrective action work after the measure has been selected. Moneys expended by the owner or operator prior to Department selection of the corrective action, unless contributed towards preliminary studies to confirm existence of suspected contamination and the Department has approved the studies, shall not be considered part of the owner or operator's contribution.

Refunds: In the event that preliminary studies are required before implementation of a corrective measure to confirm or deny the existence of suspected contamination and those studies indicate that contamination is not present, the Department shall refund any money which the owner or operator has contributed to those studies.

Funding Criteria: While evaluating the application for landfill post-closure trust funds to determine whether or not funds will be awarded, the Department will consider, at the least, the following criteria:

1. Meets eligibility requirements.
2. Provides proof of and solutions to certified contamination or environmental issues.
3. Clearly written and focused narrative proposal.
4. Clear budgeting and project scheduling process.
5. Purchases or contracts follow accepted purchasing or bid procedures.

Budgeting Criteria: In considering items to include in the project budget, keep in mind that the following items are not normally eligible to be covered by Landfill Post-Closure Trust Funds. Such budgeted items will not be funded unless they are directly associated with the project and are fully justified, and have met the prior funding approval by the Department:

1. **Administrative Costs over 10%**

   No more than ten percent (10%) of the funds shall be used for administrative costs related to the project.

2. **Other Ineligible Costs**

   - Legal costs or fees
   - Motor vehicles or vehicle registration
   - Land acquisition

General Instructions

Included herein are instructions and application forms necessary to apply for funds under the provisions of the Landfill Post-Closure Trust Fund, pursuant to Regulation 11 and Regulation 22.

If the project is approved to receive funding, a contract will be executed between the grantee and the Department. (For information purposes only, a sample Statement of Agreement and General Contract Conditions are provided in this packet.)

Wherever the wording "document or documentation" is used in this package, it means letter(s), contract(s), resolutions(s) or another specific forms of written communication which verifies a commitment.

To submit the application:

1) Follow the instructions and guidelines provided herein. A "fill in the blanks" electronic version of this application packet will be available for your ease in responding.

2) Attach narrative responses, comment letters and other documentation, identifying or numbering each document to correspond with the related question.

3) Sign and date the Application Cover Sheet. Each document that requires signatures must bear legally authorized signatures.

4) Provide a completed "Checklist Form" and a table or list of contents with the completed application.

5) Submit the original signed application and related documents to the Department for approval (if possible, include a CD or diskette copy). Do not FAX.

6) Provide a copy of the application, for information only, to the local Regional Solid Waste Management District to show proposed landfill corrective actions.

Mail Your Application
Arkansas Department of Environmental Quality
Solid Waste Management Division
P O Box 8913
Little Rock, AR 72219-8913

Or Deliver Your Application
Arkansas Department of Environmental Quality
Solid Waste Management Division
8001 National Drive, Building E
Little Rock, Arkansas

Checklist

Applicant:

Complete responses are required throughout the application.

Bind each copy on the left side and align as listed below.

Check that the following forms are enclosed in your submittal.

1. **List of Contents**
2. **Application Cover Sheet, Signed and Dated**
3. **Project Description and Narrative Summaries**
4. **Budget**
5. **Bids, Quotations, RFQ's or RFP's**
6. **Permit Coordination Form**
7. **Newspaper Notice**
8. **Documentation or Certification Contamination or Environmental Hazards**
9. **Landfill Post-Closure Certification**
10. **Third Party Certification**
11. **$10,000 Contribution or Approved Prior Expenditures**
12. **Right of Entry**
13. **Supporting Documents**

I certify that the information checked above is included in this application submittal.

Authorized Applicant Signature: ______________________

Landfill Post-Closure Trust Fund Grant Application

District/County Applicant ______________________

Mailing Address ______________________

City ______________________ Zip __________

Project Contact Person ______________________

Phone __________ FAX __________ e-mail __________

Project Location: City ______________________

County ______________________

Project Description or Short Title ______________________

State Fund Estimate __________

In-Kind Contribution Estimate __________

Total Cost Estimate __________

Project to be completed: In-House ☐ Contractor ☐ Both ☐

Authorized Signature ______________ Title __________

Authorized Signature ______________ Title __________

Date Submitted ______________

Submit Completed Application and Attachments to:

Arkansas Department of Environmental Quality
Solid Waste Management Division
Landfill Post-Closure Trust Fund Program
P O Box 8913
Little Rock AR 72219-8913

PROJECT DESCRIPTION AND NARRATIVE SUMMARY INSTRUCTIONS

A. Give project goals with specific measurable objectives. Identify need. Describe what the project intends to accomplish.

B. Provide a project timetable or schedule and a project completion plan. In chronological order, describe the main actions that will occur to achieve each of the project's objectives. Or describe the technology or methodology to be used as solutions to the effected area.

C. What cities, neighborhoods, county areas or service areas are targeted to receive a direct benefit from the proposed funding? Attach a map of the project and service areas.

D. Provide documentation that the landfill is no longer receiving waste.

E. Has the landfill received post-closure certification from the Department?

F. Provide certification and/or documentation that the landfill is causing groundwater contamination; is causing other contamination; is a hazard to public health; and/or endangers the environment? Provide any other documentation of the extent of contamination or environmental hazards and issues.

G. If the project is to be completed in part or in whole by the applicant's (in-house) personnel, identify the personnel and give brief job descriptions of persons whose salaries are to be funded in part or in whole by funds received from the Landfill Post-Closure Trust Fund.

H. If the applicant will be working with a partner to implement the project, give the organization and name of the person assigned to the project. If a contract between the applicant and a private partner (pursuant to Act 629 of 1991, A.C.A. §8-5-602) is applicable, include a copy of the contract with the application submittal. Contracts are to follow State Purchasing Procedures.

I. Identify the owner of the land on which the site is located. Provide proof or verification of financial responsibility of property owner. Provide an executed Right of Entry (form included).

J. If the applicant is other than the land owner, provide a copy of the lease and a signed statement indicating that the land owner is unable or unwilling to remediate the site and is, therefore, willing to allow the applicant to process the proposed project.

K. Provide verification of expenditures for remediation and clean-up of the site by the responsible party of not less than ten thousand dollars ($10,000) or remit an initial contribution of ten thousand dollars ($10,000) to the Department for use in the corrective action work after the measure has been selected.

L. The applicant is required to follow corrective action procedures contained in Regulation 22.1201 etal.

M. Provide a certification statement that the fund shall not be used to compensate third parties for damages caused by the contamination.

Project Budget Instructions

1. Attach a Project Budget, using a general accounting format. Ensure that:

   A. The State Funding does not exceed the maximum estimated amount of the project.

   B. The applicant initial expenditure of at least $10,000 is included.

   C. The State Funding plus the applicant's expenditure equals the Budget Total.

2. All items listed in the Budget under State funding must be eligible expenditures. Budgeting Criteria under the General Instructions in this packet identifies eligible and ineligible costs.

3. Administrative costs must be kept to no more than 10% of the total funds awarded.

4. Attach two quotations for each contracted or purchased item or service to be funded in excess of $20,000. Quotations should reflect the cost of the item or service at the time of purchase. Applicable bidding and purchasing procedures should be followed.

   INFLATED BID PROPOSALS:
   ADEQ reserves the right to deny project funding in the event bids appear inflated, or if some other discrepancy is discovered in the bidding process.

   CONTRACTOR HISTORY:
   ADEQ reserves the right to deny project funding if the bid is awarded to a contractor who has a history of non-compliance with environmental statutes or regulations.

5. Provide a breakdown of the estimated costs for each of the items listed on the budget sheet.

6. Project specific activities with an estimated cost of $20,000 or more must have design plans approved by a professional engineer, unless otherwise approved by the Department.

7. If funding is awarded for purchasing used equipment in excess of $20,000, an appraisal will be required. Applicant should consider used equipment where appropriate. Equipment purchases must receive prior-approval from the Department.

Permit Coordination Form

The following is a list of key questions which will help identify what permits, licenses, or approvals of a permit-like nature may be needed. It is the applicant's responsibility to identify and obtain needed permits, licenses and/or approval. Submit this completed form with the application to expedite its review and to reduce the possibility that the project will be delayed due to the untimely discovery of additional permitting requirements. If the project is funded, copies of permits, licenses or written approval may be required.

Answering "yes" to any of these questions (by circling the "Y"), may indicate a need for a permit, license or approval from the appropriate authority.

1. Y N Does the project involve the discharge of any type of wastewater to a storm sewer, drain, lake, stream, or other surface water?
2. Y N Does the project involve the discharge of liquids, sludge, wastewater and/or wastewater residuals into or onto the ground?
3. Y N Does the project involve the storage of chemicals, petroleum products, or salt on the property?
4. Y N Does the project involve the on-site storage of sanitary sewage prior to ultimate transport and disposal off-site (pump and haul)?
5. Y N Does the project involve the transport of septic tank, cesspool, or dry well contents?
6. Y N Does the project involve the on-site treatment, storage, or disposal of hazardous waste?
7. Y N Does the project involve burning, landfilling, storage, composting, transferring or processing any type of solid non-hazardous wastes on site?
8. Y N Does the project involve the installation, construction, reconstruction, relocation, or alteration of any process or process equipment (including air pollution control equipment) which has the potential to emit air contamination?
9. Y N Does the project involve the construction or alteration of any sewage collection or treatment facility?
10. Y N Does the project involve proposed work (dredging, filling, construction) in a:

    a) River, stream, creek, ditch, or swamp

    b) Wetlands or floodplain (area that has standing or flowing water any time of the year)?
11. Y N Does the project involve any dredging proposed with 500 feet of a lake, stream, creek, or ditch?
12. Y N Does the project involve any work proposed on or within the boundaries of State or Federal land?

LANDFILL POST-CLOSURE TRUST FUND GRANT PROGRAM
Arkansas Department of Environmental Quality
Solid Waste Management Division

RIGHT OF ENTRY AGREEMENT

The undersigned is the owner of certain property located in County, Arkansas, and has a legal description as follows:

The named property contains a solid waste landfill which has been deemed eligible to receive funding for remediation pursuant to Arkansas Code Annotated §8-6-1001 et seq. The undersigned hereby grants Right of Entry to either the State of Arkansas, the affected regional solid waste management district, the affected county, and/or their agents to enter the to the named property for the purposes of remediation of the said site as approved by the Arkansas Department of Environmental Quality. The undersigned further hereby releases and holds harmless the State or its agents from any damage, injury or loss that might occur in the performance of this operation. This Agreement shall be valid until said remediation operation has been completed.

Nothing in this Agreement shall be construed as limiting the rights of the State or a waiver of its authority to pursue enforcement of applicable laws.

SIGNED:

____

____

Property Owner(s)

SUBSCRIBED AND SWORN to before me

this______ of ________________, 20______.

Notary Public

My Commission Expires:

SAMPLE

STATEMENT OF AGREEMENT
Arkansas Department of Environmental Quality
Solid Waste Management Division
LANDFILL POST-CLOSURE TRUST FUND

Project Title:

Fund Award Number:

Grantee*(s)*:

State Funds Awarded:

The State of Arkansas, represented by the Arkansas Department of Environmental Quality, Solid Waste Management Division (hereinafter referred to as the Department) and the recipient (named herein and hereinafter referred to as the Grantee) of a grant award from the Landfill Post-Closure Trust Fund, mutually agree to perform this *Statement of Agreement* in accordance with the Landfill Post-Closure Trust Fund Act, A.C.A. §8-6-1001 et seq., with Regulation 11, Solid Waste Fees and Grants, Part Three, and with Regulation 22, the Solid Waste Management Regulation. All applicable general conditions, forms and reporting requirements, disbursement and other terms, promises, conditions, plans, specifications, procedures, and assurances, included with this *Statement of Agreement*, are hereby made a part of the *Statement of Agreement* and are signed as a mutual agreement for the implementation of the funded project by the authorized parties of the Department and of the Grantee. Grantees must meet all conditions as set forth herein and in applicable Department regulations, guidelines and policies.

The Grantee, in consideration of the promises made by the State herein and in accordance with the terms of this *Statement of Agreement*, hereby promises to execute the project described in the submitted application. The Department, in consideration of the conditions agreed to by the Grantee, hereby promises to tender to the Grantee the State funds awarded to the project in so far as the Grantee continues to meet the terms and conditions attached herein and in so far as funds are appropriated and are available from the Landfill Post-Closure Trust Fund.

The Grantee may not deviate from the terms of this contract without the written concurrence of the Department. It shall be the responsibility of the Grantee to notify the Department of any irregularities that may in any way effect this award, including any violations of Federal, State or Local laws by employees or agents of the Grantee. The Grantee further understands and accepts that the project will not receive any funds from the State until this *Statement of Agreement* has been executed by the Department and the Fund Recipient.

Special Conditions to be met by the Grantee:

Authorized Signatures: **Arkansas Department of Environmental Quality**	Grantee(s):
______________________________ *Chief, Solid Waste Management Division*	*Authorized Signature*
Date: ______________	Date:

Form-PC-AG

GENERAL CONDITIONS OF LANDFILL POST-CLOSURE TRUST FUND PROGRAM AWARDS

As specified in Arkansas Code Annotated §8-6-1001, et seq., it is the responsibility of the Arkansas Department of Environmental Quality to administer the Landfill Post-Closure Trust Fund. These General Conditions are to be enforce on any funds awarded in order to meet legislative intent and requirements.

These conditions include, but are not limited to, the following:

1. **Inter-local Agreements.** With the exception of Regional Solid Waste Management Boards acting under the provisions of A.C.A. §8-6-701 et seq., and Solid Waste Authorities incorporated under A.C.A. §14-233-101 et seq., no inter-local agreements shall be allowed unless approval has been received from the Department.

2. **Quotations and Bids.** Each new Application (or Change Order covering any deviations to the approved application) must be accompanied by two quotations for each contracted or purchased item or service in excess of $20,000. The Department may grant an exception to the two quote rule for services or items available only through one source. Quotations should reflect the cost of the item or service at the time of purchase. The Fund Recipient is to follow State Purchasing Procedures and bid processes for funded purchases or contracts.

3. **Agent of the Fund Recipient Requirements:** Any Agent of the Fund Recipient is to provide to the Fund Recipient, prior to Contract approval, a Certificate of Insurance covering Workmen's Compensation Insurance and Automobile Insurance. **And......** Agent of the Fund Recipient is further to provide to the Fund Recipient, prior to Contract approval, a Performance Bond in the amount of the Contract. Such bond is to be posted by a bonding company licensed to do business in the State of Arkansas and such bond is to be issued in the State of Arkansas. **Or......** the Agent of the Fund Recipient, in said Contract with the Fund Recipient, agrees that any payment of said Contract shall be withheld until the project has received final inspection approval from the Department

4. **Passing Funds through to an Agent.** For funds passed through to an agent of the Fund Recipient for services rendered, payments must be as specified in the application budget or identified via a Change Order. The Fund Recipient will establish that the agent has not violated any Federal, State or local law. The agent must maintain accounting records on funded projects available to the Fund Recipient and to the Department.

5. **Signs and Property Tags.** Project sites must prominently display signs giving recognition to funds received through the *Arkansas Department of Environmental Quality, Solid Waste Management Division.*

6. **Compliance.** A Fund Recipient must have all necessary solid waste permits. It is the intent of the Arkansas Legislation governing solid waste management that the waste be recycled wherever possible or practical. However, any waste not recovered by recycling must be disposed of in a permitted solid waste disposal facility, as specified in Regulation 22. Funded projects must maintain compliance with all local, State, or Federal laws, rules or regulations.

GENERAL CONDITIONS Page 2

7. **Record Keeping.** The Department shall have the right of access to all records, books, papers, or documents related to the funded project. The Recipient shall establish a proper accounting system to document expenditures and revenues. Records shall be kept for a period of not less than 3 years following receipt of funds.

8. **Employee Records.** Records shall be maintained by a Fund Recipient on an employee whose primary job duty is directly related to a funded project.

9. **Progress Reports.** On forms provided by the Department, a Fund Recipient must provide a schedule which identifies projected completion dates and estimated costs. The Fund Recipient will give an accounting of expenditures and include waste disposal data. Reporting will begin with the start-up payment request, if any, and will continue through receipt of the final payment.

10. **Report Submittals and Check Requests.** The Fund Recipient will establish need, calculate and submit check requests.

11. **State Funds Disbursed.** Upon Departmental review and approval of reports, a State of Arkansas warrant check shall be issued for the amount designated by the Department. Funds shall be released, as funds are available, in accordance with the Landfill Post-Closure Trust Fund Program disbursement schedule, and such funds shall be calculated following receipt of required documents and, for in-house projects, invoice copies of costs or services rendered.

12. **Checks Payable.** Unless otherwise requested by the Fund Recipient, by use of a Change Order form, checks will be made payable to the Fund Recipient and mailed to the Project Coordinator named in the application.

13. **Documentation of Expenditures.** For project bid at over $20,000, provide a copy of the contract with a winning bidder, bid specifications, and bids received to the Department. For sites being cleaned up as an in-house project, provide copies of invoices covering project expenditures.

14. **Modifications and Changes.** Changes may be made to the funded project, as described in the original approved Application, only if the Fund Recipient submits a Change Order. The Department will review the request and will determine if modifications are to be allowed. Changes made without following proper procedure may result in funds being withheld or in reimbursement actions.

15. **Suspension, Termination, Reimbursements, Appeals.** A Fund Recipient who encounters serious financial problems after accepting grant funds, or who is, for some other reason, unable to proceed with the approved project, must immediately inform the Department.

This attachment, named General Conditions of Landfill Post-Closure Trust Fund Program, is hereby made a part of this Statement of Agreement.

Request for Proposal
Professional Services
C & L Landfill Site Characterization Study
City of Fayetteville, AR
Parks and Recreation Division

RFP

I. INTRODUCTION

Objective

The objective of this project is to conduct a site characterization of the former C & L Landfill located on a portion of the Cummings property in Fayetteville, Arkansas. The project will evaluate impacts to soil, groundwater and surface waters in the vicinity of the former landfill. The Consultant will generate a Site Characterization Report (SCR) for submittal to the City of Fayetteville and the Arkansas Department of Environmental Quality (ADEQ).

Background

The Cummings property encompasses approximately 500 acres of land, of which approximately 35 acres were previously utilized as a landfill. The former C & L Landfill is located approximately 1.5 miles southwest of Fayetteville, in the Southwest ¼ of Section 30, Township 16 North, Range 30 West, Washington County, Arkansas (Figure 1). The landfill reportedly operated primarily to receive municipal solid waste and some construction/demolition debris.

II. CONFORMANCE WITH WORK PLAN

All project activities shall be conducted in conformance with the ADEQ-approved Work Plan prepared by Terracon, dated September 17, 2003, for the site characterization of the former C & L Landfill. The Work Plan includes a Scope of Work, proposed subcontractor list, schedule of activities, Sampling and Analysis Plan (SAP), Quality Assurance Protection Plan (QAPP), Laboratory Statement of Qualifications, and Health and Safety Plan. Modifications to the Work Plan must be approved by the ADEQ.

The following information is a summary of the approved Work Plan. The project description presented in the ADEQ-approved Work Plan takes precedence for any discrepancies between the following summary and the Work Plan.

III. SCOPE OF SERVICES

A. HEALTH AND SAFETY

Consultant will develop a Site-Specific Health and Safety Plan (HSP) which is in compliance with OSHA Standard 29 CFR 1910.120.

Field personnel will have completed an OSHA 40-hour HAZWOPER (29CFR 1910.120) course and be current for 8-hour OSHA Annual Refresher Training. Copies of resumes demonstrating practical project experience and training certificates for should be available for all Consultant field personnel.

Field measurements will be taken for health and safety monitoring and onsite screening of soils. The health and safety monitoring will include the use of a calibrated Photoionization Detector (PID), a Thermo Environmental Industries Model 580 Organic Vapor Meter (OVM), or similar device, calibrated to isobutylene, and a combustible gas indicator (CGI) calibrated to 50% LEL methane calibration gas.

B. SAMPLING AND ANALYSIS

1. Soil Boring Installation and Soil Sampling

A total of seven (7) soil borings will be advanced in the vicinity of the site. Four (4) of the soil borings will be advanced within the apparent confines of the former landfill. Two (2) soil borings will be advanced at selected down-gradient locations on the east side of the former landfill. One (1) soil boring will be advanced at a selected upgradient location on the west or north side of the former landfill. Proposed well locations are shown on the attached Proposed Boring and Samples Location Map (Figure 2). The soil borings will be advanced to a maximum depth of approximately 20 feet below grade surface (bgs), five feet below the initial water table, or to auger refusal, whichever occurs first. The wells will be advanced using a truck-mounted, or track-mounted drilling rig capable of operating with 8.5-inch outside diameter, hollow stem augers. Soil samples will be collected continuously using core barrels or split spoon samplers. As each boring is advanced, subsurface soil samples will be obtained and examined for ASTM soil classification, including soil type, texture, color, water content, odor, etc. This lithologic description will be recorded on boring log/monitoring well completion forms.

Soil samples will be field-screened for organic vapors using calibrated PID, or equivalent instrument. One soil sample will be collected from each of the seven soil borings, from the zone exhibiting the highest OVM reading. If, based on these observations, no evidence of environmental impact is noted, samples will be collected from the capillary fringe zone, a change in lithology (to native soil at the interface of the landfill bottom), or from the interval of most likely environmental impact as determined in the field by the sampling professional.

All samples retained for analysis will be properly labeled, preserved, and delivered under chain-of-custody control to ERMI Environmental Laboratories (ERMI), Allen, Texas, for analysis. (Note: ERMI is the designated subcontract analytical laboratory, per the ADEQ-approved Work Plan dated September 17, 2003). If another subcontract analytical laboratory will be used, Consultant must submit the laboratory's Statement of Qualifications to the ADEQ for approval.) Soil samples retained for analysis will be analyzed for concentrations of volatile organic compounds (VOCs) per EPA test method 8260, semi-volatile organic compounds (SVOCs) per EPA test method 8270, RCRA metals using EPA test method 6010/7000, organophosphorous pesticides per EPA test method 8141, organochlorine pesticides per EPA test method 8081, and chlorinated herbicides per EPA test method 8151 as outlined in U.S. EPA, Test methods for evaluation Solid Waste, SW-846, 3rd Edition, November, 1986. In addition, soil samples collected from the four soil borings advanced within the apparent confines of the former landfill will be analyzed for total radioactivity (gross alpha + gross beta).

2. Groundwater Monitoring Well Installation, Surveying and Gauging

Each of the seven soil borings will be converted to groundwater monitoring wells to evaluate groundwater on the site. The wells will be completed as follows:

- Installation of 5 to 15 feet of 2-inch diameter, 0.010-inch machine slotted PVC well screen with a threaded bottom cap;
- Installation of 2-inch diameter, threaded, flush-joint PVC riser pipe to approximately 2 to 3 feet above grade surface;
- Addition of pre-sieved 10/20 grade silica sand for annular sand pack around the well screen from the bottom of the boring to approximately 2 feet above the top of the well screen;
- Placement of 2 feet of hydrated bentonite pellets above the sand pack;
- Installation of an above grade, locking, steel, monitoring well cover with a locking well cap inset in a concrete well pad.

The monitoring wells will be properly developed after completion.

All monitoring wells will be topographically surveyed to vertical and horizontal coordinates by a State of Arkansas-licensed land surveyor. Coordinates will be documented using a Universal Transverse mercator, state planar coordinate system, or latitude and longitude grid. Elevations for ground surface and top of casing for each well will be surveyed.

At least 48 hours after the wells have been developed, the monitoring wells will be gauged with an oil/water interface probe to record the depth to groundwater beneath the site.

3. Groundwater Sampling

Following gauging activities, the monitoring wells will be purged and groundwater samples obtained. Well purging will consist of removing a minimum of three wellbore volumes from each well. Field measurements of temperature, pH, and conductivity will be performed at recorded intervals during purging activities to confirm well recharge stabilization. Groundwater samples will be evacuated from the bottom of each dedicated bailer by inserting a manufacturer-provided check valve and emptying the bailer contents into the laboratory-provided, pre-preserved sample containers.

The sample containers will be properly labeled, preserved, and delivered under the chain-of-custody control to ERMI for analyses of concentrations of VOCs per EPA test method 8260, SVOCs per EPA test method 8270, RCRA metals per EPA test method 6010/7000, organophosphorous pesticides per EPA test method 8141, organochlorine pesticides per EPA test method 8081, and chlorinated herbicides per EPA test method 8151 as outlined in U.S. EPA, Test methods for evaluation Solid Waste, SW-846, 3rd Edition, November, 1986. In addition, groundwater samples collected from the seven monitoring wells will be analyzed for total radioactivity (gross alpha + gross beta) and water quality parameters including: chloride and sulfate using EPA SW-846 Method 300.0/9056, nitrogen (nitrite + nitrate) using EPA SW-846 Method 300.0, phosphate using EPA SW-846 Method 365.2, total organic carbon (TOC) using EPA SW-846 Method 415.2/9060, and total alkalinity using EPA SW-846 Method SM2320.

4. Surface Water Sampling

A total of six surface water samples will be collected in the vicinity of the site. One (1) of the surface water samples will be collected from an unspecified location upgradient to the former landfill. One (1) of the surface water samples will be collected from a surface water seep near the base of the slope on the west-central portion of the former landfill. One (1) of the surface water samples will be collected from the intermittent creek that flows eastward from the former landfill, in a location adjacent to, and downgradient from, the former landfill. One (1) of the surface water samples will be collected in a downstream location from the same intermittent creek that flows eastward from the landfill, in a location approximately one mile east of the landfill, at a point prior to its discharge into Cato Springs Branch. One (1) of the surface water samples will be collected from Cato Springs Branch, approximately 1,700 feet northeast and downstream from the discharge point of the intermittent creek. One (1) of the surface water samples will be collected from Cato Springs Branch, approximately one mile southwest and upstream from the discharge point of the intermittent creek. Proposed surface water samples are identified on the Proposed Boring and Samples Location Map (Figure 2).

Surface water sampling will be conducted in general conformance with ASTM Standard D 3370-82 ("Standard Practices for Sampling Water"). Filed measurements of temperature, pH, and conductivity will be performed on the surface water samples. Final readings will be recorded on the appropriate form. In addition to these field/laboratory measurements, the following field qualitative observations will be recorded on the appropriate field form: color, odor and turbidity.

The sample containers will be properly labeled, preserved, and delivered under the chain-of-custody control to a ERMI for analyses of concentrations of VOCs per EPA test method 8260, SVOCs per EPA test method 8270, RCRA metals per EPA test method 6010/7000, organophosphorous pesticides per EPA test method 8141, organochlorine pesticides per EPA test method 8081, and chlorinated herbicides per EPA test method 8151 as outlined in U.S. EPA, Test methods for evaluation Solid Waste, SW-846, 3rd Edition, November 1986. In addition, the surface water samples will be analyzed for water quality parameters including: chloride and sulfate using EPA SW-846 Method 300.0/9056, nitrogen (nitrite + nitrate) using EPA SW-846 Method 300.0, phosphate using EPA SW-846 Method 365.2, total organic carbon (TOC) using EPA SW-846 Method 415.2/9060, and total alkalinity using EPA SW-846 Method SM2320.

5. QC Samples for Soil, Groundwater and Surface Water

During the course of the field investigations, three types of Quality Control (QC) samples will be obtained, as follows.

For the specified VOC analyses per EPA Test Method 8260, one trip blank will be submitted with every cooler of soil samples or groundwater samples submitted to the laboratory.

One equipment rinsate sample will be collected per each day of the sampling and submitted to the laboratory with the collected soil or groundwater samples. The rinsate will be prepared by pouring distilled water through the sampling device, such as the continuous core sampler, flight augers, or other non-dedicated sampling equipment. The rinsate will be analyzed for the same constituents as the collected soil or groundwater samples.

One field duplicate sample will be collected for every 20 soil, groundwater or surface water environmental samples collected.

One field blank sample will be collected of the distilled water to document the quality of the distilled water.

6. Management and Disposal of Contaminated Waste
All waste materials generated during the proposed investigation from drilling, decontamination, and sampling activities will be collected in 55-gallon, DOT-approved steel drums and stored onsite pending waste characterization and disposal. Composite samples will be collected from each waste stream (soil and water) for laboratory analyses required for disposal. A waste generator's profile sheet will be completed and submitted to the appropriate permitted landfill or disposal facility.

Upon approval from the landfill, Consultant will contract with a state-licensed disposal contractor, for transport and disposal of the subject drums to the designated landfill.

7. Equipment Decontamination
Equipment which may come into contact with subsurface soils or groundwater during the site investigation will be properly cleaned and decontaminated prior to use, between boring installations or sampling activities and prior to demobilization from the site. All decontamination waste fluids will be collected in suitable containers and stored in a drum staging area onsite until proper disposal options are determined.

8. Surface Radioactivity Survey
Field personnel will conduct a limited ground surface radioactivity survey over the apparent extent of the former landfill. The ground surface radioactivity survey will consist of measuring radioactivity levels at intersection points of an approximate 100 foot by 100 foot grid, laid out across the former landfill, using a Geiger Counter or similar radioactivity measuring instrument.

C. QUALITY ASSURANCE PROTECTION PLAN

Consultant will provide a Quality Assurance Project Plan (QAPP), or will conduct project activities according to the ADEQ-approved QAPP (Terracon Work Plan dated September 17, 2003), to provide information necessary for maintaining quality assurance/quality control (QA/QC) during the investigation process. Field measurements and soil/groundwater samples will be collected in general accordance with applicable ASTM standards.

Consultant will provide a list and resumes of supervisory personnel responsible for QA/QC during the investigation process, including the Program Manager, Project Manager, Health and Safety Officer, Field Sample Custodian and Quality Assurance Coordinator. Consultant will provide documentation of corporate quality control procedures, including senior review, document control and records control.

1. Control of Measuring and Test Equipment
Appropriate requirements for calibration procedures, calibration frequency, and equipment maintenance will be performed in the field.

2. Use and Maintenance of Field Notebooks
Field forms or notebooks will provide the means for recording all data collecting activities performed at the site, including drilling and sampling activities. Entries will be descriptive and detailed.

The following information will be provided in the daily field notes:

- Date
- Project Number and Location
- Start Time
- Weather, including temperature and wind direction information. Weather entries should be updated as needed, at least once daily.
- Identification of field and site personnel
- Signature of person making the entry
- Boring log or well completion information, as required
- Instrument calibration
- Field measurements

Entries into the field notes will also include notes of pertinent conversations with regulatory agency officials, deviations from the QAPP, SAP, or Work Scope, and any other significant events or observations. Field equipment calibration records will also be recorded on the field forms, or in field notebooks dedicated to the specific equipment.

D. REPORT

Consultant will generate an SCR for submittal to the City of Fayetteville and the ADEQ. The SCR will include the following:

- Documentation of field activities;
- Site plan showing pertinent site features;
- Soil boring/monitoring well logs;
- Analytical laboratory results;
- Isoconcentration contour maps for selected analytes;
- Map of ground surface radioactivity levels over the former landfill;
- Cross-sections across the former landfill;
- Data evaluation and presentation of pertinent findings; and,
- Recommendations for specific remediation measures and cost estimation

The SCR will include a discussion of the precision, accuracy and completeness of the field and analytical data (per Terracon Work Plan dated September 17, 2003). The precision will be evaluated by the analysis of the replicate samples and will be expressed as a relative percent difference. Accuracy will be estimated from the analysis of QC samples whose true values are known or from surrogate or matrix spike recovery. Completeness will be reported as the percentage of all measurements made whose results are judged to be valid

IV. GENERAL REQUIREMENTS

A. PROPOSAL TIMELINE

RFP Release Date:	January 21, 2004
Deadline for Submission of Proposals:	February 4, 2004
Tentative Contract Award Date:	March 9, 2004 (City Council Approval)
Tentative Report Due Date:	May 4, 2004

Proposal Submission Deadline
All proposals must be received at the address listed above **no later than 4:00 pm on February 4, 2004.** Facsimile or electronically transmitted proposals will not be accepted. Postmarks will not be accepted in lieu of actual receipt. Late or incomplete proposals may not be opened and considered.

B. CORRESPONDENCE

All *project specific questions* can be directed to:

Rebecca Ohman
Park Planner
113 West. Mountain Street
Fayetteville, AR 72701
Telephone: 479-444-3472
Fax: 479-521-7714

All correspondence, including proposals, should be submitted to:

Ms. Peggy Vice
Purchasing Manager
113 West Mountain Street
Fayetteville, AR 72701
Telephone: 479-575-8289
Fax: 479-575-8241

C. PROPOSAL CONDITIONS

1. Contingencies
Funding for the study is available. This RFP does not commit the City to award a contract. The City reserves the right to accept or reject any or all proposals if the City determines it is in the best interest of the City.

2. Proposal Submission
To be considered, all proposals must be submitted in the manner set forth in this proposal. It is the Firm's responsibility to ensure that its proposals arrive on or before the specified time.

3. Incurred Costs
This RFP does not commit the City to pay any costs incurred in the preparation of a proposal in response to this request and Firms agree that all costs incurred in developing this proposal are the Firm's sole responsibility.

4. Final Authority
The final authority to award a Contract rests solely with the City Council.

5. City of Fayetteville Reserves the Right
The Selection Committee reserves the right, for any reason to accept or reject any one or more proposals, to negotiate the term and specifications for the services provided, to modify any part of the RFP, or to issue a new RFP.

V. PROPOSAL SUBMISSION

A. GENERAL

1. Submission of a proposal indicates that the Firm has read and understands this entire RFP, to include all attachments, exhibits, schedules, and addendum (as applicable) and all concerns regarding this RFP have been satisfied.

2. Proposals must be submitted in the format described below. Proposals are to be prepared in such a way as to provide a straightforward, concise description of capabilities to satisfy the requirements of this RFP. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.

3. Proposals must be complete in all respects as required in this section. A proposal may not be considered if it is conditional or incomplete.

B. PROPOSAL PRESENTATION

1. An original and eight (8) copies of the written proposal are required.

2. The package containing the original and copies must be sealed and clearly marked **"Request for Proposal Cummings Property Site Characterization Study RFP #XXX."**

C. PROPOSAL FORMAT

Response to this Request for Proposal must be in the form of a proposal package that must be submitted in the following format:

1. Cover Page - Submit a letter, on letterhead stationary, signed by a duly authorized officer, employee, or agent of the organization/firm submitting the proposal that must include the following information:

a. A statement that the proposal is submitted in response to the RFP #XXX

b. A statement indicating which individuals, by name, title, address, telephone number, and signature, are authorized to negotiate with the City on behalf of the firm.

c. A statement certifying that the undersigned, under penalty of perjury, is an agent authorized to submit proposals on behalf of the firm,

2. Statement of Certification – Submit copies of licenses as required and pertinent in addition to those listed for the Quality Assurance Protection Plan.

3. Experience

a. Describe experience Site Characterization Studies.

b. Describe key staff experience in working on any part of this project.

4. Project Approach

As described in Scope of Services.

5. References – Submit a list of references from projects that are related or pertinent to this type of project.

6. Schedule- Consultant will provide an estimated schedule for the implementation of the field investigation and reporting activities.

7. Cost and Fees for Anticipated Services – **Submit in a separate marked and sealed envelope.** Cost and fees will not be considered in the selection process. Cost and fee submittal will be opened and used in negotiation of a final contract. Only the first selected Firm's cost and fee submittal will be opened unless a contract can not be negotiated. In this event, the second choice Firm's submittal will be opened, examined, and negotiated.

a. Explain any assumptions and/or constraints.

b. Explain any additional charges and/or fees in the proposal, either direct or indirect costs.

c. Basic fees for services (per hour).

d. Any additional consultant costs as deemed necessary by the Firm.

e. Spreadsheet to outline overall project costs and itemize the work.

VI. PROPOSAL EVALUATION AND SELECTION

A. EVALUATION PROCESS

All proposals will be subject to a standard review process developed by the City. A primary consideration shall be the effectiveness of the firm in the presentation of similar or related services based on verifiable performance. The evaluation will be based on the written proposal as submitted, but may include an interview between the Selection Committee and the firm.

B. EVALUATION CRITERIA

1. Initial Review - All proposals will be initially evaluated to determine if they meet the following minimum requirements:

a. The proposal must be complete, in the required format, and be in compliance with all the requirements of this RFP.

b. Prospective firms must meet the requirements as stated in the Minimum Firm Requirements as outlined in Section I, B.

Failure to meet all of these requirements may result in a rejected proposal. No proposal shall be rejected, however, if it contains a minor irregularity, defect or variation if the irregularity, defect or variation is considered by the Selection Committee to be immaterial or inconsequential. In such cases the Firm will be notified of the deficiency in the proposal and given an opportunity to correct the irregularity, defect or variation or the Selection Committee may elect to waive the deficiency and accept the proposal.

2. **Technical Review** - Proposals meeting the above requirements will be thoroughly evaluated by the Selection Committee based on conformance to all the requirements stated herein. Following an evaluation of the RFP responses, prospective firms maybe interviewed by the committee. The committee reserves the right to select the firm from the information submitted in the RFP. Criteria used in evaluating the proposals and selecting the firm includes the following:

   27 Points: Specialized experience and technical competence of the firm with respect to the type of professional services required.
   27 Points: Project approach that best meets the Parks and Recreation Division's needs and goals.
   21 Points: Ability to provide services in a timely manner (including, but not limited to, providing sufficient personnel, licensing, certification, preliminary and final drawings, specifications, calculations, cost estimates and all such services needed for the full completion of the project.)
   20 Points: Past record of performance of the firm with respect to control of costs, quality of work, and ability to meet schedules and deadlines. (References)
   5 Points: Firms proximity to and familiarity with the area in which the project is located.

C. CONTRACT AWARD

Contract(s) will be awarded based according to the Professional Selection Policy of the City of Fayetteville. The City reserves the right to negotiate any portions of the successful Firm fees and scope of work or utilize their own resources for such work. However, total cost and project approach should include a turn-key engineered project from preliminary design through award of construction contract.

VII. PROPOSAL CHECKLIST

Item	Description	Included
1	Cover Page (V. C. 1. p. 8)	
2	Statement of Certifications (V. C. 2. p. 8)	
3	Experience (III. C. p. 5 and V. C. 3. p. 8)	
4	Project Approach (III and V. C. 4. p. 9)	
5	References (V. C. 5. p. 9)	
6	Schedule (V. C. 6. p. 9)	
7	Schedule of Cost and Fees Enclosed in a Separate Sealed Envelope (V. C. 7. p. 9)	
8	Submit Original Proposal and 8 Copies (V. B. 2. p. 8)	

Fayetteville Parks and Recreation Division
City of Fayetteville, AR
C & L Landfill Site Characterization Study
RFP #XXX

ATTACHMENT A

Firm Information: ___Corporation ___Partnership ___Sole Proprietorship

Firm Name	Owner Name Telephone Number
Federal Tax ID #	Contact Name Telephone Number Fax Number
Mailing Address	Remittance Address

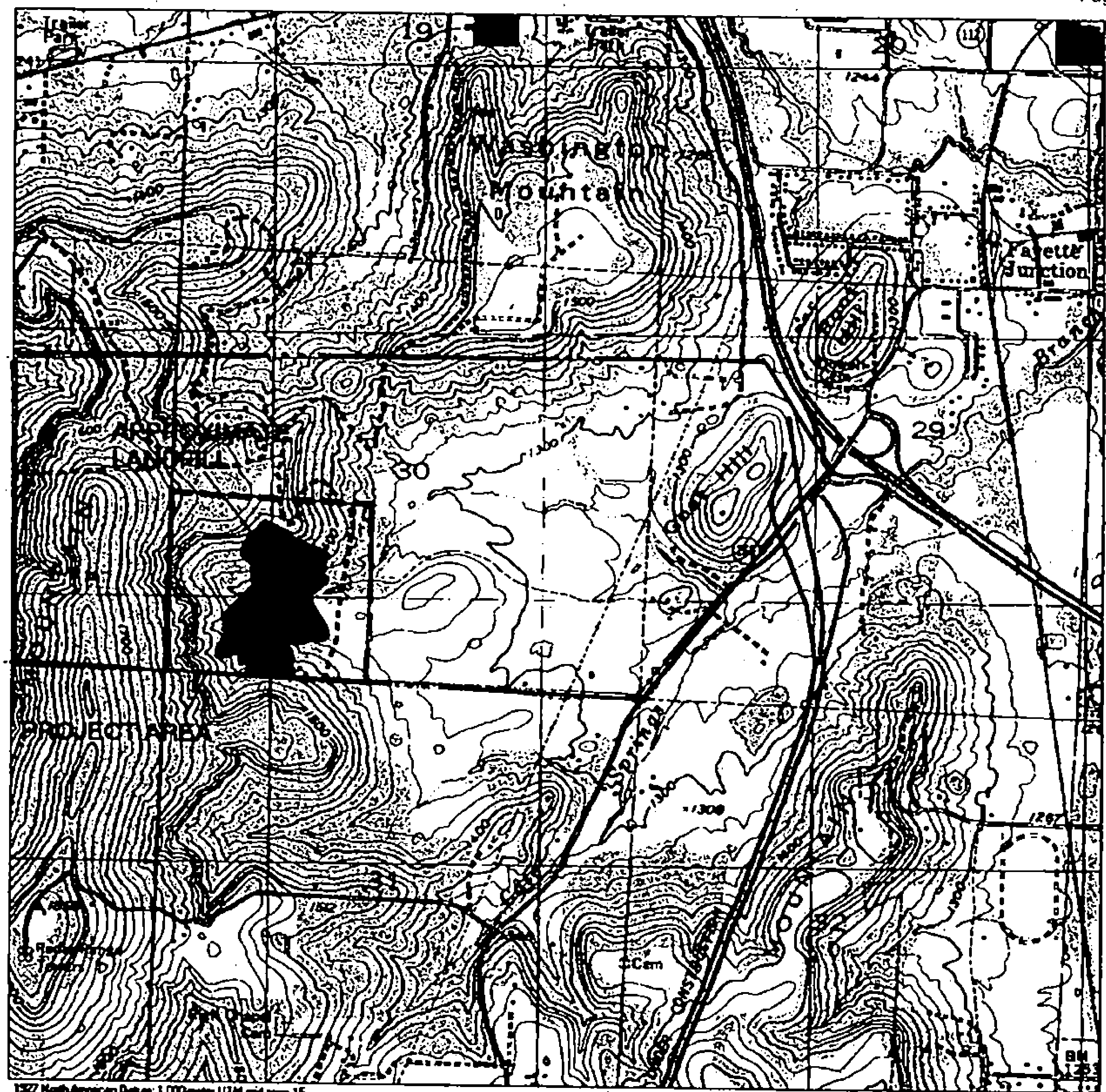
I certify that:

1. All declarations in this proposal and attachments are true to the best of reasonable knowledge, whereof the falsity of such representations entitles the City to pursue any legal remedy.
2. All aspects of this proposal, including cost, have been determined independently, without consultation with any other prospective Firm or competitor for the purpose of restricting competition.
3. The offer made in this proposal is firm and binding for 90 days after receipt of the proposal by the City of Fayetteville.

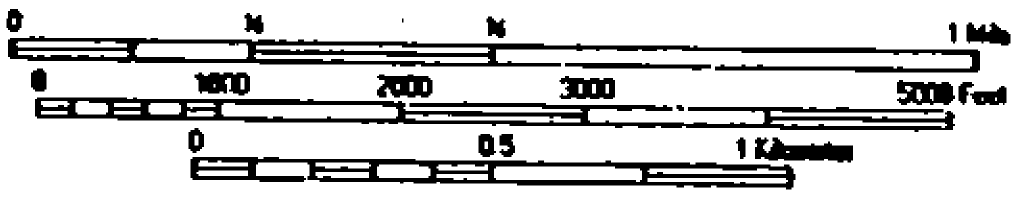
______________________________(Firm) agrees to provide the City with any additional information it deems necessary to accurately determine ability to perform services proposed. Furthermore, submission of this proposal constitutes permission by this organization for the City to verify all information contained herein. Failure to comply with any request for additional information may disqualify this organization from further consideration. Such additional information may include evidence of financial ability to perform.

Authorized Signature________________________________
Date___________________

Print Name ____



1927 North American Datum; 1,000-meter UTM grid zone 15
Generated by BigTopo (www.gaga.com)
Map compiled from USGS Quads: Fayetteville, AR



MODIFIED AFTER USGS 7.5 MINUTE
FAYETTEVILLE, ARKANSAS
1995
Sec. 30, T 16 N - R 30 W

N

DIAGRAM IS FOR GENERAL LOCATION ONLY,
AND IS NOT INTENDED FOR CONSTRUCTION PURPOSES

LOCATION MAP
C & L LANDFILL-CUMMINGS PROPERTY

FAYETTEVILLE, ARKANSAS
FOR: CITY OF FAYETTEVILLE

Project Mngr:	RCT	Terracon	Project No.	04037072
Designed By:	USGS		Scale:	1" = 2,000'
Checked By:	RCT	10930 East 56th Street	Date:	9/17/03
Approved By:	TDK	Tulsa, Oklahoma 74146	Drawn By:	USGS
File Name:		04037072 L(1)	Figure No.	1

STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
CONTRACT REVIEW
X GRANT REVIEW

For the Fayetteville City Council Meeting of: February 3, 2004

FROM:

Rebecca Ohman	Parks and Recreation	Public Works
Name	Division	Department

ACTION REQUIRED: Resolution authorizing Parks and Recreation to apply for the Post Closure Trust Fund from the Arkansas Department of Environmental Quality for study and potential remediation of the C & L Landfill.

COST TO CITY:

$8,500.00	$ 206,173.50	Community Park Development
Cost of this request	Category/Project Budget	Program Category / Project Name
2250.9255.5301.00	$ 11,972.50	Parks Development Capitol
Account Number	Funds Used to Date	Program / Project Category Name
02002-01	$ 194,201.00	Parks Development
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item ___ Budget Adjustment Attached

Budget Manager — Date 1-16-04

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager — Date 1/16/04
Internal Auditor — Date 1/16/04
City Attorney — Date 1/16/04
Purchasing Manager — Date 1/20/04

STAFF RECOMMENDATION:

Division Head — Date 1-16-04
Department Director — Date 1-20-04
Finance & Internal Services Dir. — Date 1-20-04
Chief Administrative Officer — Date 1-21-04
Mayor — Date

Received in Mayor's Office — Date 1-20-04 Jm

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

New Item: Yes No

ENTERED 1-16-04

City Council Agenda Item

Preprint agenda date and item number inserted by city clerk

To: Mayor and City Council

From: Gary Dumas

Date: January 16th, 2004

Subject: Awarding Bid for 2 to 8 Yard Solid Waste Containers – Bid #03-80

Recommendation: Accept the low bid for 2 to 8 Yard Containers from Wastequip May Fab from Beeville, Texas.

Background: The Solid Waste/Recycling Division annual bid for 2 to 8 yard containers has expired. These containers are used for trash and recycling for multiple family dwellings and commercial businesses.

Discussion The twelve month agreement will allow the purchase of the listed items at lowest price on an "As Needed" basis and are as follows:

- 4yd Containers @ $332.00/UNIT
- 6yd Containers @ $403.00/UNIT
- 8yd Containers @ $499.00/UNIT
- 4yd Recycle Cont. @$357.00/UNIT
- 6yd Recycle Cont. @$428.00/UNIT
- 8yd Recycle Cont. @$524.00/UNIT

Purchases will be primarily on an as needed basis but a small inventory will be maintained at the Solid Waste/Recycling site. This small inventory will allow staff to provide an immediate response to a request for service.

The Solid Waste/Recycling Division staff has inspected the low bidder's containers to verify they meet current specifications.

The bid tab sheet from City of Fayetteville Purchasing Office is attached.

Budget Impact: These items were anticipated and budgeted into the commercial collection program within container costs account. The annual projected cost of this project is $63,000. These items are within there formal bids.

RESOLUTION NO. ______

A RESOLUTION APPROVING THE PURCHASE OF 2 TO 8 YARD TRASH CONTAINERS FROM WASTEQUIP IN AN AMOUNT NOT TO EXCEED $63,000.00 TO SERVICE MULTI-FAMILY AND COMMERCIAL SOLID WASTE CUSTOMERS.

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

<u>Section 1</u>. That the City Council of the City of Fayetteville, Arkansas hereby approves the purchase of 2 to 8 yard trash containers from Wastequip in an amount not to exceed $63,000.00 to service multi-family and commercial solid waste customers.

PASSED and **APPROVED** this 3rd day of February, 2004.

APPROVED:

By: ________________________
DAN COODY, Mayor

ATTEST:

By: ________________________
SONDRA SMITH, City Clerk

BID: 03-80
DATE: 12/18/03
TIME: 1:30 PM
CITY OF FAYETTEVILLE

Dumpsters

BIDDERS	Item 1	Item 2	Item 3	Item 4	Item 5	Item 6	Item 7
1. Bes-Pac	$270.00	$335.00	$425.00	$525.00	$340.00	$425.00	$525.00
2. Downing Sales & Service	$250.00	$345.00	$453.00	$539.00	$355.00	$458.00	$544.00
3. Gregory Manufacturing Co.	$260.00	$395.00	$492.00	$565.00	$395.00	$492.00	$565.00
4. RJM	$276.00	$365.00	$443.00	$545.00	$365.00	$443.00	$545.00
5. Wastequip May Fab	$253.00	$332.00	$403.00	$499.00	$357.00	$428.00	$524.00

Totals:	
Bes Pac	$2,845.00
Downing Sales & Service	$2,944.00
Gregory	$3,164.00
RJM	$2,982.00
Waste Equipment	$2,796.00

CERTIFIED BY: P Vice
P. VICE PURCH MGR

Ben Bell
WITNESS

12/29/03
DATE

STAFF REVIEW FORM - FINANCIAL OBLIGATION

xx AGENDA REQUEST
CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council Meeting of: February 3rd, 2004

FROM:

Travis Dotson	Solid Waste and Recycling	Operations
Name	Division	Department

ACTION REQUIRED: Approval of resolution authorizing purchases up to $63,000 for 2 to 8 yard containers. Also accepting low bid for 2 to 8 yard containers from Wastequip May Fab. This is an annual bid allowing the Division to purchase containters at the lowest cost possible. Containers will be purchased on an as needed basis to service customers.

COST TO CITY:

$63,000.00	$160,000	Container Costs
Cost of this request	Category/Project Budget	Program Category / Project Name
5500-5010-5870-00	none	Not applicable
Account Number	Funds Used to Date	Program / Project Category Name
Not applicable	$160,000	Solid Waste
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: ✓ Budgeted Item ___ Budget Adjustment Attached

Budget Manager — Date 1-16-04

CONTRACT/GRANT/LEASE REVIEW:

Marsha Farthing — Accounting Manager — Date 1/16/04
Nancy Smith — Internal Auditor — Date 1/16/04
City Attorney — Date 1/20/04
Purchasing Manager — Date 1/20/04

STAFF RECOMMENDATION:

Division Head — Date 1/16/04
Received in Mayor's Office — Date 1-20-04
Department Director — Date 1-16-04
Finance & Internal Services Dir. — Date 1-20-04
Hugh Earnest — Chief Administrative Officer — Date 1-21-04
Mayor — Date

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

New Item: Yes No

ENTERED 1-6-04

City Council Agenda Item

Preprint agenda date and item number inserted by city clerk

To: Mayor and City Council

From: Gary Dumas

Date: January 16th, 2004

Subject: Awarding Bid for Roll-Off Style Containers, Receiver Boxes, and Compactors – Bid #03-78

Recommendation: Accept the lowest bids from BesPac Manufacturing of Easly, South Carolina and Downing Sales of Phillipsburg, Missouri for containers/receiver boxes and compactors respectively.

Background: The Solid Waste/Recycling Divisions present bid for containers, receiver boxes, and compactors has expired. The containers are used to receive trash and recycling items from construction sites, demolition staging and refuse from large commercial businesses.

Discussion:

The twelve month agreement will allow the purchase of the listed items at lowest price on an "As Needed" basis and are as follows:

Compactors
- 4yd hopper units @ $8595.00/UNIT
- 40yd Receiver Boxes @ $3645.00/UNIT

Container/Receiver Box
- 20yd drop boxes @ $1947.00/UNIT
- 30yd drop boxes @ $2195.00/UNIT
- 40yd drop boxes @ $2349.00/UNIT
- Receiver boxes various sizes @ $3645.00/UNIT

The Solid Waste and Recycling Division, pursuant to resolution #131-02, will be expanding temporary drop box service as well as permanent compactor services during the 2004 fiscal year. The purchases of containers/receiver boxes and compactors will assist Solid Waste servicing its current customers and provide the equipment to expand the drop box and compactor services.

The Solid Waste/Recycling Division staff has inspected the low bidder's compactors and receiver/drop boxes to verify they meet current specifications.

The bid tab sheet from City of Fayetteville Purchasing Office is attached.

Budget Impact: These items were anticipated and budgeted into Solid Waste's Commercial Collection program within the container costs account. The projected cost of this project is $85,859. These items are within their formal bids.

RESOLUTION NO. ______

A RESOLUTION APPROVING THE PURCHASE OF TRASH COMPACTORS AND ROLL-OFF CONTAINER/COMPACTORS IN AN AMOUNT NOT TO EXCEED $85,859.00 FROM BES-PAC INC., AND DOWNING SALES, INC.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves the purchase of trash compactors and roll-off container/compactors in an amount not to exceed $85,859.00 from Bes-Pac Inc., and Downing Sales, Inc.

PASSED and **APPROVED** this 3rd day of February, 2004.

APPROVED:

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
SONDRA SMITH, City Clerk

City of Fayetteville

Solid Waste Containers & Compactors

Bid: 03-79
Date: 12/18/03
Time: 11:30 AM

Item	Bes-Pac Inc.	Downing Sales and Service	Gregory Manufacturing	J.V. Maufacturing	K-Pac	RJM Waste Equipment Co.	Wastequip Mayfab
1	$1,947.00	$2,145.00	$2,170.00	No Bid	No Bid	$2,179.00	$2,081.00
2	$2,195.00	$2,245.00	$2,460.00	No Bid	No Bid	$2,372.00	$2,275.00
3	$2,349.00	$2,594.00	$2,850.00	No Bid	No Bid	$2,691.00	$2,629.00
4	$1,760.00	$2,132.00	$2,205.00	No Bid	No Bid	$2,231.00	$2,251.00
5	$1,964.00	$2,245.00	$2,600.00	No Bid	No Bid	$2,484.00	$2,347.00
6	$2,200.00	$2,643.00	$2,850.00	No Bid	No Bid	$2,850.00	$2,939.00
7	$2,645.00	$3,445.00	$3,450.00	No Bid	No Bid	No Bid	$4,513.00
8	$2,750.00	$3,600.00	$3,900.00	No Bid	No Bid	No Bid	$5,192.00
9	$3,300.00	$3,740.00	$3,970.00	No Bid	No Bid	No Bid	No Bid
10	$3,645.00	$3,925.00	$4,700.00	No Bid	No Bid	$4,600.00	$5,892.00
11	$3,850.00	$3,925.00	$4,800.00	$5,764.00	No Bid	$4,850.00	$5,892.00
12	$2,548.00	$3,445.00	$3,700.00	$3,998.00	No Bid	No Bid	$3,422.00
13	$3,060.00	$3,570.00	$3,800.00	$4,196.00	No Bid	No Bid	$3,606.00
14	$3,100.00	$3,640.00	$3,900.00	No Bid	No Bid	$3,630.00	$3,826.00
15	$3,550.00	$3,795.00	$4,400.00	$4,568.00	No Bid	$3,940.00	$4,077.00
16	$3,961.00	$3,870.00	$4,300.00	No Bid	No Bid	$4,340.00	No Bid
17	$9,150.00	[redacted]	$10,100.00	$8,805.00	$9,534.00	No Bid	No Bid
18	$9,490.00	[redacted]	$10,100.00	$9,023.00	$9,534.00	No Bid	$11,245.00
19	$9,675.00	[redacted]	$10,500.00	$9,863.00	$9,534.00	$10,560.00	$11,245.00
20	$9,890.00	[redacted]	No Bid	$10,039.00	$10,060.40	$10,590.00	$11,325.00
21	$10,700.00	[redacted]	$11,000.00	$10,279.00	$10,365.60	$10,610.00	$11,400.00
22	$11,120.00	[redacted]	$11,758.00	$10,838.00	$10,671.15	$10,810.00	$11,520.00
23	$11,900.00	[redacted]	No Bid	$11,280.00	No Bid	$12,580.00	$12,225.00
24	$12,410.00	[redacted]	No Bid	No Bid	No Bid	No Bid	No Bid
25	$7,710.00	[redacted]	$6,640.00	$5,445.00	$6,738.90	$6,010.00	$6,250.00
26	$8,925.00	[redacted]	$9,300.00	$8,456.00	$7,085.40	$7,730.00	$7,963.00
27	$9,400.00	[redacted]	$9,800.00	$8,981.00	$10,162.60	$8,646.00	$8,795.00
28	$12,290.00	[redacted]	No Bid	$15,221.00	$14,100.80	$12,950.00	$10,250.00
29	$6,200.00	[redacted]	No Bid	No Bid	No Bid	No Bid	No Bid
30	$5,710.00	[redacted]	$7,800.00	$5,975.00	$6,133.40	No Bid	$5,853.00
31	$6,300.00	[redacted]	$8,100.00	$6,235.00	$6,343.40	No Bid	$5,883.00
32	$6,715.00	[redacted]	$8,300.00	$6,495.00	$6,613.60	No Bid	$6,272.00
Subtotals							
	$192,409.00	$186,816.00	$159,453.00	$145,461.00	$116,877.25	$126,653.00	$171,168.00
Exceptions for No Bids							
	0	0	$57,736.00	$61,696.00	$91,738.00	$85,716.00	$36,454.00

STAFF REVIEW FORM - FINANCIAL OBLIGATION

xx AGENDA REQUEST
CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council Meeting of: February 3rd, 2004

FROM:

Travis Dotson	Solid Waste and Recycling	Operations
Name	Division	Department

ACTION REQUIRED: Approval of resolution authorizing purchases up to $85,859 for Roll-Off Style containers, Receiver Boxes and Compactors. Also accepting the low bid for containers/receiver boxes from Bes Pac Manuafacturing of Easly, South Carolina and compactors from Downing Sales of Phillipsburg, Missouri. This is an annual bid allowing the Division to purchase this equipment at the lowest cost possible. Equipment will be purchased on a as needed basis to service customers.

COST TO CITY:

$85,859.00	$160,000	Container Costs
Cost of this request	Category/Project Budget	Program Category / Project Name
5500-5010-5870-00	none	Not applicable
Account Number	Funds Used to Date	Program / Project Category Name
Not applicable	$160,000	Solid Waste
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item ____ Budget Adjustment Attached

Budget Manager 1-16-04 Date

CONTRACT/GRANT/LEASE REVIEW:

Marsha Farthing	1/16/04	Nancy Smith	1/16/04
Accounting Manager	Date	Internal Auditor	Date
	1/20/04		1/20/04
City Attorney	Date	Purchasing Manager	Date

STAFF RECOMMENDATION:

	1-16-04	**Received in Mayor's Office**	1-20-04
Division Head	Date		Date
	1-16-04		
Department Director	Date		
	1-20-04		
Finance & Internal Services Dir.	Date		
	1-21-04		
Chief Administrative Officer	Date		
Mayor	Date		

Cross Reference:

Previous Ord/Res#: ____

Orig. Contract Date: ____

Orig. Contract Number: ____

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

ENTERED 1-16-04

FAYETTEVILLE

January 27, 2004 Agenda Session

THE CITY OF FAYETTEVILLE, ARKANSAS

January 7, 2004

TO: Mayor Coody

THRU: Steve Davis, Finance and Internal Services Director

FROM: Scott Huddleston. Information Technology Manager SH

SUBJECT: AGENDA ITEMS TO APPROVE PURCHASE REQUESTS TO HANSEN INFORMATION TECHOLOGIES AND ESRI FOR 2004 SERVICE AND MAINENANCE FEES

Recommendations:
Staff recommends approval of purchase requests to Hansen Information Technologies and ESRI for 2004 Service and Maintenance Fees.

Discussion:
Service and Maintenance fees are necessary to keep our software current. These fees allow the City to receive updates and enhancements to the software as they become available. In addition, Service and Maintenance fees provide technical phone support and problem troubleshooting and resolution. The software products that we have purchased from Hansen and ESRI are essential to the City's day to day operations and it is important that we keep these assets current.

Background:
January 15, 2002, City Council approved a resolution (7-02) contracting with Hansen Information Technologies for purchase of software and professional services for installation and training. Installation began in March of 2002, and the first module went live in April of 2002. Installation of all modules was completed by year end 2002. The Hansen software provides modules and applications utilized by the City for many daily operations. Hansen applications include Building Permits and Inspections, Code Enforcement, Planning, Customer Service, Asset Management, Work Orders, and Citizen Requests for Service processed from the web. To date the system has been used to process over 9,000 Customer Service Requests, approximately 990 Code Enforcement Cases, approximately 6,800 Building Applications, and over 20,000 Inspections.

The City began using ESRI software products in 1996. ESRI provides software utilized for the development, analysis and utilization of the City's Geographic Information System(GIS) data. All maps and analysis of the City's geographic information are stored and produced through the utilization of ESRI software products. The City is currently involved in a joint project with ESRI and Washington County to develop a single source location for information related to all Land Records.

RESOLUTION NO. _____

A RESOLUTION APPROVING THE ANNUAL MAINTENANCE AGREEMENT IN THE AMOUNT OF $20,692.30 WITH ESRI, INC. FOR GEOGRAPHIC INFORMATION SYSTEM (GIS) SOFTWARE MAINTENANCE AND UPGRADES.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves the Annual Maintenance Agreement in the amount of $20,692.30 with ESRI, Inc. for Geographic Information System (GIS) software maintenance and upgrades.

PASSED and **APPROVED** this 3rd day of February, 2004.

APPROVED:

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
SONDRA SMITH, City Clerk

ESRI

ESRI Inc
380 New York Street
REDLANDS CA 92373

SUBJECT: MAINTENANCE QUOTE

DATE: 10/02/2003
TO: JOHN GODDARD
ORGANIZATION: CITY OF FAYETTEVILLE
INFORMATION TECHNOLOGY DEPT
FAX #: 479-575-8316 PHONE #: 479-575-8219

FROM: Ki Lyons
FAX #: 909-307-3083 PHONE #: 888-377-4575 Ext. 1225
EMAIL: klyons@esri.com

Number of pages transmitted
(including this cover sheet): 5

QUOTATION #25091018

Please find the attached quotation for your forthcoming software support term. As you know, keeping your support current entitles you to exclusive benefits that may include technical support, software upgrades, and User Conference registrations. Please contact me if you need information about the entitlements that are specific to the programs you are participating in.

ESRI
380 New York Street
REDLANDS, CA 92373
Phone: 888-377-45751225
Fax #: 909-307-3083

Quotation

Date: 10/02/2003 **Quotation Number:** 25091018

Send Purchase Orders To:
ESRI, Inc.
380 New York Street
Redlands, CA 92373-8100
Attn: Ki Lyons

Please include the following remittance address on your Purchase Order:
ESRI Inc.
File #54630
Los Angeles, CA 90074-4630

JOHN GODDARD
CITY OF FAYETTEVILLE
INFORMATION TECHNOLOGY DEPT
113 W MOUNTAIN
FAYETTEVILLE AR 72701
Attn: JOHN GODDARD

Customer Number: 23472

Item	Qty	Product#	Description	Unit Price	Extended Price
			YOUR CUSTOMER SERVICE REPRESENTATIVE IS KI LYONS AT (888)377-4575 EXT 122		
10	1	52384	MAINT,PRIM,AI,FL ArcInfo Floating Primary Maintenance Start Date: 01/16/2004 End Date: 01/15/2005 Hardware Platform: WINDOWS NT-INTEL	3,000.00	3,000.00
20	2	52385	MAINT,SCNDRY,AI,FL ArcInfo Floating Secondary Maintenance Start Date: 01/16/2004 End Date: 01/15/2005 Hardware Platform: WINDOWS NT-INTEL	1,200.00	2,400.00
40	1	52390	MAINT,PRIM,NET,FL Network Floating Primary Maintenance Start Date: 01/16/2004 End Date: 01/15/2005 Hardware Platform: WINDOWS NT-INTEL	500.00	500.00
50	1	52396	MAINT,PRIM,COGO,FL ArcCOGO Floating Primary Maintenance Start Date: 01/16/2004 End Date: 01/15/2005 Hardware Platform: WINDOWS NT-INTEL	500.00	500.00

This quotation is valid for 90 days. The quotation information is proprietary and may not be copied or released other than for the express purpose of system selection and purchase/license. This information may not be given to outside parties or used for any other purpose without consent from Environmental Systems Research Institute, Inc. (ESRI).

Any estimated sales and/or use tax has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's budgetary purposes. ESRI reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state taxes directly, then prior to invoicing, your organization must provide ESRI with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

Issued By: Ki Lyons **Ext:** 1225 (LYONSK)

To expedite your order, please reference your customer number and this quotation number on your purchase order.

ESRI

380 New York Street
REDLANDS, CA 92373
Phone: 888-377-45751225
Fax #: 909-307-3083

Quotation

Page 2

Date: 10/02/2003 **Quotation Number:** 25091018

Item	Qty	Product#	Description	Unit Price	Extended Price
60	1	52397	MAINT,SCNDRY,COGO,FL ArcCOGO Floating Secondary Maintenance Start Date: 01/16/2004 End Date: 01/15/2005 Hardware Platform: WINDOWS NT-INTEL	200.00	200.00
70	1	64820	MAINT,APRS FOR AG ArcPress for ArcGIS Maintenance Start Date: 01/16/2004 End Date: 01/15/2005 Hardware Platform: GENERIC DESKTOP	200.00	200.00
80	1	85057	MAINT,AIMS STD ED,SRVR/CPU LIC ArcIMS Standard Edition Server CPU Maintenance Start Date: 01/16/2004 End Date: 01/15/2005 Hardware Platform: GENERIC DESKTOP	1,500.00	1,500.00
90	4	87192	MAINT,PRIM,AV,8X,SU ArcView 8.X Single Use Primary Maintenance Start Date: 01/16/2004 End Date: 01/15/2005 Hardware Platform: GENERIC DESKTOP	400.00	1,600.00
100	6	87193	MAINT,SCNDRY,AV,8X,SU ArcView 8.X Single Use Secondary Maintenance Start Date: 02/20/2004 End Date: 01/15/2005 Hardware Platform: GENERIC DESKTOP	182.05	1,092.30
110	26	87193	MAINT,SCNDRY,AV,8X,SU ArcView 8.X Single Use Secondary Maintenance Start Date: 01/16/2004 End Date: 01/15/2005 Hardware Platform: WINDOWS NT-INTEL	200.00	5,200.00
130	1	87198	MAINT,PRIM,AG 3D,CU ArcGIS 3D Analyst Concurrent Use Primary Maintenance	500.00	500.00

Any estimated sales and/or use tax has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's budgetary purposes. ESRI reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state taxes directly, then prior to invoicing, your organization must provide ESRI with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

Issued By: Ki Lyons Ext: 1225

(LYONSK)

To expedite your order, please reference your customer number and this quotation number on your purchase order.

ESRI

380 New York Street
REDLANDS, CA 92373
Phone: 888-377-45751225
Fax #: 909-307-3083

Quotation

Date: 10/02/2003 **Quotation Number:** 25091018

Item	Qty	Product#	Description	Unit Price	Extended Price
			Start Date: 01/16/2004 End Date: 01/15/2005 Hardware Platform: WINDOWS NT-INTEL		
140	1	87213	MAINT,DSG,ASDE,SRVR,2PROC ArcSDE Developer Support Group (DSG) Maintenance for 1 Server and up to 2 CPUs Includes 5 Read and Write Connects Start Date: 01/16/2004 End Date: 01/15/2005 Hardware Platform: WINDOWS NT-INTEL	3,000.00	3,000.00
150	1	87232	MAINT,PRIM,AG SA,CU ArcGIS Spatial Analyst Concurrent Use Primary Maintenance Start Date: 01/16/2004 End Date: 01/15/2005 Hardware Platform: WINDOWS NT-INTEL	500.00	500.00
160	1	91271	MAINT,PRIM,AG PUB,CU ArcGIS Publisher Concurrent Use Primary Maintenance Start Date: 01/16/2004 End Date: 01/15/2005 Hardware Platform: WINDOWS NT-INTEL	500.00	500.00

Subtotal		20,692.30
Shipping & Handling		0.00
Estimated Tax		0.00
Total	$	20,692.30

Issued By: Ki Lyons Ext: 1225 [LYONSK]

To expedite your order, please reference your customer number and this quotation number on your purchase order.

City Of Fayetteville

Requisition No.:
Date: 7/31/2003
P.O Number
Expected Delivery Date:

Vendor #: 5221
Vendor Name: ESRI Inc.
Mail Yes:__ No:__
Address: File # 54630
Fob Point:
Taxable Yes:__ No:__
Quotes Attached Yes:__ No:__
City: Los Angeles
State: CA
Zip Code: 90074-4630
Ship to code:
Divison Head Approval: S Hudd
Requester: Scott Huddleston
Requester's Employee #: 331
Extension:

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	Annual Software Maintenance	1	EA	20,692.30	$20,692.30	1010-1710-5416 00			
2					$0.00				
3					$0.00				
4					$0.00				
5					$0.00				
6					$0.00				
7					$0.00				
8					$0.00				
9					$0.00				
10					$0.00				
	Shipping/Handling		Lot		$0.00				

Special Instructions:

Subtotal: $20,692.30
Tax: $1,141.73
Total: $21,834.03

Approvals:

Mayor: ______
Department Director: ______
Purchasing Manager: ______
Finance & Internal Services Director: ______
Budget Manager: ______
IT Manager: ______
Dispatch Manager: ______
Utilities Manager: ______
Other: ______

STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council Meeting of: February 3, 2004

FROM:

Scott Huddleston	Information Technology	Finance and Internal Services
Name	Division	Department

ACTION REQUIRED: Approve Purchase Request to ESRI for 2004 Service and Maintenance Fees.

COST TO CITY:

$20,692.30	$ 141,500.00	Maintenance
Cost of this request	Category/Project Budget	Program Category / Project Name
1010-1710-5416 00	$ -	Maintenance
Account Number	Funds Used to Date	Program / Project Category Name
	$ 141,500.00	General
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item ____ Budget Adjustment Attached

Budget Manager — Date: 1-15-04

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager: Marsha Farthing — Date: 1/15/04
Internal Auditor: Nancy Smith — Date: 1/16/04
City Attorney — Date: 1/16/
Purchasing Manager — Date: 1/16/04

STAFF RECOMMENDATION:

Division Head — Date: 1/15/2004
Received in Mayor's Office — Date: 1/16/04 P.H.

Department Director — Date

Finance & Internal Services Dir. — Date: 1-16-2004

Chief Administrative Officer: Hugh Earnest — Date: 1-21-04

Mayor — Date

Cross Reference:

Previous Ord/Res#: ______
Orig. Contract Date: ______
Orig. Contract Number: ______
New Item: **Yes** **No**

ENTERED 1-16-04

FAYETTEVILLE

January 27, 2004 Agenda Session

THE CITY OF FAYETTEVILLE, ARKANSAS

January 7, 2004

TO: Mayor Coody

THRU: Steve Davis, Finance and Internal Services Director

FROM: Scott Huddleston. Information Technology Manager SH

SUBJECT: AGENDA ITEMS TO APPROVE PURCHASE REQUESTS TO HANSEN INFORMATION TECHOLOGIES AND ESRI FOR 2004 SERVICE AND MAINENANCE FEES.

Recommendations:
Staff recommends approval of purchase requests to Hansen Information Technologies and ESRI for 2004 Service and Maintenance Fees.

Discussion:
Service and Maintenance fees are necessary to keep our software current. These fees allow the City to receive updates and enhancements to the software as they become available. In addition, Service and Maintenance fees provide technical phone support and problem troubleshooting and resolution. The software products that we have purchased from Hansen and ESRI are essential to the City's day to day operations and it is important that we keep these assets current.

Background:
January 15, 2002, City Council approved a resolution (7-02) contracting with Hansen Information Technologies for purchase of software and professional services for installation and training. Installation began in March of 2002, and the first module went live in April of 2002. Installation of all modules was completed by year end 2002. The Hansen software provides modules and applications utilized by the City for many daily operations. Hansen applications include Building Permits and Inspections, Code Enforcement, Planning, Customer Service, Asset Management, Work Orders, and Citizen Requests for Service processed from the web. To date the system has been used to process over 9,000 Customer Service Requests, approximately 990 Code Enforcement Cases, approximately 6,800 Building Applications, and over 20,000 Inspections.

The City began using ESRI software products in 1996. ESRI provides software utilized for the development, analysis and utilization of the City's Geographic Information System(GIS) data. All maps and analysis of the City's geographic information are stored and produced through the utilization of ESRI software products. The City is currently involved in a joint project with ESRI and Washington County to develop a single source location for information related to all Land Records.

RESOLUTION NO. ______

A RESOLUTION APPROVING A PURCHASE REQUEST TO HANSEN TECHNOLOGY, INC. IN THE AMOUNT OF $44,852.10 FOR SOFTWARE SERVICE AND MAINTENANCE FEES.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a Purchase Request to Hansen Technology, Inc. in the amount of $44,852.10 for software service and maintenance fees.

PASSED and **APPROVED** this 3rd day of February, 2004.

APPROVED:

By: ______________________________
DAN COODY, Mayor

ATTEST:

By: ______________________________
SONDRA SMITH, City Clerk

HANSEN®

People. Government. Solutions

Invoice	SMAR100518
Date	10/31/2003
Page	1

FAYETTEVILLE, CITY OF
SCOTT HUDDLESTON
113 WEST MOUNTAIN STREET
FAYETTEVILLE AR 72701

Invoice Type	Purchase Order/Contract No.	Payment Terms
SMAR	PLEASE ISSUE PO/CK	Net 00

Item	Unit Price / Qty Ordered	Amount
SMA-CS-LA	Service and Maintenance for Land Products $6,844.50 1.00 V7.x Land Management: Customer Service (7), Building (15), Code Enforcement (7), and Licensing (3)	$6,844.50
SMA-CS-AS	Service and Maintenance for Asset Products $35,682.66 1.00 V7.x Assets: Customer Service (13), Bldg (1), Complex (3), Park (3), Plant (12), Sewer (3), Storm (4), Street (4), Water (4), Pvmnt, Adv. Asset Insp., VRM, and Tab Editor	$35,682.66
SMA-CS-DY	Service and Maintenance for Dynamic Portal $1,825.02 1.00 Dynamic Portal for Customer Service	$1,825.02
SMA-CS-GIS	Service and Maintenance for GIS Products $500.00 1.00 V7.x GIS: ArcView 3 upgraded to GeoAssistant ESRI 8 (1)	$500.00

Due on or before January 1, 2004, for Coverage Term: 1/1/2004 - 12/31/2004. For questions, please call Diane at ext. 3002. This invoice includes an incremental increase based on a CPI of 1.4%.

Subtotal	$44,852.18
	$0.00
Tax	$0.00
Total	$44,852.18

City Of Fayetteville

Requisition No.:
Date: 7/31/2003
P.O Number:
Expected Delivery Date:

Vendor #: 11273
Vendor Name: Hansen Information Technoloies
Mail Yes:__ No:____

Address: 1745 Markstron Road
Fob Point:
Taxable Yes:_ No:____
Quotes Attached Yes:____ No:____

City: Sacramento
State: CA
Zip Code: 95825
Ship to code:
Divison Head Approval:

Requester: Scott Huddleston
Requester's Employee #: 331
Extension:

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	Annual Software Maintenance	1	EA	44,852.19	$44,852.19	1010-1710-5416 00			
2					$0.00				
3					$0.00				
4					$0.00				
5					$0.00				
6					$0.00				
7					$0.00				
8					$0.00				
9					$0.00				
10					$0.00				
	Shipping/Handling		Lot		$0.00				

Special Instructions:

Subtotal:	$44,852.19
Tax:	$2,379.92
Total:	$47,232.11

Approvals:

Mayor: ____________
Department Director: ____________
Purchasing Manager: ____________

Finance & Internal Services Director: ____________
Budget Manager: ____________
IT Manager: ____________

Dispatch Manager: ____________
Utilities Manager: ____________
Other: ____________

FAYETTEVILLE
THE CITY OF FAYETTEVILLE

DEPARTMENTAL CORRESPONDENCE

Date: January 16, 2003

To: The Mayor and Council

From: Hugh Earnest
CAO

Subject: A Resolution Authorizing the Mayor to Negotiate a Contract for Services with Van Scoyoc Associates

Recommendation
The resolution authorizing the employment of the Van Scoyoc firm be approved

Background
For three years, the mayor, along with several city staff and others, have been visiting with a number of firms that all claim to have a great deal of experience in securing financial support from the federal government for a wide range of local and regional issues. It became apparent in these conversations that the principal common denominator among these firms was a high level of skill in grant writing. However, what we are looking for in these meetings is a firm or an individual that could influence the appropriation and authorization process in Washington and in so doing, secure for the city monies specifically targeted at local issues. In short, we need a Washington-based firm that will enable us to more effectively and efficiently secure needed federal support for Fayetteville.

Current Situation
In order to address this issue, city staff sent out a Request for Qualifications (RFQ) for *Federal Government Relations Representation and Consulting Services*. The intent of this particular effort was to locate a firm whose focus is on the development, in concert with us, on a federal relations strategy that over time will result in better identifying, seeking and winning federal funding for local priorities.

Discussion
The RFQ prepared by the city was sent out to a number of firms and was also placed on the city web site. Three firms responded to the RFQ. They were:

- Finnegan and Associates Inc Little Rock, AR
- Randall Funding and Development Mill Valley, CA
- Van Scoyoc Associates Washington DC

The three responses were evaluated through our normal procurement process by a Collis Committee consisting of Ray Boudreaux, Gary Dumas, Hugh Earnest, Dean Collis Geren and Robert Rhodes. Mrs. Peggy Vice serves on all committees as an ex-officio member. After considerable discussion, it was the unanimous opinion of the committee that the firm of Van Scoyoc Associates be recommended for employment by the city. It should also be noted that this firm has been employed by the University for 3+ years and the results, as measured by monies secured by the firm for the university, have been excellent. Over the past three years the U of A experience has been as follows.

- 2002-$1,000,000
- 2003-$3,000,000
- 2004-$7,000,000 (This amount is not yet firm and depends on final action on appropriation bills currently before congress.)

It will be necessary for the city to carefully negotiate a contract for services with the firm. This can be accomplished in a very short time which will allow us to immediately begin the process with the council of identifying local priorities.

The firm uses a carefully detailed methodology in its approach to representing a client. We have attached their response explaining the program proposed by them.

Budget Impact
The firm works on an annual retainer basis. Contracts are generally for one year, with a 90 day opt-out clause for both parties. The final price is subject to negotiation and is contingent upon the detailed scope of work agreed to, the degree of difficulty in its execution, and the amount of time it is expected to be required to fulfill the work. The firm is proposing a retainer of $65,000 to $85,000 per year and understands that the number is subject to negotiation. In addition, the firm expects to have reasonable expenses (e.g., long distance telephone, copying and travel) paid for by the client with prior approval of the client if requested. The firm suggests that re-imbursements will not exceed $10,000 on an annual basis.

I recommend that this expense, which we believe to be an excellent investment for the future, to be taken out of the monies secured from the 540 sale that originally came form economic development funds. As stated previously, the exact amount will be negotiated and will be submitted for approval as part of a budget amendment.

RESOLUTION NO. ______

A RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE A CONTRACT FOR SERVICES WITH VAN SCOYOC ASSOCIATES

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 negotiate a contract for services with Van Scoyoc Associates.

PASSED and **APPROVED** this the 3rd day of February, 2004.

APPROVED:

DRAFT

By: ____________________________
DAN COODY, Mayor

ATTEST:

By: ____________________________
SONDRA SMITH, City Clerk

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

X AGENDA REQUEST

For the Fayetteville City Council Meeting of: February 3, 2004

FROM:

Hugh Earnest	Administration	Chief Administrative Officer
Name	Division	Department

ACTION REQUIRED: Approval of Resolution authorizing the Mayor to negotiate a contract for services with Van Scoyoc Associates, to obtain financial support from the federal government and to address and calculate regional issues.

SUMMARY EXPLANATION:

STAFF RECOMMENDATION:

Division Head — Date

City Attorney — Date 1-21-04

Department Director — Date

Finance & Internal Services Dir. — Date

Hugh Earnest
Chief Administrative Officer — Date 1-21-04

Mayor — Date

Received in Mayor's Office — Date

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

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

CITY ATTORNEY AGENDA REQUEST FORM

FOR: COUNCIL MEETING OF FEBRUARY 3, 2004

FROM:

City Attorney Kit Williams

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A Resolution To Clarify That The Rules Of Order And Procedure Of The Fayetteville Mayor/City Council Should Follow The "Procedural Rules For Municipal Officials" By The Arkansas Municipal League

APPROVED FOR AGENDA:

City Attorney — 1-20-04
Date

ENTERED 1/20/04

RESOLUTION NO. _______

A RESOLUTION TO CLARIFY THAT THE RULES OF ORDER AND PROCEDURE OF THE FAYETTEVILLE MAYOR/CITY COUNCIL SHOULD FOLLOW THE "PROCEDURAL RULES FOR MUNICIPAL OFFICIALS" BY THE ARKANSAS MUNICIPAL LEAGUE

WHEREAS, Rule D.2. Of Rules of Order and Procedure of the Fayetteville Mayor/City Council incorrectly refer to the "Handbook for Arkansas Municipal Officials" instead of the "Procedural Rules For Municipal Officials" by the Arkansas Municipal League.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby replaces the current D.2. of the Rules of Order and Procedure with the new D.2. as stated below:

> **"2. Precedence of Motions**
>
> The City Council shall follow the precedence and classification of motions as given in the most recent edition of the Arkansas Municipal League's 'Procedural Rules for Arkansas Municipal Officials.' In the event a matter is not covered by the 'Procedural Rules for Arkansas Municipal Officials,' the most recent edition of Robert's Rules of Order shall apply. On questions of appeal, a majority of those present is required to overturn a ruling by the chair."

PASSED and **APPROVED** this the 3rd day of February, 2004.

APPROVED:

DRAFT

By: ________________________
DAN COODY, Mayor

ATTEST:

By: ________________________
SONDRA SMITH, City Clerk

ALDERMAN AGENDA REQUEST FORM

February 3, 2004

FOR: COUNCIL MEETING OF ~~DECEMBER 16, 2003~~

FROM:

BOB DAVIS, ALDERMAN

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A Resolution To Modify Section **B. 4.** **Voting** on the Rules of Order and Procedure of the Fayetteville Mayor/City Council

---

APPROVED FOR AGENDA:

Orally Approved by Bob 1-21-04
Alderman Date

1-21-04
City Attorney (as to form) Date

RESOLUTION NO. ________

A RESOLUTION TO MODIFY SECTION **B. 4.** **VOTING** ON THE RULES OF ORDER AND PROCEDURE OF THE FAYETTEVILLE MAYOR/CITY COUNCIL

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 modifies Section **B. 4.** **Voting** by adding another sentence to clarify that discussion and comments cannot occur during the voting procedure. The revised Section **B. 4.** **Voting** shall be as follows:

"**4. Voting**

"Every member present when a question is put to a vote shall vote either "yes" or "no", except that a member may abstain from voting if he or she has not participated in the preceding discussion of the question and if that member has previously stated the reason for the abstention. Except for a question necessary to clarify the meaning of the motion, resolution or ordinance being voted upon, no questions or comments by members of the City Council including the Mayor shall be made during the voting on the pending motion, resolution or ordinance. The Aldermen will vote at City Council meetings in the order of their position number, but with a progressively different position voting first at each meeting."

PASSED and **APPROVED** this the 5th day of ~~December~~ February, 2004

APPROVED:

DRAFT

By: ____________________
DAN COODY, Mayor

ATTEST:

By: ____________________
SONDRA SMITH, City Clerk

ALDERMAN AGENDA REQUEST FORM

FOR: COUNCIL MEETING OF FEBRUARY 3, 2004

FROM:

ALDERMAN KYLE COOK

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:
An Ordinance To Repeal §33.111 Removal Of Planning Commissioners And Enacting §33.300 Attendance Requirement For All Members Of Citizen Committees, Boards And Commissions

APPROVED FOR AGENDA:

Alderman 1/21/04
Date

City Attorney (as to form) 1-20-04
Date

ENTERED 1-20-04

ORDINANCE NO. _____

AN ORDINANCE TO REPEAL §33.111 REMOVAL OF PLANNING COMMISSIONERS AND ENACTING §33.300 ATTENDANCE REQUIREMENT FOR ALL MEMBERS OF CITIZEN COMMITTEES, BOARDS AND COMMISSIONS

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby repeals **§33.111 Removal of planning commissioners** and enacts **§33.300 Attendance requirement for all members of citizen committees, boards and commissions** as shown below:

"§33.300 Attendance requirement for all members of citizen committees, boards and commissions.

"(A) Any member of a citizen committee, board or commission appointed by the Mayor and City Council shall immediately tender his or her resignation if the citizen fails to attend three regularly scheduled meetings of the committee, board or commission within any twelve month period and that position shall be deemed vacant.

"(B) Any committee, board or commission member who has been required to tender a resignation may present extenuating circumstances within the letter of resignation and request that the resignation not be accepted by the City Council. If the letter of resignation is not accepted by the City Council, the position shall not be deemed vacant and the member shall be reinstated to complete the normal term of appointment.

"(C) For purposes of this section, a regularly scheduled Agenda setting session of the Planning Commission shall be considered a regular meeting with attendance requirements as stated in subsection (A). If job requirements do not permit a member to attend meetings prior to 5:00 P.M., the meetings will be scheduled for after normal working hours or such member shall be excused from the requirements of attending the agenda meetings."

PASSED and **APPROVED** this the 3rd day of February, 2004.

APPROVED: DRAFT

By: ____________________
DAN COODY, Mayor

ATTEST:

By: ____________________
SONDRA SMITH, City Clerk

CITY COUNCIL AGENDA MEMO

To:	Mayor Coody and City Council
Through:	Hugh Earnest, Chief Administrative Officer
From:	Tim Conklin, Community Planning and Engineering Services Director T.C.
Date:	December 18, 2003
Subject:	Approval of a bid waiver ordinance and approval of a contract and budget adjustment in the amount of $27,390 for Duncan and Associates to prepare road, fire, and police impact fee's.

RECOMMENDATION

Staff recommends approval of a bid waiver ordinance and approval of a contract and budget adjustment for Duncan and Associates to prepare road, fire, and police impact fee's.

BACKGROUND

The City Council on November 18, 2003 passed Resolution No. 167-03 requesting staff to bring forward information on the feasibility of adopting impact fee's for roads police, and fire.

Staff is recommending that competitive biding be waived and approval of a bid waiver and budget adjustment in order to contract with Duncan and Associates. Approval of the Bid Waiver would allow Duncan and Associates to develop the methodology and calculate the road impact fee based on an "improvements based" methodology and also develop the methodology and calculate the fire and police impact fees. This work will result in two methodologies and two sets of potential fees for roads along with fire and police impact fees. Staff has received the following estimate for this work:

Cost to Develop Methodology and Calculate Impact Fees

	Proposed Cost	**Comparison Cost**
Roads (Improvement Based) (Citywide)	$14,890	$25,000 +/- Conway ($44,000 for Roads and Parks, includes Ord.)
Fire (Optional)	$4,750	$8,200 Bentonville
Police (Optional)	$4,750	$8,600 Bentonville
One trip to Fayetteville	$1,500	
Cost to City	**$25,890**	
Contingency (Extra Trip)	$1,500	
Total Cost	**$27,390**	

Tabled to 2/3/04 mtg

ORDINANCE NO. _______

AN ORDINANCE WAIVING THE REQUIREMENTS OF COMPETITIVE BIDDING AND APPROVING A CONTRACT WITH DUNCAN AND ASSOCIATES TO CALCULATE IMPACT FEES FOR ROAD, POLICE AND FIRE IMPROVEMENTS IN THE AMOUNT OF $25,890.00 WITH A CONTINGENCY AMOUNT OF $1,500.00 AND APPROVING A BUDGET ADJUSTMENT OF $27,390.00

WHEREAS, Duncan and Associates were selected in 2000 to calculate impact fees for water, sewers, parks and roads and presented their impact fee to the City Council in 2001; and

WHEREAS, the City Council adopted the impact fees for water and for sewer presented by Duncan and Associates in late 2002 by implementing ordinance; and

WHEREAS, Duncan and Associates can use their prior expertise gained from these earlier studies to provide a more cost effective analysis and report concerning potential impact fees for roads, police and fire in conformity with the state's new impact fee statute

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby determines an exceptional situation exists in which competitive bidding is deemed not feasible or practical and therefore waives the requirements of formal competitive bidding and approves a contract between the City of Fayetteville, Arkansas and Duncan and Associated in the amount of $25,890.00, plus a contingency of $1,500.00 to provide impact fee studies for roads, police and fire. This contract is attached as Exhibit "A".

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves the budget adjustment in the amount of $27,390.00 attached as Exhibit "B".

PASSED and **APPROVED** this the 6th day of January, 2004.

APPROVED: DRAFT

By: ____________________
DAN COODY, Mayor

ATTEST:

By: ____________________
SONDRA SMITH, City Clerk

CITY COUNCIL AGENDA MEMO

To: Mayor Coody and City Council
Through: Hugh Earnest, Chief Administrative Officer
From: Tim Conklin, Community Planning and Engineering Services Director T.C.
Date: December 18, 2003
Subject: Approval of a bid waiver ordinance and approval of a contract and budget adjustment in the amount of $27,390 for Duncan and Associates to prepare road, fire, and police impact fee's.

RECOMMENDATION

Staff recommends approval of a bid waiver ordinance and approval of a contract and budget adjustment for Duncan and Associates to prepare road, fire, and police impact fee's.

BACKGROUND

The City Council on November 18, 2003 passed Resolution No. 167-03 requesting staff to bring forward information on the feasibility of adopting impact fee's for roads police, and fire.

Staff is recommending that competitive biding be waived and approval of a bid waiver and budget adjustment in order to contract with Duncan and Associates. Approval of the Bid Waiver would allow Duncan and Associates to develop the methodology and calculate the road impact fee based on an "improvements based" methodology and also develop the methodology and calculate the fire and police impact fees. This work will result in two methodologies and two sets of potential fees for roads along with fire and police impact fees. Staff has received the following estimate for this work:

Cost to Develop Methodology and Calculate Impact Fees

	Proposed Cost	**Comparison Cost**
Roads (Improvement Based) (Citywide)	$14,890	$25,000 +/- Conway ($44,000 for Roads and Parks, includes Ord.)
Fire (Optional)	$4,750	$8,200 Bentonville
Police (Optional)	$4,750	$8,600 Bentonville
One trip to Fayetteville	$1,500	
Cost to City	**$25,890**	
Contingency (Extra Trip)	$1,500	
Total Cost	**$27,390**	

DISCUSSION

The City Council in October of 2000 hired Duncan and Associates to study impact fees and subsequently amended their contract to prepare impact fee ordinances for water and sewer which were adopted on December 17, 2002. Duncan and Associates is very familiar with Fayetteville and has already completed the methodology and calculation for a "consumption based" road impact fee. Because of their past work and performance on developing the existing impact fees, Staff is recommending contracting with Duncan and Associates to prepare the new impact fees.

BUDGET IMPACT

A budget adjustment in the amount of $27,390 is required to fund this project. Funding is available from the identified remaining 2003 CIP Street/ROW/Intersections project.

E-Mail's From Duncan and Associates – November 25, 2003

Tim,

Per your request, I have reviewed the City's new Traffic and Transportation Study and developed a proposed budget to develop an improvements-driven or plan-based road impact fee. I have also developed costs to prepare fire and police impact fee studies. As we discussed, the fire and police fees may have to be based on the existing level of service, unless the City has facility master plans for those services.

The road study could be provided for $14,890. This is significantly less that what we would normally charge, but we are able to offer you a reduced price because of the quality of the BRW study and the fact that we will be able to build on the background analysis we did in the original road impact fee study. The fire and police studies would cost $4,750 each, for a grand total of $24,390. The road impact fee study could be stand-alone, but the prices for the other two assume they are in addition to the road impact fee study.

The price quoted above includes the preparation of a staff review draft and a final report. It does not include preparation of an implementing ordinance. The price does not include any trips to Fayetteville to attend meetings, which we would be happy to provide at an additional cost of $1,500 per person-day.

The City would be responsible for providing all necessary data, including the current CIP and TIP (and RTP if changed), residential building permits issued by housing type for 2002 and 2003 to date, nonresidential square footage by land use type from Washington County Assessor, inventory of fire and police station building square footage and site acres, inventory of major police and fire capital equipment, cost data (including recent land acquisitions and building construction, insured value listings, asset listings, and current equipment replacement values), history of police and fire capital grant funding,
etc.

I would be happy to prepare a formal scope of services and budget if desired. Let me know how you would like to proceed.

Clancy

Clancy Mullen, AICP
Duncan Associates
13276 Research Blvd., Suite 208
Austin, TX 78750
512.258.7347 ext 204
512.258.9994 (fax)

Tim,

I should probably clarify that the price I quoted for the road impact fee study is to calculate a city-wide plan-based fee. The transportation plan appears to recommend that a financing mechanism such as impact fees would be computed for multiple Priority Growth Areas. However, the transportation plan does not provide sufficient information to determine the future cost attributable to subareas of the city (improvements physically located in a subarea could serve growth in adjacent subareas as well). To do this, additional modeling work like what we had done for Cary, NC would be required.

Clancy

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department: Sales Tax Capital Improvements Division: Program:	Date Requested	Adjustment Number
2003		1/6/2004	

Project or Item Requested:
$27,390 is requested for a Street/Fire/Police Impact Fee study.

Project or Item Deleted:
The Street ROW/Intersection/Cost Sharing project is being reduced by $27,390.

Justification of this Increase:
Resolution #167-03 was approved by City Council on November 18, 2003 requesting the study.

Justification of this Decrease:
Sufficient funding remains to comply with City Policy and with project completion.

Increase Budget (Decrease Revenue)

Account Name	Account Number				Amount	Project Number	
Professional services	4470	9470	5314	00	27,390	04001	1

Decrease Budget (Increase Revenue)

Account Name	Account Number				Amount	Project Number	
Street improvements	4470	9470	5809	00	27,390	02116	1

Approval Signatures

Requested By — Date

Budget Manager — Date 12/19/03

Department Director — Date 12-19-03

Finance & Internal Services Director — Date

Mayor — Date

Budget Office Use Only

Type: A B C D E

Date of Approval — Initial — Date

Posted to General Ledger — Initial — Date

Posted to Project Accounting — Initial — Date

Entered in Category Log — Initial — Date

PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF FAYETTEVILLE AND DUNCAN ASSOCIATES

This Professional Services Agreement is made by and between the City of Fayetteville, a political subdivision of the State of Arkansas (City) and James Duncan and Associates, Inc., a professional corporation doing business as Duncan Associates located in Austin, Texas.

WHEREAS, City desires to engage Duncan Associates to perform certain services relating to the
development of impact fees for roads, fire and police facilities.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter provided, City and Duncan Associates agree as follows.

1. **Scope of Agreement.** Duncan Associate's relationship to City shall be that of independent contractor; at all times this relationship shall be governed by and be in strict compliance with the terms of this Professional Services Agreement.

2. **Professional Services.** Duncan Associates shall furnish services to City as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.

3. **Deliverables and Schedule.** Duncan Associates shall begin its services promptly after receipt of an executed copy of this Agreement and will complete the services and deliverables pursuant to the schedule as set forth in Exhibit "B." Times for performance shall be extended for periods of delay resulting from circumstances over which Duncan Associates has no control.

4. **Compensation and Hourly Rates.** For services provided by Duncan Associates as described in Exhibit "A," City shall compensate Duncan Associates monthly based upon the percent completion of individual tasks and in accordance with the fee schedule outlined in Exhibit "C." Payment of each such invoice shall be due to Duncan Associates within thirty (30) days of receipt by City.

5. **Subcontracting.** Any subcontractor relationships must first be approved by the City.

6. **Conflict of Interest.** Duncan Associates agrees that it has no interest and shall acquire no interest, direct or indirect, that would conflict in any manner with the performance of the services hereunder. Duncan Associates further agrees that, in the performance of this Agreement, no person having any such interest shall be employed.

7. **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon written notice to the other party. In the event of any

termination, Duncan Associates will be paid for all services rendered to date of such termination.

8. **Ownership of Documents.** All documents prepared in the performance of this Agreement shall be delivered to City and become the property of the City before final payment is made to Duncan Associates.

9. **Amendments.** No amendments or modifications of this Agreement shall be valid unless in writing and signed by each of the parties to the Agreement.

10. **Venue.** The laws of the State of Arkansas shall govern the construction and interpretation of this agreement.

11. **Severability.** Any provision in this Agreement that is prohibited or unenforceable under state or federal law shall be ineffective to the extent of such prohibitions or unenforceability, without invalidating the remaining provisions hereof. Also, the non-enforcement of any provision by either party to this Agreement shall not constitute a waiver of that provision nor shall it effect the enforceability of that provision or the remainder of this Agreement.

12. **Freedom of Information Act.** City contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, Duncan Associates will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et.seq.) Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

13. **Changes in Scope or Price.** Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees.

IN WITNESS WHEREOF, City and Duncan Associates have caused this instrument to be signed by their respective duly authorized officers.

EXECUTED on this, the _____ day of ____________, 2004.

DUNCAN ASSOCIATES

By: ______________________________
Jim B. Duncan, President

EXECUTED on this, the _____ day of______________, 2004, by City of Fayetteville.

CITY OF FAYETTEVILLE, A Municipal Corporation

By: ____
Dan Coody, Mayor

Witness: ____
Sondra Smith
Fayetteville City Clerk

Exhibit A
SCOPE OF SERVICES

Task 1: Road Impact Fee Study

The Consultant will prepare a road impact fee study using an improvements-driven methodology based on the City's recently-completed *Traffic and Transportation Study* prepared by BRW. The road impact fee will be a city-wide fee. The road impact fee study will utilize information developed for the previous April 2002 draft of a consumption-based road impact fee prepared by the Consultant as well as information derived from the BRW study. The City will provide additional readily-available data needed by the Consultant to complete the study at no charge.

The impact fee study will calculate the cost per service unit to accommodate growth based on the growth projections, growth-related improvements and improvement costs identified in the BRW study. The study will determine appropriate revenue and/or deficiency credits to ensure that new development is not charged more than its proportionate share of the cost of new facilities. The study will include a table that establishes the number of service units and amount of facility demand associated with different land use types. Finally, the study will include a net unit cost schedule that represents the maximum impact fees that could be charged by land use category.

The impact fee study will be consistent with the requirements of the Arkansas Development Impact Fees Act (§14-56-102, Arkansas Code). Two drafts of the road impact fee study will be prepared. A preliminary draft will be provided for staff review. The final draft will incorporate staff comments on the preliminary draft. The final draft will be delivered in digital format, accompanied by supporting spreadsheets.

DELIVERABLES: PRELIMINARY DRAFT ROAD IMPACT FEE STUDY
FINAL DRAFT ROAD IMPACT FEE STUDY
SUPPORTING SPREADSHEETS

Task 2: Fire and Police Impact Fee Studies (optional)

At the City's option, and only following receipt of written authorization from the City, the Consultant will include in the same documents as the preliminary and final road impact fee studies an analysis of police and/or fire impact fees. Unless the City can provide facility master plans for police and fire facilities, the analyses will be based on the existing levels of service for those facilities. The City will provide the Consultant, at no charge, all information needed to prepare the analysis, including, but not limited to, existing city-wide land use data (residential units by housing type and nonresidential building floor area by land use type), an inventory of existing police and fire facilities (land area, building square footage, capital equipment), insured values and fixed asset listings for police and fire buildings and equipment, current replacement costs based on recent acquisitions or improvements where available, capital improvement plans, history of recent capital grants, and outstanding debt and debt service schedules for police and fire facilities.

DELIVERABLES: PRELIMINARY DRAFT POLICE IMPACT FEE STUDY
PRELIMINARY DRAFT FIRE IMPACT FEE STUDY
FINAL DRAFT POLICE IMPACT FEE STUDY
FINAL DRAFT FIRE IMPACT FEE STUDY
SUPPORTING SPREADSHEETS

Task 3: Public Presentation

Jim Duncan or Clancy Mullen will present the study at a public meeting in Fayetteville: Additional trips to attend meetings will be provided at an additional cost.

DELIVERABLE: PUBLIC MEETINGS (ONE PERSON-DAY)

Exhibit B

PROJECT SCHEDULE

The schedule for the tasks outlined in the Scope of Services is illustrated in the following project schedule.

Months After Contract Execution

Tasks	1	2	3	4
1: Road Impact Fee Study				◇ ◆
2: Fire and Police Impact Fee Studies (optional)				◇ ◆
3: Public Presentation				★

◇ = draft deliverable ◆ = final deliverable ★ = meeting/presentation

Exhibit C
CONSULTANT COMPENSATION

The total cost of the professional services described in the accompanying Scope of Services is $25,890. This lump-sum budget includes all direct and indirect expenses incurred by the consultant team in performing the services. Task 2 is optional, and will not be undertaken without explicit written authorization from the City. The breakdown of project cost by task is presented below. The City will be billed monthly based on percent completion of individual tasks.

Task		Amount
Task 1:	Road Impact Fee Study	$14,890
Task 2.1:	Fire Impact Fee Study (optional)	$4,750
Task 2.2:	Police Impact Fee Study (optional)	$4,750
Task 2 Total (optional)		$9,500
Task 3:	Public Participation (1 person-day)	$1,500
Total Project		$25,890

Additional trips shall be provided at $1,500 per person-day. Other additional services beyond those specified in the accompanying Scope of Services may be negotiated or billed on a time and expense basis at the following hourly rates. The only expense not included in the lump-sum price per person-day for travel or in the hourly rates is overnight mail, which will be billed separately.

Principal (Jim Duncan)	$150
Land Use Attorney	$175
Project Director (Clancy Mullen)	$135
Associates	$95

RESOLUTION NO. 167-03

A RESOLUTION TO REQUEST CITY STAFF TO STUDY THE FEASIBILITY AND ADVISABILITY OF NEW IMPACT FEES IN THE AREAS OF STREET CONSTRUCTION, FIRE FIGHTER OPERATIONS, POLICE OPERATIONS AND CAPITAL COSTS

WHEREAS, the City of Fayetteville is facing a long term stagnation of its sales tax revenue despite a rapidly growing population; and

WHEREAS, the population growth is creating a need for street construction and improvements, increased police and fire personnel and facilities and support staff; and

WHEREAS, the City cannot afford to increase spending for road construction, or increased personnel for police, fire and other services without increasing revenue from property taxes or impact fees on new development; and

WHEREAS, it is only fair that the increasing population in new development that is causing a need for new roads and increased fire, police and other staff pay its fair share of the costs for these additional services and roads.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby requests city staff to study the feasibility and advisability of additional impact fees on new development in the areas of road construction, police operations and capital costs and fire operations and capital costs.

PASSED and **APPROVED** this the 18th day of November, 2003.

APPROVED:

By: Dan Coody
DAN COODY, Mayor

ATTEST:

By: Sondra Smith
SONDRA SMITH, City Clerk

STAFF REVIEW FORM - FINANCIAL OBLIGATION

____ AGENDA REQUEST
X CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council Meeting of: January 6, 2004

FROM:

Tim Conklin, AICP	Comm. Planning & Eng. Svcs.	Comm. Planning & Eng. Svcs.
Name	Division	Department

ACTION REQUIRED: Approval of a bid waiver ordinance and approval of a contract with Duncan and Associates in the amount of $25,890 with a project contingency of $1,500 for a total project amount of $27,390 and approval of a budget adjustment.

COST TO CITY:

$27,390.00	$ -	
Cost of this request	Category/Project Budget	Program Category / Project Name
4470 9470 5314 00	$ -	
Account Number	Funds Used to Date	Program / Project Category Name
04001.1	$ -	
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: ____ Budgeted Item x Budget Adjustment Attached

B Fell 12/19/03
Budget Manager Date

CONTRACT/GRANT/LEASE REVIEW:

Marsha Farthing	12/19/03	Nancy Smith	12/19/03
Accounting Manager	Date	Internal Auditor	Date
D. White	12/19/03	P. Vice	12/19/03
City Attorney	Date	Purchasing Manager	Date

STAFF RECOMMENDATION:

		Received in Mayor's Office ____ Date
Division Head	Date	
	12-19-03	Cross Reference:
Department Director	Date	Previous Ord/Res#:
	12-19-03	Orig. Contract Date:
Finance & Internal Services Dir.	Date	Orig. Contract Number:
Chief Administrative Officer	Date	New Item: **Yes** **No**
Dan Coody	12/19/03	
Mayor	Date	

ENTERED 12-19-03

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Tim Conklin, Community Planning and Engineering Services Director

From: Dawn T. Warrick, AICP, Zoning and Development Administrator DW

Date: December 17, 2003

Subject: Residential Planned Zoning District for Benton Ridge (R-PZD 03-06.00)

RECOMMENDATION

Planning Staff recommends approval of an ordinance creating the Residential Planned Zoning District (R-PZD) for Benton Ridge. This action will establish a unique zoning district for development of an 8.34 acre tract located on the east side of Crossover Road, north of Huntsville Road and south of Wyman Road. The proposal is for the construction of 43 dwelling units on 23 residential lots (20- two family units, 3- single family units).

BACKGROUND

Staff has met with the applicant numerous times to discuss both the PZD process and the content of the proposal as submitted. Originally, the applicant proposed 21 Two-family lots and three commercial lots connected by a loop drive. Staff concerns with the proposal included the loss of significant tree canopy and natural drainage-ways, in a PZD process which specifically requires consideration of existing natural amenities in an effort to preserve them. A number of submittals and meetings occurred thereafter, all in which Staff reiterated concerns with these issues (see attached comments letter dated 31 July). The proposal was modified with the use of a cul-de-sac and single family homes in October, however Staff and the Subdivision Committee expressed concern with the use of proposed 4-plexes in a single-family residential dominated area. A neighborhood meeting was held by the applicant and several concerns addressed from the Subdivision Committee meeting, all of which are documented in the Staff report. Covenants for the development as well as detailed information regarding the location of proposed driveways and building footprints for each lot were considered as a part of this review process.

DISCUSSION

The Planning Commission voted 9-0-0 in favor of this request on Monday, December 8, 2003. Approval of a planned zoning district requires City Council approval as it includes zoning (land use) as well as development approval (preliminary plat). Recommended conditions included in the attached staff report were approved by the Planning Commission.

Left on 1st Reading 1/6/04
Left on 2nd Reading 2/20/04

BUDGET IMPACT
None.

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING A RESIDENTIAL PLANNED ZONING DISTRICT TITLED (R-PZD 03-06.00) LOCATED ON THE EAST SIDE OF CROSSOVER ROAD NORTH OF HUNTSVILLE ROAD AND SOUTH OF WYMAN ROAD CONTAINING 8.34 ACRES, MORE OR LESS; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FAYETTEVILLE; AND ADOPTING THE ASSOCIATED RESIDENTIAL DEVELOPMENT PLAN AS APPROVED BY THE PLANNING COMMISSION.

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

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

From RSF-4, Residential Single Family, four units per acre to R-PZD 03-06.00 as shown in Exhibit "A" attached hereto and made a part hereof.

Section 2. That the change in zoning classification is based upon the approved master development plan and development standards as shown on the plat and approved by the Planning Commission on December 8, 2003.

Section 3. That this ordinance shall take affect and be in full force at such time as all of the requirements of the development plan have been met.

Section 4. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this _______ day of ___________, 2004.

APPROVED:

By:______________________
DAN COODY, Mayor

By: ________________________
SONDRA SMITH, City Clerk

DRAFT

EXHIBIT "A"
R-PZD 03-06.00

PART OF LOTS 40 AND 41 OF W.E. ANDERSON FARM OR SUBDIVISION AS PER PLAT OF SAID SUBDIVISION ON FILE IN THE OFFICE OF THE CIRCUIT CLERK OF WASHINGTON COUNTY, ARKANSAS, BEING PART OF THE SE1/4 OF THE SE1/4 OF SECTION 14 IN TOWNSHIP 16 NORTH, RANGE 30 WEST, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT AN EXISTING IRON PIN ON THE NORTH LINE OF LOT 41 OF W.E. ANDERSON FARM THAT IS S87°44'19"E 147.06 FEET FROM THE N.W. CORNER OF SAID LOT 41; THENCE S87°44'19"E 515.99 FEET TO AN EXISTING IRON PIN AT THE NE CORNER OF SAID LOT 41; THENCE ALONG THE EAST LINE OF SAID LOT 41 S02°58'03"W 330.68 FEET TO AN EXISTING IRON PIN AT THE NE CORNER OF LOT 40 OF SAID W.E. ANDERSON FARM; THENCE ALONG THE EAST LINE OF SAID LOT 40 S02°46'06"W 323.67 FEET TO AN EXISTING IRON PIN AT THE SE CORNER OF SAID LOT 40; THENCE ALONG THE SOUTH LINE OF SAID LOT 40 N88°00'06"W 185.72 FEET TO THE SE CORNER OF A CEMETERY; THENCE ALONG THE BOUNDARY LINE OF SAID CEMETERY THE FOLLOWING FOUR (4) COURSES: N01°34'51"E 150.00 FEET, N88°00'06"W 267.00 FEET, S01°34'47"W 132.00 FEET, THENCE N88°00'06"W 192.64 FEET TO THE EAST RIGHT-OF-WAY LINE FOR ARKANSAS STATE HIGHWAY 265; THENCE ALONG SAID HIGHWAY 265 EAST RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES: N05°57'13"E 217.36 FEET, N04°37'51"W 160.74 FEET, THENCE N01°17'45"E 145.72 FEET; THENCE LEAVING SAID HIGHWAY 265 EAST RIGHT-OF-WAY LINE S87°44'19"E 142.52 FEET TO AN EXISTING IRON PIN; THENCE N02°30'01"E 127.01 FEET TO THE POINT OF BEGINNING, CONTAINING 8.34 ACRES, MORE OR LESS.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of December 08, 2003

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Jeremy Pate, Associate Planner
Matt Casey, Staff Engineer
THRU: December 02, 2003

R-PZD 03-06.00: Planned Zoning District (Benton Ridge, pp 527) was submitted by Crafton, Tull and Associates, Inc. on behalf of Long LLC for property located on the east side of Crossover Road, north of Huntsville Road and south of Wyman Road. The property is zoned RSF-4, Residential Single-family, 4 units per acre and contains approximately 8.34 acres. The request is to rezone the subject property to a Residential Planned Zoning District, with a total of 43 dwelling units on 23 lots (20 Two-family, 3 Single-family). Planner: Jeremy Pate

Findings:

Proposal: The request is for a Residential Planned Zoning District on 8.34 acres currently zoned RSF-4, which allows a maximum density of 4 units per acre of single family dwellings. The applicant requests a rezoning and preliminary plat approval for a residential subdivision with 23 lots. Eighteen (18) lots are proposed to be constructed with two-family dwelling units for a total of 36 dwelling units. Two lots are proposed to be developed with one (1) four-unit multi-plex spanning the lot line, resulting in a total of 4 dwelling units. The three remaining lots near Crossover Road are proposed to be single family lots, for a total of 3 dwelling units. Total proposed dwelling units on the 8.34 acres numbers 43, therefore the proposed density for the R-PZD is <u>**5.2 DU/acre.**</u>

Proposed Lots:
R-PZD, Residential Planned Zoning District

Lot No.	Land Use	Structure	# of Units	# of Bedrooms
1	Multi-Family (One 4-plex)	Sarasota Grove Multi-plex	4	12
2				
3	Two-Family	Nutmeg Circle	2	6
4	Two-Family	Nutmeg Circle	2	6
5	Two-Family	Nutmeg Circle	2	6
6	Two-Family	Chelsea Blvd.	2	6
7	Two-Family	Cooper Lake	2	6
8	Two-Family	Chelsea Blvd.	2	6

9	Two-Family	Cooper Lake ~~Creekside Way~~	2	6
10	Two-Family	Cooper Lake ~~Creekside Way~~	2	6
11	Two-Family	Chelsea Blvd.	2	6
12	Two-Family	Nutmeg Circle	2	6
13	Two-Family	Spruce Ridge	2	?
14	Two-Family	Chelsea Blvd.	2	6
15	Two-Family	Cooper Lake	2	6
16	Two-Family	Cooper Lake	2	6
17	Two-Family	Spruce Ridge	2	TBD
18	Two-Family	Morenci Court	2	6
19	Two-Family	Chelsea Blvd.	2	6
20	Two-Family	TBD	2	TBD
21	Single Family	Single Family Home	1	N/A
22	Single Family	Single Family Home	1	N/A
23	Single Family	Kennedy Cottage	1	N/A
24	Detention Pond	Detention Pond	0	0
25	Conservation Easement	No development	0	0
26	Conservation Easement	No development	0	0
27	Conservation Easement	No development	0	0
28	Conservation Easement	No development	0	0

The site contains significant groupings of trees, some of which are located along a natural drainage way, which is required to be considered as part of a Planned Zoning District:

> *Proper planning shall involve a consideration of tree preservation, water conservation, preservation of natural site amenities, and the protection of watercourses from erosion and siltation. (§166.06)*
>
> *Natural Features. Maximum enhancement and minimal disruption of existing natural features and amenities. (§161.25)*

With this in mind, staff has worked with the applicant to preserve several groupings of trees and a portion of the natural drainage way that meanders through the center of the site, thereby protecting the trees that depend upon this water source.

A waiver for the maximum 500-foot length of a cul-de-sac has been formally submitted. The applicant requests a 965-foot length. In previous submittals, a loop drive was utilized, which both removed a significant grouping of trees near the front of the property and minimized the area available for a detention pond, thereby creating a 9-10' wall surrounding the pond. Staff recommended realignment of the drive for these reasons, and supports the proposal and waiver request the applicant is presenting.

Three lots at the entrance of the development are indicated for single family homes, with the remainder proposed to be two-family dwelling units. A draft of restrictive covenants addressing building materials, size, fencing, landscaping, etc. has been submitted. A final draft is required to be filed with the Final Plat.

Existing Development: Currently two single family homes are on the site, to be removed.

Surrounding Land Use/Zoning:

Direction	Land Use	Zoning
North	Single family homes	RSF-4, Residential Single Family, 4 units per acre
South	Buckner Cemetery, Single family homes	RSF-4, Residential Single Family, 4 units per acre
East	Single family	RSF-4, Residential Single Family, 4 units per acre
West	Crossover Road, Vacant	RSF-4, Residential Single Family, 4 units per acre

Water: Existing 8" line along Crossover Road, 8" lines extended to serve development

Sewer: Existing 6" sanitary sewer

Street Improvements Proposed: None

Adjacent Master Street Plan Streets: Crossover Road (State Hwy 265) is classified as a principal arterial on the Master Street Plan, requiring a minimum 55 feet of right-of-way dedication, by warranty deed.

Tree Preservation:

Existing canopy:	29.72%
Preserved canopy:	16.21%
Required:	20.00%
Mitigation:	$10,800.00

Tree preservation areas indicated on the plat are to be placed in a protective easement with ownership noted on the plat.

Background: Staff has met with the applicant numerous times to discuss both the PZD process and the content of the proposal as submitted. Originally, the applicant proposed 21 Two-family lots and three commercial lots connected by a loop drive. Staff concerns with the proposal included the loss of significant tree canopy and natural drainageways, in a PZD process which specifically requires consideration of existing natural amenities in an effort to preserve them. A number of submittals and meetings occurred thereafter, all in which Staff reiterated concerns with these issues (see attached comments letter dated 31 July). The proposal was modified with the use of a cul-de-sac and single family homes in October, however Staff and the Subdivision Committee expressed concern with the use of proposed 4-plexes in a single-family residential dominated area. A neighborhood meeting was held by the applicant and several concerns addressed from the Subdivision Committee meeting, all of which are documented in the Staff report. A timeline summary of the Benton Ridge R-PZD process is below:

Project History:

Date	Action	Comments
25 June	Initial meeting with applicant	Three commercial lots, 21 Two-family lots proposed
07 July	Initial R-PZD submittal by applicant	
14 July	In-house Review Meeting with applicants to discuss inadequate submittal of materials	Tabled at In-House for lack of materials
16 July	Technical Plat Review	Tabled prior to meeting
30 July	Technical Plat Review	Tabled; no changes were presented in the new submittal by the applicant with the exception of a greenspace drawing
31 July	Letter to Applicants, Representatives detailing Staff concerns	Comments addressed density, natural drainageways, tree preservation, discrepancies in submittal information, submittal requirements for elevations, etc.
06 August	Meeting with applicant to discuss staff concerns	Commercial Design Standards, density, PZD process discussion
12 August	Meeting with applicant	Agreed with applicant to table prior to meeting to address outstanding issues, changes in proposal (cul-de-sac, no commercial proposed, introduction of 4-plexes)
14 August	Subdivision Committee	Tabled prior to meeting
14 October	Meeting with Applicant to discuss new proposal for submittal	
15 October	Technical Plat Review	Staff recommendation to forward to Subdivision Committee w/revisions

30 October	Subdivision Committee	Project Tabled by S.C. pending N'hood mtg, footprints added to site plan, bldg elevations, other revisions
11 November	Neighborhood Meeting	
26 November	Subdivision Committee	Project forwarded to Planning Commission w/revisions for setbacks, driveways, parking, eave heights, screening
02 December	Zoning Review Team	Toured the Property
08 December	Planning Commission hearing	Staff recommendation of approval and forward to City Council

Recommendation:
Forward to the City Council with a recommendation for approval of the requested rezoning.

Planning Commission approval of the proposed preliminary plat subject to the following conditions:

Conditions of Approval:

1. Planning Commission recommendation to the City Council regarding the rezoning of the subject property to the unique district for R-PZD 03-06.00 with all conditions of approval as determined by the Planning Commission.

2. An ordinance creating this R-PZD shall be approved by City Council.

3. A Final Plat is required to legalize the lot configuration, filed pursuant to Fayetteville city requirements.

4.
5. Lot 20, which is not currently identified with a corresponding building footprint/ elevation, shall be identified prior to Final Plat approval.

6. Interior street names shall be approved by the City 9-1-1 Coordinator.

7. All setbacks, protective easements, designated lot uses, building footprints and elevations are binding with the approval of the R-PZD.

8. Submitted covenants are binding to the project and a final draft shall be filed with the Final Plat. The covenants shall be enhanced and revised to more adequately and correctly reflect the conditions of the proposal herein.

9. Planning Commission determination of a waiver for cul-de-sac length (500 feet

maximum, proposed is 965feet). *Staff is in support of the waiver, in order to preserve an existing significant stand of trees.*

10. Payment of Tree Preservation mitigation fees in the amount of **$10,800** into the City's Tree Escrow Account, as approved by the Landscape Administrator, shall be made prior to Final Plat.

Standard Conditions of Approval:

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

12. Staff approval of final detailed plans, specifications and calculations (where applicable) for grading, drainage, water, sewer, fire protection, streets (public and private), sidewalks, parking lot(s) and tree preservation. The information submitted for the plat review process was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with City's current requirements.

13. Payment of parks fees in the amount of **$16,275** shall be required prior to Final Plat.

14. Sidewalks shall be constructed in accordance with current City regulations along both sides of the interior street, four feet in width, a minimum of six feet from the curb. Sidewalks shall tie in to existing sidewalks along Crossover Road, and be constructed through the driveway.

15. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.

PLANNING COMMISSION ACTION: **_yes_Required**
______Approved **______Denied**

Date: December 08, 2003

Comments:

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.

____
By

____
Title

____
Date

ındings associated with R-PZD 03-06.00

Sec. 166.06. Planned Zoning Districts (PZD).

(B) *Development standards, conditions and review guidelines*

(1) *Generally.* The Planning Commission shall consider a proposed PZD in light of the purpose and intent as set forth in Chapter 161 Zoning Regulations, and the development standards and review guidelines set forth herein. Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as to preserve and enhance the neighborhood. Proper planning shall involve a consideration of tree preservation, water conservation, preservation of natural site amenities, and the protection of watercourses from erosion and siltation. The Planning Commission shall determine that specific development features, including project density, building locations, common usable open space, the vehicular circulation system, parking areas, screening and landscaping, and perimeter treatment shall be combined in such a way as to further the health, safety, amenity and welfare of the community. To these ends, all applications filed pursuant to this ordinance shall be reviewed in accordance with the same general review guidelines as those utilized for zoning and subdivision applications.

FINDING: The proposed Two-family and Single Family residential subdivision includes provisions that preserves and enhances the surrounding neighborhood. Setbacks from adjoining properties to the north and west have been revised in order to provide a buffer that is more indicative of the existing RSF-4 zoning. Site layout, circulation patterns and land uses have all been altered from initial inception to best preserve existing stands of trees and a natural drainage way through the property. The proposed density (5.2 DU/Acre) is only slightly above that allowed by right in the existing zoning district, and buildings, open space, screening and landscaping have been placed and/or ensured by covenants to further the amenity of the development to the community. Accommodations have been made to place 4 lots in Conservation Easements, in addition to Tree Canopy preservation areas, common green spaces and a lot serving as a detention pond. The applicant is required to file a Final Plat and Covenants pursuant to City regulations to create legal lots of record in the subdivision, prior to the issuance of building permits.

(2) *Screening and landscaping.* In order to enhance the integrity and attractiveness of the development, and when deemed necessary to protect adjacent properties, the Planning Commission shall require landscaping and screening as part of a PZD. The screening and landscaping shall be provided as set forth in §166.09 Buffer Strips and Screening. As part of the development plan, a detailed screening and landscaping plan shall be submitted to the Planning Commission. Landscape plans shall show the general location, type and quality (size and age) of plant material. Screening plans shall include typical details of fences, berms and plant material to be used.

FINDING: The cemetery is required to be screened with native, drought tolerant vegetation, as indicated on the Tree Preservation plan. In addition, the draft Covenants submitted by the

applicant requires each lot to plant a 2" caliper tree for each residential unit. Where possible, existing vegetation and tree canopy has been placed in a Tree Preservation Easement or Conservation Easement to ensure adequate screening from adjacent properties.

(3) *Traffic circulation.* The following traffic circulation guidelines shall apply:

(a) The adequacy of both the internal and external street systems shall be reviewed in light of the projected future traffic volumes.

(b) The traffic circulation system shall be comprised of a hierarchal scheme of local collector and arterial streets, each designed to accommodate its proper function and in appropriate relationship with one another.

(c) Design of the internal street circulation system must be sensitive to such considerations as safety, convenience, separation of vehicular and pedestrian traffic, general attractiveness, access to dwelling units and the proper relationship of different land uses.

(d) Internal collector streets shall be coordinated with the existing external street system, providing for the efficient flow of traffic into and out of the planned zoning development.

(e) Internal local streets shall be designed to discourage through traffic within the planned zoning development and to adjacent areas.

(f) Design provisions for ingress and egress for any site along with service drives and interior circulation shall be that required by Chapter 166 Development of this code.

FINDING: The proposed cul-de-sac is 965 feet in length, which requires a waiver by Planning Commission. Staff has worked with the applicant to provide adequate vehicular access while still preserving a significant stand of trees near Crossover Road. The street has been designed with a 28-foot width, which allows on-street parking.

(4) *Parking standards.* The off-street parking and loading standards found in Chapter 172 Parking and Loading shall apply to the specific gross usable or leasable floor areas of the respective use areas.

FINDING: N/A

(5) *Perimeter treatment.* Notwithstanding any other provisions of a planned zoning district, all uses of land or structures shall meet the open space, buffer or green strip provisions of this chapter of this code.

FINDING: The applicant has made revisions to setbacks and saved existing tree canopy along the perimeter of the property when possible to meet this requirement.

(6) *Sidewalks.* As required by §166.03.

FINDING: Four-foot sidewalks are proposed along both sides of the proposed street, and shall connect to existing sidewalks along Crossover Road.

(7) *Street Lights.* As required by §166.03.

FINDING: Adequate street lights have been provided to meet Ordinance requirements.

(8) *Water.* As required by §166.03.

FINDING: 8" water lines are being extended to serve the development.

(9) *Sewer.* As required by §166.03.

FINDING: Sewer lines are being extended to serve the development. A 6" sewer line is existing on the site.

(10) *Streets and Drainage.* Streets within a residential PZD may be either public or private.

(a) *Public Streets.* Public streets shall be constructed according to the adopted standards of the City.

(b) *Private Streets.* Private streets within a residential PZD shall be permitted subject to the following conditions:

(i) Private streets shall be permitted for only a loop street, or street ending with a cul-de-sac. Any street connecting one or more public streets shall be constructed to existing City standards and shall be dedicated as a public street.

(ii) Private streets shall be designed and constructed to the same standards as public streets with the exceptions of width and cul-de-sacs as noted below.

(iii) All grading and drainage within a Planned Zoning District including site drainage and drainage for private streets shall comply with the City's Grading (Physical Alteration of Land) and Drainage (Storm water management) Ordinances. Open drainage systems may be approved by the City Engineer.

(iv) Maximum density served by a cul-de-sac shall be 40 units. Maximum density served by a loop street shall be 80 units.

(v) The plat of the planned development shall designate each private street as a "private street."

(vi) Maintenance of private streets shall be the responsibility of the developer or of a neighborhood property owners association (POA) and shall not be the responsibility of the City. The method for maintenance and a maintenance fund shall be established by the PZD covenants. The covenants shall expressly provide that the City is a third party beneficiary to the covenants and shall have the right to enforce the street maintenance requirements of the covenants irrespective of the vote of the other parties to the covenants.

(vii) The covenants shall provide that in the event the private streets are not maintained as required by the covenants, the City shall have the right (but shall not be required) to maintain said streets and to charge the cost thereof to the property owners within the PZD on a pro rata basis according to assessed valuation for ad valorem tax purposes and shall have a lien on the real property within the PZD for such cost. The protective covenants shall grant the City the right to use all private streets for purposes of providing fire and police protection, sanitation service and any other of the municipal functions. The protective covenants shall provide that such covenants shall not be amended and shall not terminate without approval of the City Council.

(viii) The width of private streets may vary according to the density served. The following standard shall be used:

Paving Width
(No On-Street Parking)

Dwelling Units	One-Way	Two-Way
1 - 20	14'	22'
21+	14'	24'

***Note:** If on-street parking is desired, 6 feet must be added to each side where parking is intended.

(ix) All of the traffic laws prescribed by Title VII shall apply to traffic on private streets within a PZD.

(x) There shall be no minimum building setback requirement from a private street.

(xi) The developer shall erect at the entrance of each private street a rectangular sign, not exceeding 24 inches by 12 inches, designating the street a "private street" which shall be clearly visible to motor vehicular traffic.

FINDING: The applicant is proposing a public street that meets all requirements set forth by the adopted standards of the City.

(11) *Construction of nonresidential facilities.* Prior to issuance of more than eight building permits for any residential PZD, all approved nonresidential facilities shall be constructed. In the event the developer proposed to develop the PZD in phases, and the nonresidential facilities are not proposed in the initial phase, the developer shall enter into a contract with the City to guarantee completion of the nonresidential facilities.

FINDING: N/A

(12) *Tree preservation.* All PZD developments shall comply with the requirements for tree preservation as set forth in Chapter 167 Tree Preservation and Protection. The location of trees shall be considered when planning the common open space, location of buildings, underground services, walks, paved areas, playgrounds, parking areas, and finished grade levels.

FINDING: The Landscape Administrator has approved the applicant's Tree Preservation Plan preserving 16.81% of the 29.72% existing canopy and the proposed mitigation fees in the amount of $10,800, due prior to Final Plat approval.

(13) *Commercial design standards.* All PZD developments that contain office or commercial structures shall comply with the commercial design standards as set forth in §166.14 Site Development Standards and Construction and Appearance Design Standards for Commercial Structures.

FINDING: N/A

(14) *View protection.* The Planning Commission shall have the right to establish special height and/or positioning restrictions where scenic views are involved and shall have the right to insure the perpetuation of those views through protective covenant restrictions.

FINDING: N/A

(E) *Revocation.*

(1) *Causes for revocation as enforcement action.* The Planning Commission may recommend to the City Council that any PZD approval be revoked and all building or occupancy permits be voided under the following circumstances:

(a) *Building permit.* If no building permit has been issued within the time allowed.

(b) *Phased development schedule.* If the applicant does not adhere to the phased development schedule as stated in the approved development plan.

(c) *Open space and recreational facilities.* If the construction and provision of all common open spaces and public and recreational facilities which are shown on the final plan are proceeding at a substantially slower rate than other project components.

Planning staff shall report the status of each ongoing PZD at the first regular meeting of each quarter, so that the Planning Commission is able to compare the actual development accomplished with the approved development schedule. If the Planning Commission finds that the rate of construction of dwelling units or other commercial or industrial structures is substantially greater than the rate at which common open spaces and public recreational facilities have been constructed and provided, then the Planning Commission may initiate revocation action or cease to approve any additional final plans if preceding phases have not been finalized. The city may also issue a stop work order, or discontinue issuance of building or occupancy permits, or revoke those previously issued.

(2) *Procedures.* Prior to a recommendation of revocation, notice by certified mail shall be sent to the landowner or authorized agent giving notice of the alleged default, setting a time to appear before the Planning Commission to show cause why steps should not be made to totally or partially revoke the PZD. The Planning Commission recommendation shall be forwarded to the City Council for disposition as in original approvals. In the event a PZD is revoked, the City Council shall take the appropriate action in the city clerk's office and the public zoning record duly noted.

(3) *Effect.* In the event of revocation, any completed portions of the development or those portions for which building permits have been issued shall be treated to be a whole and effective development. After causes for revocation or enforcement have been corrected, the City Council shall expunge such record as established above and shall authorize continued issuance of building permits.

(F) *Covenants, trusts and homeowner associations.*

(1) *Legal entities.* The developer shall create such legal entities as appropriate to undertake and be responsible for the ownership, operation, construction, and maintenance of private roads, parking areas, common usable open space, community facilities, recreation areas, building, lighting, security measure and similar common elements in a development. The city encourages the creation of homeowner associations, funded community trusts or other nonprofit organizations implemented by agreements, private improvement district, contracts and covenants. All legal instruments setting forth a plan or manner of permanent care and maintenance of such open space, recreation areas and communally-owned facilities shall be approved by the City Attorney as to legal form and effect, and by the Planning Commission as to the suitability for the proposed use of the open areas. The aforementioned legal instruments shall be provided to the Planning Commission together with the filing of the

final plan, except that the Guarantee shall be filed with the preliminary plan or at least in a preliminary form.

(2) *Common areas.* If the common open space is deeded to a homeowner association, the developer shall file with the plat a declaration of covenants and restrictions in the Guarantee that will govern the association with the application for final plan approval. The provisions shall include, but not necessarily be limited to, the following:

(a) The homeowner's association must be legally established before building permits are granted.

(b) Membership and fees must be mandatory for each home buyer and successive buyer.

(c) The open space restrictions must be permanent, rather than for a period of years.

(d) The association must be responsible for the maintenance of recreational and other common facilities covered by the agreement and for all liability insurance, local taxes and other public assessments.

(e) Homeowners must pay their pro rata share of the initial cost; the maintenance assessment levied by the association must be stipulated as a potential lien on the property.

FINDING: The applicant has submitted a draft of covenants for the proposed PZD describing the responsibilities and maintenance of future open space, landscaping, building types, heights, etc. A final draft shall be submitted and filed with the Final Plat.

Sec. 161.25 Planned Zoning District

(A) Purpose. The intent of the Planned Zoning District is to permit and encourage comprehensively planned developments whose purpose is redevelopment, economic development, cultural enrichment or to provide a single-purpose or mixed-use planned development and to permit the combination of development and zoning review into a simultaneous process. The rezoning of property to the PZD may be deemed appropriate if the development proposed for the district can accomplish one or more of the following goals.

(1) Flexibility. Providing for flexibility in the distribution of land uses, in the density of development and in other matters typically regulated in zoning districts.

(2) Compatibility. Providing for compatibility with the surrounding land uses.

(3) Harmony. Providing for an orderly and creative arrangement of land uses that are harmonious and beneficial to the community.

(4) Variety. Providing for a variety of housing types, employment opportunities or commercial or industrial services, or any combination thereof, to achieve variety and integration

of economic and redevelopment opportunities.

(5) No negative impact. Does not have a negative effect upon the future development of the area;

(6) Coordination. Permit coordination and planning of the land surrounding the PZD and cooperation between the city and private developers in the urbanization of new lands and in the renewal of existing deteriorating areas.

(7) Open space. Provision of more usable and suitably located open space, recreation areas and other common facilities that would not otherwise be required under conventional land development regulations.

(8) Natural features. Maximum enhancement and minimal disruption of existing natural features and amenities.

(9) General Plan. Comprehensive and innovative planning and design of mixed use yet harmonious developments consistent with the guiding policies of the General Plan.

(10) Special Features. Better utilization of sites characterized by special features of geographic location, topography, size or shape.

FINDING: The proposal exhibits flexibility in the density of development and types of residential units, mixing single family and two-family units in a variety of building types and elevations to provide a cohesive new neighborhood. The site plan has been reflective of the adjoining neighborhood's wishes, enlarging setbacks when adjoining single family homes, utilizing single family homes in those areas that are most visible from Crossover Road, and preserving open space and tree preservation areas in places that offer the most benefit to the surrounding community. The proposed development will provide for a variety of housing types, from owner-occupied duplexes to rental properties to single family homeowners. Suitable enhancement and minimized disruption of existing natural features has been a goal from the initial submittal of the proposed PZD.

The proposal is consistent with the General Plan 2020 in which it meets the guiding policies for Residential Areas which are:

9.8.f Site new residential areas accessible to roadways, alternative transportation modes, community amenities, infrastructure, and retail and commercial goods and services.

The proposal is consistent with the General Plan 2020 in which it meets the guiding policy for Environmental Resources which is:

9.16.b Define and protect areas of significant...hillsides, trees and other environmental resources through...density controls, protective easements ,and other new and existing development standards and regulations.

9.16.e Develop methods to identify tree preservation ares in perpetuity through tree easements and/or private conservation easements.

The proposal is consistent with the General Plan 2020 in which it meets the guiding policy for Community Character which is:

> ***9.19.g Encourage new residential development to incorporate varying lot sizes, home prices, and types of dwelling units.***

(B) Rezoning. Property may be rezoned to the Planned Zoning District by the City Council in accordance with the requirements of this chapter and Chapter 166, Development. Each rezoning parcel shall be described as a separate district, with distinct boundaries and specific design and development standards. Each district shall be assigned a project number or label, along with the designation "PZD". The rezoning shall include the adoption of a specific master development plan and development standards.

FINDING: Staff has reviewed the proposed development with regard to findings necessary for rezoning requests. Those findings are attached to this report. An ordinance will be drafted in order to create this Planned Zoning District which will incorporate all conditions placed on the project by the Planning Commission. Covenants provided by the developer will be included in the PZD ordinance. This ordinance will be forwarded to the City Council for approval.*

(C) R - PZD, Residential Planned Zoning District.

(1) Purpose and intent. The R-PZD is intended to accommodate mixed-use or clustered residential developments and to accommodate single-use residential developments that are determined to be more appropriate for a PZD application than a general residential rezone. The legislative purposes, intent, and application of this district include, but are not limited to, the following:

(a) To encourage a variety and flexibility in land development and land use for predominately residential areas, consistent with the city's General Plan and the orderly development of the city.

(b) To provide a framework within which an effective relationship of different land uses and activities within a single development, or when considered with abutting parcels of land, can be planned on a total basis.

(c) To provide a harmonious relationship with the surrounding development, minimizing such influences as land use incompatibilities, heavy traffic and congestion, and excessive demands on planned and existing public facilities.

(d) To provide a means of developing areas with special physical features to enhance natural beauty and other attributes.

(e) To encourage the efficient use of those public facilities required in connection with new residential development.

FINDING: The R-PZD proposed is consistent with the City's General Plan for residential development, and allows a more flexible means of development to better accommodate the siteing of structures and drives so as to preserve the existing natural amenities of the site, including significant stands of trees and a natural drainage channel.

(2) Permitted uses.

Unit 1 City-wide uses by right
Unit 2 City-wide uses by conditional use permit
Unit 3 Public protection and utility facilities
Unit 4 Cultural and recreational facilities
Unit 5 Government facilities
Unit 8 Single-family dwellings
Unit 9 Two-family dwellings
Unit 10 Three-family dwellings
Unit 12 Offices, studios and related services
Unit 13 Eating places
Unit 15 Neighborhood shopping
Unit 19 Commercial recreation, small sites
Unit 24 Home occupations
Unit 25 Professional offices
Unit 26 Multi-family dwellings

FINDING: The proposal calls for Use Unit 8, Single Family Dwellings, and Use Unit 26, Multifamily dwellings.

(3) Condition. In no instance shall the residential use area be less than fifty-one percent (51%) of the gross floor area within the development.

FINDING: The PZD proposed is entirely residential in use.

***Required Findings for Rezoning Request.**

RECOMMENDATION:

LAND USE PLAN: General Plan 2020 designates this site Residential. Rezoning this property to R-PZD03-06.00 is consistent with the land use plan and compatible with surrounding land uses in the area.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use

planning objectives, principles, and policies and with land use and zoning plans.

Finding: **The proposed rezoning from the existing RSF-4 to R-PZD, with the development as presented, is consistent with the General Plan's designation of the site as Residential. The density proposed is 5.2 Dwelling Units per acre, only slightly above the allowed 4 units per acre. The single family and two-family dwelling units proposed are compatible with the surrounding single family residential land use and zoning.**

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: **The proposed rezoning is needed in order to facilitate development of the proposed mixed-density, mixed-use unit (single family and two-family) subdivision. The flexibility of the PZD zoning allows for better insurance of compatibility with adjoining properties by permitting reduced interior setbacks not available with standard zoning districts.**

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The proposed zoning will not create or appreciable increase traffic danger and congestion in this area. Crossover Road is an improved state highway in this location, and street improvements are not recommended in this location. An increase in traffic will occur with development, approximately 323 average vehicle trips per day generated by the proposed development. It is the opinion of the Fayetteville Police Department that this Planned Zoning District will not substantially alter the population density and thereby undesirably increase the load on police services or create and appreciable increase in traffic danger and congestion in the area.

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

Finding: The proposed zoning would not substantially alter the population density.

Engineering - **The property currently has access to an 8" water line along Crossover Road, which is proposed to be extended to serve development onsite. An extension of the water main will be required to provide water supply within any development on this property.**

The site currently has access to an 6" sewer main on the site and an 8" sewer line to the east. Sewer is to be extended within the development. The existing sewer mains should have sufficient capacity to serve the development.

***Fire* - Water supply with fire hydrants is needed to serve development on this site. Response time from the Fire Station #5 is will be 1 minutes 43 seconds (1.2 miles).**

***Police* - Projects existing in this area already receive police services. The same level of service will be provided to this site as is currently applied to the existing citizenry. No additional equipment or personnel is needed to provide service to this area. No undesirable increase in load on police services is perceived by the proposed rezoning.**

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

    a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

    b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

Benton Ridge
Summary of Trip Generation Calculation
For 43 Dwelling Units of Residential PUD
December 04, 2003

	Average Rate	Standard Deviation	Adjustment Factor	Driveway Volume
Avg. Weekday 2-Way Volume	7.50	3.32	1.00	323
7-9 AM Peak Hour Enter	0.11	0.00	1.00	5
7-9 AM Peak Hour Exit	0.40	0.00	1.00	17
7-9 AM Peak Hour Total	0.51	0.72	1.00	22
4-6 PM Peak Hour Enter	0.40	0.00	1.00	17
4-6 PM Peak Hour Exit	0.22	0.00	1.00	9
4-6 PM Peak Hour Total	0.62	0.80	1.00	27
Saturday 2-Way Volume	6.82	2.66	1.00	293
Saturday Peak Hour Enter	0.27	0.00	1.00	12
Saturday Peak Hour Exit	0.29	0.00	1.00	12
Saturday Peak Hour Total	0.56	0.75	1.00	24

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

TRIP GENERATION BY MICROTRANS

Crafton, Tull & Associates, Inc.

901 N. 47th Street, Suite 200, Rogers, AR 72756 479.636.4838 Fax: 479.631.6224 www.craftull.com

December 2, 2003

Mr. Jeremy Pate
City of Fayetteville – Planning Department
113 West Mountain
Fayetteville, AR 72703

RE: Benton Ridge PZD – Subdivision Committee Comments
CTA Job No. 031061-00

Dear Mr. Pate:

The attached set of plans and drainage report were revised per the subdivision committee review comments from the November 26th meeting. Below is a breakdown of how the comments were addressed:

1. The varied rear building setbacks along the north property line and the east property line were revised to be a minimum of 20'.

2. The driveways for the proposed building on Lots 1 and 2 were revised to provide additional room for parking.

3. A note was added to the site plan to provide screening between the cul-de-sac and the cemetery.

4. A note addressing conservation easements and tree preservation were added to the preliminary plat.

5. The draft covenants were revised to address how buildings would be sold, tree preservation, etc.

6. The proposed sanitary sewer was extended to Lot 23.

7. The developer will not able to determine the accurate eave heights for Sarasota Grove or Nutmeg Circle until the building plans are ordered. The developer is not comfortable with ordering the detailed building plans until the project is approved, but will furnish this information for review and approval prior to the issuance of a building permit.

8. The developer is still looking for a building footprint for Lot 20 that will maintain the integrity of the proposed subdivision. Once a footprint is selected, the developer will furnish the information to the planning department for review prior to the issuance of a building permit.

Respectfully,
Crafton, Tull & Associates, Inc.

Juli Zimmerman

Juli Zimmerman, E.I.
Project Engineer

RECEIVED
DEC 02 2003
PLANNING DIV.

From: "Juli Zimmerman" <jzimm@craftull.com>
To: <jpate@ci.fayetteville.ar.us>
Date: 11/24/03 1:03PM
Subject: Benton Ridge - summary of changes

Jeremy -

Several items have been addressed since the previous Subdivision Committee, and I would like to summarize them in preparation for this week's committee meeting.

1. A note was added to the preliminary plat explaining the Tree Preservation/Green Space areas that are to be located within protective easements. Conservation easements are areas of common property and will be maintained by the POA. Areas designated as green space area to be owned by lot owner and to be maintained by covenants by the lot owner.

2. The cul-de-sac was moved north, so that there would be no grading within 5' of the south property line. A formal letter was submitted requesting a waiver for the length of the cul-de-sac.

3. Lot 23 was changed from a two-family dwelling to a single-family dwelling. There are now 20 two-family dwellings and 3 single-family dwellings. The total number of units for the project is 43 units, and the proposed density is 5.2 units per acre.

4. A drawing was submitted showing the building footprints and driveways for the proposed lots. An identification key was made to show which building elevations went with which lot. The building heights and number of bedrooms were also included. A packet showing the floor plans and elevations of each building was also included.

5. The 5' setback in front of Lots 1 through 5 was revised to a 20' utility easement.

6. The 8' setback on the back of Lots 7 through 9 was revised to a 15' setback.

7. The 5' setback on the east side of Lot 17 was revised to a 10' setback.

8. A meeting was held on Tuesday, November 18th, at 6:30 with the neighboring property owners. The neighbors that signed-in were:

Orvie Gosnell (2678 Travis)
Dorothy Ryskey (555 Sherlock)
Jerry and Sue Mounce (577 Sherlock)
Rick Nickell (2633 Wyman)
Clanton (390 Crossover)
Elsa Isaacs (2665 Travis)
James Wright (3758 Huntsville)
Wilda Hardin (2677 Travis)

Per property owner's comments at this meeting, the proposed duplexes on Lots 9 and 10 were revised from the Creekstone Way floor plan to the Cooper Lake floor plan. I will bring a revised drawing showing these new footprints to the subdivision committee.

Crafton, Tull & Associates, Inc.
901 N. 47th Street, Suite 200, Rogers, AR 72756 479.636.4838 Fax: 479.631.6224 www.craftull.com

November 19, 2003

Mr. Jeremy Pate
City of Fayetteville – Planning Department
113 West Mountain
Fayetteville, AR 72703

RE: Benton Ridge PZD – Subdivision Committee Comments
CTA Job No. 031061-00

Dear Mr. Pate:

The attached set of plans and drainage report were revised per technical plat review comments on October 30, 2003. Below is a breakdown of how the comments were addressed:

<u>Planning Comments:</u>

1. A note was added to the preliminary plat explaining the Tree Preservation/Green Space areas that are to be located within protective easements. (See Sheet 2)

2. The detention pond was assigned a lot number. (See Sheet 2).

3. A meeting was held on Tuesday, November 18th, at 6:30 with the neighboring property owners. A copy of the invitation is attached.

4. The building footprints and driveways were added to the lots. An identification key was made to show which building elevations went with which lot. The building heights and number of bedrooms were also included.

5. A formal letter is included requesting a waiver for the length of the cul-de-sac.

6. The cul-de-sac was moved north, so that there would be no grading within 5' of the south property line.

7. Lot 23 was reverted back to a single-family dwelling.

Please do not hesitate to call if you have any questions or comments about the revised plans. My direct dial number is (479) 878-2455.

Respectfully,
Crafton, Tull & Associates, Inc.

Juli Zimmerman

Crafton, Tull & Associates, Inc.
901 N. 47th Street, Suite 200, Rogers, AR 72756 479.636.4838 Fax 479.631.6224 www.craftull.com

November 19, 2003

City of Fayetteville
113 West Mountain
Fayetteville, AR 72703

RE: Benton Ridge PZD – Formal Request for Waiver
CTA Job No. 031061-00

Dear Planning Commissioners:

The developer would like to formally request a waiver for the length of the proposed cul-de-sac street for the Benton Ridge Planned Zoning District project.

The proposed cul-de-sac length is 965' in length. Rather than extending the proposed street to Crossover for a second entrance, the proposed cul-de-sac allows for a large group of existing pine trees to be preserved.

Respectfully,
Crafton, Tull & Associates, Inc.

Juli Zimmerman

Juli Zimmerman, E.I.
Project Engineer

Crafton, Tull & Associates, Inc.

901 N. 47th Street, Suite 200, Rogers, AR 72756 479.636.4838 Fax 479.631.6224 www.craftull.com

November 11, 2003

Dear Neighbors:

You are invited to an informational meeting which will be held on November 18, 2003 at 6:30 p.m. at the Ramada Inn located at 3901 N. College, Fayetteville, Arkansas concerning the proposed Benton Ridge PZD Subdivision.

The proposed project is located on the east side of Crossover Road, north of Huntsville Road and south of Wyman Road. The developer will be present to answer any questions you may have.

Thank you,

Juli Zimmerman

Juli Zimmerman, EI
Project Engineer

Crafton, Tull & Associates, Inc.

901 N. 47th Street, Suite 200, Rogers, AR 72756 479.636.4838 Fax 479.631.6224 www.craftull.com

October 6, 2003

City of Fayetteville
Planning Commissioners
Fayetteville, AR

RE: Benton Ridge PZD Rezoning Request
CTA Job No. 031061-00

Dear Commissioners:

We are respectfully requesting this rezoning on behalf of Raymon and Melba Rogers, the current property owner of Lot 40 of the W.E. Anderson Farms, and on behalf of Carl and Ora Murrell, Trustees, the current property owner of Lot 41 of the W.E. Anderson Farms, and on behalf of Long, L.L.C., who has the properties under contract for purchase.

We are requesting that the property be rezoned as a Residential PZD for the following reasons:

1. **Flexibility.** The developer is proposing a mixed use within the twenty-three-lot subdivision. Lots 1 through 20 will be designated as two-family residential lots (Unit 9). Lots 21 through 23 will be designated as single-family residential dwellings (Unit 8).

2. **Compatibility and Harmony.** This area of Fayetteville is currently being developed as single-family residential (RSF-4), and the developer feels that a Residential PZD is compatible with the surrounding usage and will be beneficial to the community. The developer is proposing 43 units (20 duplex units, and 3 single family units), which will give the proposed site a density of 5.2 units per acre. This is just slightly about the density allowed by the RSF-4 zoning.

3. **Natural Features.** The building setbacks were adjusted throughout the proposed subdivision to best protect the natural features on the site, which will be designated as tree preservation areas in the covenants. The natural drainage way that runs through the center of the property is being preserved.

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Full public utilities are available. An existing 8-inch waterline is located along the west property line along Crossover Road. An existing 6-inch sanitary sewer line runs through the center of the property and along the north property line. An existing 8-inch waterline runs along the east property line.

Should you have any questions, or require any additional information, please contact us at your convenience.

Respectfully,

Crafton, Tull & Associates, Inc.

Jerry Kelso, P.E.
Project Manager

Benton Ridge PZD
Proposed Covenants

- All Residential units must be 1400 sq.ft heated and cooled. E.g. a duplex would be 2800 sq.ft overall
- All building must be a minimum of 70% brick or masonry finish material.
- Any siding must be of natural materials – no vinyl or masonite.
- Soffit & Fascia may be either wooden or aluminum.
- All roofing must be of an architectural shingle or wood shingle.
- All units must have a landscape plan approved by the POA.
- All yards will be fully sodded.
- All units will have a sprinkler system installed in the front and side yards.
- A POA will be created to maintain(mowing,weedeating) all of the yards.
- Any structural changes, exterior color/façade treatment alterations, or additions must be approved by the POA
- No vehicles can be parked anywhere but the designated areas. No inoperative vehicles can be left in sight.
- Fencing must be wood or wrought iron and must be approved by the POA. The poa will be responsible for letting an individual homeowner know when the appearance of his fence is unacceptable and will work with that homeowner to remedy the situation (i.e. stain the fence, new fence required)
- No businesses or live stock will be kept or operated on the residential lots.

- No trees existing in the building setbacks may be cut down unless the have been determined to be dead.
- Each lot will plant atleast a 2" caliper tree for each residential unit located on that lot. E.g. duplex = 2 trees planted and maintained
- Each unit will have a 6' yard light and matching mailbox. They will be of black painted metal (same as in Brookbury woods)
- All Structures(units) within the bounds of a legal lot are to be sold in their entirety.(no sale of one side of a duplex unit is permitted)
- Conservation areas are within common property and are to be owned and maintained by the property Owner's Association.
- Areas designated as green space are to be owned by the lot owner, but maintained by the POA.
- Since the PZD has included a larger road than required, Parking will be allowed on the street.
- The minimum square footage for lots 1 & 2 (zero lot lines) will be 1200 square feet per unit.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

[redacted]
Jerry Kelso
901 N. 47th Street Ste 200
Rogers, AR 72756

Re: Benton Ridge PZD proposal

Dear Mr. Kelso,

The following is a review of project requirements concerning the project mentioned above:

Staff remains concerned with the development as proposed and at this time is not comfortable recommending approval for the overall project. The following comments are items of concern that have been discussed with the applicant and applicant representative on several occasions (June 25, July 07, July 14, 2003). The site plans from the initial meeting have not appreciably changed in any manner as an outcome of these discussions. Staff remains unconvinced with how the proposed development achieves the intent and spirit of the Planned Zoning District as set forth in the Unified Development Code.

166.06 Planned Zoning Districts (PZD) D.

(1) *Generally. The Planning Commission shall consider a proposed PZD in light of the purpose and intent as set forth in Chapter 161 Zoning Regulations, and the development standards and review guidelines set forth herein. Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as to preserve and enhance the neighborhood. Proper planning shall involve a consideration of tree preservation, water conservation, preservation of natural site amenities, and the protection of watercourses from erosion and siltation. The Planning Commission shall determine that specific development features, including project density, building locations, common usable open space, the vehicular circulation system, parking areas, screening and landscaping, and perimeter treatment shall be combined in such a way as to further the health, safety, amenity and welfare of the community. To these ends, all applications filed pursuant to this ordinance shall be reviewed in accordance with the same general review guidelines as those utilized for zoning and subdivision applications.*

- The natural drainage features of the site are not being preserved in any manner. The natural drainage pattern is being reconfigured and stormwater is being channeled to a detention pond with approximately 9-foot high detention walls, creating an undesirable condition that could be avoided with more site-sensitive design and clustering of structures. Staff has expressed specific concern regarding these retaining walls, and comments are included in the Technical Plat review packet.
- In numerous places, the proposed tree preservation areas in which trees are intended to remain also

contain building envelopes. The tree preservation areas effectively become negated once the lot is sold and built upon. In particular, lots 2, 5, 18, and 24 indicate preserved tree areas within the building envelopes. Again, more site-sensitive design and potentially the clustering of dwelling units could alleviate both the potential loss of units and loss of trees for the overall development.

- The tree preservation area on lot 24, proposed to be utilized as commercial/office use, effectively creates an unbuildable lot. If the tree preservation area is truly to be in effect in this location, Staff needs to see a building footprint that works with that lot in the proposed manner.

- The natural drainage area has associated trees, including a 30" Ash, a 24" Elm, a 20" Elm, and several 10-12" Cherry, Sycamore, Pin oak and Ash trees, all of which are being removed. Staff is optimistic that some of these trees could be saved, along with the natural drainage area, with an alternate site layout.

Staff has consistently asked for design alternatives for the layout of the overall development, and as of yet has not received anything more than the current plan to review. The conceptual idea for the project reaches the benchmark set by the Planned Zoning District ordinance, however, the development needs to follow through. It is Staff's opinion that the site is overly developed to accomplish the goals and criteria set forth by the Planned Zoning District. The density allowed with the current zoning (RSF-4) is more compatible with that of the surrounding single family residential land use. The site plan could perhaps provide better compatibility with fewer lots and a reconfiguration of site layout and circulation to permanently preserve natural features and site amenities.

Please feel free to contact City Staff to review these and other comments and concerns regarding your proposed development project. We look forward to reviewing a revised site plan, and hope these comments will aid in that process.

Sincerely,

Jeremy C. Pate
Associate Planner
City of Fayetteville

cc: Juli Zimmerman, Crafton, Tull & Associates
Mr. Jon Brittenum
Dawn Warrick, Zoning & Development Administrator
Craig Carnagey, Landscape Administrator

From: <rustytwr@cox-internet.com>
To: <planning@ci.fayetteville.ar.us>
Date: Mon, Oct 27, 2003 12:16 AM
Subject: benton ridge subdivison

Garey Sorensen
425 S Stone Bridge Rd
Fayetteville AR
72701
479 521 8718
479 871 9012
rustytwr@cox-internet.com

October 27, 2003
Subdivison Committee
Planning Commission
113 West Mountain St
Fayetteville AR
72701

Members of the Subdivision Committee and Planning Commission,

My name is Garey Sorensen and I am a resident at 425 S Stone Bridge Rd. I am also President of the Wyman/Stone Bridge Neighborhood Association. This letter is in regard to the development known as Benton Ridge. My personal concerns are as follows,

1. the density of the development
2. the encroachment next to the cemetery

As a concern of the neighborhood associations, besides my own concerns, are

1. effects of changing the natural drainage
2. effects on our property values
3. that these are not planned as single family homes
4. will structures fit in with already established homes
5. Set back from property lines.

I have looked at a blueprint of the development and one of my major concerns is the cul-d-sac next to the cemetery. I believe there should be some kind of buffer and a removal of the street to protect the cemetery. My wife has family in the cemetery, I have church family that has family members there, and I have planned to be buried there myself.

Simply put, we do not wish to stop development. We would like to see the development be for single family homes on about half of the lots now called for. As it looks now, there would be 22 duplexes, which would be 44 families. That could roughly amount to 150 people on approx 8 acres. As one resident put it, in 10 years time that would be a blight (slum) on our neighborhood. We wish the Committee and Commission to turn down the plans as they are now. We would like to see the developers work with the Neighborhood Association and the over seers of the Buckner Cemetery to build something that is pleasing to the majority.

Sincerely,
Garey Sorensen

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October 27, 2003

City of Fayetteville
Subdivision Committee

My name is Malcolm Scott Clanton I live at 390 S. Crossover Rd. This letter is in regards to the Benton Ridge proposed subdivision. I am an adjoining landowner and I acquired a set of plans from the city. I and am very opposed because of the extreme population density of the plan. I am also concerned about the closeness to the Buckner Cemetery. Following the plans I took my tape measure to the Cemetery and noticed that the sidewalk that goes around the cul-de-sac would be approximately fifteen feet from a grave. As you know with dead end cul-de-sacs especially during construction you would have far increased litter into the cemetery proper i.e. trash, beer bottles. I feel this plan is irreverent to the historical cemetery.

Most people don't remember that Buckner Community had it's own autonomy at one time. The only remaining pieces of the Community are Buckner Church, and Buckner Cemetery. I am not naive enough to think that 81/2 acres of land in the middle of Fayetteville would stay undeveloped, however, I feel that this is not a good plan and should be rethought. I ask only one thing of the developer, which is any street that comes off of Crossover rd. in Buckner Community, should be Buckner Street. I know these developers have a lot of money tied up in what they do. However, all of my money is tied up in where I live in this community. I love where I live and the people this is a great neighborhood and much thought should be placed into what is built here.

Thank You,

Malcolm S. Clanton
Vice President of the Wyman /Stonebridge neighborhood watch association
390 S. Crossover Rd.
Fayetteville, AR 72701

October 20, 2003

Planning Commission:

We are writing concerning a project called Benton Ridge Planned Zoning District. This project, located on the east side of Crossover Road, north of Huntsville Road and south of Wyman, abuts to the subdivision and community area that we live in.

We are strongly against having a rental project adjoining our quiet area of living. Not only do we feel that this will increase the noise and traffic in our area, but also decrease our property values. The proposed residential project will be placing 63 family dwellings on the property that at present has two families. We as a small quiet single- family residential area, are asking you to please consider the neighborhoods that are already in this area and ask you to deny this request.

Respectfully,

Leon Bozarth
Elaine Bozarth

Leon and Elaine Bozarth
2761 Travis Street
Fayetteville, AR 72701

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Subdivision Committee,

This letter is in Regards To The Benton Ridge develoment Proposal on The east side of Crossover RD North of huntsville Rd and South of wyman RD in fayetteville. AT 830 Am on Thursday Oct 30 Room 111 you will reviE a Subdivision with 20 Two family Residential a 3 Single famly lots on 8.34 Acers. Would eQual Aproux. 63 Familys.

I highly Opposes of This Project. reasons being.

A) our Neighborhood is made up of singal family homes. (NOT condoes)

B) The Value of our grandfathered in homes would be at risk. My ~~Neighborhood~~ Neighbors on TRAvis & holmes St. would be in greator Jeopardy of NoisE and devaluing lAnd.

PleasE do NoT even consider This Cluster of Condoes To be built.

Yours Truly
Hallie Guthrie
10/20/03

JANE PARKS
3365 WYMAN RD.
FAYETTEVILLE, AR. 72701
October 19, 2003

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SUBDIVISION COMMITTEE
ROOM 219
113 W. MOUNTAIN
FAYETTEVILLE, AR. 72701

PLEASE NOTE MY CONCERNS REGARDING THE BENTON RIDGE DEVELOPMENT . THE PROPOSALS BY BRYAN DANDY AND ROBERT SCHMIDT WILL COME BEFORE YOUR COMMITTEE ON OR ABOUT OCTOBER 30, 2003.

1. SHODDY WORKMANSHIP ON SIMILAR DWELLINGS BUILT ON MISSION BLVD.
2. WYMAN/STONEBRIDGE NEIGHBOR HOOD IS NOTA MIXED USE NEIGHBOR HOOD.
3. TREES WILL BE CUT. TOP SOIL REMOVED AND CLAY AND ROCKS BROUGHT IN AS FILL
4. THIS AREA WAS ORIGINALLY A 2 FAMILY LOT
5. A RESIDENTIAL/OFFICE COMPLEX WILL NOT FIT IN WITH THIS AREA
6. PROPERTY VALUES WILL DECLINE.
7. INCONSISTENCIES IN CITY COMMUNICAES ARE TROUBLING. HOW MANY OF WHAT TYPE BUILDINGS WILL BE BUILT VARIES WITH EACH MEMORANDUM.
8. WILL THERE BE DAMAGE TO BUCKNER CEMETERY?
9. WILL THE NATURAL CREEK BE OBLITERATED?
10. THE DENSITY OF POPULATION THIS WILL ADD TO OUR AREA IS NOT ACCEPTABLE TO THE WYMAN/STONEBRIDGE ASSOCIATION OR TO ME PERSONALLY.

PLEASE CONSIDER THESE CONCERNS.

RESPECTFULLY,
Jane Parks
JANE PARKS

Jerry and Sue Mounce
577 Sherlock Avenue
Fayetteville, AR 72701

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October 20, 2003

Subdivision Committee
City of Fayetteville
City Administration Building
113 West Mountain
Fayetteville, AR 72701

Dear Sirs or Madams:

I am writing you regarding the Benton Ridge Planned Zoning District.

I am an adjoining landowner to the East of the proposed project and want you to know that I am greatly disturbed at the prospects of such a development being in my back yard. I built this house about eight years ago in a single residential neighborhood and would not have done so if such a project as this could be seen (and heard) from my back porch. This type of project is not in keeping with the neighborhood I chose to build in and live in. I want you to not allow it.

I have been a resident of this area all of my life and my parents lived here all of their lives. As I now approach retirement in this neighborhood, I am appalled that the city would even consider changing my neighborhood in this way. I did not move here to live next to renters. I moved here to live with landowners who have a vested interest in their own property and live as owners of it. I do not wish to look out my back window to see a neighborhood that is not in keeping with the one I have chosen to live in as I retire with my wife.

This letter is to let you know of my displeasure in the possibilities of the impact that such a development would have on my hard earned and long sought investment here on Sherlock Avenue. If I had wanted to live in a duplex neighborhood I would have moved near to one. I did not then want to live near one and I do not appreciate that the powers that be in Fayetteville would make me live near one now.

Please do not allow this project to proceed.

Sincerely,

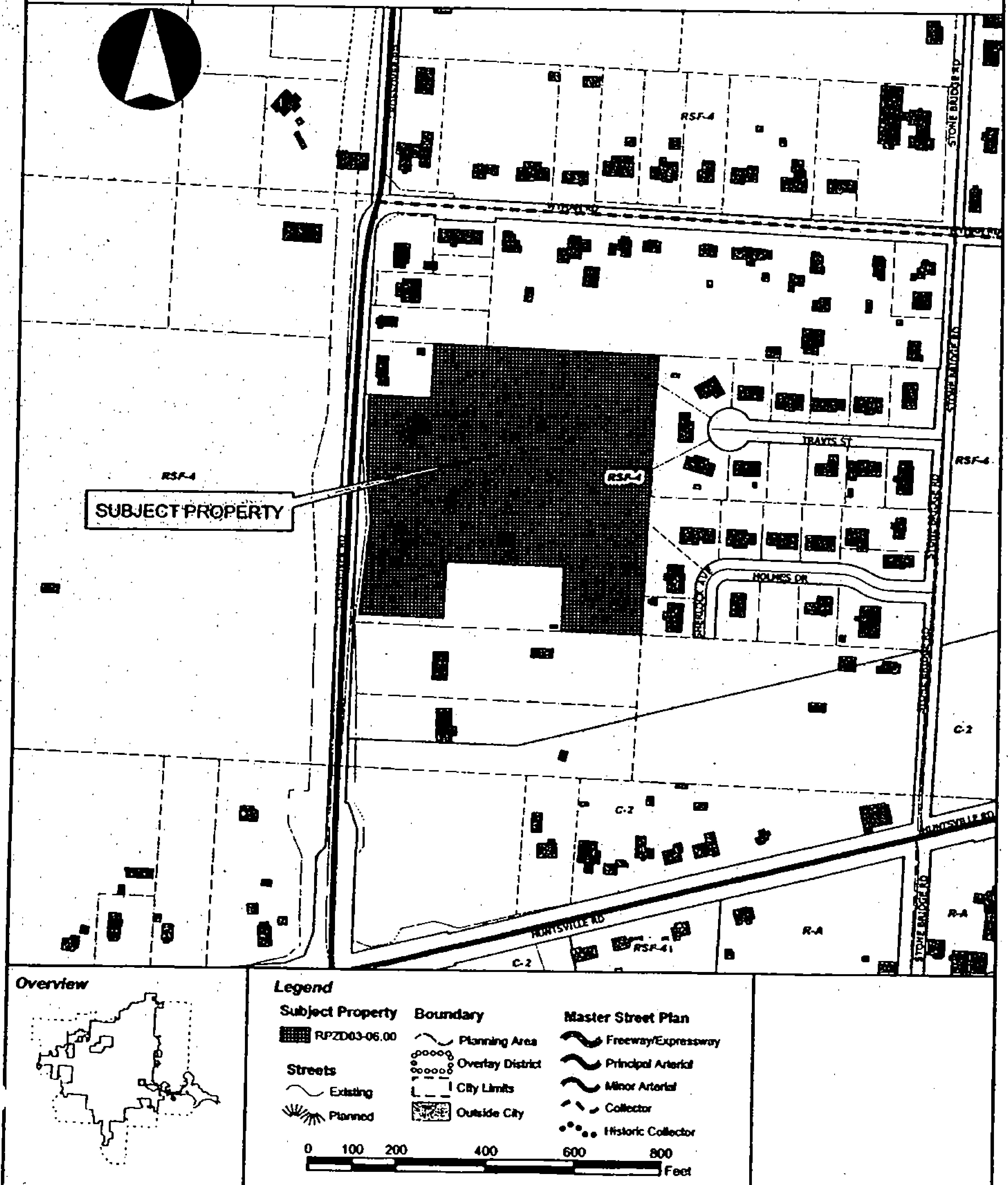
Jerry Mounce
Martha Sue Mounce
Jerry Mounce

File

RPZD03-06.00

Close Up View

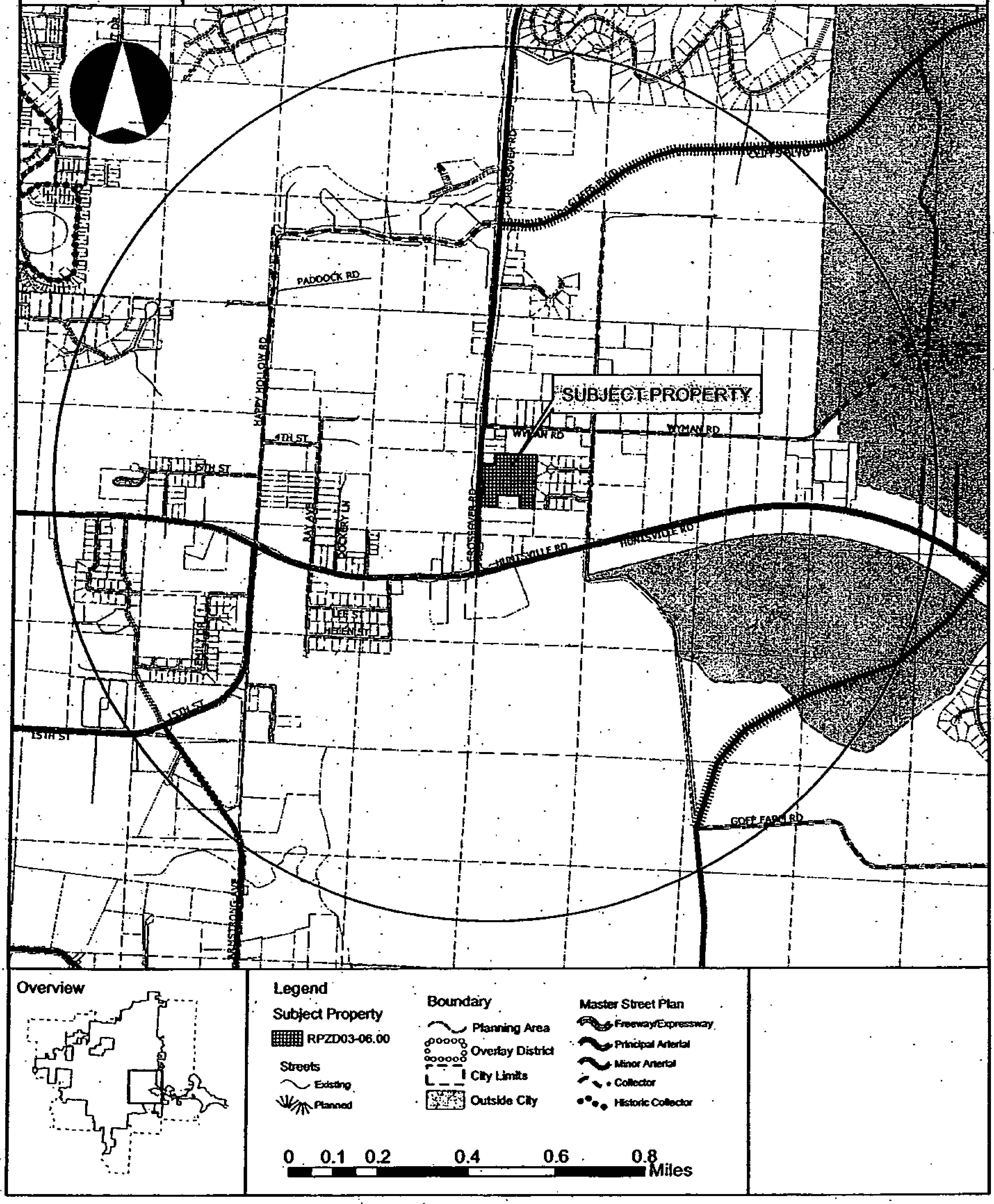
BENTON RIDGE



RPZD03-06.00

One Mile View

BENTON RIDGE



STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

x AGENDA REQUEST

For the Fayetteville City Council Meeting of: January 6, 2004

FROM:

Dawn Warrick	Planning	CP&E
Name	Division	Department

ACTION REQUIRED: Ordinance approval.

SUMMARY EXPLANATION:

R-PZD 03-06.00: Residential Planned Zoning District (Benton Ridge, pp 527) submitted by Crafton, Tull and Associates, Inc. on behalf of Long, LLC for property located on the east side of Crossover Road, north of Huntsville Road and south of Wyman Road. The property is zoned RSF-4, Residential Single-family, 4 units per acre, and contains approximately 8.34 acres. The request is to rezone the subject property to a R-PZD 03-06.00, with a total of 43 dwelling units on 23 lots (20 Two-family and 3 Single-family).

STAFF RECOMMENDATION: Approval.

Dawn I. Warrick 12/19/03
Division Head Date

Received in Mayor's Office 12/19/03
Date

12-19-03
City Attorney Date

12-19-03
Department Director Date

Cross Reference:

12-19-03
Finance & Internal Services Dir. Date

Previous Ord/Res#:

Orig. Contract Date:

Chief Administrative Officer Date

Orig. Contract Number:

Dan Coody 12/19/03
Mayor Date

New Item: Yes No

ENTERED 12/19/03 TLM

R-PZD 03-06.00: Planned Zoning District (Benton Ridge, pp 527) was submitted by Crafton, Tull and Associates, Inc. on behalf of Long LLC for property located on the east side of Crossover Road, north of Huntsville Road and south of Wyman Road. The property is zoned RSF-4, Residential Single-family, 4 units per acre, and contains approximately 8.34 acres. The request is rezone the subject property to a Residential Planned Zoning District, with a total of 43 dwelling units on 23 lots (20 Two-family, 3 Single-family)

Hoover: Item number four has been withdrawn, that was RZN 03-39.00 so we are on to item number five, R-PZD 03-06.00 for Benton Ridge.

Pate: Madam Chair, as you mentioned, this is a request for an R-PZD, Residential Planned Zoning District for Benton Ridge. The proposal is for a residential subdivision with 23 lots, 18 of these lots are proposed to be constructed with two family dwelling units. Two lots are proposed to be developed with one four unit multi-plex which expands that lot line resulting in a total of four dwelling units for those two lots. The three remaining lots near Crossover Road are proposed to be single family lots. This results in a total of 43 units and a total density of 5.2 dwelling units per acre. The applicant has provided both this graphic and within your staff report and on the plat the corresponding lots with the elevations and the site plans to be placed on each of these lots. These site plans and elevations are binding to this approval through the covenants and through the Planning Commission and subsequent City Council approval if you and City Council choose to do so. This site is located on North Huntsville Road on the east side of Crossover Road. It contains approximately 8.34 acres. There is a waiver request for the maximum 500' length in cul-de-sac that has been formally submitted by the applicant that a 965' length be allowed. In previous submittals a looped drive was utilized. Staff was concerned within a PZD they are required to look specifically at environmental considerations. There is a significant grove of trees in that location that the Landscape Administrator was looking at trying to preserve and save on this site, as well as a natural drainage way which the applicant has also proposed to remain on the site. Tree preservation areas as listed in your reports are to be placed in a protective easement and there are two or three lots that are conservation easements that would be protected in perpetuity. I have included also a project history that is for the Planning Commission to peruse. We have been contacted about this specific project with the applicant since the 25th of June of this year from it's initial meeting with the applicant. What we have today is similar but is also very different than what was initially proposed. Just for a little background, initially there were commercial lots on this site. There were also four plexes at one time. The density was quite a bit higher at one time and there was also quite a bit lower percentage of tree canopy preserved. Staff has worked diligently I believe with the applicant to try to address some of these issues. A lot of those have disappeared from our conditions of approval as we have gone through several of these meetings. A lot of them never made it to the meeting that you see here. It was tabled just previously. It has been to Subdivision two or three times for review and Technical Plat just as well. The applicant did conduct a neighborhood meeting and I believe the results of the people who attended that meeting are in your packet as well. Staff recommended that as well as did the Planning Commission to hopefully address or alleviate the concerns of the neighbors. Specifically, some of the concerns addressed were setbacks to the north and to the east. The applicant has changed those setbacks. Within a PZD the developer is able to vary setbacks. However, the Planning Commissioners were concerned as were the neighbors about the closeness of this development to their homes. I believe on the north and east side all setbacks are now 20', which is more consistent with a single family residential dwelling unit type of development, which is allowed in this district by right at the current time. The applicant has submitted a draft of covenants as well addressing proposed PZD responsibilities and maintenance of future open spaces, landscaping building types and heights. The final draft shall be submitted with this and the Final Plat that has to follow this development. Staff is recommending approval of the proposed PZD with a number of findings as listed in your staff report. The 15 conditions of approval that staff is recommending are indicative of some of those issues. Specifically, lot 20 is currently not identified with a corresponding building footprint and elevation. That does need to be identified prior to the Final Plat approval for this project. Also, Planning Commission must determine tonight and recommending for or against the waiver for the cul-de-sac length. I will be available for questions.

Hoover: Thank you. Would the applicant come forward with a presentation?

Zimmerman: Hello, my name is Julie Zimmerman with Crafton, Tull & Associates and I am representing Long, LLC for the Benton Ridge PZD project. Jeremy pretty much hit all the points that I also came up with. Basically, the property right now is zoned for Residential Single Family, RSF-4. We are proposing a PZD with 18 two family lots, three single family lots and two multi-family lots with one building which spans lot one and two but there will only be two units allowed per lot. This comes up with a total number of units of 43 with a density of 5.2 units per acre. As a background, also, originally we did have a looped street that created a horseshoe pattern and I brought along some before and afters to pass around. This is just to show you how we have come along. Originally we were proposing 22 two family lots with two Residential Office lots adjacent to Crossover, which had a total units of 46 with 5.5 units per acre and there was also one lot for a detention pond. Originally we had proposed a 24' back to back street with a 40' right of way and now we have a 28' back to back street with a 50' right of way. Originally we did not preserve the natural drainage way, nor did we preserve very many trees. The second sheet in the packet I handed out is where we are today. As you can see, we have a long cul-de-sac street so that we can stop right before we hit a large group of pine trees, which make up the conservation easement and lot 25. That is why we are requesting the formal waiver of the 500' cul-de-sac length. Some areas of tree preservation, lot 25 is a conservation easement. It is a large grouping of pine trees and a large elm and it is west of lot 18. Lot 26 is a conservation easement and we are preserving some existing cherry trees, some elms and willows. This lot is on the southeast of the property and it is also an area where we are preserving the natural drainage way. Lot 27 is a conservation easement, which is west of lot 21 and lot 28 is kind of a small conservation easement and it is just south of the cul-de-sac. In addition to the conservation easements, we also have areas of greenspace which there is a 13' greenspace along the north property line to preserve a row of existing trees there. There is a 20' greenspace along the east property line. There is a 20' greenspace north of the cemetery and a 15' greenspace along the south property line which is north of the driveway to the cemetery and west of the cemetery. The conservation easements are areas of common property that will be maintained by the P.O.A. and the greeenspaces will be owned by the lot owners but also maintained by the P.O.A. per the covenants so that the trees will be preserved. Also, there is a 40' greenspace in between lots 16 and 17 and lots 19 and 20 and this is to preserve an existing ditch that runs through the property so all those trees that are existing along that ditch will also be preserved. One of the requests from the staff was to provide you with the colored drawing you have in your packets. We showed the building footprints and we also had elevations to help everyone see what we were proposing for each lot. The driveways are also shown on that. We did hold a meeting with the property owners around the project and with some discussion with them, originally we had some varying setbacks along the perimeter of the property, some of them were as small as 8' so we have changed them all to a minimum of 20' along the north and the east property line. They also had some concerns about a couple of our footprints. One of them was Creek stone Way, which was a huge building and it was two story and since talking with them we have changed it to Cooper Lake on lots 9 and 10 which is a single story duplex. We have also changed, we did have some 5' setbacks along the street, which we changed to a 20' utility easement. That area was in front of lots one through five. We have worked quite a bit at this project. I think that we have pretty much addressed most of the concerns from the staff and adjacent property owners so I will just answer any questions you might have.

Hoover: Thank you Julie. At this time I will open it up to the public. Is there any member that would like to address this Planned Zoning District 03-06.00? If you would come to the podium.

Isaacs: Hi, I'm Ilsa Isaacs I live at 2665 E. Travis. I would like to note Mr. Clanton is here today and Mr. Clemens is here today. Both of them said they wanted to say something and address this issue. Just a couple of quick comments. I am going to ask, I don't know who is best to address for this, one of the old sticking points was Creekside Way backed up to lots 9 and 10 and the material I got from Renee Thomas on Friday still has Creekside Way building and the lower profile building not shown on page two. I don't know if that is an over sight. It is a matter very close to my heart since my property abuts three of these properties. Whom should I give this to?

Pate: Madam Chair, that is an oversight. Ms. Zimmerman made me aware of that today. That should be changed in our staff report to reflect what is on your current color drawing I believe. The Cooper Lake for lots 9 and 10.

Isaacs: Your saying that puts it on the record, is that correct?

Pate: Yes Ma'am.

Isaacs: Alright. The other thing I want to say just as nicely as possible is the density issue, which is one of the primary issues of all the residents who wrote letters has not been greatly changed. It has been changed, it hasn't been greatly changed. Apparently the parking issue has been modified to the satisfaction of the Planning Commission. Maybe I shouldn't ask, that will come out in the discussion no doubt. I'm going to repeat myself but all teachers repeat themselves, it is one of the requirements. When the just position of the new zoning placed in the old zone is so different there is bound to be a lot of ruckus and there are bound to be a lot of accommodations that are necessary. I would suggest to the lovely young people who work so hard at this, I would suggest to them that the new zonings blend, articulate, melt with the old neighborhoods somewhat better, not quite so extreme, maybe bazaar isn't the right word, but not in such an extreme manner. That said, I will say that it's not the happiest thing that ever happened in my life but I'm going to withdraw my objections. I won't give it my empery mature but then I'm not the pope.

Hoover: Thank you. Is there any other member of the public that would like to address this Planned Zoning District? Seeing none, I will bring it back to the Commission. Would someone from Subdivision like to give us a report? Julie and Jeremy did a good job.

Bunch: I guess in looking at the historical record of this project it has been to Subdivision several times as well as Technical Plat and staff and the applicant have worked on it and reworked it and fine tuned and tweaked it. Some of the last issues that were discussed at the last Subdivision Committee meeting were delineating parking and setbacks to be more commensurate with RSF-4 setbacks. The applicant has provided all of these things so the project has come a long ways and it has made many attempts to create compatibility, albeit a slightly greater density than it's previous RSF-4 zoning.

Vaught: I have a question for clarification. The three lots with the single family residential, which ones are those?

Pate: Lots 21, 22 and 23, lot 23 is identified as a cottage, that is a single family lot.

Vaught: The footprint for that has two units. That is why I was wondering, at least from what I can tell. That is why I was confused. I just want to make sure it is 43. We are stating 43 and if there are 44 I want to make sure that got changed.

Pate: Right. If that is the case staff has recommended consistently that all of those lots, 21, 22 and 23 be single family lots.

Warrick: Correspondence from the applicant's representative dated November 19th, itemizes that as a cottage in their proposal, lot 23 was reverted back to a single family dwelling. That is in your packets on page 24.

Vaught: On a PZD, my understanding is that when we specify these footprints, those will be set, that is what they have to build there. On that one we need to make a condition stating that will be designated single family before Final Plat or how would we do that?

Warrick: As this goes forward this does still require City Council approval because they will be changing the zoning that is associated with this development project. Staff can ensure that that change is made before this goes forward to the City Council.

Bunch: For the same line of questioning Commissioner Vaught was pursuing, in the covenants there is also a statement that lot 23 will be a two family lot but must maintain a single story single family look when viewed from Crossover Road. That also needs to be addressed just to have continuity within the packet.

Pate: That was the intent of one of the conditions of approval to clarify one of the draft covenants before City Council approval and ultimately before Final Plat when they are filed with that Final Plat. There are some discrepancies in the covenants at this time. If you will note, on your plat on page two with the lot schedule, it does call out lots 21, 22, and 23 as single family unit eight lots.

Bunch: A question for the applicant. In your covenants you are calling out a 1,400 sq.ft. minimum and Sarasota Grove on lots one and two your prototype shows that that is less. Do you need to put an exception in or do you need to propose a different prototype?

Zimmerman: We will propose a different footprint.

Hoover: Are there other comments or motions?

MOTION:

Bunch: I will attempt a motion. I move that we approve and recommend to the City Council for their review and approval R-PZD 03-06.00 for Benton Ridge subject to the conditions of approval as stated and with the clarification of some of the discrepancies as reviewed tonight.

Hoover: I have a motion by Commissioner Bunch, is there a second?

Shackelford: I will second.

Hoover: A second by Commissioner Shackelford. Is there more discussion? Renee?

Roll Call: Upon the completion of roll call the motion to forward R-PZD 03-06.00 to the City Council was approved by a vote of 9-0-0.

City Council Meeting of January 6, 2004
Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Tim Conklin, Community Planning and Engineering Services Director

From: Dawn T. Warrick, AICP, Zoning and Development Administrator DW

Date: December 17, 2003

Subject: Residential Planned Zoning District for Brophy Condos (R-PZD 03-07.00)

RECOMMENDATION

Planning Staff recommends approval of an ordinance creating the Residential Planned Zoning District (R-PZD) for Brophy Condos. This action will establish a unique zoning district for development of a 6.01 acre tract located east of College Ave, north of Township on Brophy Circle. The request is to rezone the subject property to a Residential Planned Zoning District with a total of 50 Residential dwelling units (25 Two-family units).

BACKGROUND

The applicant requests a rezoning and preliminary plat approval for a residential development within an R-PZD zoning district. The proposed use is two-family residential to be built in three phases. Density for the entire site is 8.32 units per acre. The development encompasses an area with three zoning designations of RSF-4, RMF-24, and RMF-40. The site is located east of College Avenue and north of Brophy Circle and has extensive canopy-coverage on steep terrain.

The applicant proposes to construct 25 duplexes with 50 total units to be sold using a horizontal property regime. Therefore, an individual may buy one unit located on a lot, which is defined as the building area for each duplex. There are two lot sizes. Twenty-one of the buildings are to be built at 35' by 40' and four at 40' by 50'. Seven styles of building elevations have been proposed. Styles 1, 2, and 3 are proposed for the larger building units and 4 through 7 for the smaller units. Below are the dimensions of each building style. The driveways for each of the buildings are unique. Minor changes are required to the plat to assure that the correct driveway configuration is represented for each unit. There is also a proposed five foot area around each unit designated as a construction perimeter and deck/porch easement.

DISCUSSION

The Planning Commission voted 5-3-0 in favor of this request on Monday, December 8, 2003. Approval of a planned zoning district requires City Council approval as it includes

Left on 1st Reading 1/6/04
Left on 2nd Reading 2/20/04

zoning (land use) as well as development approval (preliminary plat). Recommended conditions included in the attached staff report were approved by the Planning Commission. Planning Commission did amend the conditions of this project to state that the structures to be located along the western edge of the development shall be limited in height to a maximum of two storys.

BUDGET IMPACT

None.

ORDINANCE NO. ______

AN ORDINANCE ESTABLISHING A RESIDENTIAL PLANNED ZONING DISTRICT TITLED (R-PZD 03-07.00) LOCATED EAST OF COLLEGE AVENUE, NORTH OF TOWNSHIP ON BROPHY CIRCLE CONTAINING 6.01 ACRES, MORE OR LESS; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FAYETTEVILLE; AND ADOPTING THE ASSOCIATED RESIDENTIAL DEVELOPMENT PLAN AS APPROVED BY THE PLANNING COMMISSION.

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

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

From RSF-4, Residential Single Family four units per acre, RMF-24, Residential Multi-family 24 units per acre and RMF-40, Residential Multi-family 40 units per acre to R-PZD 03-07.00 as shown in Exhibit "A" attached hereto and made a part hereof.

Section 2. That the change in zoning classification is based upon the approved master development plan and development standards as shown on the plat and approved by the Planning Commission on December 8, 2003.

Section 3. That this ordinance shall take affect and be in full force at such time as all of the requirements of the development plan have been met.

Section 4. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this ______ day of ___________, 2004.

APPROVED:

By:______________________
DAN COODY, Mayor

By: _________________________
SONDRA SMITH, City Clerk

EXHIBIT "A"
R-PZD 03-07.00

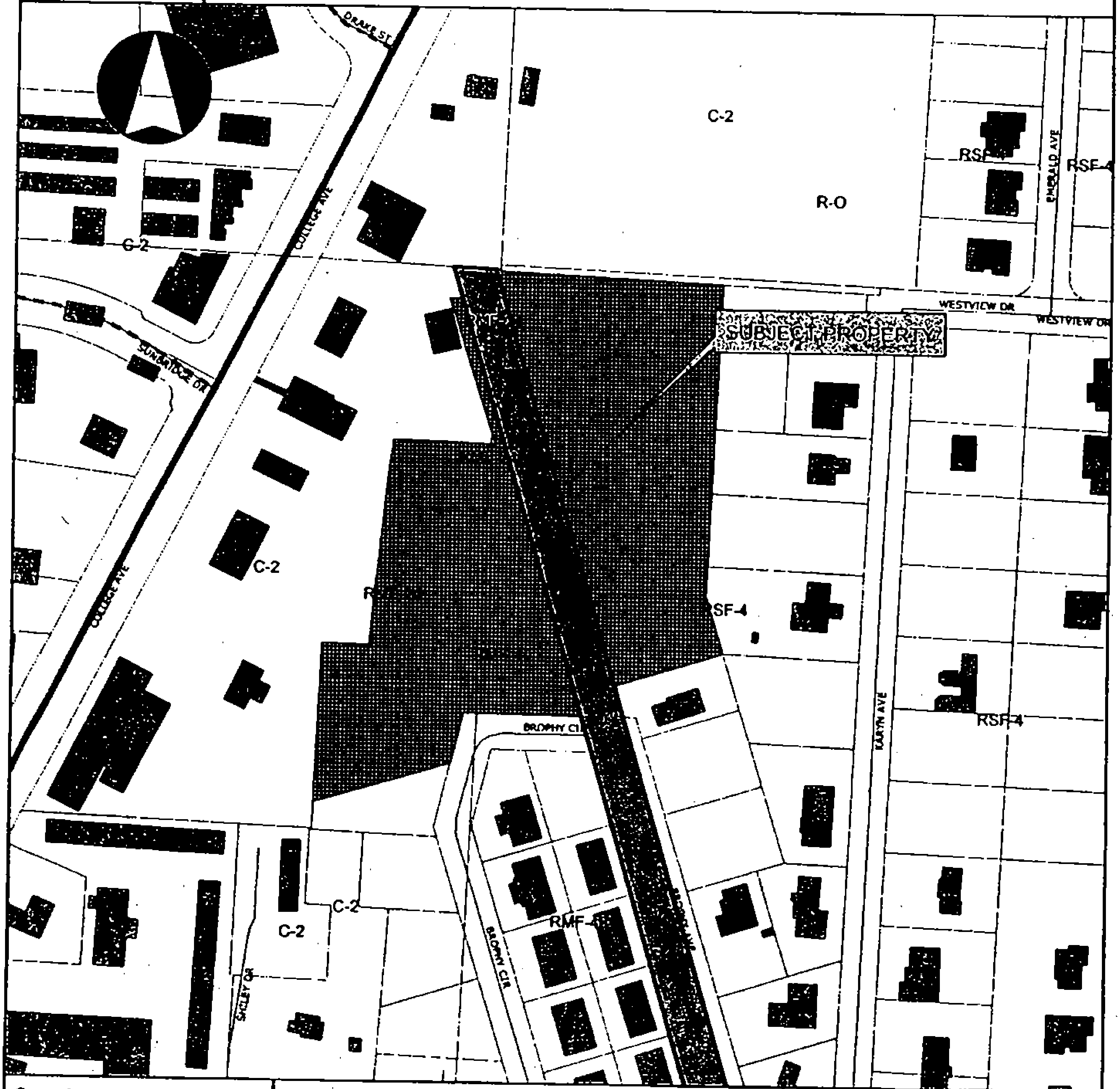
A PART OF THE SE ¼ OF THE SW ¼ AND A PART OF THE SW ¼ OF THE SE ¼ OF SECTION 35, TOWNSHIP 17 NORTH, RANGE 30 WEST, IN THE CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

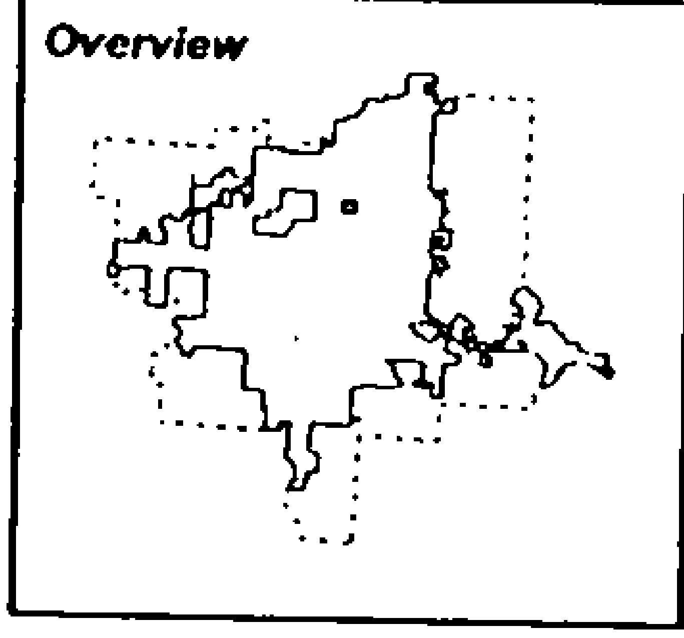
COMMENCING AT THE NE CORNER OF SAID SE ¼, SW ¼, RUN THENCE S02°19'51"W 10.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE S87°36'31"E 78.62 FEET; THENCE S87°41'04"E 226.63 FEET; THENCE S02°26'59"W 430.36 FEET; THENCE S17°19'50"E 84.79 FEET; THENCE S72°52'23"W 139.18 FEET; THENCE S75°58'14"W 50.08 FEET; THENCE 17°19'50"E 30.39 FEET; THENCE N89°13'34"W 185.06 FEET; THENCE S14°01'58"W 44.10 FEET; THENCE S67°01'51"W 211.76 FEET; THENCE N02°32'57"E 219.99 FEET; THENCE S87°42'47"E 63.58 FEET; THENCE N05°44'36"E 86.47 FEET; THENCE N06°05'49"E 149.85 FEET; THENCE N07°51'09"E 50.71 FEET; THENCE S87°41'04"E 139.79 FEET; THENCE N17°44'06"W 212.91 FEET; THENCE S87°41'04"E 56.84 FEET; THENCE N01°26'29"E 40.10 FEET; THENCE S87°36'31"W 11.05 FEET TO THE P.O.B., CONTAINING 6.01 ACRES, MORE OR LESS, AND SUBJECT TO ALL RIGHTS OF WAY AND UTILITY EASEMENTS OF RECORD.

R-PZD03-07.00

Close Up View

BROPHY





Legend

Subject Property

Streets
- Existing
- Planned

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

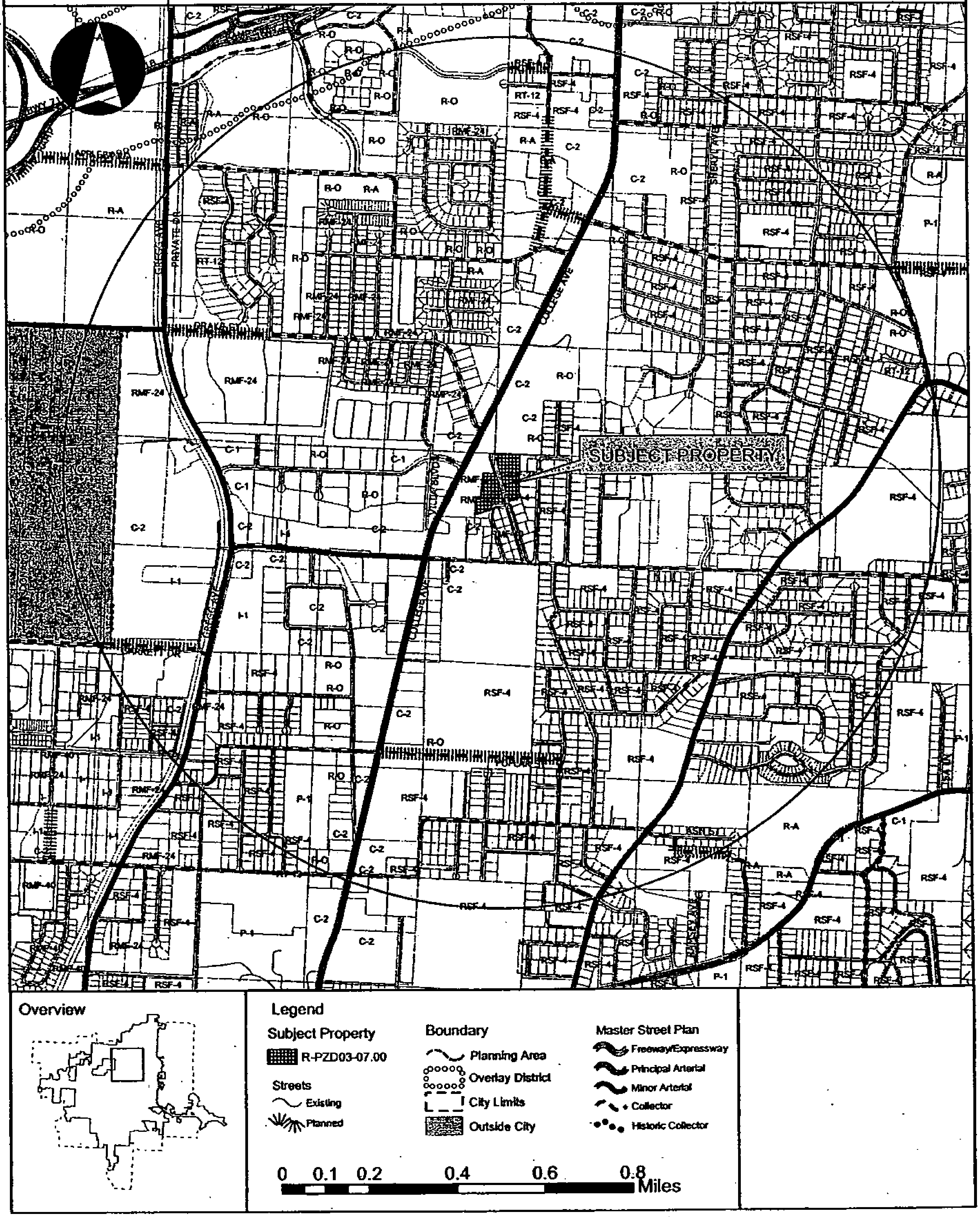
Master Street Plan
- Freeway/Expressway
- Principal Arterial
- Minor Arterial
- Collector
- Historic Collector

0 75 150 300 450 600 Feet

R-PD03-07.00

One Mile View

BROPHY



FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of December 08, 2003

PLANNING DIVISION CORRESPONDENCE

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

TO: Fayetteville Planning Commission
FROM: Suzanne Morgan, Associate Planner
Matt Casey, Staff Engineer
THRU: Dawn Warrick, Zoning & Development Administrator, A.I.C.P.
DATE: December 02, 2003

R-PZD 03-07.00: Planned Zoning District (Brophy Condominiums, pp 290, 291) was submitted by William Rudasill of WBR Engineering Assoc. on behalf of Ralph Brophy for property located east of College Ave, north of Township on Brophy Circle. The property is zoned RMF-40, RMF-24 and RSF-4 and contains approximately 6.01 acres. The request is to rezone the subject property to a Residential Planned Zoning District with a total of 50 Residential dwelling units (25 Two-family units). Planner: Suzanne Morgan

Findings: The applicant requests a rezoning and preliminary plat approval for a residential development within an R-PZD zoning district. The proposed use is two-family residential, with 50 units (25 duplexes) proposed to be built in three phases. Density for the entire site is 8.32 units per acre. The development encompasses an area with three zoning designations of RSF-4, RMF-24, and RMF-40. The site is located east of College Avenue and north of Brophy Circle and has extensive canopy-coverage on steep terrain. This item must be heard at City Council pursuant to the requirements for a PZD.

The applicant proposes to construct 25 duplexes with 50 total units to be sold using a horizontal property regime. Therefore, an individual may buy one unit located on a lot, which is defined as the building area for each duplex. There are two lot sizes. Twenty-one of the buildings are to be built at 35' by 40' and four at 40' by 50'. Seven styles of building elevations have been proposed. Styles 1, 2, and 3 are proposed for the larger building units and 4 through 7 for the smaller units. Below are the dimensions of each building style. The driveways for each of the buildings are unique. Minor changes are required to the plat to assure that the correct driveway configuration is represented for each unit. There is also a proposed five foot area around each unit designated as a construction perimeter and deck/porch easement.

Building Styles:

Style	1	2	3	4	5	6	7
Dimension	42' x 39'	48' x 40'	46' x 39'	40' x 32.5'	36' x 33'	36' x 34'	38' x 32'

Surrounding Land Use / Zoning:

Direction	Land Use	Zoning
North	Commercial along College Avenue & vacant property	C-2, Thoroughfare Commercial R-O, Residential Office
South	Duplex and Four-plex units	RMF-40, Residential Multi-family – 40 units per acre
East	Single-family residential	RSF-4, Residential Single-family – 4 units per acre
West	Commercial	C-2 Thoroughfare Commercial

Easements: There is an existing 20' sewer easement located on the west of the proposed private drive named Brophy Place. A private 55' gas easement also exists on this property. Exact location of this easement is to be determined. No structures shall encroach on any public or private easements.

Right-of-way being dedicated: The applicant proposes to construct 24' wide private streets with four foot sidewalks and a six foot greenspace along both sides of the street. These private streets will connect an existing private drive extending east from College Avenue and Brophy Circle, a dedicated right-of-way.

Street Improvements: The 24' private drive shall be built to City standards to include curb, gutter, and storm sewer.

Adjacent Master Street Plan Streets: College Avenue (principle arterial) and Brophy Circle (local street).

Tree Preservation:	Existing canopy:	58.4 %
	Preserved canopy:	23.9 %
	Required:	25 %
	Mitigation:	$2,972 payment into the City's Tree Escrow Account prior to final plat.

Project History:

Date	Action	Comments
22 August 2003	Tabled	Meeting scheduled with engineer for week of August 25, 2003
23 September 2003	Resubmitted	Tabled at In-House
6 October 2003	Resubmitted legal, plats, site plans, elevations, soils, waiver request, and covenants	Tabled at In-House
13 October 2003	In-House Review	Forwarded to Technical Plat
15 October 2003	Technical Plat Review	Forwarded to Subdivision Committee

04 November 2003	Meeting with Mr. Rudasill; Project tabled.	Comments addressed tree preservation data, driveways, building styles, and sidewalks.
12 November 2003	Project Tabled. Meeting with Mr. Rudasill, Suzanne Morgan, and Matt Casey	Retaining walls were shown in an easement. No structures are allowed to be built in an easement. Questions regarding location of gas easement.
13 November 2003	Zoning Review Team Toured the Property	Visited the property.
17 November 2003	Faxed letter to Mr. Rudasill.	Letter listed items to be addressed for the submittal for Subdivision Committee on November 26th.
25 November 2003	Meeting with Mr. Brandt from Arkansas Western Gas and Mr. Rudasill.	Gas easement is private. Gas lines will be located in the field and easement will be measured off of survey.
26 November 2003	Subdivision Committee	Discussion to lessen sidewalk requirement to 4' with a 4' green space; overhead electric lines; cross sections of specific units requested; impermeable/ permeable surface comparison requested.

Recommendation:
Forward to the City Council with a recommendation for approval of the requested rezoning.

Planning Commission approval of the proposed preliminary plat subject to the following conditions:

Conditions of Approval:

1. Planning Commission recommendation to the City Council regarding the rezoning of the subject property to the unique district for R-PZD 03-07.00 with all conditions of approval as determined by the Planning Commission.

2. An ordinance creating this R-PZD shall be approved by City Council.

3. A Final Plat is required to legalize the lot configuration, filed pursuant to City of Fayetteville requirements.

4. All easements, both private and public, shall clearly be identified on the plat.

5. Driveways shown on the plat shall reflect the driveway required for each proposed building elevation.

6. The 24' private drive shall be built to City street standards with curb, gutter, and storm drain.

7. Planning Commission determination of request for four foot sidewalks with a six foot of green space. *Staff is recommending five foot sidewalks with a two foot greenspace in order to provide pedestrian access, area for greenspace and adequate depth for vehicle stacking in driveways.*

8. Street lights shall be installed with this development in accordance with §166.03.

9. Interior street names shall be approved by the City 9-1-1 Coordinator.

10. A sign shall be erected at each entrance of the private street to indicate the road as private.

11. All designated crosswalks shall have sidewalks connecting to the street.

12. Payment of parks fees in the amount of **<u>$19,650</u>** shall be required prior to building permit.

13. Covenants for this planned zoning district shall be updated to include requirements for maintenance for private streets per Chapter 166.06 and address any needed corrections or clarification.

14. Covenants shall include a statement prohibiting vehicles from overhanging or parking on sidewalks.

Standard Conditions of Approval:

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

16. Staff approval of final detailed plans, specifications and calculations (where applicable) for grading, drainage, water, sewer, fire protection, streets (public and private), sidewalks, parking lot(s) and tree preservation. The information submitted for the plat review process was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with City's current requirements.

17. Sidewalk construction in accordance with current standards to include a sidewalk and greenspace with width to be determined by Planning Commission along all proposed streets.

18. Preliminary Plat shall be valid for one calendar year.

19. Prior to the issuance of a building permit the following is required:
a. Grading and drainage permits
b. Separate easement plat for this project that shall include the tree preservation area.
c. Project Disk with all final revisions
d. Completion of all required improvements or the placement of a surety with the City (letter of credit, bond, escrow) as required by §158.01 "Guarantees in Lieu of Installed Improvements" to guarantee all incomplete improvements. Further, all improvements necessary to serve the site and protect public safety must be completed, not just guaranteed, prior to the issuance of a Certificate of Occupancy
e. Parks fees paid and/or deed recorded and copy received.

Findings associated with R-PZD 03-07.00

Sec. 166.06. Planned Zoning Districts (PZD).

(B) *Development standards, conditions and review guidelines*

(1) *Generally.* The Planning Commission shall consider a proposed PZD in light of the purpose and intent as set forth in Chapter 161 Zoning Regulations, and the development standards and review guidelines set forth herein. Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as to preserve and enhance the neighborhood. Proper planning shall involve a consideration of tree preservation, water conservation, preservation of natural site amenities, and the protection of watercourses from erosion and siltation. The Planning Commission shall determine that specific development features, including project density, building locations, common usable open space, the vehicular circulation system, parking areas, screening and landscaping, and perimeter treatment shall be combined in such a way as to further the health, safety, amenity and welfare of the community. To these ends, all applications filed pursuant to this ordinance shall be reviewed in accordance with the same general review guidelines as those utilized for zoning and subdivision applications.

FINDING: The subject property is adjacent to property zoned C-2 to the west, C-2 and R-O to the north, RSF-4 to the east and RMF-40 to the south. The surrounding land uses are commercial, single family residential and multi-family residential. The subject property is 6.01 acres and zoned RSF-4, RMF-24, and RMF-40. Rezoning the property to have 25 duplexes for a total of 50 units and an overall density of 8.32 units per acre is compatible with surrounding uses and zoning. The site is located on hilly terrain and entirely covered with tree canopy.

(2) *Screening and landscaping.* In order to enhance the integrity and attractiveness of the development, and when deemed necessary to protect adjacent properties, the Planning Commission shall require landscaping and screening as part of a PZD. The screening and landscaping shall be provided as set forth in §166.09 Buffer Strips and Screening. As part of the development plan, a detailed screening and landscaping plan shall be submitted to the Planning Commission. Landscape plans shall show the general location, type and quality (size and age) of plant material. Screening plans shall include typical details of fences, berms and plant material to be used.

FINDING: A total of 23.9% of the tree canopy is proposed to remain and designated as common area for the entire project. No buffers or other screening has been proposed other than the natural features of the land. The largest sections of preservation are located along the east and west boundary lines to create a buffer between this proposed development and the existing single family dwellings and commercial buildings.

(3) *Traffic circulation.* The following traffic circulation guidelines shall apply:

(a) The adequacy of both the internal and external street systems shall be reviewed in light of the projected future traffic volumes.

(b) The traffic circulation system shall be comprised of a hierarchal scheme of local collector and arterial streets, each designed to accommodate its proper function and in appropriate relationship with one another.

(c) Design of the internal street circulation system must be sensitive to such considerations as safety, convenience, separation of vehicular and pedestrian traffic, general attractiveness, access to dwelling units and the proper relationship of different land uses.

(d) Internal collector streets shall be coordinated with the existing external street system, providing for the efficient flow of traffic into and out of the planned zoning development.

(e) Internal local streets shall be designed to discourage through traffic within the planned zoning development and to adjacent areas.

(f) Design provisions for ingress and egress for any site along with service drives and interior circulation shall be that required by Chapter 166 Development of this code.

FINDING: The proposed 24' private streets will connect an existing private drive intersecting College Avenue and Brophy Circle, which connects to Township St. The private drive, West View Place, has joint ownership. The applicant is one of these owners. Traffic generated by this development will not negatively impact the area due to several connections to nearby collector and arterial streets.

(4) *Parking standards.* The off-street parking and loading standards found in Chapter 172 Parking and Loading shall apply to the specific gross usable or leasable floor areas of the respective use areas.

FINDING: Each proposed unit shall have a one-car garage and driveway to provide for a total of two off-street parking spaces for each unit.

(5) *Perimeter treatment.* Notwithstanding any other provisions of a planned zoning district, all uses of land or structures shall meet the open space, buffer or green strip provisions of this chapter of this code.

FINDING: There is a total open space/pervious surface of 3.64 acres (60.6%) and 2.37 acres (39.4%) is impervious. Buffer between this development and the surrounding

property is proposed to be the tree preservation area. The eastern edge has a buffer area ranging from 240'at the north to 30.25' at the south end of the property. The buffer along the western property line ranges from 35' to 75' north to south.

(6) *Sidewalks.* As required by §166.03.

FINDING: The applicant is proposing four foot sidewalks with a six foot green space on both sides of the road. Staff is recommending a five foot sidewalk with a two foot green space in order to allow for enough stacking room in the driveways for all units.

(7) *Street Lights.* As required by §166.03.

FINDING: Street lights shall be installed in accordance with §166.03.

(8) *Water.* As required by §166.03.

FINDING: Water shall be extended to serve development.

(9) *Sewer.* As required by §166.03.

FINDING: Sewer shall be extended to serve development.

(10) *Streets and Drainage.* Streets within a residential PZD may be either public or private.

(a) *Public Streets.* Public streets shall be constructed according to the adopted standards of the City.

(b) *Private Streets.* Private streets within a residential PZD shall be permitted subject to the following conditions:

(i) Private streets shall be permitted for only a loop street, or street ending with a cul-de-sac. Any street connecting one or more public streets shall be constructed to existing City standards and shall be dedicated as a public street.

(ii) Private streets shall be designed and constructed to the same standards as public streets with the exceptions of width and cul-de-sacs as noted below.

(iii)All grading and drainage within a Planned Zoning District including site drainage and drainage for private streets shall comply with the City's Grading (Physical Alteration of Land) and Drainage (Storm water management) Ordinances. Open drainage systems may be approved by the City Engineer.

(iv) Maximum density served by a cul-de-sac shall be 40 units. Maximum density served by a loop street shall be 80 units.

(v) The plat of the planned development shall designate each private street as a "private street."

(vi) Maintenance of private streets shall be the responsibility of the developer or of a neighborhood property owners association (POA) and shall not be the responsibility of the City. The method for maintenance and a maintenance fund shall be established by the PZD covenants. The covenants shall expressly provide that the City is a third party beneficiary to the covenants and shall have the right to enforce the street maintenance requirements of the covenants irrespective of the vote of the other parties to the covenants.

(vii) The covenants shall provide that in the event the private streets are not maintained as required by the covenants, the City shall have the right (but shall not be required) to maintain said streets and to charge the cost thereof to the property owners within the PZD on a pro rata basis according to assessed valuation for ad valorem tax purposes and shall have a lien on the real property within the PZD for such cost. The protective covenants shall grant the City the right to use all private streets for purposes of providing fire and police protection, sanitation service and any other of the municipal functions. The protective covenants shall provide that such covenants shall not be amended and shall not terminate without approval of the City Council.

(viii) The width of private streets may vary according to the density served. The following standard shall be used:

Paving Width
(No On-Street Parking)

Dwelling Units	One-Way	Two-Way
1 - 20	14'	22'
21+	14'	24'

***Note:** If on-street parking is desired, 6 feet must be added to each side where parking is intended.

(ix) All of the traffic laws prescribed by Title VII shall apply to traffic on private streets within a PZD.

(x) There shall be no minimum building setback requirement from a private street.

(xi) The developer shall erect at the entrance of each private street a rectangular sign, not exceeding 24 inches by 12 inches, designating the street a "private street" which shall be clearly visible to motor vehicular traffic.

FINDING: The proposed private streets are ending in a cul-de-sac and connecting a private and public street. The street shall be built in accordance with City standards. The cul-de-sac will serve 14 units. At 50 units, the street is required to be built at a minimum 24' width. Covenants shall reflect the appropriate maintenance of the private drives as stated above (see vi and vii). The developer shall erect a sign at each entrance to the proposed street indicating it is a private street.

(11) *Construction of nonresidential facilities.* Prior to issuance of more than eight building permits for any residential PZD, all approved nonresidential facilities shall be constructed. In the event the developer proposed to develop the PZD in phases, and the nonresidential facilities are not proposed in the initial phase, the developer shall enter into a contract with the City to guarantee completion of the nonresidential facilities.

FINDING: N/A

(12) *Tree preservation.* All PZD developments shall comply with the requirements for tree preservation as set forth in Chapter 167 Tree Preservation and Protection. The location of trees shall be considered when planning the common open space, location of buildings, underground services, walks, paved areas, playgrounds, parking areas, and finished grade levels.

FINDING: There is an existing 58.4% of canopy on this site. The applicant is proposing to preserve 23.9% canopy in a designated tree preservation area and mitigate by payment of $2,972 into the City's Tree Fund. The applicant has also proposed to retain approximately 36.4% of additional the canopy; however, this canopy is located within easements and other areas which will not ensure the preservation of these trees.

(13) *Commercial design standards.* All PZD developments that contain office or commercial structures shall comply with the commercial design standards as set forth in §166.14 Site Development Standards and Construction and Appearance Design Standards for Commercial Structures.

FINDING: N/A

(14) *View protection.* The Planning Commission shall have the right to establish

special height and/or positioning restrictions where scenic views are involved and shall have the right to insure the perpetuation of those views through protective covenant restrictions.

FINDING: The applicant has indicated in the submitted Covenants, Conditions and Restrictions that the height of each building shall not exceed two and one-half stories in or 35' in height.

(E) *Revocation.*

(1) *Causes for revocation as enforcement action.* The Planning Commission may recommend to the City Council that any PZD approval be revoked and all building or occupancy permits be voided under the following circumstances:

(a) *Building permit.* If no building permit has been issued within the time allowed.

(b) *Phased development schedule.* If the applicant does not adhere to the phased development schedule as stated in the approved development plan.

(c) *Open space and recreational facilities.* If the construction and provision of all common open spaces and public and recreational facilities which are shown on the final plan are proceeding at a substantially slower rate than other project components.

Planning staff shall report the status of each ongoing PZD at the first regular meeting of each quarter, so that_the Planning Commission is able to compare the actual development accomplished with the approved development schedule. If the Planning Commission finds that the rate of construction of dwelling units or other commercial or industrial structures is substantially greater than the rate at which common open spaces and public recreational facilities have been constructed and provided, then the Planning Commission may initiate revocation action or cease to approve any additional final plans if preceding phases have not been finalized. The city may also issue a stop work order, or discontinue issuance of building or occupancy permits, or revoke those previously issued.

(2) *Procedures.* Prior to a recommendation of revocation, notice by certified mail shall be sent to the landowner or authorized agent giving notice of the alleged default, setting a time to appear before the Planning Commission to show cause why steps should not be made to totally or partially revoke the PZD. The Planning Commission recommendation shall be forwarded to the City Council for disposition as in original approvals. In the event a PZD is revoked, the City Council shall take the appropriate action in the city clerk's office and the public zoning record duly noted.

(3) *Effect.* In the event of revocation, any completed portions of the development or those

portions for which building permits have been issued shall be treated to be a whole and effective development. After causes for revocation or enforcement have been corrected, the City Council shall expunge such record as established above and shall authorize continued issuance of building permits.

(F) *Covenants, trusts and homeowner associations.*

(1) *Legal entities.* The developer shall create such legal entities as appropriate to undertake and be responsible for the ownership, operation, construction, and maintenance of private roads, parking areas, common usable open space, community facilities, recreation areas, building, lighting, security measure and similar common elements in a development. The city encourages the creation of homeowner associations, funded community trusts or other nonprofit organizations implemented by agreements, private improvement district, contracts and covenants. All legal instruments setting forth a plan or manner of permanent care and maintenance of such open space, recreation areas and communally-owned facilities shall be approved by the City Attorney as to legal form and effect, and by the Planning Commission as to the suitability for the proposed use of the open areas. The aforementioned legal instruments shall be provided to the Planning Commission together with the filing of the final plan, except that the Guarantee shall be filed with the preliminary plan or at least in a preliminary form.

(2) *Common areas.* If the common open space is deeded to a homeowner association, the developer shall file with the plat a declaration of covenants and restrictions in the Guarantee that will govern the association with the application for final plan approval. The provisions shall include, but not necessarily be limited to, the following:

(a) The homeowner's association must be legally established before building permits are granted.

(b) Membership and fees must be mandatory for each home buyer and successive buyer.

(c) The open space restrictions must be permanent, rather than for a period of years.

(d) The association must be responsible for the maintenance of recreational and other common facilities covered by the agreement and for all liability insurance, local taxes and other public assessments.

(e) Homeowners must pay their pro rata share of the initial cost; the maintenance assessment levied by the association must be stipulated as a potential lien on the property.

FINDING: The applicant has submitted a draft of covenants for the proposed PZD describing the responsibilities and maintenance of future open space, landscaping, building

heights, etc. A final draft shall be submitted and filed with the Final Plat.

Sec. 161.25 Planned Zoning District

(A) Purpose. The intent of the Planned Zoning District is to permit and encourage comprehensively planned developments whose purpose is redevelopment, economic development, cultural enrichment or to provide a single-purpose or mixed-use planned development and to permit the combination of development and zoning review into a simultaneous process. The rezoning of property to the PZD may be deemed appropriate if the development proposed for the district can accomplish one or more of the following goals.

(1) Flexibility. Providing for flexibility in the distribution of land uses, in the density of development and in other matters typically regulated in zoning districts.

(2) Compatibility. Providing for compatibility with the surrounding land uses.

(3) Harmony. Providing for an orderly and creative arrangement of land uses that are harmonious and beneficial to the community.

(4) Variety. Providing for a variety of housing types, employment opportunities or commercial or industrial services, or any combination thereof, to achieve variety and integration of economic and redevelopment opportunities.

(5) No negative impact. Does not have a negative effect upon the future development of the area;

(6) Coordination. Permit coordination and planning of the land surrounding the PZD and cooperation between the city and private developers in the urbanization of new lands and in the renewal of existing deteriorating areas.

(7) Open space. Provision of more usable and suitably located open space, recreation areas and other common facilities that would not otherwise be required under conventional land development regulations.

(8) Natural features. Maximum enhancement and minimal disruption of existing natural features and amenities.

(9) General Plan. Comprehensive and innovative planning and design of mixed use yet harmonious developments consistent with the guiding policies of the General Plan.

(10) Special Features. Better utilization of sites characterized by special features of geographic location, topography, size or shape.

FINDING: The proposed R-PZD is located on property with three zoning designations. It is located between RSF-4 and C-2 zones and has steep terrain. A 55' privately owned gas easement and a 20' sewer easement bisect the property. Tree canopy exists on 58.4% of the property and 23.9% is proposed to be preserved in open/common space. The General Plan designates this area to be used for residential purposes, as the applicant is proposing. Staff finds that the proposed development is compatible with surrounding neighborhoods and provides an appropriate transition from the commercial developments along College Avenue and the single family homes to the east.

(B) Rezoning. Property may be rezoned to the Planned Zoning District by the City Council in accordance with the requirements of this chapter and Chapter 166, Development. Each rezoning parcel shall be described as a separate district, with distinct boundaries and specific design and development standards. Each district shall be assigned a project number or label, along with the designation "PZD". The rezoning shall include the adoption of a specific master development plan and development standards.

FINDING: Staff has reviewed the proposed development with regard to findings necessary for rezoning requests. Those findings are attached to this report. An ordinance will be drafted in order to create this Planned Zoning District which will incorporate all conditions placed on the project by the Planning Commission. Covenants provided by the developer will be included in the PZD ordinance. This ordinance will be forwarded to the City Council for approval.

(C) R - PZD, Residential Planned Zoning District.

(1) Purpose and intent. The R-PZD is intended to accommodate mixed-use or clustered residential developments and to accommodate single-use residential developments that are determined to be more appropriate for a PZD application than a general residential rezone. The legislative purposes, intent, and application of this district include, but are not limited to, the following:

(a) To encourage a variety and flexibility in land development and land use for predominately residential areas, consistent with the city's General Plan and the orderly development of the city.

(b) To provide a framework within which an effective relationship of different land uses and activities within a single development, or when considered with abutting parcels of land, can be planned on a total basis.

(c) To provide a harmonious relationship with the surrounding development, minimizing such influences as land use incompatibilities, heavy traffic and congestion, and excessive demands on planned and existing public facilities.

(d) To provide a means of developing areas with special physical features to enhance natural beauty and other attributes.

(e) To encourage the efficient use of those public facilities required in connection with new residential development.

FINDING: The applicant proposes to build an R-PZD with 25 duplexes. This is an infill development that will provide a harmonious relationship with the surrounding developments and minimize traffic and congestion. The site is constrained by easements and natural features and this project will allow for development and use of the land while also preserving approximately half of the existing canopy.

(2) Permitted uses.

Unit 1	City-wide uses by right
Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 12	Offices, studios and related services
Unit 13	Eating places
Unit 15	Neighborhood shopping
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Professional offices
Unit 26	Multi-family dwellings

FINDING: The proposed two-family dwellings are a permitted use under use unit #9.

(3) Condition. In no instance shall the residential use area be less than fifty-one percent (51%) of the gross floor area within the development.

FINDING: The PZD proposed is entirely residential in use.

RECOMMENDATION: Approval of R-PZD with conditions.

LAND USE PLAN: General Plan 2020 designates this site Residential. Rezoning this property to R-PZD 03-07.00 is consistent with the land use plan and compatible with surrounding land uses in the area.

FINDINGS OF THE STAFF

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

Finding: **The proposed rezoning from the existing RSF-4, RMF-24, and RMF-40 to R-PZD, with the development as presented, is consistent with the General Plan's designation of the site as Residential. The density proposed is 8.32 Dwelling Units per acre. The two-family dwelling units proposed are compatible with the surrounding single-family and multi-family residential land use and zoning.**

The proposal is consistent with the General Plan 2020 in which it meets the guiding policies for Residential Areas which are:

9.8.f Site new residential areas accessible to roadways, alternative transportation modes, community amenities, infrastructure, and retail and commercial goods and services.

9.8.b Adopt regulations which establish a development scale to maintain compatibility and proportionality between nonresidential development and adjacent residential areas.

9.8.i Establish performance zoning design standards to mitigate adverse impacts of contrasting land uses with residential land uses.

9.8.k Adopt a City policy of "connectivity", meaning that commercial areas and residential areas are easily accessible by vehicles, pedestrians and bicyclists.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: **The proposed zoning is 8.32 units per acre. Currently the 6.01 acre tract is sectioned into three zones of 4, 24, and 40 units per acre. With maximum build out of each of these sections, a total of 129 units could be developed. Staff finds that due to the physical and zoning constraints on this property the rezoning proposed is justified. Comments from engineering, police, and fire have been included with this report.**

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: **The proposed zoning will not create or appreciable increase traffic danger and congestion. There are two access points from the development and Brophy Circle, the southern access, is an improved roadway.**

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

Finding: **Water and sewer lines will need to be extended into the development and any upgrades needed due to the addition of the project will be determined prior to development. The addition of 50 units will not significantly alter the population density.**

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

   a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

   b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: **N/A**

FAYETTEVILLE

PC Meeting of December 8, 2003

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: 501-575-8202

ENGINEERING DIVISION CORRESPONDENCE

TO:	Fayetteville Planning Commission
FROM:	Matt Casey, Staff Engineer
DATE:	November 18, 2003

R-PZD 03-07.00: Planned Zoning District (Brophy Condominiums, pp 290, 291) was submitted by William Rudasill of WBR Engineering Assoc. on behalf of Ralph Brophy for property located east of College Ave, north of Township on Brophy Circle. The property is zoned RMF-40, RMF-24 and RSF-4 and contains approximately 6.01 acres. The request is to rezone the subject property to a Residential Planned Zoning District with a total of 50 Residential dwelling units (25 Two-family units). Planner: Suzanne Morgan

- *A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion*

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

The property currently has access to a 6" water line along Brophy Circle. An extension of the water main will be required to provide water supply within any development on this property. The main will also have to be looped to the northeast to connect with the 6" line along West View Drive to provide dual feed for the development.

The site currently has access to a 6" sewer main on the site. This sewer main flows into the 10" that runs along College Avenue. Sewer will need to be extended within the development. Calculations will be requested at the time of development to determine if the existing 6" line can handle the additional flows from the project. If not, the main will need to be upgraded from the development to the main along College Avenue.

Brophy Circle, which is where the development will be accessed from, is an improved roadway. Access is also proposed through a private drive on the north side of the site. Street improvements will only be recommended within the proposed development.

Name Matt Casey Department Engineering

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

POLICE DEPARTMENT

November 18, 2003

Dawn Warrick
Zoning and Development Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Warrick,

This document is in response to the request for a determination of whether the proposed **R-PZD 03-07.00 Planned Zoning District (Brophy Condominiums, pp 290,291)** submitted by William Rudasill of WBR Engineering Assoc. on behalf of Ralph Brophy for property located east of College Ave, north of Township on Brophy Circle would substantially alter the population density and thereby undesirably increase the load on public services or create an appreciable increase in traffic danger and traffic congestion.

It is the opinion of the Fayetteville Police Department that this Planned Rezoning District **will not** substantially alter the population density and thereby undesirably increase the load on police services or create an appreciable increase in traffic danger and traffic congestion.

Sincerely,

Lieutenant William Brown
Fayetteville Police Department

FAYETTEVILLE POLICE DEPARTMENT
P.O. BOX 1988
FAYETTEVILLE, ARKANSAS 72702-1988

(DELIVERIES) POLICE: 100-A WEST ROCK STREET 72701
JAIL: 140-A WEST ROCK STREET 72701
PHONE: 501-587-3555 FAX: 501-587-3522

FAYETTEVILLE

FIRE MARSHAL'S OFFICE

THE CITY OF FAYETTEVILLE, ARKANSAS

From: Fire Prevention Bureau

To: Planning Division

Date 11-12-03

REZONING ✓ ANNEXATION ______

REZONING # R-PZD 03-07.00 OWNER Ralph Brophy
ANNEXATON# ______ OWNER ______
LOCATION OF
PROPERTY Brophy Circle

NEAREST FIRE STATION AND
LOCATION Fire Station #4 Plainview St.

RESPONSE TIME FROM FIRE STATION # 4 TO
LOCATION OF
PROPERTY 4 MINUTES Ø SECONDS.
TRAVEL MILES FROM FIRE STATION # 4 TO LOCATION OF
PROPERTY 1.9 miles.
COMMENTS ON FIRE DEPT.
ACCESS/ROADWAYS Township can be Dangerous in the Winter - 2 Access Roads From Complex will be req. D104.3 2000 ED of INT. Fire Code
EXISTING FIRE HYDRANTS? IF SO
LOCATION Ø

WATER SUPPLY WITH HYDRANTS
NEEDED? yes.

ADDITIONAL
COMMENTS

D Farrar

MAIN OFFICE
115 SOUTH CHURCH ST.
(501) 444-3448 / (501) 444-3449
FAX (501) 575-8272

SUBSTATION
N.W.A. MALL
(501) 575-8271
FAX (501) 575-8272

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
PLANNING DIVISION

TO: WBR Engineering
COPY: Suzanne Morgan, Associate Planner
FROM: Craig Carnagey, Sr. Planner
DATE: Nov. 14, 2003
SUBJECT: Brophy PZD

TREE PRESERVATION

1. The Tree Canopy Table needs to be simplified in order to clearly reflect only the preserved canopy that meets the criteria laid out in the ordinance.

2. Indicate ownership of the Tree Preservation Area on the Final Plat.

3. A payment into the City's Tree Escrow Account in the amount of $2,972.00 is required before Final Plat.

City of Fayetteville
Tree Preservation Plan Review Form

Project: Brophy Condominiums **Developer:** Ralph Brophy

Location: N. Brophy Circle **Engineer:** WBR Engineering

This form shall stand as a: ✓Initial Review/Letter of Confirmation

✓Recommendation to Planning Commission or City Council

☐ Final Administrative Determination*

Requirements Submitted:

✓Initial Review ✓Site Analysis ✓Analysis Report ✓Tree Preservation Plan

Canopy Measurements:

<u>% Tree Canopy Required to be Preserved</u>
Land Use <u>R-PZD</u>
%To be Preserved <u>25</u>

<u>Total Area of Site</u>
Acres <u>6.01</u>
Square Feet <u>261,802</u>

<u>Total Area of Existing Tree Canopy</u>
Acres
Square Feet <u>152,881</u>
% of Total Site Area <u>58.4</u>

<u>Existing Tree Canopy Preserved</u>
Acres
Square Feet <u>62,570</u>
% of Total Site Area <u>23.9</u>

Mitigation/Off Site Alternatives Requested: ✓Yes ☐No

☐On-Site Mitigation ☐Off-Site Preservation ☐Off-Site Reforestation ✓Tree Fund

Tree Preservation Criteria Met: ✓Yes ☐No (See back for criteria list and comments)

Applicant's Plan: ☐Approved ☐ Denied ✓Conditionally Approved

Conditions for Approval: <u>Tree preservation table needs to be simplified to clearly indicate required canopy calculations.</u>

Signed:______________________ The Landscape Administrator

Date:______________

Criteria used by the Landscape Administrator to evaluate Tree Preservation Plans

1. The desirability of preserving a tree or group of trees by reason of age, location, size or species.
Comments: Large groups of trees along the eastern perimeter of the site have been preserved.
2. Whether the design incorporates the required Tree Preservation Priorities.
Comments: Yes, priority groupings have been preserved.
3. The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.
Comments: The area is heavily treed on the eastern edge with few trees to the property adjacent to the west. Preservation of trees within the wooded eastern edge will help reduce environmental degradation.
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.
Comments: The preserved eastern perimeter trees will provide a buffer between properties.
5. Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.
Comments: Building footprints and lot sizes have been reduced to allow retention of tree canopy.
6. Whether the size or shape of the lot reduces the flexibility of the design.
Comments: No.
7. The general health and condition of the tree or group of trees, or the presence of any disease, injury or hazard.
Comments: Trees on the site are in moderate to good condition.
8. The placement of the tree or group of trees in relation to utilities, structures, and use of the property.
Comments: Utilities have been sited for least impacts to trees.
9. The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.
Comments: There are several existing utility easements on this property, and any upgrade to these lines would impact trees.
10. Whether roads and utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.
Comments: Yes, an existing street r.o.w. that was previously cleared is being utilized to avoid unnecessary tree removal.
11. Construction requirements for On-Site and Off-Site Alternatives.
Comments: None
12. The effects of proposed On-Site Mitigation or Off-Site Alternatives.
Comments: Payment into the Tree Fund is required.
13. The effect other chapters of the UDO, and departmental regulations have on the development design.
Comments: None
14. The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations.
Comments: N/A
15. The impact a substantial modification or rejection of the application would have on the Applicant.
Comments: Tree preservation criteria has been met by the applicant.

*An appeal may be filed against a Final Administrative Determination in accordance with Chapter 155 of the Unified Development Ordinance. City Landscape Administrator determinations/decisions may be appealed by any person aggrieved to the Planning Commission within 10 business days. Recommendations go straight to Planning Commission, thus no formal appeal is necessary for recommendations.

City of Fayetteville
Tree Mitigation Form

Project: Brophy Condominiums **Developer:** Ralph Brophy

Location: N. Brophy Circle **Engineer:** WBR Engineering

Canopy Measurements:

%Tree Canopy
Land Use R-PZD
Required to be Preserved 25

Total Area of Site
Acres 6.01
Square Feet 261,802

Amount of Preservation Requirement Requested for Mitigation:
Acres
Square Feet 2,880
% of Total Site .01

Total Area of Existing Tree Canopy
Acres
Square Feet 152,881
% of Total Site Area 58.4

Existing Tree Canopy Preserved
Acres
Square Feet 62,570
% of Total Site Area 23.9

Type of Mitigation Pursued:
☐On Site Mitigation ☐Off Site Preservation ☐Off Site Reforestation ✓Tree Fund

List Mitigation Species, Caliper, and Quantity of trees to be planted in the space below. Refer to table and on back for figuring quantity and caliper sizes.

Species	Caliper	Qty.
mitigation trees / 218 base density		13

Amount proposed to be deposited in the City of Fayetteville Tree Fund:
$ 2972.00

Mitigation Proposal: ✓Approved ☐Disapproved

Signed:______________________, Landscape Administrator, _______ date

From: Rebecca Ohman
To: Morgan, Suzanne; Pate, Jeremy
Date: 10/29/03 11:47AM
Subject: Subdivision Comments

LSP 03-56.00

Parks and Recreation fees are assessed in the amount of $555 for one additional single family lot.

Fees are due prior to issuance of a building permit.

PPL 03-18.00

On December 9, 2002, PRAB voted to accept a combination of money and land to meet the Park Land Dedication requirements. City Council approved a combination of money and land at the January 7, 2003 meeting in Resolution 01-03, waiving Ordinance 166.03K.

The developer has agreed to provide 1.84 acres of land and $14,568.75 for 103 Single family lots.

A deed representing the park land and the remaining parks fees are due prior to issuance of the final plat.

Parks and Recreation requests the developer erect park boundary signs. Signs are available at the Parks and Recreation offices located on Happy Hollow Road.

POA should exclude the park land dedication from the covenants.

Construction debris or dumping shall not be permitted on park property.

PPL 02-13.10

The Parks and Recreation Advisory Board accepted a land dedication on January 15, 2002. PRAB accepted a banking credit of excess park land dedicated.

The park land dedication for 112 single family lots is 2.68 acres. The owners have dedicated 8.19 acres, leaving a banking credit of 5.51 acres for the southeast park district.

Please label the park land with a lot number.

Parks Staff requests a review of the proposed concrete weir on Lot 114 for potential flow on Park Property prior to construction.

A deed for the park land dedication must be received by the Parks and Recreation Division prior to issuance of the final plat.

Parks and Recreation requests the developer erect park boundary signs. Signs are available at the Parks and Recreation offices located on Happy Hollow Road.

POA should exclude the park land dedication from the covenants.

Construction debris or dumping shall not be permitted on park property.

* ***RPZD 03-7.00***

The Parks and Recreation Advisory Board reviewed this project on July 7, 2003 and recommended money in lieu of land for 50 Multi-Family units. Parks fees are due in the amount of $19,650 before issuance of a final plat.

LEGAL DESCRIPTION:

A PART OF THE SE1/4 OF THE SW1/4 AND A PART OF THE SW1/4 OF THE SE1/4 OF SECTION 35, TOWNSHIP 17 NORTH, RANGE 30 WEST, IN THE CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NE CORNER OF SAID SE1/4, SW1/4, RUN THENCE S02°19'51"W 10.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE S87°36'31"E 78.62 FEET; THENCE S87°41'04"E 226.63 FEET; THENCE S02°26'59"W 430.36 FEET; THENCE S17°19'50"E 84.79 FEET; THENCE S72°52'23"W 139.18 FEET; THENCE S75°58'14"W 50.08 FEET; THENCE S17°19'50"E 39.39 FEET; THENCE N89°13'34"W 185.06 FEET; THENCE S14°01'58"W 44.10 FEET; THENCE S67°01'51"W 211.76 FEET; THENCE N02°32'57"E 219.99 FEET; THENCE S87°42'47"E 63.58 FEET; THENCE N05°44'36"E 86.47 FEET; THENCE N06°05'49"E 149.85 FEET; THENCE N07°51'09"E 50.71 FEET; THENCE S87°41'04"E 139.79 FEET; THENCE N17°44'06"W 212.91 FEET; THENCE S87°41'04"E 56.84 FEET; THENCE N01°26'29"E 40.10 FEET; THENCE S87°36'31"W 11.05 FEET TO THE P.O.B., CONTAINING 6.01ACRES, MORE OR LESS, AND SUBJECT TO ALL RIGHTS-OF-WAY AND UTILITY EASEMENTS OF RECORD.

Submitted For ~~R~~ PZD 03-07
OK

RECEIVED
OCT 0 6 2003
PLANNING DIV.

EXHIBIT "A"
PROPERTY TO BE REZONED
AS SUBMITTED BY THE APPLICANT

Applicant's Signature

REVISED PER ENGR 10/6/03

Brophy Condos
Summary of Trip Generation Calculation
For 50 Dwelling Units of Residential Condominium / Townhouse
December 04, 2003

	Average Rate	Standard Deviation	Adjustment Factor	Driveway Volume
Avg. Weekday 2-Way Volume	5.86	3.09	1.00	293
7-9 AM Peak Hour Enter	0.07	0.00	1.00	4
7-9 AM Peak Hour Exit	0.37	0.00	1.00	19
7-9 AM Peak Hour Total	0.44	0.69	1.00	22
4-6 PM Peak Hour Enter	0.36	0.00	1.00	18
4-6 PM Peak Hour Exit	0.18	0.00	1.00	9
4-6 PM Peak Hour Total	0.54	0.76	1.00	27
Saturday 2-Way Volume	5.67	3.10	1.00	284
Saturday Peak Hour Enter	0.25	0.00	1.00	13
Saturday Peak Hour Exit	0.22	0.00	1.00	11
Saturday Peak Hour Total	0.47	0.71	1.00	24

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

TRIP GENERATION BY MICROTRANS

WBR Engineering Associates, P.A.

4241 Gabel Drive, Ste 1B
Fayetteville, AR 72703

Voice: (479) 582-2820
Fax: (479) 582-1788
E-Mail: wbrjr@aol.com

November 18, 2003

BROPHY CONDOMINIUM DEVELOPMENT PLANNING NARRATIVE

THIS PROJECT IS INTENDED TO FINALIZE THE PROPOSED DEVELOPMENT MR BROPHY PLANNED FOR THIS AREA OVER 20 YEARS AGO TO SUPPLEMENT HIS RETIREMENT. THE PROPOSED SITE IS LOCATED SUCH THAT IS SUITED AS A TRANSITIONAL DEVELOPMENT FROM COMMERCIAL ZONE ALONG COLLEGE AVE TO THE R-1 RESIDENTIAL AREA DEVELOPED TO THE EAST. THE REQUEST FOR THE PLANNED ZONE DISTRICT IS TO CONSOLIDATE THREE ZONES INTO ONE DEVELOPMENT AND PROVIDE A BEST USE DEVELOPMENT FOR THIS PROPERTY. THE TERRAIN, AVAILABLE ACCESS AND NEED TO PRESERVE THE HILLSIDE AND TREES LEND ITSELF TO THE NEED FOR A PLANNED ZONE AND PLANNED CONSTRUCTED DEVELOPMENT TO ACCOMPLISH THE ABOVE.

THE PROPOSED DEVELOPMENT WILL CONSIST OF 25 FREE STANDING BUILDINGS OR 50 LIVING UNITS WITH ACCOMPANYING DRIVE, WALKWAY AND INFRASTRUCTURE. THE INTENT OF THE PROJECT IS TO PROVIDE DUPLEX/CONDOMINIUM BUILDING SITES WHICH CAN BE SOLD TO PROSPECTIVE DEVELOPERS FOR SPECULATIVE UNIT SALES OR RENTALS. THE INTENT IS TO PROVIDE FOR A FIXED CONSTRUCTION PACKAGE OF A BUILDING FOOTPRINT AND A FIXED BUILDING PAD WITH DRIVEWAY ACCESS TO FIT THAT PLAN. IT IS NOT THE INTENT OF MR. BROPHY TO BUILD THE UNITS HIMSELF. THERE ARE TWO PAD SIZES. THE FIRST IS A 40' WIDE BY 35' DEEP AREA WITH A 5' ACCESSORIES EASEMENT AROUND THE ENTIRE PERIMETER WHICH WILL ACCOMMODATE DECKS, PATIOS, STAIRWELLS, SIDEWALKS AND WILL ALSO ACT AS A CONSTRUCTION ACCESS EASEMENT. THE SECOND PAD WILL CONSIST OF A 50' WIDE BY 40' DEEP PAD ALSO WITH A 5' ACCESSORIES EASEMENT AROUND THE PERIMETER. THE REMAINDER OF THE PROPERTY WILL CONSIST OF COMMON PROPERTY AND OPEN SPACE TO BE INCLUDED IN A PROPERTY OWNERS ASSOCIATION OR HORIZONTAL PROPERTY REGEIM.

ACCESS TO THE DEVELOPMENT CONSIST OF PRIVATE COMMERCIAL DRIVE ON THE NORTH AND PUBLIC MULTI-FAMILY ACCESS TO THE SOUTH. THE IMPACT OF THIS DEVELOPMENT IS IN-LINE WITH THE SURROUNDING DEVELOPMENT AND IN OUR OPINION IS THE BEST DEVELOPMENT SOLUTION FOR THE GIVEN PROPERTY . WATER AND SEWER ARE READILY AVAILABLE TO THE SITE AN HAVE SUFFICIENT CAPACITY TO ACCEPT THE ADDITIONAL LOADS FROM THE PROPOSED DEVELOPMENT.

RESPECTFULLY SUBMITTED

WBR ENGINEERING
ON BEHALF OF RALPH BROPHY

WBR Engineering Associates, P.A.

4241 Gabel Drive, Ste 1B
Fayetteville, AR 72703

Voice: (479) 582-2820
Fax: (479) 582-1788
E-Mail: wbrjr@aol.com

December 2, 2003

BROPHY GREEN SPACE COMPUTAION
(AS REQUESTED BY SUBDIVISION COMMITTEE)

GREEN SPACE PROVIDED: (TREES, LANDSCAPE ISLANDS, AND LAWN OR OPEN SPACE. 3.64 ACRES OR 60.6%

IMPERVIOUS SURFACE: DRIVES, WALKS, STREET AND ROOF
2.37 ACRES OR 39.4%

RESPECTFULLY SUBMITTED

WBR ENGINEERING
ON BEHALF OF RALPH BROPHY

WBR Engineering Associates, P.A.

4241 Gabel Drive, Ste 1B
Fayetteville, AR 72703

Voice: (479) 582-2820
Fax: (479) 582-1788
E-Mail: wbrjr@aol.com

November 19, 2003

BROPHY WAIVER REQUEST

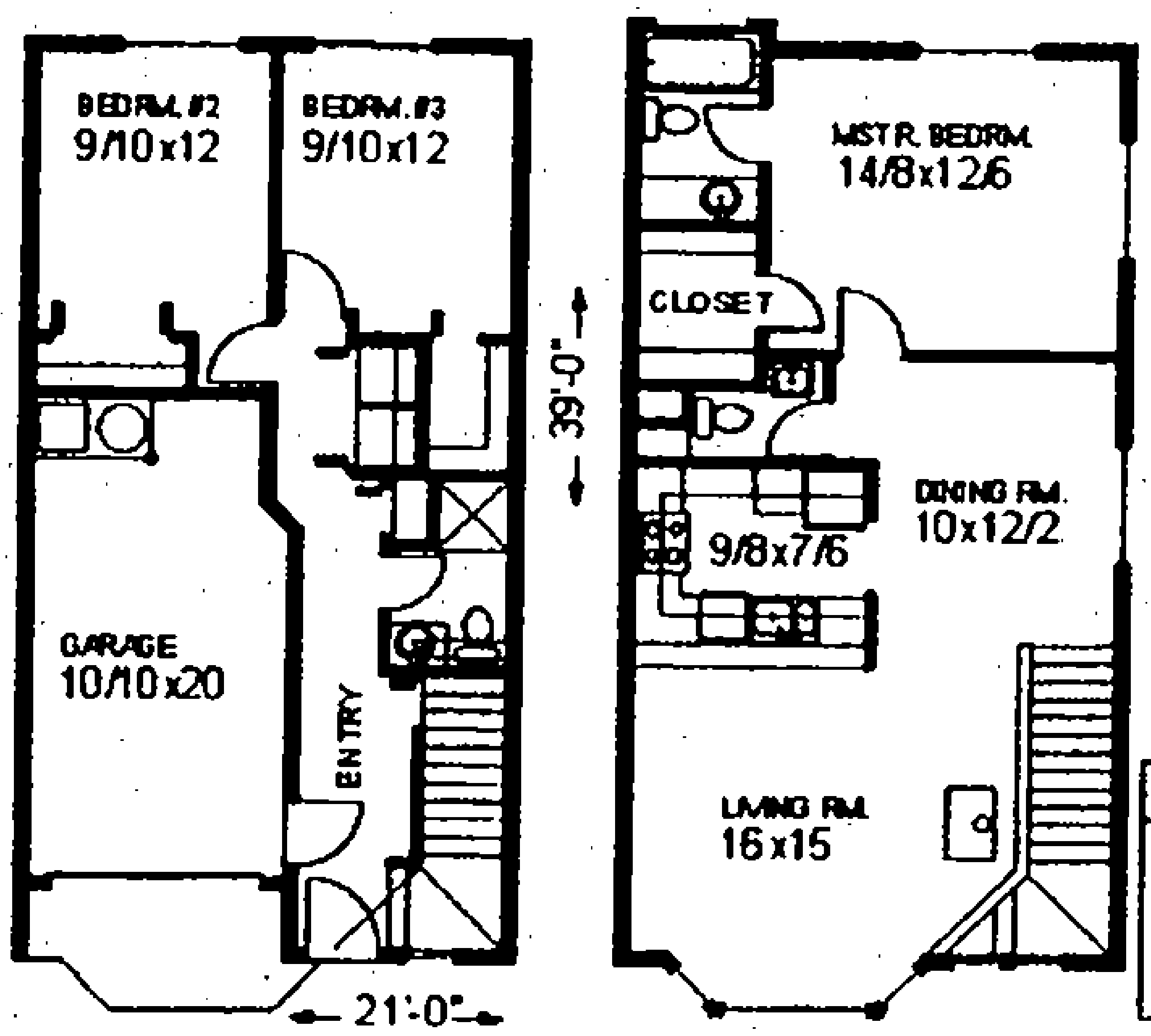
1. 4' SIDEWALK INSTEAD OF REQUESTED 6' SIDEWALK ALONG PRIVATE STREETS.

2. RETAINING WALLS GREATER THAN 10' TALL DUE TO CONSTRUCTION ON SLOPED AREAS AND TO AVOID GREAT CUTS AND FILLS.

3. KEEP EXISTING ABOVE GROUND ELECTRIC LINES BEHIND UNITS 43 & 44 AND ALONG THE OFF-SITE LINES TO THE NORTH TO PRESERVE EXISTING TREE CANOPY. ALL LINES WITHIN THE PRIMARY DEVELOPMENT AREA WILL BE PLACE UNDERGROUND PER ORD.

RESPECTFULLY SUBMITTED

WBR ENGINEERING
ON BEHALF OF RALPH BROPHY



PLAN NO. D-384	
EACH UNIT	
HOME SIZE	1338 SQ. FT.
MAIN FLR	557 SQ. FT.
UPPER FLR	781 SQ. FT.

MAIN FLOOR PLAN

UPPER FLOOR PLAN

Bruinier & associates, inc. designers A.I.B.D.
PHONE: (503) 246-3022
1304 SW BERTHA BLVD. PORTLAND OREGON 97219

Previous Next

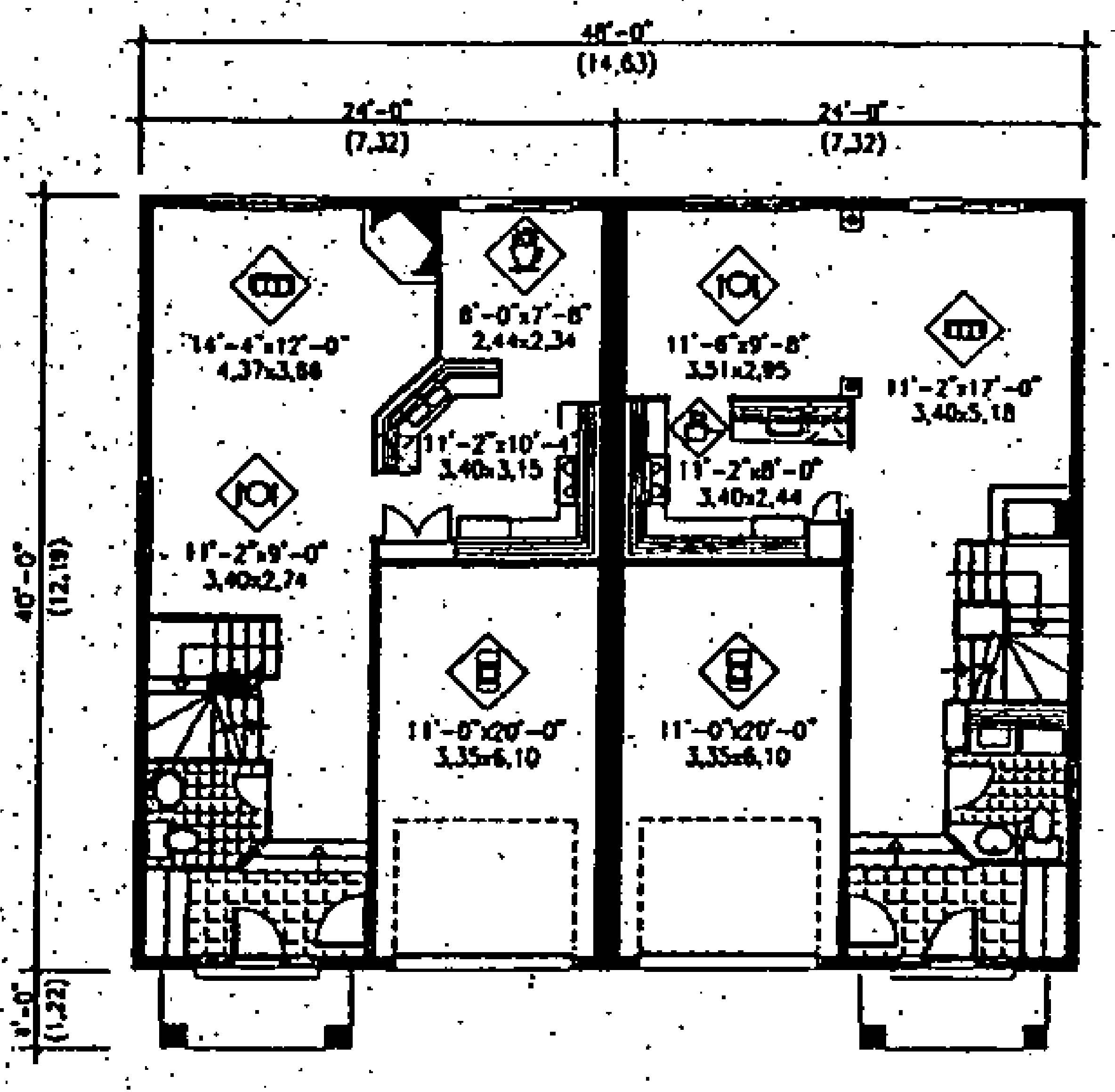
[Home] [Duplexes/Rowhouses] [Single Family] [Apartments] [Virtual Tours]
[Book Store] [Order] [New Plans] [About Us] [Contact Us]

PLAN 2

HouseplanGuys Plan Image

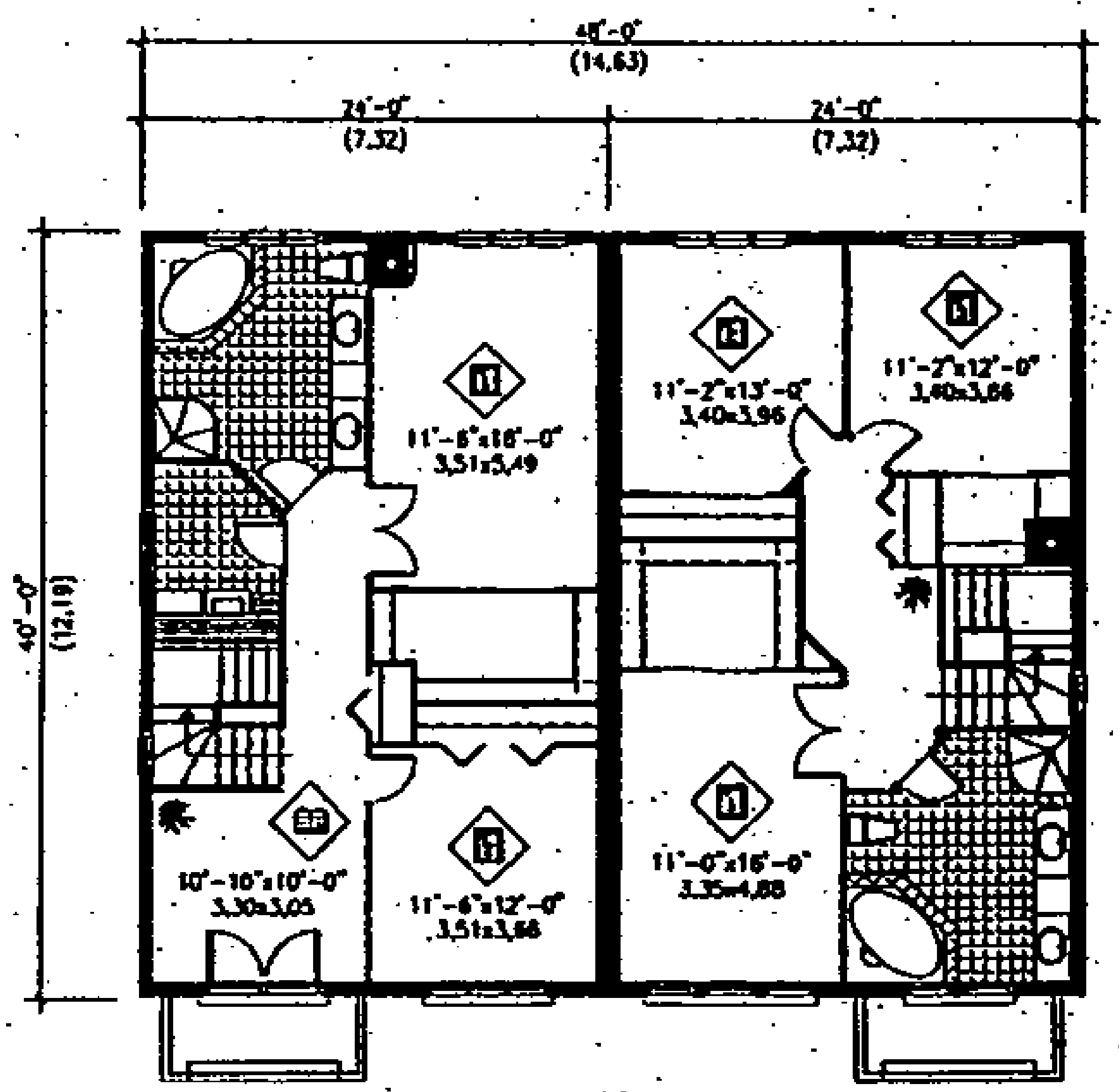
For questions, call us toll-free at **1-866-977-5267**
or email us at info@houseplanguys.com

HouseplanGuys Plan Image



For questions, call us toll-free at 1-866-977-5267
or email us at info@houseplanguys.com

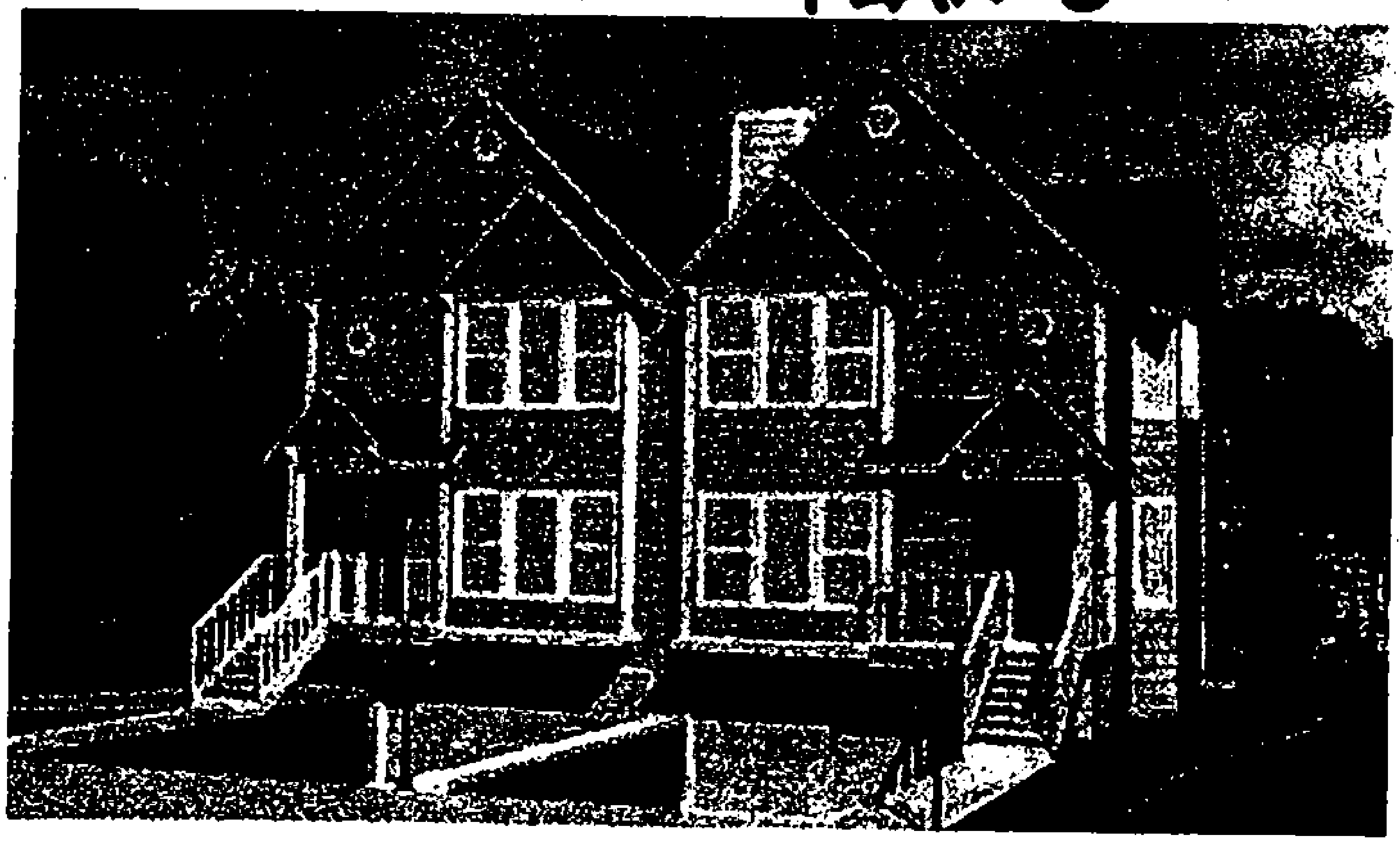
HouseplanGuys Plan Image

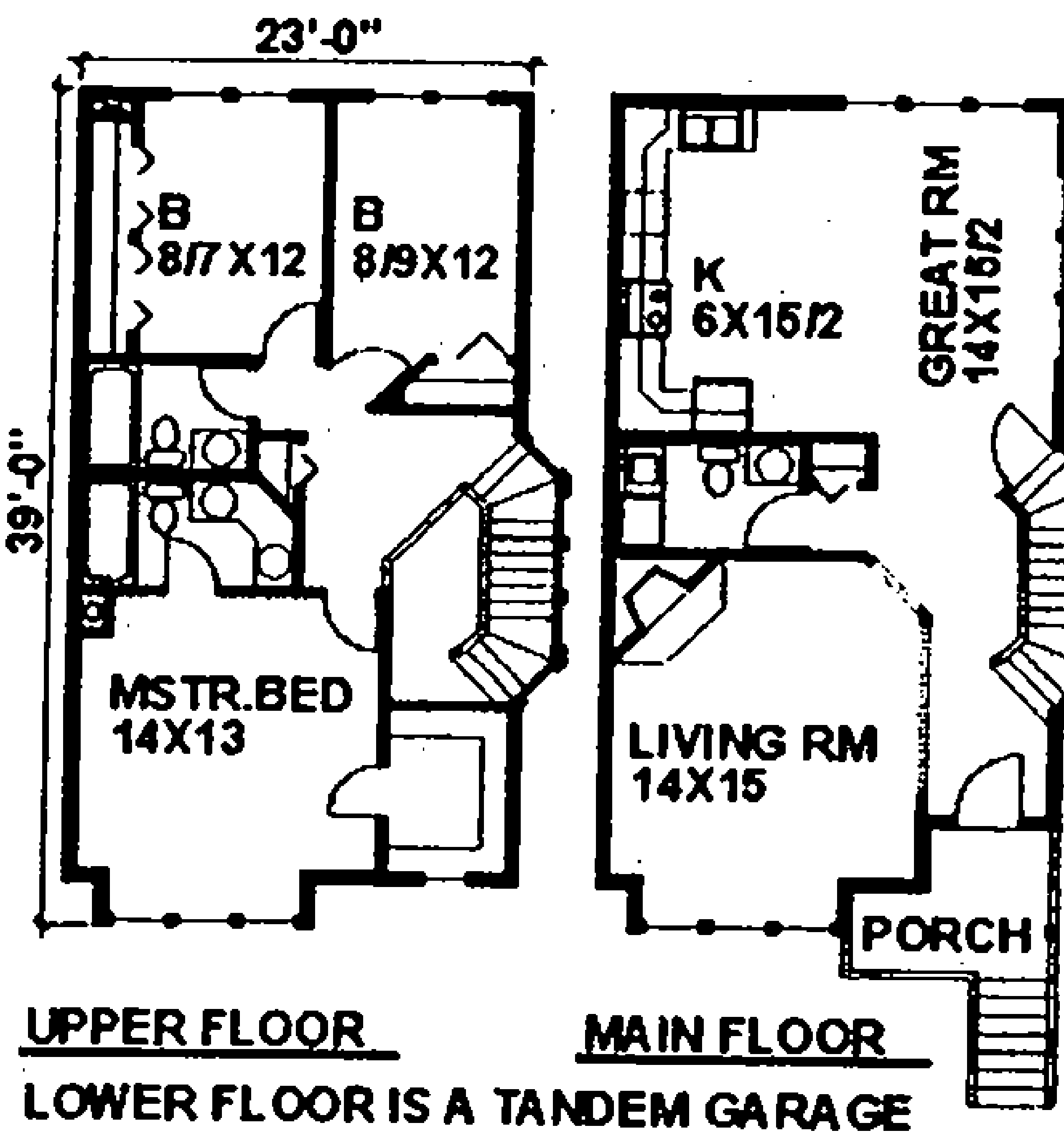


For questions, call us toll-free at 1-866-977-5267
or email us at info@houseplanguys.com

B. 3
R-PZD 03-7.00 Brophy Condominiums
Page 39 of 70

PLAN 5





UPPER FLOOR MAIN FLOOR

LOWER FLOOR IS A TANDEM GARAGE

PLAN NO. D-403	
HOME SIZE	1541 SQ. FT.
MAIN FLOOR	801 SQ. FT.
UPPER FLOOR	740 SQ. FT.
GARAGE	788 SQ. FT.

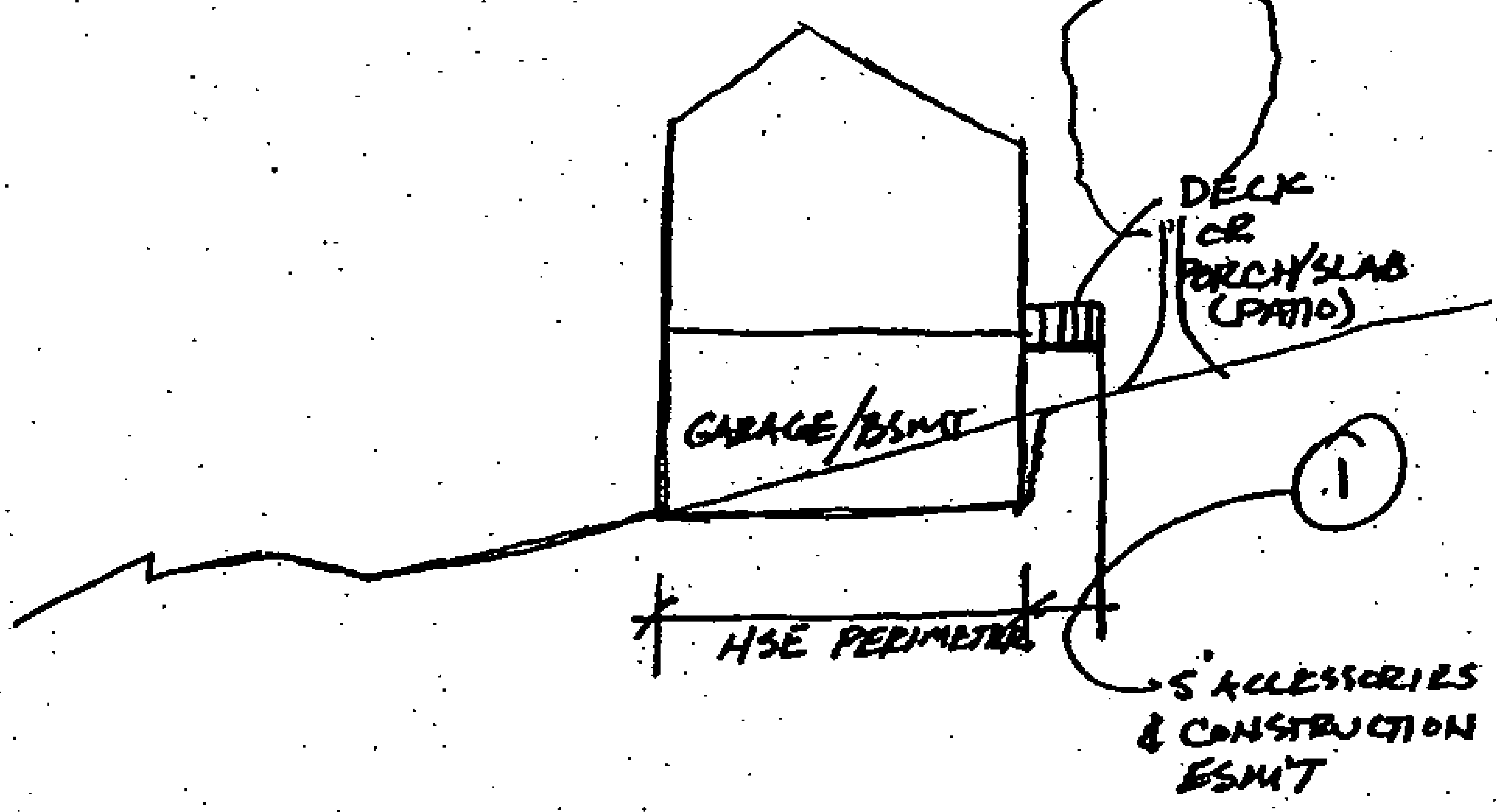
Bruinier & associates, inc. designers A.I.B.D.
PHONE: (503) 246-3022 1304 SW BERTHA BLVD. PORTLAND OREGON 97219

Virtual Tour

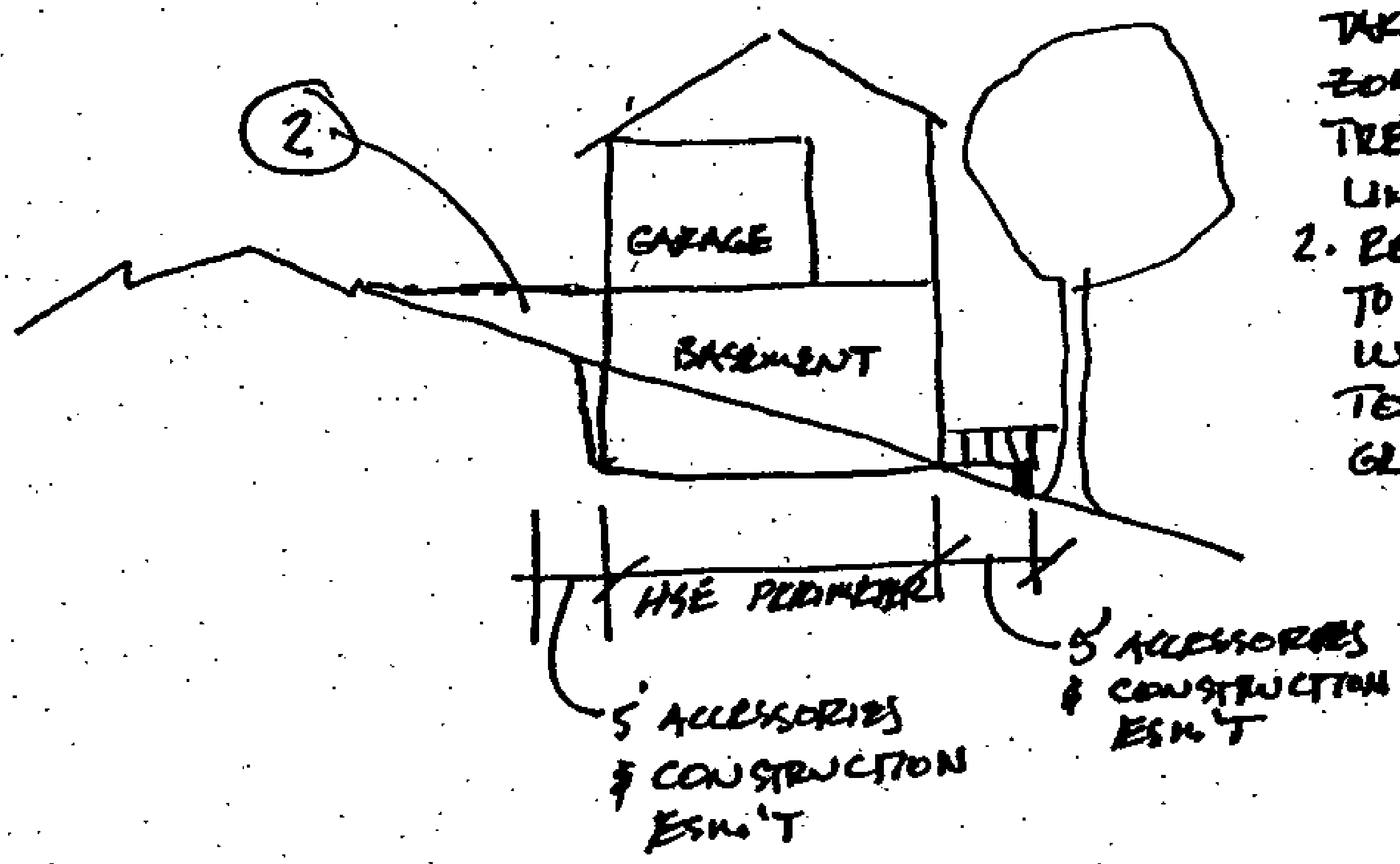
Previous Next

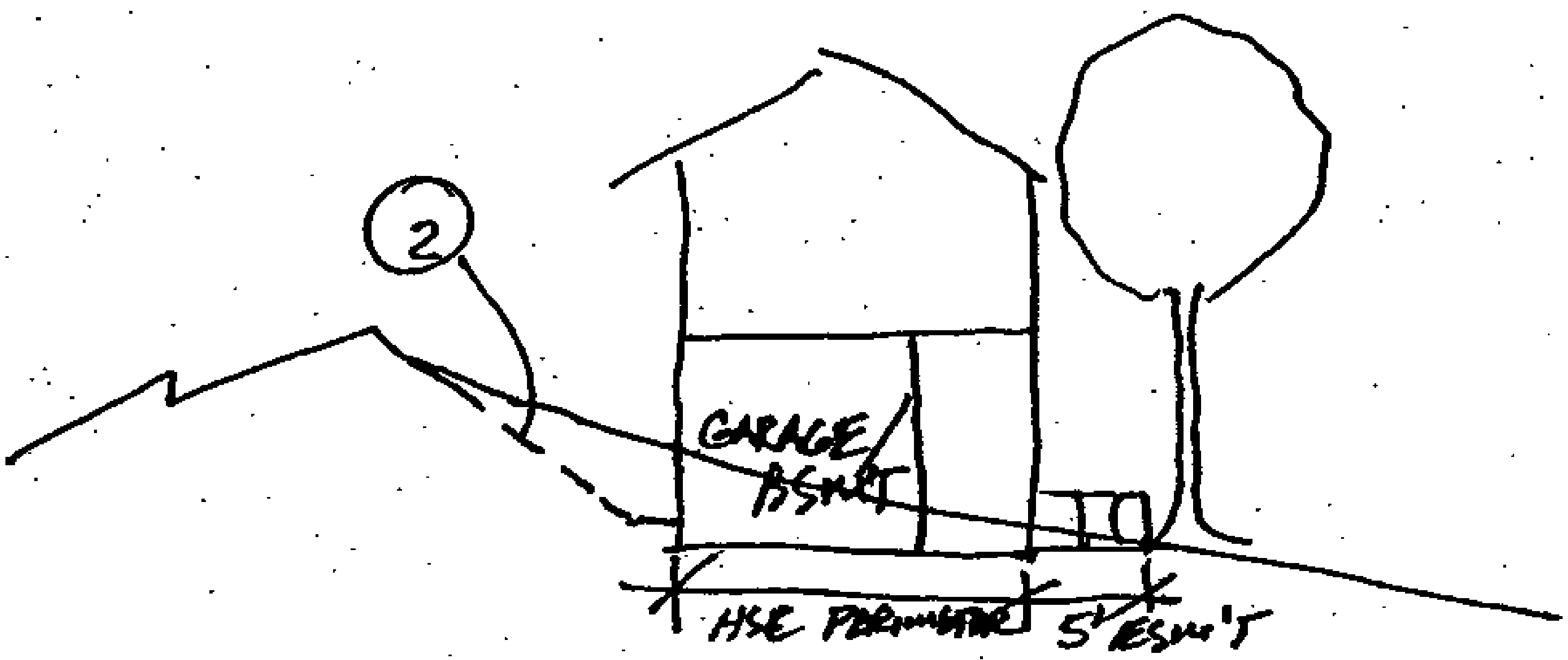
[Home] [Duplexes/Rowhouses] [Single Family] [Apartments] [Virtual Tours]

C[illegible]STRUCTION PRACTIC[illegible]
SCHEMATIC (NTS)
BROPHY CONDO'S / PZD



NOTE:
1. MEASURE TO BE TAKEN IN ESM'T ZONE TO PROTECT TREE ROOTS & DRIP LINES WHEN POSSIBLE
2. RETAINING WALLS TO BE UTILIZED WHERE POSSIBLE TO PRESERVE NATURAL GRADE





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PLANNING DIV.

3rd version

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Declarant is the Declarant of certain property in Fayetteville, Washington County, Arkansas, and has caused certain lands owned by him to be platted into an addition known as Ralph Brophy's Condominiums Association Addition to the City of Fayetteville, Washington County, Arkansas, and the plat thereof appears of record in the office of the Recorder of Washington County, Arkansas, in Plat Book ________ at Page ________; and,

WHEREAS, Declarant desire to provide for the use of property for the highest of residential uses and to restrict its uses as such;

NOW THEREFORE, Declarant hereby adopts the covenants stated herein and agrees that the stated covenants shall apply to all of the property now platted as Ralph Brophy's Condominiums Association Addition to the City of Fayetteville, Washington County, Arkansas, as covenants running with the land. These covenants shall apply in their entirety to the area now known and described as Ralph Brophy's Condominiums Association Addition to the City of Fayetteville, Washington County, Arkansas, as shown on the recorded plat thereof.

1. DEFINITIONS.

A. Association shall mean and refer to Ralph Brophy's Condominiums Association, its successors and assigns.

B. Declarant shall mean and refer to Ralph Brophy until a successor or assign should acquire more than eighty percent (80%) of the undeveloped lots from the Declarant for the purpose of development. In that event, Declarant shall perform all actions necessary to facilitate the transfer to the newly appointed Declarant.

C. Property shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

D. Common Area shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Declarants. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows: see attached Exhibit A.

2. LAND USE AND BUILDING TYPES.

No lot in the addition shall be used for any other purpose than Two-Family Townhouses/Condominiums as that term is defined in the City of Fayetteville Municipal Zoning Ordinance. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached duplex not to exceed two and one-half stories, thirty-five (35) feet in height, and each such dwelling shall have a private garage or carport for the storage of not less than one automobile.

No business or commercial use shall be carried on or permitted in any structure or in any portion of this addition in keeping with the general plan to develop this property for the highest class of residential occupancy.

3. DWELLING SIZE AND QUALITY.

Size, design, location and site development of dwellings in this planned development shall be subject to the construction under current city codes and must be sided with either vinyl and/or brick, and shall be approved by the community association. All dwellings shall be constructed within the bounds set forth on the plat of the development and shall utilize hill-side construction methods such as Pier & Beam, etc. to preserve tree cover where practicable. Slab on grade pads shall not exceed the perimeter of the allowable building areas as platted. All dwellings placed upon the premises shall be of new construction and shall be of the highest class workmanship and best quality materials. Approval of plans for construction of principal residences and permitted accessory buildings shall not be unreasonably withheld by the Declarant based upon the style of design of the exterior of such proposed principal residences as long as the same are designed, in whatever style, in accordance with the highest standards of architectural design. All construction shall be completed within one (1) year from the beginning of such construction.

4. ARCHITECTURAL CONTROL.

No residence, permitted accessory building, fence, wall or other structure shall be constructed, created or maintained upon any lot in the addition, nor shall any modification, alteration or change be made in the exterior of any existing residence or permitted accessory building until the construction, grading and drainage and landscape plans and specifications showing the nature, size, shape, dimensions, materials and location of the same shall have been submitted to and approved, in writing by the Declarant, or an authorized agent of Declarant, or the Declarant has waived his right in the manner hereinafter provided.

5. THE ARCHITECTURAL CONTROL COMMITTEE.

The Architectural Control Committee shall consist of Ralph Brophy. Mr. Brophy shall assign a successor in the event of his death or resignation. Any property owner in the addition seeking to obtain the required approval or any plans for construction, modification or alteration or improvements on his, her or its property shall submit the same in two (2) copies to the Declarant or any person designated by him A written receipt from the Declarant shall be prima facie evidence of the delivery of such plans and the date thereof. If, with thirty (30) days from the date of delivery of such plans to a member of it, the Declarant has not stated to the owner deficiencies in the proposal for such construction or alteration or improvements, the owner may proceed with such construction or alterations as though affirmative approval had been received from the Declarant. Notice shall be given to the owner at the address for the property owner indicated in the city telephone directory or as otherwise indicated by the owner, in writing, to the owner by certified mail with return receipt requested. If deficiencies are noted and called to the owner's attention in the proposed plans within the thirty (30) day period following delivery thereof to the owner, the owner shall not proceed with any such construction or alteration until such deficiencies have been corrected to the satisfaction of the Declarant. The Declarant shall have full power to enforce the provisions and restrictions herein

by an action for an injunction as fully as though he were the Declarant of property in the subdivision and whether or not he is actually the Declarant of property in the subdivision.

6. GENERAL RESTRICTIONS.

a. No noxious or offensive activity and no commercial activities of any kind shall be carried on upon any lot in this addition, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

b. No manufactured housing, trailer, recreational vehicle, mobile home, tent, shack, or barn shall be erected on any lot in this subdivision, temporary or permanently, except for temporary use by construction contractors only. Tents used for recreational purposes of a short duration shall not be considered as excluded by this provision.

c. No signs, billboards, posters or advertising devices shall be permitted upon any of the lots in this addition except that the Declarant of each lot may place house numbers and the Declarant's name upon his or her mail box or dwelling; however, each letter thereof shall be no more than 6 inches in height and 6 inches in width; and Declarant may place a sign not more than 4 square feet in size advertising the property for sale should it be offered for sale by the Declarant.

d. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purposes.

e. No trash, ashes or other refuse may be thrown or dumped on any of the lots in the addition.

f. No building material of any kind or character shall be placed or stored upon any lot in the addition until the Declarant is ready to commence construction of the improvements requiring such materials. Building materials shall only be placed or stored between the curb and the property line of the site to be developed and shall be stacked in a decent and proper manner unless contained in a lumber storage container.

g. No privy, cesspool, septic tank field or disposal plant shall be installed or maintained on any lot in the addition, and all residences and permitted accessory buildings shall have the plumbing connected to the city sanitary sewer system.

h. All garages shall be finished inside and shall be fully enclosed with garage doors. Carports are not allowed.

i. All driveways in the addition shall consist of a hard surface acceptable to the Declarant and driveways are to be no less than 18 feet and no more than 24 feet in width.

j. No trucks, mail carts, dune buggies, golf carts, mobile homes, commercial vehicles, travel trailers, campers, boats, motors or trailers shall be kept on the lot or in the street adjacent to any lot except that such items may be stored or parked inside an enclosed garage or similar enclosure.

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so screened with fencing or plant material as not to be visible from the street.

k. Grass, weeds and vegetation shall be kept mowed and cleared at regular intervals on each lot by the Declarant thereof so as to maintain the same in a neat and attractive manner. No debris shall be allowed to accumulate upon any lot. Dead trees, shrubs, vines and plants shall be promptly removed from each lot. The Declarant or HomeDeclarants Association shall have the right, privilege and option to cause any unkept lots to be mowed and to remove dead trees, plants or other vegetation and debris from such lot if, after ten days' notice in writing, from the HomeDeclarants Association to the Declarant, the Declarant has failed or neglected to do so, and the HomeDeclarants Association shall be entitled to a lien on such lot for the cost of such work.

l. Each lot Declarant shall provide and maintain a light located in the vicinity of the intersection of the driveway and street, which light shall be in all respects in accordance with the requirements of the Architectural Control Committee.

m. Exterior surfaces of each dwelling place shall be composed of either brick or vinyl siding.

n. All dwelling places will be guttered and all guttering must have leaf guards to prohibit buildup of leaves and other foreign objects from obstructing the gutters.

o. All Declarants of dwelling places in this development are required to furnish termite insurance and treatment at their own expense and Declarant reserves the right to demand presentation of termite inspection and protection at reasonable times and places.

p. Any swimming pool plans shall have to be approved by the HomeOwner's Association and meet city code requirements.

7. BUILDING LOCATION.

Buildings shall be located on lots as shown on the final plat of the planned zoning district.

8. DIVISION OF LOTS.

A "lot" as that word is used herein shall consist of a numbered lot as shown on the plat of the addition.

9. FENCING AND ORNAMENTAL STRUCTURES.

No fences shall be erected on any portion of a lot between the line drawn across the front foundation or building line of the principal dwelling and intersecting the side lot lines and the front lot line. Dog pens properly screened by walls, fences, or plantings may be constructed and maintained in the rear yard portion of any lot. Retaining walls, ornamental fences of less than 3 feet in height, and composed brick, wood or natural stone construction may be permitted on a lot in the front portion as herein described and the front lot line. However, no other structure exceeding 3 feet

in height shall be placed or permitted on the portion of any lot lying nearest to the abutting street and in front of a line extended across the front foundation line of the principal dwelling.

10. DEFINITION OF "PRINCIPAL DWELLING".

The term "principal dwelling," "resident" or "principal residence" as used in these restrictive covenants shall refer to a residence meeting the requirements hereof and approved by the Committee for construction in the Addition.

11. HOMEOWNER'S ASSOCIATION.

For the purpose of maintaining areas to be used in common with some or all of the residents and owner of property in the addition, the streets, the street lights, drainage and such other activities and undertakings as may be for the general use and benefit of owner and residents of the property, each and every lot owner, in accepting a conveyance of any lot in this Addition, agrees to and shall become a member of and be subject to the obligations and duly enacted by-laws and rules of the Ralph Brophy Condominiums Association.

12. LIEN FOR MEMBERSHIP DUES.

Assessment fees for the development are $45.00 per month, or $540.00 per year, payable monthly/yearly as it comes due/in advance, but no assessment fee shall become due and payable on real property until one month after dwelling place has been constructed and occupied.

All owners of property in the Addition shall pay the required dues to the HomeOwners Association promptly when the same become due, and in the event of failure to pay the same promptly when the same become due, such dues shall constitute a lien upon the property owned by such owner in the Addition and the same may be enforced in equity as in the case of any lien foreclosure authorized in the State of Arkansas.

All delinquent assessments shall bear interest at the rate of ten percent (10%) per annum from the date the same become due until they are paid, and the association shall be entitled to a reasonable fee for its attorneys when their services become necessary to collect any delinquent assessments, all of which shall be a part of the lien for dues.

13. SUBORDINATION OF LIEN FOR MEMBERSHIP DUES.

The liens herein retained for membership dues to the HomeOwners Association are hereby made expressly inferior and subordinate to valid and bona fide mortgages and deeds of trust or retained vendor's liens securing obligations of owner of any of the lots in the addition up to the time of sale at foreclosure of any such mortgage, deed of trust or vendor's lien and for a period of six (6) months thereafter or until the residence upon such property is occupied, whichever date shall first occur, after which time monthly membership dues shall thereafter accrue as a lien upon such lot in the identical form and manner as prior to the foreclosure sale of the property involved. This subordination shall be construed to apply not only to the original, but to all successive, mortgages, deeds of trust, and vendor's liens given by property owners to secure obligations, together with all

extensions and renewals thereof.

14. EASEMENTS.

No recorded easement shall be used by any company or person, other than the owner of the affected lot or lots, for any purpose other than those designated on the plat of the addition.

15. PERSONS BOUND BY THESE COVENANTS.

All persons or corporations who now own or shall hereafter acquire any of the lots in this addition shall be deemed to have agreed and covenanted with the Declarant of all other lots in this addition and with its or their heirs, successors and assigns to conform to and observe the restrictions, covenants and stipulations contained herein for a period of 25 years from the date these covenants are recorded, and these covenants shall thereafter automatically extend in effect for successive periods of 10 years unless prior to the end of the original term or any successive term of the application hereof [a majority] of the then owners of lots in the addition agree to the amendment or removal of these covenants in whole or in part. These covenants may be amended at any time by the owners of [80%] of the lots in the addition. No changes in these covenants in the manner herein set forth shall be valid unless the same shall be placed of record in the office of the Recorder of Washington County, Arkansas, duly executed and acknowledged by the requisite number of owners.

17. RIGHT TO ENFORCE.

The covenants, agreements and restrictions herein set forth shall run with the title to the lots in this addition and bind the present Declarant, its heirs, successors and assigns, future owners and their heirs, successors and assigns; and all parties claiming by, through or under them shall be taken to hold, agree and covenant with the owners of other lots in the addition, their heirs, successors and assigns, and with Declarant, as to the covenants and agreements herein set forth and contained. None shall be personally binding on any person, persons, or corporations except with respect to breaches committed during its, his or their holding of title to lots in the addition. Any owner or owners of lots in this Addition, or Declarant, shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of any of the covenants, agreements or restrictions contained herein together with any other rights to which they might otherwise be entitled under the laws of the State of Arkansas. The invalidation of any one of these covenants, restrictions or agreements herein contained by the order of a court of competent jurisdiction shall in no way affect any of the other provisions hereof which will remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has hereunto set his hand and seal this ________ day of ________, 2003.

[ACKNOWLEDGMENT]

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

x AGENDA REQUEST

For the Fayetteville City Council Meeting of: January 6, 2004

FROM:

Dawn Warrick	Planning	CP&E
Name	Division	Department

ACTION REQUIRED: Ordinance approval.

SUMMARY EXPLANATION:

R-PZD 03-07.00: Residential Planned Zoning District (Brophy Condominiums, pp 527) was submitted by William Rudasill of WBR Engineering Assoc. on behalf of Ralph Brophy for property located east of College Ave, north of Township on Brophy Circle. The property is zoned RMF-40, RMF-24 and RSF-4 and contains approximately 6.01 acres. The request is to rezone the subject property to a R-PZD 03-07.00 with a total of 50 Residential dwelling units (25 Two-family units).

STAFF RECOMMENDATION: Approval.

Dawn T. Warrick 12/19/03
Division Head Date

Received in Mayor's Office 12/19/03
Date

12-19-03
City Attorney Date

12-18-03
Department Director Date

12-19-03
Finance & Internal Services Dir. Date

Chief Administrative Officer Date

Dan Coody 12/19/03
Mayor Date

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

New Item: Yes No

ENTERED 12/19/03

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

CC Meeting of February 3, 2004

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Mayor Dan Coody
Fayetteville City Council
City Attorney's Office

FROM: Craig Carnagey, Landscape Administrator

THRU: Dawn Warrick, AICP, Zoning & Development Administrator
Tim Conklin, AICP, Community, Planning & Engineering Services Director

DATE: January 14, 2004

RE: Evergreen Screen Request for Brophy Condominiums

On January, 6, 2003, City Council asked the developer of Brophy Condominiums to plant an evergreen screen along the western edge of this property. This request stated that the developer would be allowed to forego a percentage of this project's required payment into the City's Tree Escrow Account in order for the developer to use this money to plant trees for this screen.

At the request of the City Attorney, the following information from Chapter 167 Tree Preservation and Protection of the Unified Development Code is provided for your review: Chapter 167.04(J)(4)(a) requires all residential subdivisions that remove trees below the designated percent minimum canopy to pay into the City's Tree Escrow Account. There is no legal provision that allows a subdivision development to plant trees in lieu of paying into the tree fund. There is an amendment to this section of the ordinance pending Council approval that would allow a developer the option to submit a mitigation plan to plant trees on-site, rather than pay into the Tree Escrow Account. This amendment requires a specified plan with guarantees to be submitted for approval by the Landscape Administrator.

The Planning Division recently received a letter from the engineer for Brophy Condominiums stating they would plant the requested evergreen screen. However, no mitigation plan with guarantees has been submitted. Staff is recommending that any City Council request for this project to forego payment into the Tree Escrow Account in order to to plant an evergreen screen, be required to submit a full mitigation plan with guarantees to the Landscape Administrator for approval. This action, under the existing provisions of Chapter 167, constitutes a waiver from the requirements of the Tree Preservation and Protection Ordinance which must be specifically approved by City Council.

WBR ENGINEERING ASSOCIATES, P.A.,

4241 Gabel Dr., Suite 1B
Fayetteville, Arkansas 72703

William B. Rudasill, Jr., P.E.

Phone: (479) 582-2820
Facsimile: (479) 582-1788

January 13, 2003

City of Fayetteville
113 West Mountain Street
Fayetteville, Arkansas 72701

RE: Evergreen Tree Screening
Brophy Condominiums

Mr. Ralph Brophy agrees to the planting of evergreen trees along the west side of the Brophy Condominium project subject to the following conditions:

1. Mr. Brophy agrees to plant an adequate evergreen screen along the west side of the subject property between the proposed residential condominiums and US 71B.

2. The money for the aforementioned evergreen screen shall be reduced from Mr. Brophy's agreed upon amount of payment to the City of Fayetteville's Tree Escrow Account as decided at the previous Fayetteville City of Council meeting.

William B. Rudasill, Jr., P.E.

WBRJR/
Enclosures

R-PZD 03-07.00: Planned Zoning District (Brophy Condominiums, pp 290, 291) was submitted by William Rudasill of WBR Engineering Assoc. on behalf of Ralph Brophy for property located east of College Ave, north of Township on Brophy Circle. The property is zoned RMF-40, RMF-24 and RSF-4 and contains approximately 6.01 acres. The request is to rezone the subject property to a Residential Planned Zoning District with a total of 50 Residential dwelling units (25 Two-family units).

Hoover: Item number six on the agenda is PZD 03-07.00 for Brophy Condominiums north of Township on Brophy Circle.

Morgan: The applicant is requesting a rezoning and Preliminary Plat approval for a residential development within an R-PZD zoning district. The proposed use is a two family residential project with 50 units, 25 duplexes proposed to be built in three phases. Density for the entire 6.01 acre tract is 8.32 units per acre. The development encompasses an area with three zoning designations currently, RSF-4, RMF-24 and RMF-40. The site is located east of College Avenue and north of Brophy Circle and has extensive tree canopy coverage on hilly terrain. This item must be heard at City Council pursuant to requirements for a PZD. The units to be sold will be done in a horizontal property regime. There are currently proposed two lot sizes for the 25 units. 21 of these buildings are to be built at 35'x40' and four within a 40' x50' footprint. Seven different building styles elevations have been proposed. Styles one through three are proposed for the larger units and four through seven for those smaller ones. There is a proposed 5' area around each unit designated as a construction perimeter and also a deck/porch easement. Building height is proposed to a minimum of 35' above Finished Floor Elevations. Currently this tract is located in between commercial and residential office areas to the north and to the west is Thoroughfare Commercial. This commercial lines College Avenue, which is located to the west of this development. To the east is Residential Single Family and to the south is Residential Multi-Family units with the zoning of 40 units per acre. The applicant is proposing to construct 24' wide private streets with 4' sidewalks and 6' greenspace along both sides of the street. These private streets will connect to the north to an existing private drive which extends east from College Avenue as well as to the south to Brophy Circle, a dedicated right of way. The 24' private street shall be built to city standards with curb, gutter and storm sewer. Payment of parks fees are required in the amount of $19,650. The existing tree canopy s 58.4%, preserved canopy is 23.9% and that requires mitigation of $2,972. Open space for this project is 3.64 acres of the total 6.01 acres, which amounts to 60.6% of the project area, resulting in impervious surface of 39.4%. Some history for this project is that it was submitted on the 22nd of August, 2003 was it's first submittal. It was resubmitted on the 23rd of September after a meeting with the engineer. Several meetings followed after the first submittal. It was heard at Subdivision Committee on November 26th and forwarded to the full Planning Commission. Staff is recommending forwarding this project to the City Council with a recommendation of approval of the requested rezoning and Planning Commission approval of the proposed Preliminary Plat subject to 19 conditions. Planning Commission recommendation to City Council regarding the subject property with the conditions of approval as determined by the Planning Commission. Condition seven, Planning Commission determination of the request for 4' sidewalks with a 6' greenspace. Staff is recommending 5' sidewalks with a 2' greenspace in order to provide pedestrian access and area for greenspace as well as adequate depth for vehicle stacking and driveways.

Hoover: Does the applicant have a presentation?

Rudasill: She pretty much covered everything. I will go ahead and present what we've got here. The plans that are proposed, there are four units that are proposed on a 35'x40' footprint, those are these four here. They are cut back and worked so there will be a basement type situation in the hill. The runs that are on the up hill side we will use stem walls. The large lots, this is plan one, they are two story. Here is one with a three story and a lower level garage. We have had discussions with staff regarding sidewalks and their locations. The plan that we originally did was 4' sidewalks with a 6' greenspace. Staff feels that a 5' sidewalk with a 2' greenspace is more appropriate to assist in getting better pedestrian traffic behind cars that are stacked in driveways. We are in agreement with that. We have no problems with that. If there are any questions I would like to answer them.

Hoover: Thank you. At this time I will open it up to the public. Is there any member of the public that would like to address this RZN 03-07.00? Seeing none, I will bring it back to the Commission. Can we go ahead and have a Subdivision report?

Bunch: Yes. Like the preceding Planned Zoning District, this one had considerable involvement with the applicant and the staff and staff is to be commended and the applicant on their coordination to work through a very challenging site. This site has not just location challenges but also topography and easements and any number of things and having a jumble of preexisting zoning districts. The applicant is to be commended on coming up with a design that works within all of those challenges. Basically, I think this came to Subdivision maybe twice. We worked with staff and the applicant on helping make this thing fit into the very tough parameters. It is a good example of how a PZD can be utilized to turn a very challenging piece of property into something that is compatible with existing areas and to be able to utilize a piece of land productively that otherwise might go unused.

Hoover: Thank you. I will start with a few questions for staff. One concern I keep having and if you wouldn't mind expressing what the requirements are and why this is a private street and not a city street? I'm thinking of Lindsey apartments there off I-540 was a public street.

Bunch: Just one, that was to make the Stone Street connection.

Hoover: Right.

Bunch: The rest of them were private.

Ostner: The rest were actually just parking lot.

Warrick: The differences between private and public, this street will be constructed to city street standards. It is being proposed as a private street and can function that way without having to dedicate right of way there is an easier allowance with regard to setting the structures back from the street. The maintenance will be the responsibility of the property owner's association. Another difference is that private streets are not required to have sidewalks. Staff recommended them, the applicant is agreeable to installing them. This particular location is unique. It is connecting an existing public street and an existing private street. This is basically going to become an extension of a private street, which is located to the north side of the site and accesses College Avenue. The construction standards will be the same as a private street. The maintenance requirement will be the applicant's maintenance responsibility.

Hoover: My other question would be a tree preservation plan. I guess I'm a little concerned because the view from College Avenue. There is a tree line along the edge of this property and when I'm looking at what trees are going to be removed many of those are going to be removed and it doesn't look like we are going to have much buffer on this western edge.

Warrick: The double hatched area along the west side is within an easement and could not be calculated as preserved area.

Hoover: I'm looking at the existing tree canopy and each tree on the west side and then I'm looking at it with the buildings on and the ones removed but they are out of the double hatched area. Are you saying that there are some trees in that hatched area that are not showing on this plan on sheet 6?

Warrick: I will let Mr. Rudasill explain.

Rudasill: There is a tree row in here, these trees are all existing.

Hoover: You are saying that there are trees in here that are not shown individually?

Rudasill: Yes, if they are smaller than 6" or 8" in diameter.

Hoover: Ok.

Ostner: What sort of easement is that?

Rudasill: It is an existing sewer easement. The utility companies do not plan on using those easements to extend to these units. They want to serve them all from the front so we will not be accessing those easements other than for a sewer tap and we will be very careful going into those easements to make those taps. There will be some narrow areas where we will go back and tap the sewer for those three or four units that are right there in that one area. As far as construction in that easement back there we will not extend into that area. There is canopy there but like I said, it is all smaller than 6" trees.

Ostner: On this cross section you gave us, what is the scale on the horizontal?

Rudasill: The horizontal is 1"= 10'. Each one of those vertical lines is 10'.

Ostner: Are you sure about that?

Rudasill: I'm sure. It is a 1 to 10 exaggeration. If it were 1 to 1 you wouldn't see any slope at all.

Ostner: Part of what I was wanting to see in the cross sections was basically the complete driveway and you kind of cut these off when it hit final grade which sends me back to the drawing which is confusing because that is part of why I asked for the sections was to get away from the drawing.

Williams: May I ask, I see there is a letter from him asking for three waivers. The sidewalks were discussed, have you made any decision with staff not to pursue the other waivers?

Rudasill: I'm interested in pursuing what the staff is recommending. No, we are not asking for a waiver from whatever the city wants.

Williams: They talked about the sidewalks but you are no longer seeking the retaining walls?

Rudasill: There are no retaining walls over 10' so that one is not required anymore.

Williams: Keeping the above ground electrical lines?

Rudasill: We are disregarding that. We are going to go ahead and put them underground.

Hoover: Thanks for clearing that up.

Anthes: In reviewing the packet and we just now had the benefit of those cuts as opposed to the sketch. I am looking most specifically at your grading plan which I find rather unconvincing in terms of how these units are going to be graded. The grading plan shows pretty specifically how the streets will be graded but it isn't at a scale that we can see how the grading for the units is going to work particularly. My biggest concern is that I don't see a good mesh between the grading plan and the tree preservation plan so that when you look at the amount of cut and fill that you are talking about for these structures and then you talk about grading that out and then you are within very close distances to some of these trees that you are calling out to be preserved. I don't see a clear indication that we are not changing the topography level of those trees in this grading plan.

Rudasill: The rear of all the houses will be cut into the natural grade. We will not disturb natural grade. It will be a vertical cut within that 5' easement.

Anthes: You are saying within this 5'?

Ostner: It is going to cut in and go straight up so you are essentially not doing grading for houses. It is either cut in or go straight up.

Rudasill: Cut in and coming down. For the driveways on the up hill side we are staying at grade.

Ostner: On the down hill side with retaining walls?

Rudasill: We will have fill on the front and then retaining walls. There will be stem walls on those on the hill.

Anthes: You are saying that you are not going to disturb any land within 5' of each of these building lines?

Rudasill: We will cut within that 5' easement, yes.

Anthes: Some of the trees that you are showing to be preserved, their canopies extend.

Rudasill: No, those have been actually eliminated from the preservation numbers.

Anthes: That's not what it shows on the plan I have.

Warrick: Our Landscape Administrator has reviewed this plan extensively in every iteration of this project. He has agreed to the plan and believes that it is adequate. There is a slight amount of mitigation that is required in order for this project to meet the ordinance minimums.

Anthes: The drawings that we have in our packets for the tree preservation plan that has numbered trees who canopies extend over the rooflines of the buildings. Therefore, who's roots are going to be within 2' of these cuts that might be 13' cuts compared to some of these sections. Those have been removed from this plan? This plan is inaccurate or what?

Rudasill: Let me answer that. What has occurred there is that all trees that there is more than a 20% encroachment in the canopy have been disallowed as far as preservation and they have not been included in the numbers. We are still going to try to preserve that tree but it is not going to be counted as a preserved tree. It is one that he would not allow but we are still going to try to preserve. In the easements there is currently tree canopy in all the easements that are present. If we can avoid doing anything in those easements we are going to avoid doing it. We want to save the trees that are in there. We could not count those as preservation either because they are in easements. They could potentially be destroyed by the utility companies if they have to do repairs or something. None of the easements and none of the trees that have been encroached on more than 20% have been included in the tree preservation numbers. There is a strong canopy underneath each one of those big trees also. It is a very dense wooded area and those specific trees that were 6", 8" and larger. Anything that was smaller we did not pick up. There are several 4" or 5" trees. You can't walk a straight line through that wooded area. We want to preserve that as our buffer between what we are doing and the residential up above.

Ostner: I have a question. On your covenants on page 6.11 for us, the applicant has indicated in the submitted covenants that the height of each building shall not exceed 2 ½ stories or 35' in height.

Rudasill: That should be three story. It won't exceed 35'.

Ostner: Ok.

Rudasill: Actually what we will have is 8' ceilings, a 12" floor type situation so we will have 9' per floor, which is 27' plus your roof.

Ostner: My question is when you walked around showing us which drawings were going where, I think you pointed a three story.

Rudasill: It will actually set in the hill.

Ostner: My concern is this, the view from College is a severe angle up. There is no room to hide, it is not like looking level. Any tall buildings on your western edge, first off, you are almost adding a story when you build up the elevated garage to your new street level. I'm concerned the view is going to be some really big buildings. From the inside of your development they look like three story but they look a lot more like four story from College Avenue. Am I right that some of those western buildings are? I'm going to make that part of my motion or request, that these be shorter. I think you can live with that.

Rudasill: We can do that.

Ostner: To share, for the record, I was concerned about three story buildings on the western edge and Mr. Rudasill offered to make all the western buildings on this drawing two story, which would satisfy my concerns with the added basement it would appear like a three story from College making it a lot smaller. Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 23, 24, and 21 and 22. Those are unit numbers. That has been one of my concerns. I am still concerned as is Ms. Hoover, that the screening is inadequate and I was going to request some evergreen screening on this western edge to help buffer this view.

Rudasill: We can do that. There are some evergreens actually in there already along the back side of there. This is already evergreens.

Ostner: With sewers getting tapped there is a lot of impact going on. I know you can be careful but those machines are big and holes get deep and soil gets pushed around. I would be afraid for any trees that we are trying to dodge around a sewer line.

Rudasill: There should only be three taps to that existing sewer, which are those three units that back up to that easement behind here. These are all being serviced from the front with a new sewer. It is just those three units that will tap into that existing sewer. The rest will tap into the front to the new sewer that will be built at that road's edge.

Ostner: That addresses my main concerns.

Anthes: A question about condition of approval number seven, the request about the different configuration of greenspace and sidewalks. Generally a 2' greenspace is not well kept and tends to collect trash and not grow things very well, which is why a lot of people then end up paving it to the curb line in a lot of conditions in cities. I know you are not going to get as much foot traffic here as in other places, can you talk us through the rational for the change in the 6' plus 4' configuration?

Warrick: We looked at reducing it so that there would be additional stacking room behind the garages to allow vehicles not to overhang the sidewalk. That was one of the main concerns. We also did not want to push the structures back any further into the preservation areas that surround the outskirts of the site. We chose a 2' and 5' configuration so that there would be at least some greenspace to allow for the placement of mailboxes and anything that would be along the street edge and then to have a 5' sidewalk, which is adequate width for two people walking abreast. We do have some subdivisions in town where the sidewalks were placed immediately at the curb and when mailboxes were built they were built in the sidewalks, which is, I'm sure meeting the needs of the postal workers but they sure are safety hazards and they are not very functional when it comes to actually using the sidewalk. Some greenspace is what we were going for to allow for that. Planning Staff was asked at Subdivision Committee to make a recommendation. We felt that this was reasonable but we are more than willing to go with whatever recommendation that the Planning Commission wishes to see there.

Rudasill: Also, please let me reiterate. This is a horizontal property regime. All of the greenspace outside of the units will be cared for by the P.O.A. so there will be a maintenance contract and there will be somebody in there maintaining it.

Anthes: That is important information, thank you.

MOTION:

Shackelford: I just want to start out with saying that I concur with what Commissioner Bunch said earlier. I really appreciate the hard work that both the applicant and staff have done on this PZD to make this project work on a very difficult location. We've looked at this project several times. There has been a lot of conversation about tree preservation, potential grading and that sort of thing. We have Landscape Administrators, we have City Engineers in place to make those calls. We have professionals doing their jobs doing that. I would like to think we need to go ahead and support them and the decisions that they have made. With that being said, I am going to go ahead and make a motion that we forward to City Council with a recommendation of approval R-PZD 03-07.00 with condition number seven reading a 5' sidewalk with 2' greenspace will be required within the proposed development. I am in agreement also with staff on this as well. I think that the safety issue is more important with the stacking to get a safer sidewalk in that area and the fact that there will be a professional service that is maintaining those that we will be fine with a 2' greenspace in that area. Also, add as condition number 20 that units one through fourteen, 21, 22, 23 and 24 be restricted to two story buildings only. As far as screening, I know that that was talked about as well. I don't have as big of a concern in that area. If you look at the existing street that is in place with the Brophy Circle and some of the three stories that are in there, I don't see that that is going to be an issue. Obviously, if that is something that you want to add then I would consider including that. My motion would be for a recommendation of approval based on those 20 conditions of approval.

Graves: Second.

Hoover: There is a motion by Commissioner Shackelford and a second by Commissioner Graves. Is there more discussion?

Ostner: I would like to offer an amendment to the motion that we require evergreen screening along the western property boundary to ensure that the view shed from College Avenue be softened year around.

Shackelford: Are you requiring screening along the entire western boundary?

Ostner: I am requesting screening behind the units on the western edge. There is a portion with street only which I would not. Behind the same units that you just mentioned, one through fourteen, 23, 24, 21 and 22 I think it is fair and proper for the citizens of Fayetteville to have that up hill sight line be softened.

Shackelford: Thank you. I needed clarification on that part of the western boundary that was not being developed.

Bunch: A question for the motioner on the proposed amendment. We have already had a discussion concerning the 5' perimeter around the buildings of disturbed area and the question about existing trees. If there is a tree line existing and we are already encroaching on that tree line how can we require that evergreens be placed in an area that is already covered with trees?

Ostner: We do it all the time.

Bunch: We put evergreen screening in but not necessarily in areas that are already covered with trees. We have existing canopy there that is being preserved so the question I have is do we require the removal of existing canopy and the placement of evergreens? Just as a matter of clarification.

Ostner: As a matter of clarification I would ask for a dialogue between the developer and our Landscape Administrator to catch as catch can, move a little here and shift a little there and use good sense. Mr. Rudasill has agreed that this would be amenable. I don't think it is necessary to tear out a tree to plant a tree. Using good sense if there is a spot where an evergreen won't fit because there are too many trees of course nothing should be torn out.

Warrick: Can I ask a question? I think that it is going to be critically important for our Landscape Administrator to understand what it is that you want to see when this project is finished. He is not here. We are just talking about that and there is not a plan. I need specific detail about the type of screening that the Planning Commission is expecting if this condition is going to be added so that we aren't looked to later to do something other than what we understood to be appropriate.

Ostner: Back to my original concern about these buildings being higher, appearing higher from College. The point of my motion for screening was to soften the view shed form College Avenue instead of looking up the hill and seeing a concrete basement and a two story house perched on top of it that maybe with the evergreen screening you would see the two story houses on top.

Warrick: Are we looking at a dense evergreen planting at the base of the structures or are we looking at intermittent plantings of evergreens to supplement the existing vegetation? Are we looking at a certain number of trees or shrubs? I'm sorry, I need to know so that we can do it the way you want it.

Ostner: I haven't counted it up.

Rudasill: Let me propose something here. For the frontage that we are talking about, because, like I said, that one area is already screened with pine. The other areas or areas that lack screening we can propose a large type pine on a 20' spacing, which is a typical spacing when you are trying to fit a screen. We will fit it between what is there. That is something that is doable. I am not going to worry about that. We can go ahead and do that. Really the only place that it would require is behind those three units because the other place is already pine screened. That area we are not planning on working in. That one area where we do have some deciduous trees, yes, we do plan on cutting three trenches in there to tap the sewers. They will be 12" wide. We may have to clear a little bit to get the backhoe down through there but outside of that we can squeeze some trees through there. That's not a big issue. Large white oak type trees on 20' spaces.

Ostner: I'm thinking something more evergreen.

Rudasill: I'm sorry, not white oak, white pine.

Shackelford: Would you consider reducing those requirements to the three units that are going to be affected by the sewer tap work instead of the entire western property boundary? My concern is two fold. First of all, the rest of this property is heavily wooded. I don't know how you are going to quantify screening if you put a small evergreen tree under an existing hard wood canopy. First of all, it is not going to grow. The second thing is if you go down Brophy, there are substantial numbers of three stories on the western side of that development that I think if you look from College the existing landscape has done a pretty good job of screening that. I could understand if we were talking about the areas in which there may be destruction due to putting in the sewer. I am not sure you are going to be able to quantify down the entire western property line.

Ostner: I think Mr. Rudasill put it best when he said that part of the area is already evergreen screened, which would satisfy my request. The areas that are not evergreen screened he would make them that way. I do think there is a difference because below the road the buildings get taller. The buildings on the up hill side in essence get shorter. They are being built into the earth. There is a great deal of difference. 9' up and 9' down there is almost 20' of difference.

Shackelford: We've already required a reduction in height at those locations by requiring to go from three story to two story. My concern is we are going to be taking out existing hardwood trees and replacing them with evergreen trees or if the evergreen trees are not going to grow in those areas.

Ostner: I think that we've already gone over the fact that the point of this motion is not to remove trees to put in trees and I think good sense will prevail.

Vaught: I guess I'm against making this another condition of approval. I understand the concerns. I also know the area, I drive by it every day going to work. I've looked at it this week just to try to get an idea as I drive by. We have an applicant that has bent over backwards I feel to work with us and is doing a number of things like sidewalks that aren't necessarily required. I appreciate that. If we could even do something, there is some mitigation required. If we could have him plant his mitigation in those areas instead of requiring additional screening on top of the mitigation is what I feel like we are doing. I just hate to keep settling expenses on expenses on developers for things that we would like. I think there is $2,900 payment into the tree escrow account, maybe that is something that could be worked in with that so we don't necessarily increase the expense. That is just my concern. I don't know what kind of expense we're talking about but planting trees along the whole property line is expensive.

Ostner: As Mr. Rudasill has said, part of it is already screened. We are only asking for screening. If it is screened today and no one has to plant it then it is satisfied. We are only talking a small section. We are probably only talking about three trees, maybe four or five. That would be fine with me if the mitigation were to include this. I didn't intend for this to be a big deal. As view sheds go up hill it becomes a big deal. People complained for weeks and months over cuts along Markham Hill four or five years ago. Looking at it on paper it didn't look like a big deal. When you add up the hillside and elevation it becomes a big deal. This is a simple solution. The applicant has agreed to it. I think it is a good idea, I think it is going to make a better project and that is why I made a motion for it. I don't want to confuse our Landscape Administrator even more by forcing his mitigation to go a certain way. I would like to leave that up to him if he can satisfy the screening.

Warrick: The mitigation requirement for this is being satisfied by payment into the tree fund.

Vaught: Could that amount be reduced by the expense of the trees being planted?

Warrick: There is a certain fee applied to each different type of tree based on the plan. I believe that it can be reduced based on proposed plantings. It is a determination by the Landscape Administrator and I'm sure that he would be glad to consider that and review it.

Vaught: To me that would be the only fair way to do it. We aren't going to make them pay twice for the same thing in my opinion if we require both of those.

Shackelford: I concur with that. I can see if we are requiring it on the three units in which they are going to be destroyed. Otherwise, I would like to see it somewhat applied to mitigation.

Ostner: I would agree it makes good sense if it is possible with our staff.

Hoover: I have to say I'm confused, I've lost track. You made a friendly amendment, did Commissioner Shackelford accept the amendment and what is the amendment?

Shackelford: That is one of the reasons I didn't tackle it because I didn't think I could quantify it. That is another reason why I was wanting to say specifically in these units. I think it is quantifiable, I think it is something our Landscape Administrator can handle. If you want to try to quantify this then restate it and let's go from there.

Ostner: I would offer an amendment to the motion that there be a requirement of an evergreen screen along the western edge of the project from units one and two to units 21 and 22. If an evergreen screen is existing it shall satisfy the requirement, if an evergreen screen is lacking it should be added and planted as the Landscape Administrator and the applicant can coordinate.

Shackelford: If any such planting occurs then the expense of that planting be deducted from the tree mitigation that is addressed in the staff report. I will accept that amendment.

Vaught: I've got a question. What about the areas with hardwood screening already there? You said specifically where evergreens didn't exist. What about where there is hardwood screening?

Ostner: Hardwood screening is not an evergreen screen, in the winter we can see through deciduous trees.

Vaught: So they would be required to screen in areas where they are using hardwoods?

Ostner: Yes.

Vaught: Even if there is complete canopy?

Ostner: Deciduous canopy.

Williams: May I ask the development administrator, I've been looking at the ordinance and the only kind of screening I can see that is required by our ordinance is §166.10 which is primarily commercial design standards. Is there screening required for residential developments?

Warrick: We currently do not have screening requirements for residential developments. We do have screening requirements between commercial and residential developments. It is typically applied when a commercial development is installed after an existing residential development is there or adjacent to an existing vacant residential property. There is not a specific screening requirement for that application.

Williams: In light of that, I don't think you should attempt to make a new screening requirement that is not found in the ordinance. I think that would be overstepping the bounds of the Planning Commission to require a residential developer to screen to a highway.

Anthes: May we then urge the applicant to use, in lieu of paying the mitigation fee, work with the Landscape Administrator to spend some of those dollars in doing the intent of what Alan would like to see there?

Williams: I would just certainly urge the Landscape Administrator to look at potentially using some of the mitigation dollars if allowed under the ordinance to put the kind of screening in that the Planning Commission certainly would like to see here. That is a decision actually for the Landscape Administrator and not the petitioner I think.

Ostner: That's ok with me. That's a good point. My question with that is we don't have rules in our ordinance for half the things that we are looking at on a PZD. They are not even giving us right of way. They are breaking all the rules with a sidewalk, there are no setbacks. My point or my question, since this is a PZD why not? Everything else has been put on the table and has been arm wrestled over. There are no setbacks, these buildings come and go. There is something in our ordinance requiring setbacks. My question to you is we are pushing everything else around.

Williams: My recommendation would be, and I would have to ask the Planning staff this, if there is anything in this particular development that is in violation of our PZD ordinance we should not pass it period. We are bound by our ordinances, the City Council and the Planning Commission are bound by our ordinances. We can't just push around and arm wrestle. Certainly we can work with our developer but we cannot go beyond what our ordinances say and especially putting conditions upon them and upon we're not going to approve it unless you do this. I would imagine that staff in working with this developer has not violated any of our PZD ordinances. If they have in relation to setbacks or anything else then my recommendation is that you vote this down. I would ask staff if they have in fact violated any of the PZD ordinance in working with this property.

Warrick: No Sir, staff does not feel that any ordinances have been violated. I would add that in the PZD ordinance there is a specific area that addresses screening and landscaping and it states that the Planning Commission shall require landscaping and screening to protect adjacent properties as a part of the PZD when screening and landscaping shall be provided as set forth in §166.10 Buffer Strips and Screening. It references back to the section that was mentioned earlier requiring screening between commercial and residential or any type of residential and non-residential development.

Williams: To make this clear then, can or cannot the Planning Commission because of the PZD ordinance, require this developer to provide screening to College Avenue?

Warrick: I don't believe that we have the ability to require screening between a street right of way and a non-residential development. The code section that you mentioned earlier that you read from, §166.10 that requires screening around things such as outdoor storage yards or between commercial and non-commercial developments is applicable and it is specifically referenced in the PZD ordinance but only that is what is allowed under the PZD ordinance for screening.

Shackelford: With that being said, on the advice of the City Attorney, I would ask that we vote on the motion as it stands without the requirement of screening. I understand the concern of Commissioner Ostner and what we are trying to do and think maybe that is something we need to think about as we go through the review of the grading ordinances as we proceed in that area. On the advice of the City Attorney I don't know that we need to proceed in this area with zoning requirements in a residential development. I wish we would've thought of that a little bit earlier. Is that acceptable?

Ostner: That is acceptable. I would hope we could continue this because these buildings don't have setbacks. They don't have a lot of things required in our ordinance. I believe that a PZD is designed to be flexible. It is far reaching and it is supposed to let the developer do things that he can't normally do, it is supposed to let us ask for things we don't normally ask for, it is supposed to go both ways. That is what I meant about arm wrestling, nothing covert or illegal, simply give and take people working together as we should. With that said, I will withdraw the amendment.

Hoover: I would like to make a statement now that you all are done with that. In referencing in our packets §161.25 Planned Zoning District and it tells us what our goals are for a PZD and I want to challenge that this development to me does not meet several of the goals listed on here. One is harmony providing for an orderly and creative arrangement of land uses that are harmonious and beneficial to the community. I am not seeing that, referring back to some of the discussion here we have had on screening, the screening and the issue of the trees and grading. The second one I don't feel that it fulfills says that it should have no negative impact. "Does not have a negative affect on the future development of the area." I think that this is very likely to have an effect, there are a few other hillside projects we have had where most of the trees were removed and when you look up on the hillside all you see are the backs of the buildings. The third one is natural features that "...it has maximum enhancement and minimal disruption of existing natural features and amenities." I think these issues came up when we talked about the grading and how can you grade around these buildings and still save these trees that you have shown on here. I really find it hard to believe that you are going to be able to grade exactly at 5' and not affect this tree 104 and tree 92 and 13. I think a lot of these trees are going to be in jeopardy of that.

Also, I want to say that I'm not in favor of this project going back to, Planning Commission needs to determine if this reduced setback landscape reduction. I am definitely not in favor of that. I feel like if we have an existing condition and you could prove a hardship on why you could not move the buildings back I would be more sympathetic. Just because you placed the buildings and now we need to reduce that landscape strip so that you have enough room to get the car parked in there I think is your problem and not our problem. I am sorry, I'm not going to be compassionate on that. Consequently, looking at the whole thing I would say possibly it might be a little too dense to be built here. I am certainly in favor of the higher density, I think this is a compatible type use for this area but just this particular configuration I think has some problems. If we look at the Planned Zoning District that we just approved, they reworked their street so that they could save all those trees. They had some difficult terrain also. I'm just not seeing here that we've really saved, I know that there are some trees up to the east and I really appreciate that buffering to the residential district there but I think this edge along the west edge is just not enough existing tree coverage. Perhaps if on the plans you had shown that easement area and what kinds of trees they were but you said they were under 8" or 6" in size and it is hard for me to visualize, I've been out there and I saw them but I can't tell from the plan now. It looks like there is no trees there. I think those are pretty much my reasons.

Shackelford: Obviously I made the motion so I'm in favor of this project, in response to a couple of the comments that you made. First of all, on the tree canopy, as I go look at this site there is basically 100% canopy on the location. I don't think there is any way that this property will ever be developed that we could save more trees than what this plan proposes. Anytime you have 100% canopy there are going to be some trees that have to be taken out for development. On the points of the PZD that you were struggling with, in particular, meeting with the existing neighborhood, negative impact and the preservation of natural features. One thing that I kept going back to is the current zoning of this property. A lot of this property is zoned RMF-40, RMF-24, RSF-4, use by right with the current zoning you could come in without the grading ordinances that are being proposed at this point, we could see a much denser and a much more impacted development in this location without a request for a rezoning that would come through as a Large Scale Development. I think a developer could come in and meet the ordinances of a Large Scale Development and have a lot more impact on this area with the proposal of a multi-family traditional apartment complex than the current zoning would allow. Based on that, I looked at this R-PZD as a way of compromise between the developer to allow some development to happen on the property and the desire to maintain the integrity of the location as much as possible. That how I got to the agreement with the R-PZD on those specific findings. I think that it is an impact but I think that it is a far less impact than what could possibly go in there under current zoning that is in place at this location.

Anthes: Loren, I would have you look at the existing canopy is listed as 58.4%, preserved canopy is 23.9%. I don't think that is anywhere near 100%. The other thing is looking at the configuration of this land whether or not it is zoned RMF-40, I think it would be pretty tough to get 40 units per acre on this site. I would agree with Commissioner Hoover that I remain unconvinced about the grading plan and perhaps it's a density issue. This site is just very challenged topographically and we wouldn't be sitting here having this conversation if the site was nearly flat and it didn't have the restrictions that it has. That's all I have.

Shackelford: My response, I don't want to have an argument but two things. First of all, this is in compliance with the grading ordinances as the City of Fayetteville has them right now. Second of all, the 58.4% tree canopy does not include any trees that are less than 8" in caliper and does not include any trees that are in any of the easements that are on this property. As I go out and look at this property, it has significantly more than 58% if you include the smaller trees and the trees that are in the easements. If I eyeball it, it looks almost like total canopy to me.

Vaught: I am going to be in support of this project. I think it is a situation where it is hard site to build on. You are surrounded by a lot of multi-family and commercial. It is not an idea site for single family residential because of the proximity to the commercial below it and College Avenue. I appreciate the work the developer has done in trying to do things like create a 5' impact area around each building, trying to minimize the grading that is going into this site to try to make the best development possible. I think those are things that don't necessarily have to be done that he is offering to do. It is things that we can't necessarily see on a grading plan. I agree with Commissioner Shackelford. It is a hard site. There is not much to be done with it. I think it is a good compromise and I appreciate the work the developer has done with the city in offering a lot of things like the sidewalks with minimized grading, the private drives to allow the creative setbacks, which is another ordinance we are thinking about changing, the setback ordinance. I don't know, I just think it is a good project.

Graves: I'm also in favor of the project. The staff has already indicated that it is in compliance with the ordinances as they stand. Whether someone may be comfortable or uncomfortable with it, it is in line with the ordinances and the developer has done a lot of things, a number of things that have been outline here to try to deal with the topographical challenges of the area and to make it a pleasing to the eye area and it does conform to the other uses of the property in the area.

Ostner: I appreciate that. Part of the difficulty I have with the PZD, Commissioner Graves, is our staff is stuck with something like number fourteen on page 6.10, view protection. The Planning Commission shall have the right to establish special height and/or positioning restrictions where scenic views are involved and shall have the right to ensure that the perpetuation of those views through protective covenant restrictions. That is very subjective. They do the best they can. When they present this to us I do not agree that we should necessarily approve it because it automatically meets the ordinance. It has met as much as possible for them to bring it to us. I understand number fourteen is requesting to ensure view protection through protective covenants, that can get complicated. That is why I wanted to do a screening along that edge. I still think that we can request that and I still suspect it might be proper. I too am having a big problem with this project. I think it is a little too dense when it comes down to it with the impact that is going on. I think in general it is a good project. I think in general the higher density ought to be placed on this site considering where it is located with College and with the development behind it. I disagree with some of the Commissioners before me that just because everybody has worked really hard that we need to approve it. Everybody has worked really hard and I think we might need to work a little bit harder to make it worth while.

Vaught: Commissioner Ostner, that is not why I am backing it. I do appreciate the work everyone has put into it.

Ostner: So do I. I have been at Subdivision and I've done a bunch of that work that has been put into it.

Hoover: We have had a motion and a second, is there anymore discussion?

Bunch: I will be in favor of this project. Admittedly, there are some weaknesses in it. It is a series of compromises. It is a very difficult location. Considering what our City Attorney has told us tonight I think much of the discussion we have had tonight have to do with design standards that are currently not within the codes of the City of Fayetteville. These are very good standards. They deserve to be considered. They deserve to be brought up in a proper manner and presented to the City Council for their inclusion into ordinance. Currently they are not in ordinance. We do have some setback considerations coming up, we have a hillside committee that has been formed and right now seems to be on hold. These are good places to address these issues. I think the history of Fayetteville, maybe our City Attorney can enlighten us on this, we have had a history of being sued by taking illegal action many times we thought it was a well planned action and something that seemed on the surface to be good to do and it was palpable and everyone wanted it but we did not have legal background to do it and we have been sued any number of times as a city for overstepping our legal bounds. I do agree that these are quite attractive standards and I would implore the Planning Commissioners who have brought them up to put them into such a form and run them through the proper procedures so that they can be voted up or down and be included in our system of ordinances so that they may be legally considered.

Hoover: Are there any other comments? Renee, would you call the roll?

Roll Call: Upon the completion of roll call the motion to forward R-PZD 03-07.00 was approved by a vote of 5-0-3 with Commissioners Hoover, Anthes and Ostner voting no. Commissioner Allen left the meeting at 7:00 p.m. and was not there to vote.

Thomas: The motion carries five to three.

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Hugh Earnest, Chief Administrative Officer HE

From: Tim Conklin, Community Planning and Engineering Services Director T.C.

Date: December 22, 2003

Subject: Proposed Walgreen's Cost Share in the amount of $25,512.00 with a contingency of $3,826.00 with WIV-Fayetteville, LLC for the installation of approximately 350 feet of 8" water main.

RECOMMENDATION

Staff recommends that the City cost-share with WIV-Fayetteville, LLC the developer, to construct approximately 350 feet of 8" water main. By participating in the construction of these improvements, the City will be creating a loop in the water main system in this area and eliminating the gap in the system.

BACKGROUND

On November 7, 2002, the Planning Commission approved the Large Scale Development for Walgreen's. The proposed development is located at the northwest corner of Joyce Blvd. and Shiloh Dr. As a part of this development, the developer will be constructing a water main extension to provide service and fire protection to the site. The site grading and water and sewer extensions have been approved for the site and construction is underway.

DISCUSSION

There is existing water main along Joyce Blvd. There is also a system of mains that serves the Northwest Arkansas Mall and several other businesses in this area. This network of mains is fed from one point of connection at the intersection of Highway 71B and Zion Road. In the event of a water main break on this connecting line, the Mall and many of the surrounding businesses would be without water. It would benefit the City of Fayetteville to have this gap in the water main system eliminated and to further loop the system in this area.

Left on 2nd reading 1/20/04

Construction bids have been provided to the City for these improvements by WIV-Fayetteville, LLC.as follows:

Developer's Share	**$ 37,920.00**
City's Share	**$ 25,512.00**
15% Contingency(City's Share)	**$ 3,826.00**
Total	**$ 67,258.00**

BUDGET IMPACT

Based upon the information provided by the Budget & Research Division, there is a proposed budget of $150,000.00 in the Water and Sewer Cost Sharing Account for 2004. The final costs to the City will be based upon actual costs as documented by WIV-Fayetteville, LLC. subject to review by the City and may, or may not exceed the submitted estimate. However, the City's share will not exceed the estimate without additional authorization.

ORDINANCE NO. ______

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING A COST-SHARE AGREEMENT WITH WIV-FAYETTEVILLE, LLC IN AN AMOUNT OF $25,512.00 PLUS A CONTINGENCY OF $3,826.00 FOR A TOTAL OF $29,338.00 FOR THE CONSTRUCTION OF 350 FEET OF 8-INCH WATER MAIN

WHEREAS, the Fayetteville Planning Commission has approved a Large Scale Development for Walgreen's on Joyce Boulevard which calls for the construction of a water main extension; and

WHEREAS, it will be of great benefit to the City and businesses in the Mall area to construct a water main loop extension in this area; and

WHEREAS, entering into a cost-share agreement with WIV-Fayetteville LLC and utilizing their engineer and contractor will avoid the added cost and unnecessary duplication of effort which would arise from the formal competitive bidding process; and

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

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby waives the requirements of formal competitive bidding and approves a cost-share agreement with WIV-Fayetteville LLC in an amount of $25,512.00 plus a contingency of $3,826.00 for a total of $29,338.00 for the construction of about 350 feet of 8-inch water main to further the water main loop system near the Northwest Arkansas Mall.

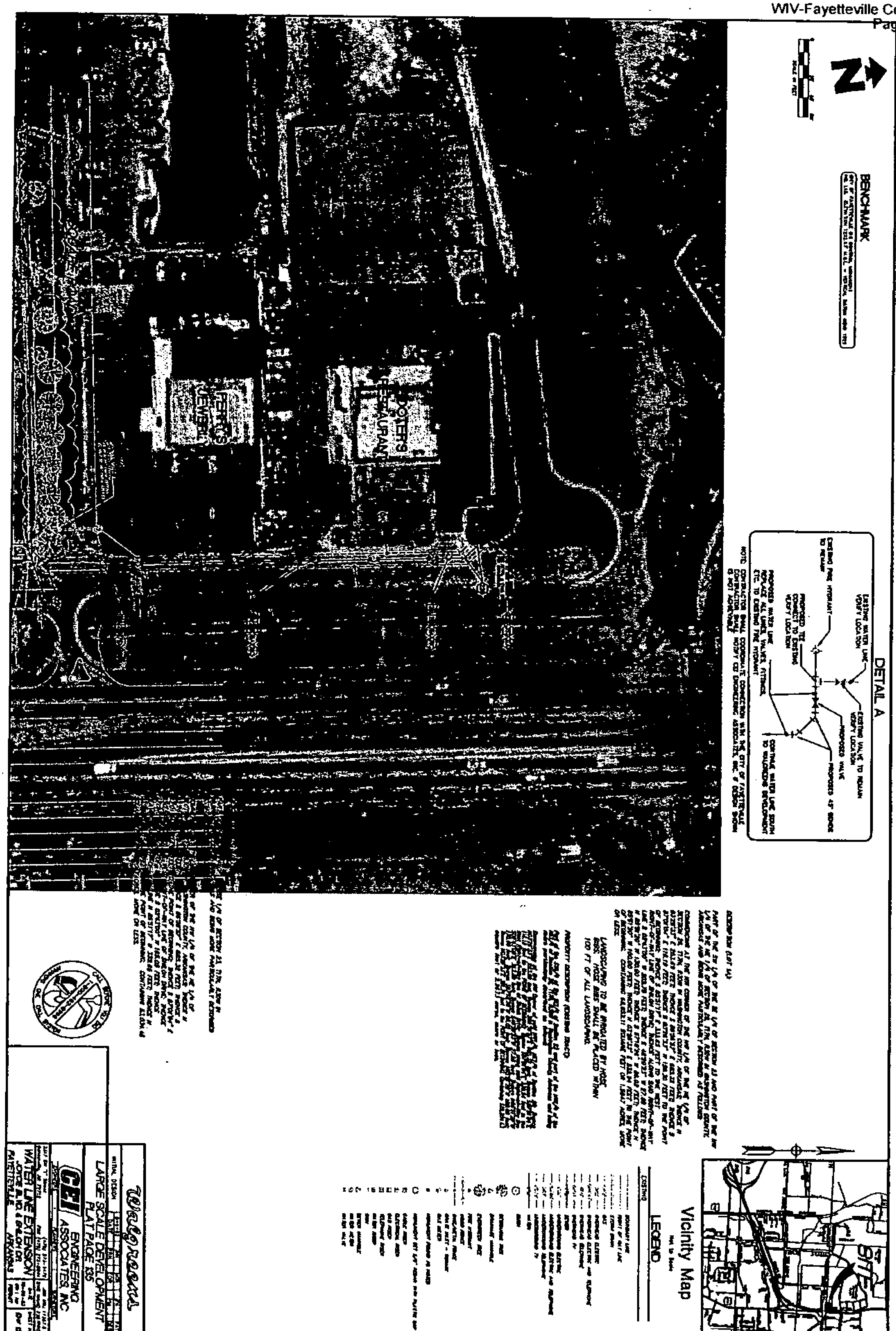
PASSED and **APPROVED** this the 20th day of January, 2004.

APPROVED:

By: DRAFT ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
SONDRA SMITH, City Clerk


BENCHMARK
DETAIL A
Vicinity Map
LEGEND
CEI ENGINEERING ASSOCIATES, INC.
LARGE SCALE DEVELOPMENT PLAT PAGE 335
WATER LINE EXTENSION
JOYCE BLVD & SALEM DR
FAYETTEVILLE ARKANSAS

Harman & Son Construction, Inc.

1633 Rogers Rd. Fort Worth, TX 76107
817-336-5780 Fax 817-336-5797
www.harmanandson.com

11/8/03 (Revised)

Mr. James Koch
CEI Engineering Associates, Inc.
3317 SW I Street
Bentonville, AR 72712

RE: Water Line Extension Shiloh & Joyce

Dear, Mr. Koch:

See below cost for the offsite water line extension for the referenced project. If you should have any questions please don't hesitate to call.

Description	Qty	Cost	Total
1. 8" C-900	365 LF	$24	$8,760
2. 8" x 8" MJ Tee	1	$800	$800
3. 8" MJ Gate Valve	1	$800	$800
4. 8" MJ 45 degree bend	2	$500	$1,000
5. Connect to fire hydrant	1	$1100	$1,100
6. Asphalt repair/patch	1	$7500	$7,500
7. Gravel bedding	100 tons	$13	$1,300
OH &P			$4,252
Total			$25,512

Sincerely,

Gabe Harman
Project Manager
Harman & Son Construction, Inc.

Harman & Son Construction, Inc.

1633 Rogers Rd. Fort Worth, TX 76107
817-336-5780 Fax 817-336-5797
www.harmanandson.com

11/14/03 (Revised)

Mr. James Koch
CEI Engineering Associates, Inc.
3317 SW I Street
Bentonville, AR 72712

RE: Water Line Extension Shiloh & Joyce

Dear, Mr. Koch:

See below cost for the total water line extension for the referenced project. If you should have any questions please don't hesitate to call.

Description	Qty	Cost	Total	
(OFFSITE)				
8" C-900	365LF	$24	$8,760	
8"x 8" MJ Tee	1	$800	$800	
8" MJ Gate Valve	1	$800	$800	
8" MJ 45 Degree Bend	2	$500	$1,000	
Connect to Fire Hydrant	1	$1,100	$1,100	
Asphalt Repair/Patch	1	$7,500	$7,500	
Gravel Bedding	100 Tons	$13	$1,300	
Sub-Total				$21,260 + OH & P $4,252
(ONSITE)				
8" C-900	535LF	$24	$12,840	
6" C-900	80LF	$22	$1,760	
8"x 8" MJ Tee	1	$800	$800	
8"MJ Gate Valve	9	$800	$7,200	
8"MJ 45 Degree Bend	2	$500	$1,000	
Gravel Bedding	60 Tons	$13	$780	
8"x 8" Tapping Sleeve & Valve	1	$2,600	$2,600	
8 x 6" Tee	1	$600	$600	
6" MJ Gate Valve	3	$630	$1,890	
8" x 8" MJ Cross	1	$800	$800	
8" MJ Ring	1	$400	$400	
Fire Hydrant Assembly	2	$2090	$4,180	
6" MJ Cap	1	$400	$400	
8" x 6" Reducer	1	$450	$450	
Gravel Class 7 Base	140	$13	$1,820	
Concrete Blocking	4	$100	$400	
Sub-Total				$37,920
Total				$59,180

Sincerely,

Gabe Harman,
Project Manager
Harman & Son Construction, Inc.

CONTRACTUAL AGREEMENT

This Agreement, made and entered into this ____________________, by and between the City of Fayetteville, Arkansas and WIV-Fayetteville, LLC, Witnesseth:

WHEREAS, WIV-Fayetteville, LLC, will be hiring a contractor for the construction of a Walgreen's at the northwest corner of Joyce Blvd. and Shiloh Dr.; and

WHEREAS, there is an existing 8" water line on the west side of this site that connects to the 8" main along Joyce Blvd. The developer will be extending this 8" main through the project site to provide service and fire protection to the Walgreen's development; and

WHEREAS, there is an existing system of water mains that serves the entire Northwest Arkansas Mall complex and several businesses in this area. The mains end approximately 350 feet north of the Walgreen's development. This entire network of mains has only one point of connection that crosses Highway 71B at Zion Road; and

WHEREAS, it will benefit the City of Fayetteville to extend this 8" water main to connect to the existing main north of the development at the same time by the same contractor. This extension will create a loop in this area and prevent numerous businesses, including the Mall, from having the water shut off in case of a water main break.

NOW, THEREFORE, the City of Fayetteville and WIV-Fayetteville, LLC agree as follows:

1. Upon the City Council and/or the Mayor approving the Water Main Cost-Share, the City of Fayetteville agrees to:

   A. Pay for 100% of the actual documented construction costs & inspection costs for the 8" water main along Shiloh Drive from Georgetown Square Road to connect with the existing water main approximately 350 feet to the north.

   B. Pay a maximum-not-to-exceed cost of $29,338.00 for the afore mentioned water main construction as was provided by WIV-Fayetteville, LLC contractor and made a part of this agreement.

   C. Reconsider the costs if the future and actual construction & inspection prices exceed the maximum-not-to-exceed amount that was furnished by WIV-Fayetteville, LLC. The contractual agreement shall be required to be reevaluated and re-approved by the Mayor and/or City Council as appropriate prior to proceeding with construction.

   D. Make all efforts to provide payment to WIV-Fayetteville, LLC within thirty (30) days after receipt of the invoice(s) but cannot guarantee the thirty day schedule.

2. WIV-Fayetteville, LLC agrees to:

   A. Provide the necessary and normal project management, inspection, and testing as necessary for a complete and acceptable water main installation.

   B. Provide a copy of the invoice(s) from the Contractor and a completed lien waiver executed by the Contractor upon acceptance of the water main installation.

   C. Not proceed with the proposed construction unless/until the proposed contractual agreement is approved by the City Council and/or the Mayor.

3. It is further understood that the contract for construction is between WIV-Fayetteville, LLC and his Contractor and that the City has no contractual obligation with either the Contractor or the Engineer. The City's only obligation shall be to participate in a contractual agreement with a not-to-exceed amount of $29,338.00 for the water main installation.

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

CITY OF FAYETTEVILLE	WIV-Fayetteville, LLC
By:____________________	By: [signature]
DAN COODY, Mayor	

City Of Fayetteville

(Not a Purchase Order)

Vendor #: [redacted] New [redacted]		Vendor Name: [redacted] WIV-Fayetteville, LLC [redacted]						Requisition No.:	Date: 12/23/2003	
								P.O Number:	Expected Delivery Date:	
Address: 541 North Fairbanks Court, Suite 1890						Fob Point:		Mail Yes:__ No:__		
								Taxable Yes:__ No:__	Quotes Attached Yes:__ No:__	
City: Chicago			State: IL			Zip Code: 60611	Ship to code: 090	Divison Head Approval:		
Requester: Matt Casey - Engineering						Requester's Employee #: 2119		Extension: 429		

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	Cost Share for Walgreens on Joyce Blvd. - 350 Feet of Waterline Extension				$29,338.00	5400.5600.5808	02087-20		
2					$0.00				
3					$0.00				
4					$0.00				
5					$0.00				
6					$0.00				
7					$0.00				
8					$0.00				
9					$0.00				
10					$0.00				
	Shipping/Handling		Lot		$0.00				

Special Instructions:

Return to Matt Casey

Subtotal: $29,338.00
Tax: ______
Total: $29,338.00

Approvals:

Mayor: ______ Department Director: ______ Purchasing Manager: ______

Finance & Internal Services Director: ______ Budget Manager: ______ IT Manager: ______

Dispatch Manager: ______ Utilities Manager: ______ Other: ______

REQUEST FOR VENDOR FILE MAINTENANCE

(CHECK ALL AVAILABLE RESOURCES, VENDOR LIST, ACCESS SYSTEM PRIOR TO SUBMISSION OF THIS REQUEST)

DATE OF REQUEST: 12/29/03 REQUESTED BY: Matt Casey

DEPT./DIVISION: Engineering EFFECTIVE DATE: ASAP

TELEPHONE EXTENSION: 429

NEW VENDOR: ✔ VENDOR CHANGE: ☐ VENDOR RE-ENTRY: ☐

VENDOR #: VENDOR #:

VENDOR NAME: WIV-Fayetteville, LLC

STREET OR P.O. BOX: 541 North Fairbanks Court, Suite 1890

CITY: Chicago STATE: IL ZIP CODE: 60611

ATT : PHONE: 312-645-0722

E-Mail Fax #

REMITTANCE ADDRESS IF DIFFERENT FROM ABOVE:

NAME:

ADDRESS:

CITY, ST, ZIP:

FEDERAL ID 82-0565492

OR

SOCIAL

TYPE OF ORGANIZATION

CORPORATION	(100):	✔
PARTNERSHIP	(200):	
INDIVIDUAL	(300):	
EMPLOYEE	(400):	
PENSION	(500):	
NON-PROFIT	(600):	

PURCHASING OFFICE USE ONLY

NEW VENDOR: ENTERED BY:

VENDOR CHANGES: DATE:

VENDOR RE-ENTRY: G. L. FILE:

W-9 FORM MAILED: INVENTORY FILE:

STAFF REVIEW FORM - FINANCIAL OBLIGATION

x AGENDA REQUEST
CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council Meeting of: January 20, 2004

FROM:

Matt Casey	Engineering	Community Planning & Engineering
Name	Division	Department

ACTION REQUIRED: Approval of a cost-share and bid waiver in the amount of $25,512.00 with a contingency of $3,826.00 with WIV-Fayetteville, LLC. for the construction of approximately 350' of 8" water main.

COST TO CITY:

$29,338.00	$ 150,000.00	Water & Sewer Cost Sharing
Cost of this request	Category/Project Budget	Program Category / Project Name
5400.5600.5808.00	$ -	Water & Sewer Improvements
Account Number	Funds Used to Date	Program / Project Category Name
02067	$ 150,000.00	Water & Sewer Fund
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item ____ Budget Adjustment Attached

Budget Manager — Date: 12-29-03

CONTRACT/GRANT/LEASE REVIEW:

Marsha Farthing — Accounting Manager — Date: 12/29/03
Internal Auditor — Date: 12/29/03
City Attorney — Date: 12/30/03
Purchasing Manager — Date: 12/31/03

STAFF RECOMMENDATION: Staff recommends approval of the cost share and bid waiver.

Division Head — Date
Department Director — Date: 12-29-03
Finance & Internal Services Dir. — Date: 12-31-03
Hugh Earnest — Chief Administrative Officer — Date: 01-01-04
Dan Coody — Mayor — Date: 1/2/04

Received in Mayor's Office — Date

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

New Item: Yes No

ENTERED 12-29-03

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: Mayor and City Council

From: Hugh Earnest, Chief Administrative Officer HE

Date: January 8, 2004

Subject: Sale of Conservation Easement on Mt. Sequoyah

Recommendation
The resolution as attached to this memo be approved by the City Council

Background
Resolution No. 46-03 approved on April 1, 2003 by the Fayetteville City Council contained language inviting the purchase of the city development rights to this property by the Natural Heritage Committee for subsequent conveyance to the Ozark Land Trust.

Current Situation
Since the passage of Resolution 46-03, it has become apparent that a further reaffirmation of the City's intent to sell its development rights in the form of a single conservation easement to the Fayetteville Natural Heritage Committee is necessary. Such an action will be of benefit to the Committee in their continuing effort to raise the monies for their portion of the sale price. It is the Committee's belief that the sale of a single conservation easement protecting the integrity of the property from inappropriate development will be of benefit to their efforts. The purchase of these development rights effectively limits the City to certain specific activities related to perimeter parking, walking trails, benches and pavilions for use of the public when enjoying this wooded hillside.

In addition, the Council has made it very clear both in their actions and numerous comments that the preservation of this parcel in its current state is a high priority. The Council's commitment of monies for this purchase, coupled with the continuing efforts of the Fayetteville Natural Heritage Committee in raising monies toward their pledge is an excellent example of public private cooperation. To date, the Committee has raised $35,000 toward their pledge.

Tabled 1/20/04

RESOLUTION NO. ______

A RESOLUTION TO APPROVE THE SALE OF A CONSERVATION EASEMENT TO THE FAYETTEVILLE NATURAL HERITAGE COMMITTEE ON THE 67 ACRES OF MOUNT SEQUOYAH WOODS PURCHASED BY THE CITY OF FAYETTEVILLE PURSUANT TO RESOLUTION NO. 46-03 (HEREINAFTER MOUNT SEQUOYAH WOODS)

WHEREAS, the City Council of the City of Fayetteville, Arkansas had invited the Fayetteville Natural Heritage Committee to purchase its development rights to Mount Sequoyah Woods in Resolution No. 46-03 passed unanimously by the Fayetteville City Council on April 1, 2003; and

WHEREAS, the Fayetteville Natural Heritage Committee has worked diligently and continues to strive to raise contributions to purchase this conservation easement to protect Mount Sequoyah Woods for all residents of Fayetteville; and

WHEREAS, the Fayetteville Natural Heritage Committee has already paid to the City tens of thousands of dollars toward the purchase of this conservation easement.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby reaffirms its commitment to sell its development rights (except as necessary to build amenities for Mount Sequoyah Woods such as perimeter parking, walking trails, benches, pavilions, etc. for the use of the public when enjoying this wooded hillside) to the Fayetteville Natural Heritage Committee for a conservation easement to protect Mount Sequoyah Woods.

PASSED and **APPROVED** this the 16th day of December, 2003.

APPROVED:

DRAFT

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
SONDRA SMITH, City Clerk

RESOLUTION NO. ______

A RESOLUTION TO REAFFIRM ITS COMMITMENT TO SELL MOST OF ITS DEVELOPMENT RIGHTS TO THE FAYETTEVILLE NATURAL HERITAGE COMMITTEE ON THE 67 ACRES OF MOUNT SEQUOYAH WOODS PURCHASED BY THE CITY OF FAYETTEVILLE PURSUANT TO RESOLUTION NO. 46-03

WHEREAS, the City Council of the City of Fayetteville, Arkansas had invited the Fayetteville Natural Heritage Committee to purchase its development rights to Mount Sequoyah Woods in Resolution No. 46-03 passed unanimously by the Fayetteville City Council on April 1, 2003; and

WHEREAS, the Fayetteville Natural Heritage Committee has worked diligently and continues to strive to raise contributions to purchase this conservation easement to protect Mount Sequoyah Woods for all residents of Fayetteville; and

WHEREAS, the Fayetteville Natural Heritage Committee has already paid to the City tens of thousands of dollars toward the purchase of this conservation easement.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby reaffirms its commitment to sell most of its development rights of Mount Sequoyah Woods (except as necessary to build amenities for Mount Sequoyah Woods such as perimeter parking, walking trails, benches, pavilions, etc. for the use of the public when enjoying this wooded hillside) to the Fayetteville Natural Heritage Committee for a conservation easement to protect Mount Sequoyah Woods.

PASSED and **APPROVED** this the 20th day of January, 2004.

APPROVED:

DRAFT

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
SONDRA SMITH, City Clerk

City Council Meeting of February 3, 2004

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations Gary Dumas
Connie Edmonston, Director of Parks and Recreation C.E.

From: Rebecca Ohman RO.

Date: January 13, 2004

Subject: Resolution to accept the recommendation of the Fayetteville Parks and Recreation Advisory Board to accept money in lieu of land for the Park Land Dedication Requirement of Southern View Phase II.

RECOMMENDATION

Fayetteville Parks and Recreation Advisory Board (PRAB) and Parks and Recreation Staff recommend money in lieu of land as the Park Land Dedication requirement for Southern View Phase II.

BACKGROUND

The Southern View Phase II development is located at the intersection of Old Farmington Road and Futrall Drive. The owner is Lindsay/Management Co., Inc and the engineering firm is Crafton, Tull & Associates. The development contains 102 multi-family units on 6.7 acres. The requirement for park land is 1.73 acres and money in lieu is $40,086. Ramay Junior High is located within a half-mile of this development.

The Park Land Dedication Ordinance states if a major development is over 40 acres or 100 units, the requirement is land.

> *"...However, if the Parks and Recreation Advisory Board determines that a neighborhood park is not feasible or advisable, it may recommend to the City Council that a cash contribution pursuant to our ordinance be accepted in lieu of land dedication. The City Council will either accept the recommendation for a cash contribution or return the subdivision plat to the Parks Board with instructions or further study."* (Unified Development Ordinance No. 166.03K)

Parks and Recreation Staff met with Jerry Kelso of Crafton, Tull & Associates to evaluate the site. The development was presented to the Parks and Recreation Advisory Board on January 5, 2004.

DISCUSSION

The Parks and Recreation Staff and PRAB recommend money-in-lieu of land in the amount of $40,086 for the Park Land Dedication requirement. This decision is based upon the developer's plan to provide green space and park amenities such as sidewalks and gazebo within the development. The money-in-lieu contribution will be used for park improvements in the southwest park district. If you have any questions, please call me at 444-3472.

Attachments;

Southern View Phase II Concept Plan
Location Map
PRAB January 5, 2004 Meeting Minutes

RESOLUTION NO. ______

A RESOLUTION ACCEPTING THE PARKS AND RECREATION ADVISORY BOARD'S RECOMMENDATION TO ACCEPT $40,086.00 CASH IN LIEU OF THE REQUIRED PARK LAND DEDICATION FOR SOUTHERN VIEW PHASE II.

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 accepts the Parks and Recreation Advisory Board's recommendation to accept $40,086.00 cash in lieu of the required Park Land Dedication for Southern View Phase II.

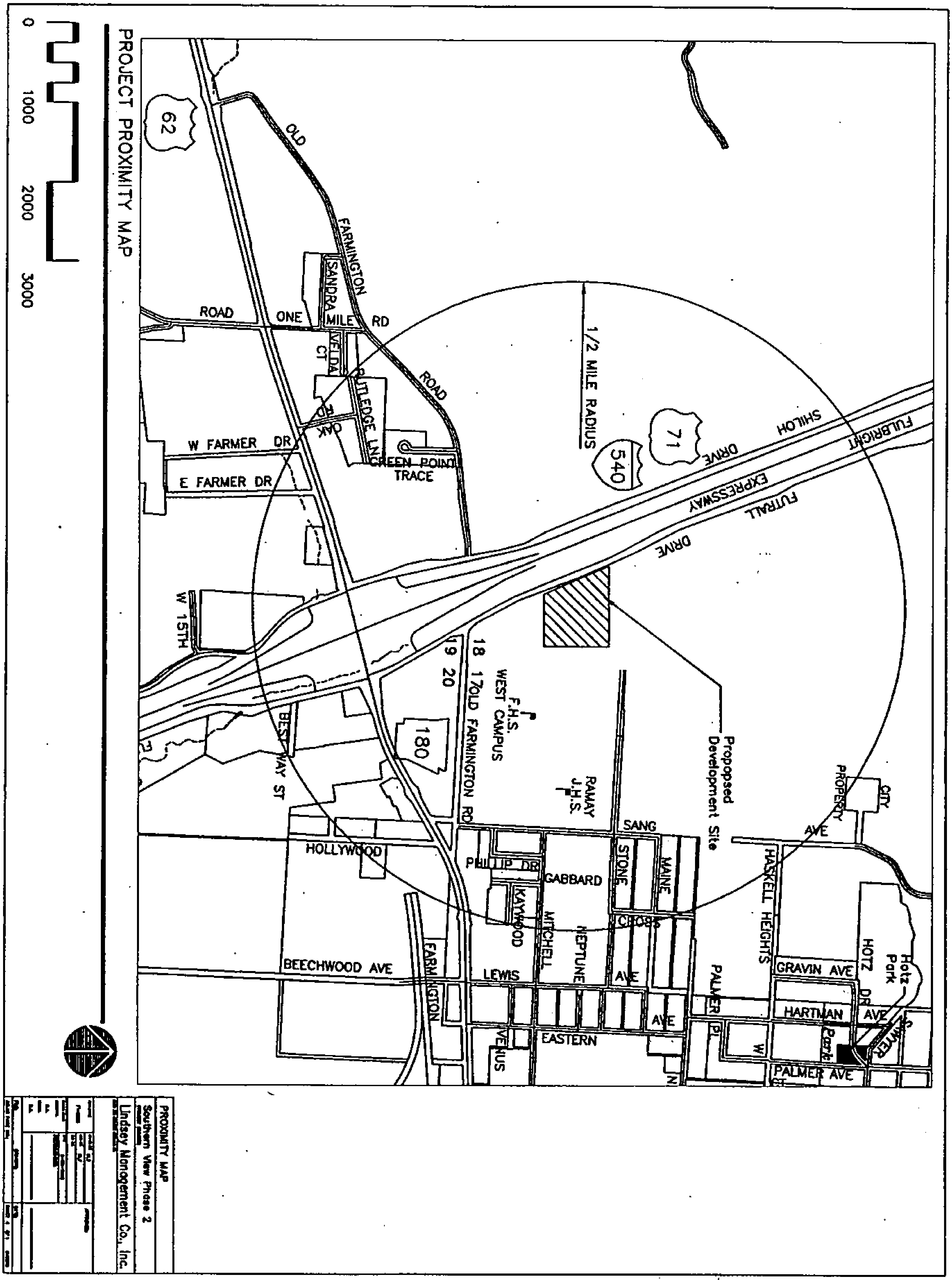
PASSED and **APPROVED** this 3rd day of February, 2004.

APPROVED:

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
SONDRA SMITH, City Clerk


PROJECT PROXIMITY MAP
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1/2 MILE RADIUS
Proposed Development Site
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540
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OLD FARMINGTON ROAD
ROAD ONE MILE RD
SANDRA
VELDA CT
RUTLEDGE LN
OAK RD
GREEN POINT TRACE
W FARMER DR
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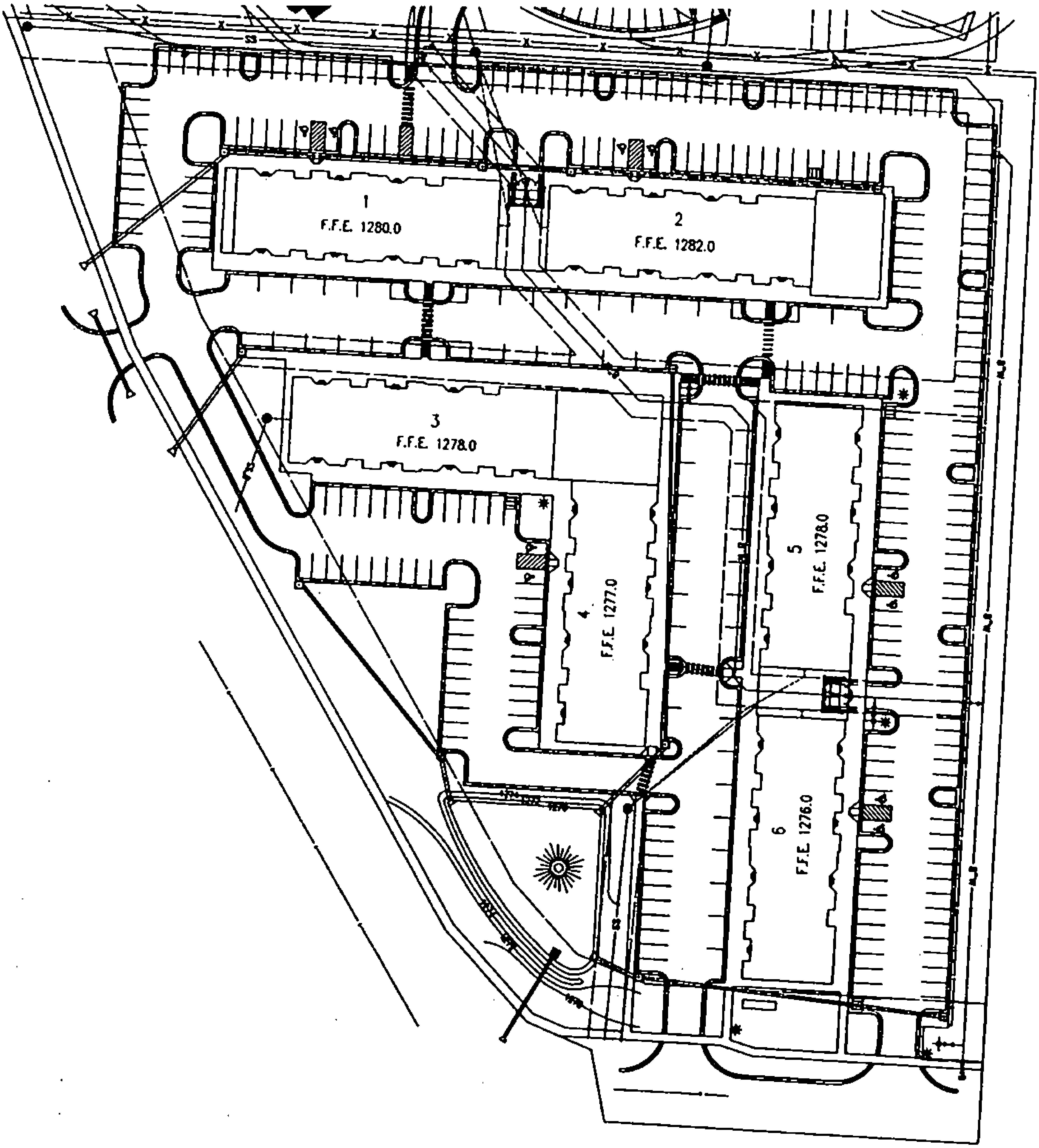
W 15TH
SHILOH DRIVE
FULBRIGHT EXPRESSWAY
FUTRALL DRIVE
F.H.S. WEST CAMPUS
RAMAY J.H.S.
OLD FARMINGTON RD
BEST WAY ST
CITY PROPERTY
SANG AVE
HOLLYWOOD
PHILLIP DR
GABBARD
STONE
MAINE
HASKELL HEIGHTS
KAYWOOD
MITCHELL
NEPTUNE
CROSS
BEECHWOOD AVE
FARMINGTON
LEWIS AVE
GRAVIN AVE
HOTZ DR
Hotz Park
PALMER PL
HARTMAN AVE
SAWYER
EASTERN AVE
VENUS
PALMER AVE
PROXIMITY MAP
Southern View Phase 2
Lindsey Management Co., Inc.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STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

______ AGENDA REQUEST

For the Fayetteville City Council Meeting of: February 3, 2004

FROM:

Rebecca Ohman	Parks and Recreation	Public Works
Name	Division	Department

ACTION REQUIRED: Resolution to accept the recommendation of the Fayetteville Parks and Recreation Advisory Borad to accept money in lieu of land for the Park Land Dedication Requirement of Southern View Phase II.

SUMMARY EXPLANATION: See attached.

STAFF RECOMMENDATION:

Connie Edmonston 1-13-04
Division Head Date

Received in Mayor's Office 1/15/04 Date P.H.

1/14/04
City Attorney Date

1-14-04
Department Director Date

<u>Cross Reference:</u>

1-15-04
Finance & Internal Services Dir. Date

Previous Ord/Res#: ______

Hugh Earnest 1-16-04
Chief Administrative Officer Date

Orig. Contract Date: ______

Dan Coody 1/16/04
Mayor Date

Orig. Contract Number: ______

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

ENTERED 1-14-04

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Dan Coody and Fayetteville City Council

THRU: Hugh Earnest, Chief Administrative Officer
Stephen Davis, Finance & Internal Services Director

FROM: Kevin Springer, Budget Manager

DATE: January 14, 2004

SUBJECT: **2003 Re-authorization Request**

Recommendation

Because of the need for project continuation, staff recommends approval of the re-authorization request at the February 3, 2004 City Council meeting. In addition, staff is recommending approval of any changes to this request that may arise due to finalizing the 2003 year end. Any administrative changes will not increase the use of fund balance for 2003 and 2004.

City Council is requested to amend the 2004 Adopted Budget by re-authorizing $58,605,226 for on-going capital improvements and increased worker's compensation insurance premium and utility costs in General Fund.

Background

At the close of each budget year, City Staff routinely requests re-authorization of on-going capital projects and re-authorization of some operational funding that was not committed during the prior budget year.

Discussion

This request retains project funding for identified and scheduled capital improvements for the current fiscal year. Currently, all uncommitted capital projects are placed on hold until City Council can re-authorize the unexpended funds into 2004.

For 2003, no operational funds were included in this re-authorization proposal except for Workers Compensation premium and increased utility costs in Parks to move forward into 2004. This is a change in policy for 2004. The additional funding is requested for the Workers Compensation insurance premium in the amount of $63,515. This increased cost is due to Police & Fire personnel premium and pay-rate changes approved for 2003. Additional funding in the amount of $25,000 is requested for increased utility costs for the Gary Hampton Softball Complex. This increased cost is due to a miscalculation made by Ozarks Electric in the metering of the electrical usage for the park. This change in rate was brought to the City's attention during the last part of December 2003. In addition, $10,000 is being requested in the Downtown Master Plan Study for project related expenses such as public notification, room rentals, transportation, etc.

Please find attached a schedule of capital projects by Improvement Type which were included in the 2003 Budget but did not incur a financial obligation during the 2003 fiscal year. The 2003 estimated unreserved fund balance/retained earnings for the respective funds reflect the cost of the requested re-budgets. Therefore approval for these items, to be made part of the 2004 authorization, **will not impact** the City's budgeted financial position.

The re-authorization of prior year's appropriated projects and items is a normal operating procedure and is generally for one-time expenses. Approval of this request will allow the 2004 Budget to be increased to reflect the attached information. Several of the requested re-authorizations include revenue offset in the form of grant revenues.

In General Fund, after 2003 financial activity and the current re-authorization request; an additional $6,636,816 will be added to the General Fund balance. The final amount is subject to change with any year end payments and audit changes. An updated General Fund schedule has been attached with this memo. The additional funds going back to General Fund is due to the following items:

Additional Revenue & Transfers	$ 665,510
Sale of Wilson Springs	5,177,115
Cost Savings:	892,706
Re-authorization Requests:	
Worker's Compensation Insurance	(63,515)
Downtown Master Plan Study (Capital Project)	(10,000)
Gary Hampton Utility Expense	(25,000)
	$ 6,636,816

Total requested re-budgets for all funds are $58,605,226 as reflected in the following worksheet. These amounts will require City Council action. For your information, a summary by Improvement Type is included in the table below.

Previous Project Authorizations		2004 Re-Budgets
Airport Improvements	$	919,595
Bridge & Drainage Improvements		1,403,611
Fire Improvements		1,177,407
Information Technology Improvements		214,812
Library Improvements		2,321,012
Other Capital Improvements		1,294,184
Parks & Recreation Improvements		2,056,694
Police Improvements		208,496
Solid Waste Improvements		312,136
Street Improvements		2,165,373
Transportation Improvements		925,486
Vehicles & Equipment Improvements		1,934,278
Wastewater Treatment Improvements		34,660,102
Water & Sewer Improvements		8,675,113
Water & Sewer Services Improvements		248,412
Non-Capital Project Items		88,515
	$	58,605,226

Of the $58,605,226 being asked to be re-authorized, $632,350 is being added to capital projects that came from budget savings in other capital projects. The projects being increased are:

Project Title	Project Transferred From	2004 Budget
Fire Station #7 - Escrow Funds	$5,664 transferred from project #03003 Exhaust Removal Systems and $387,000 was transferred from the Sales Tax Use of Fund Balance.	$ 392,664
Fire Facility Maintenance	$72,555 was transferred from Emergency Gas Generators capital project.	72,555
Downtown Master Plan Study	$10,000 was transferred from the General Fund Use of Fund Balance due to 2003 savings.	10,000
Park Beautifications	$26,048 was transferred from the Lights of the Ozarks captial project.	26,048
White River Baseball Complex Improvement	Transfer projects #01017 Lewis/Asbell Athletic, $9,503; #02014 Other Park & Safety Improvements, $24,300; and #01006 Lake Fayetteville Softball Complex, $33,020, to this project to fund the cost of the White River Baseball Complex lights.	66,823
Gordon Long/Red Oak Improvements	$8,632 transferred from project #00007 Red Oak Park Development.	8,632
Playground & Picnic Improvements	Additional funds of $10,937 from project #02122 is transferred to assist with this project.	10,937
Fleet - Back Hoe/Loaders	Additional funds of $1,970 from the Fire Vehicles & Equipment capital project.	1,970
Fleet - Other Vehicles/Equipment	Additional funds of $12,242 from the Fire Vehicles & Equipment capital project.	12,242
Fire Station #7 Construction - W/S Improvements	$30,479 transferred from project #01013 Fayetteville Boys & Girls Club Sewer Improvements.	30,479
		$ 632,350

Below is a table that shows the past history of re-appropriations for the last five years. Not including major projects such as the New Library and Wastewater Treatment Plant Construction, this request is approximately $3,157,000 lower than in 2002.

	1999	2000	2001	2002	2003
Operational	$ 306,278	$ 732,572	$ 2,100,384	$ 908,919	$ 88,515
Capital	17,316,484	20,016,277	20,196,507	23,967,361	21,624,715
New Library Project	-	-	-	1,872,626	2,316,012
Wastewater Project	-	-	-	13,200,000	34,575,984
Total	$ 17,622,762	$ 20,748,849	$ 22,296,891	$ 39,948,906	$ 58,605,226

Budget Impact & Closing

All of the funds requested in this re-authorization come from unexpended funds. They do not increase the use of reserves over what was approved in the 2004 Annual Budget. This request just simply retains project funding for identified and scheduled capital improvements for the current fiscal year.

If you have any questions concerning the attachment or the procedure, please feel free to contact either Kevin Springer (575-8226) or Stephen Davis (575-8330) Thank you for your attention to this request.

RESOLUTION NO. ______

A RESOLUTION APPROVING A BUDGET ADJUSTMENT TO REAPPROPRIATE $58,605,226.00 IN ORDER TO RETAIN PROJECT FUNDING FOR IDENTIFIED AND SCHEDULED CAPITAL IMPROVEMENTS AND FUND INCREASED WORKERS COMPENSATION PREMIUMS.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment to re-appropriate $58,605,226.00 in order to retain project funding for identified and scheduled Capital Improvements and fund increased workers compensation premiums.

PASSED and **APPROVED** this 3rd day of February, 200[illegible].

APPROVED:

____
DAN COODY, Mayor

ATTEST:

By: ______________________________
SONDRA SMITH, City Clerk

City of Fayetteville, Arkansas
General Fund

Fund - 1010

	Budgeted 2003	*Subject to Audit* Actual 2003	Budgeted 2004
Beginning Fund Balance	$ 8,694,491	$ 8,694,491	$ 12,746,473
Resources			
Revenues:			
Sales Tax - County	8,857,000	9,058,131	9,005,000
Alcoholic Beverage Taxes	290,000	327,409	335,000
Franchise Fees	3,619,900	3,466,315	3,478,000
Licenses & Permits	969,000	1,224,255	1,014,000
Intergovernmental	1,450,062	1,787,078	1,758,000
Charges for Services	1,095,700	1,116,140	1,130,100
Fines & Forfeitures	1,405,000	1,194,055	1,440,000
Investment Earnings	214,000	274,010	220,000
Other	608,730	619,202	134,000
Sale of Wilson Springs	0	5,177,115	
Total Revenue	18,509,392	24,243,709	18,514,100
Operating Transfers In:			
Off Street Parking	43,000	28,646	44,000
Water & Sewer		105,000	
Sales Tax - City	4,557,000	4,557,000	6,568,000
Total Transfers In	4,600,000	4,690,646	6,612,000
Total Resources	23,109,392	28,934,354	25,126,100
Uses			
Expenditures:			
General Government	4,839,944	4,212,264	4,664,211
Cost Reimbursements	(2,235,786)	(2,219,411)	(1,856,500)
Community Planning & Engineering Services	2,433,342	2,319,125	2,311,379
Operations	2,601,161	2,461,381	2,215,422
Finance & Internal Services	3,078,942	3,012,458	3,164,994
Police	9,173,707	9,165,951	9,303,783
Fire	5,474,130	5,471,266	5,584,739
Total Expenditures	25,365,440	24,423,034	25,388,028
Operating Transfers Out:			
Arts Center Bond Fund	407,115	405,484	405,735
Drug Law Enforcement Fund	69,886	53,854	85,000
Total Operating Transfers Out	477,001	459,338	490,735
Total Uses	25,842,441	24,882,372	25,878,763
Net Resources (Uses)	(2,733,049)	4,051,982	(752,663)
Ending Fund Balance	$ 5,961,442	$ 12,746,473	$ 11,993,810

City of Fayetteville, Arkansas
2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
Airport Improvements:						
02039	East Taxiway & Hangar Apron Ext	This project marries taxiway extension design with USDA Forest Service fire fighting tanker base facility and ramp expansion design (AIP Grant #30). FAA funding of $1.3 M is approved for construction funding.	This project is for design, engineering, and construction oversight only. The design work is complete. Construction of the project was awarded to APAC of Arkansas and construction is underway (See Proj # 03012). Estimated completion date July 1, 2004.	63,331	(82,606)	(19,275)
03011	East Corporate Hangars 60' x 60'	Will provide for small corporate-style hangars suitable for twin-engine turboprop aircraft. Will diversify and enhance the airport's facilities for support of General Aviation in the region.	Awaiting design completion. Project construction is delayed until mid-year 2004 due to the availability of State grant funds for the project.	383,800	-	383,800
03012	Taxiway A Extension Phase I	Will provide the infrastructure needed for the USDA Forest Service Fire Fighting Base installation. Will also provide the Phase I infrastructure for additional industrial/aviation development expansion on the east-side of the airfield.	Project awarded to APAC of Arkansas. Should be completed by May 1, 2004.	1,315,207	(1,119,755)	195,452
03013	10 Bay T-Hangars	Ten unit T-hangar building	Delayed until 2004 due to budget limitations.	350,000	-	350,000
03014	East Side Fuel Station	Provides self-serve 100LL aviation fuel for T-hangar tenants and itinerant small aircraft.	Contract for construction awarded to Cruzen Equipment Co. A 50/50 grant from the Arkansas Department of Aeronautics was awarded at their November commission meeting. The project will begin in 2003 and is estimated to be completed by February 1, 2004.	2,006	-	2,006
03042	Asphalt Pavement Repairing	This project is to repair different asphalt areas around Drake Field.	The project is currently underway and has been sent out for bid.	7,612	-	7,612
				2,121,956	(1,202,361)	919,595

City of Fayetteville, Arkansas

2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
Bridge & Drainage Improvements						
02023	Holly & Vista Dr Drainage Improvements	Study and engineering design to alleviate localized flooding in the Upper Hamestring Basin (Asbell area and Sang/Berry area).	Study should be completed by November 2003 with construction completed as early as August 2004.	393,596	-	393,596
02054	Shenandoah Drainage Improvements	Study and design to alleviate localized flooding in the Shenandoah Trailer Park area.	Study should be completed by November 2003 with construction completed as early as August 2004.	209,081	-	209,081
02097	Drainage Study/Master Plan	Master drainage study/plan and Federally-mandated EPA Stormwater Phase II compliance.	On going project. Drainage studies are performed as needed, EPA Phase II stormwater permit is a five-year process.	457,934	-	457,934
03005	AHTD Bridge Cost Sharing Program	AHTD bridge replacement program. The City's share is 20%. The Garland Avenue bridge at Town Branch was selected by the Street Committee.	AHTD is about to begin the initial surveying and environmental work. They estimate the design could be complete by second quarter of 2005 and construction could be complete by the second quarter of 2006.	343,000	-	343,000
				1,403,611	-	1,403,611
Fire Improvements						
01015	Fire Station #7 - Escrow Funds	This facility is required to provide fire, EMS and rescue protection to a growing area of the community.	The project has gone to large scale development. Construction is scheduled to begin in February 2004. **$5,664 transferred from project #03003 Exhaust Removal Systems and $387,000 was transferred from the Sales Tax Use of Fund Balance.**	1,103,963	-	1,103,963
02006	Fire Facility Maintenance	These improvements will help in reducing the overall utility costs for fire facilities.	Available funds will be utilized to make needed improvements to the central fire station. **$72,555 was transferred from project #03002 Emergency Gas Generators.**	73,444	-	73,444
				1,177,407	-	1,177,407

City of Fayetteville, Arkansas

2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
Information Technology Improvements						
00022	Software Upgrades - City Wide	This project provides for standardization of desktop software applications and related training across all City divisions. Additionally, this project helps ensure that all desktop software is current and legal.	Additional licenses for Microsoft Office XP, Crystal Reports, and Adobe will be needed in 2004.	18,168	-	18,168
02055	Geographic Information System	Build and maintain the City's Geographic Information System.	2003 projects complete include: GIS workstations upgrades, GIS server replacement, Storage Area Network, and GIS connectivity upgrades.	17,649	-	17,649
02057	Microcomputer Replacements	To keep user PC hardware up with standards.	46 New PCs have been installed to-date. These funds are needed to continue this on-going project.	10,308	-	10,308
02060	Printer Replacements	This is an ongoing project to purchase system and network printers. Several system and network printers have exceeded their expected life. These printers are essential for daily operations. This project ensures that replacement printers can be purchased when needed.	Two AS/400 system printers and five network printers were replaced. Additional network and system printers are scheduled for 2004.	11,903	-	11,903
02094	Document Imaging System	This project is for a document management system to provide digital storage and retrieval of the City's official documents. Currently, the City's documents are stored on film, which has a single point for access and retrieval. The document management system will provide management of the City's documents and multiple access points for input and retrieval including lookup and view access for citizens from the City's web site.	RFP projected to go out in early 2004.	88,188	-	88,188

City of Fayetteville, Arkansas

2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
99021	Municipal Management System	This project provided a single vendor solution of a Municipal Management System. The system provides management solutions for the City's infrastructure, such as streets, water & sewer lines, vehicles, buildings, etc., and solutions for managing the City's customer/citizen requests, building inspections, and planning processes.	The modules implemented for 2002 include: customer service, Code Enforcement, Inspections and permitting, and Planning applications. Various asset modules have come online throughout this period. Asset completions and work order implementations are scheduled for January 2004. Conversions and interfaces with Washington County data and Financial Inventory data are also scheduled for 2004.	68,596	-	68,596
				214,812	-	214,812
Library Improvements						
02048	Library HVAC Replacement & Improvement	This is an on-going project to replace HVAC units or parts in the current building as needed.	On going, will need to carry over to 2004.	5,000	-	5,000
99073	New Main Library Building	This project funds approximately 80% of the new 88,000 square foot main library and 212 car parking garage at 401 W. Mountain. The remainder is funded with private donations.	This will be carried over to 2004. Some of the remaining items will be paid directly with private funds.	2,316,012	-	2,316,012
				2,321,012	-	2,321,012
Other Capital Improvements						
02008	Shelter Quarantine Upgrade	New ventilation system needed for the quarantine and puppy area of the shelter. The system will assist with disease prevention.	Project has not been completed or assigned.	24,250	-	24,250
02009	Automated Field Inspection System	Replace Automated Field Inspection System that was not Y2K compliant with cellular phones programmed with MobilEHWY software. There are three components to this system: software from MobilEHWY; cellular phones; and portable printers.	Will be presenting to City Council first quarter of 2004.	96,700	-	96,700
02046	Building Improvements	Repair and maintain roofs, HVAC, plumbing, and other systems.	This project is for funding major preventive maintenance, and to address the issues of the day-to-day facility operation. This work will be on going through the year.	359,295	-	359,295

City of Fayetteville, Arkansas
2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
02061	P.E.G. Television Center - Equipment	Replace equipment up to 11 years old and add expansion of equipment; add two editing systems, editing room construction, field cameras, studio cameras, cable casting equipment, character generation equipment, lighting system, VCR replacement, DVD equipment, monitors, and computers.	This is an on going project. At the present funding rate, worn equipment replacement uses most of the yearly funding with some upgrading possible. Most of the room remodeling was completed in the third quarter. Two new editing systems, a cable casting system upgrade, new message board systems, monitor and camera replacements and possibly a lighting system upgrade will utilize the remaining funds for 2003. This phase should be completed in late 2003 or early 2004. With further funding in 2004, more needed camera and monitor replacements can be made.	55,082	-	55,082
02121	Wash Bay & Covered Storage Improvements	Installation of an additional drive-thru wash bay and a storage shed at Fleet Operations.	Preparing specifications for bid of wash service and equipment. Completion expected in the first quarter of 2004.	38,416	-	38,416
03024	Downtown Master Plan Study	This project will contract with a consultant to complete a downtown master plan. This project includes an Urban Design and Land Use Analysis, Market Analysis, Parking Management Strategy and Transportation Analysis, Public Participation Charrettes, Draft Design Standards and Zoning Text and Map Amendments, Implementation Strategy, and a Master Plan Report.	Additional funds are requested to pay for project related expenses such as public notification, room rentals, transportation, etc.	10,000	-	10,000
03036	Copier Purchase Replacements	This project purchases several copier replacements for use in City divisions.	Most of the copiers have been delivered and a project in 2004 is planned to purchase additional copiers.	10,441	-	10,441
95075	Research & High Tech Park	Business park development.	Summer 2004. $700,000 to be paid to developer from grant for infrastructure.	700,000	-	700,000
				1,294,184	-	1,294,184

City of Fayetteville, Arkansas

2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
Parks & Recreation Improvements						
00005	Tennis/Basketball Surface Renovation	Walker Park Courts will be renovated due to old cracking surface creating a safety hazard for play. Wilson Park Basketball Court will be renovated to conclude this project.	Working with McClelland Engineers on design and bid documents. Expect the bid award to be presented to City Council in January/ February 2004 with project completion in the spring of 2004.	15,485	-	15,485
01012	Concession/Restroom Improvements	Heaters need to be installed at Walker ballfield to extend usage during winter months. Restrooms currently must be closed for winterization from November through February. Heaters would allow extended usage for games, tournaments, and Grinders Skate Park and BMX Track users.	Project to be completed during the third quarter of 2004.	3,626	-	3,626
02001	Lights of the Ozarks	Lights of the Ozarks display. In the 2003 budget, labor is included in the personnel costs and equipment costs are reflected in the fleet operations.	Remaining funds of $26,048 to be transferred to project #02003 Park Beautification for the Walker Park Entry Sign and landscaping.	20,000	-	20,000
02002	Community Park Development	Purchase and develop a multi-purpose Community Park that has at least 150 acres according to the Parks and Recreation Master Plan.	Cummings property has been selected by the Parks and Recreation Advisory Board to purchase for the new Community Park site. An environmental study work plan has been submitted to ADEQ for approval.	194,300	-	194,300
02003	Park Beautifications	Additional flowerbeds were requested at several of the Parks and Recreation Master Plan public meetings. Flowerbeds/entry features will be installed at Walker and Gulley Parks.	Walker Park Entry Feature Design to be completed in February 2004. Expected City Council Bid Award March 2004 and project complete in the third quarter of 2004. There are not enough funds for the Gulley Park flowerbed project. **Remaining funds of $26,048 from project #02001 Lights of the Ozarks are transferred to this project for the Walker Park Entry Feature.**	98,130	-	98,130

City of Fayetteville, Arkansas
2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
02004	White River Baseball Complex Improvement	Replace ball field lights on two fields at White River Baseball Complex.	Bid came in too high twice. Bids are being revised and will be rebid in January 2004. **Transfer projects #01017 Lewis/Asbell Athletic, $9,503; #02014 Other Park & Safety Improvements, $24,300; and #01008 Lake Fayetteville Softball Complex, $33,020, to this project to fund the cost of the White River Baseball Complex lights.**	207,395	-	207,395
02013	Neighborhood Park Development	The Gregory Park sidewalk will be continued to the playground area in order to provide ADA accessibility. With the funds remaining, picnic tables, grills, and benches will be purchased and installed. An additional $10,000 is funded in 2003 CIP Sales Tax for Gregory Park parking lot and access. The parking lot is currently a gravel lot and needs to be in compliance with City codes. Bayyari Park playground and ADA accessible sidewalk was carried forward from 2002 to be completed in 2003.	Bayyari Park project is complete. Gregory Park project is canceled at this point pending on the need for the land by the U.S. Department of Veterans Affairs for a possible expansion of the Army Reserve Center. Remaining funds will be used for the development of Braden Park.	16,642	-	16,642
02014	Other Park & Safety Improvements	Annual funding for the urban forestry program tree contract services. ADA improvements to include, Walker Park sidewalks and ramps, Wilson Park bridge on east side of park, Veterans Memorial playground access, and a softball scoreboard.	Projects completed include tree contract services, Walker Park ADA sidewalks, Veterans Memorial ADA sidewalks, and softball scoreboard purchase. **$24,300 is transferred to project #02004 for the White River Baseball lighting project.** Remaining funds of $9,536 to be used for the Wilson Park bridge project.	9,536	-	9,536

City of Fayetteville, Arkansas
2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
02015	Gordon Long/Red Oak Improvements	Trail and drainage improvements are needed at Red Oak and Gordon Long Parks. Water runoff from adjoining subdivisions discharges into the lower valley of Red Oak Park creating an erosion problem for the park trail, tree root erosion, and various park amenities. Gordon Long Park has two low water bridges that need to be renovated. This project will improve the safety and usability of the bridges over Skull Creek. The trail at Gordon Long needs improvements since it is built on a steep hillside.	Gordon Long bridge project to be determined once Drake Road extension plans are identified. The extension of the road may divide the park. Red Oak Park pending on detailed survey. **$8,632 transferred from project #00007 Red Oak Park Development for to this project for the nature trail at Red Oak Park.**	163,632	-	163,632
02016	Trail Development	Funding is needed to develop trails according to the approved Fayetteville Alternative Transportation and Trails Master Plan.	Center Prairie Trail bid award is expected in January 2004 with project completion in June 2004. Project #01018 Park Trail Development is transferred to this project, in the amount of $176,570, to have the trail projects in one project.	764,490	-	764,490
02027	Playground & Picnic Improvements	Replace old equipment such as Sweetbriar Park playground and Wilson Park merry-go-round.	Wilson Park merry-go-round replacement is moved forward to 2004. Additional funds of $10,937 from project #02122 is transferred to assist with this project. Sweetbriar Park is cancelled due to lack of funding and higher priority projects. Project bid deadline is December 17, 2003.	20,546	-	20,546
02043	Lake Fayetteville/Sequoyah Imprs	To build a pedestrian bridge over the spillway at Lake Fayetteville. Lake Sequoyah boat docks are to be evaluated for replacement/renovation. Park Land Dedication Funds from the NE Park District were approved for $300,000 for the Lake Fayetteville Spillway Bridge project.	Grant award determination to be made by AR Parks and Tourism Outdoor Grants Program in December 2003. City Council Bid Award on February 17, 2003 with project completion July 2004.	359,216	(91,970)	267,246

City of Fayetteville, Arkansas

2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
02045	Forestry Program	Funds to be used for Arbor Day tree give-away, tree inventory, Neighborwoods program, and grants. Chipper and Box truck are currently being evaluated for the urban forestry program.	222 Neighborwoods trees were purchased and delivered to neighborhoods on October 18, 2003. Chipper and Box Truck with Aerial Boom request to Fleet Division for purchase in 2003. Received $20,000 grant from Urban Forestry for the chipper.	73,620	-	73,620
03022	Lake Fayetteville Trails	Funding is to match the existing grants for signage and trail improvements on the Lake Fayetteville Trail.	Signage Bid Award expected to go to City Council on January 6, 2004 with project completion in May 2004. The 2002 and 2003 grants are waiting for change in scope approval from the AR Highway and Transportation Division - Recreational Trails. Bid award and completion date pending upon state approval.	144,393	(71,247)	73,146
03028	West Mud Creek Trail Expansion	Construct West Mud Creek Trail from Steele Boulevard to Front Street along Mud Creek.	West Mud Creek Complete by February 2004.	212,918	(212,918)	-
03029	Walker Park Trails	Develop a trail around Walker Park and Walker Park Senior Center.	Bids have been awarded to apac-Arkansas, Inc. in the amount of $183,787. Construction started October 29, 2003 and is scheduled to be completed in March 2004.	13,645	-	13,645
03040	Wilson Pool Improvements	Repair the inner edge of the Wilson Park Swimming Pool circumference.	Bid deadline is December 29, 2003.	30,000	-	30,000
96092	Walker Park Senior Complex	Funding for the Walker Park Senior Center Complex. These funds were committed by PRAB and City Council.	Certain issues associated with the project remain salient. These issues (extraneous to the construction contract) are to be addressed in 2004.	61,676	-	61,676
99081	Fayetteville Multi Use Trail	Multi Use Trail along Mud Creek from North College to Van Asche.	Substantial completion will be January 2004 and final completion will be February 2004.	41,303	(17,724)	23,579
				2,450,553	(393,859)	2,056,694

City of Fayetteville, Arkansas
2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
Police Improvements						
02047	Police Building Improvements	This project includes the following: completion of the freight elevator repair; the construction of a new office for the Operations Captain; the addition of electrical service residing on the emergency generator; and the improvement of the flooring. The floor tiles have become loose, cracked and uneven causing unsafe conditions.	This is an on going budget. The Police Department has completed the elevator repair; the new office construction and the floors have been refinished. The tiles were not replaced because of the probability of moving to a new facility. The next item to be funded is replacement of the front doors and the locks through-out the building. This should be completed in January 2004.	119,838	-	119,838
03004	Public Safety Computer System Replacement	This project has several elements. It includes upgrade to the iSeries AS400 storage and processor; replacement of the mobile data radio frequency backbone and the laptops utilized in the vehicles; improvements to the network to meet state mandated rules for access to the Arkansas Crime Information Center; and a document imaging storage.	This is an on going budget. Mobile Data radio backbone improvements project will begin this fall. Ruggedized laptops have been received and installed. The wireless access point for uploading information from the police cars is almost complete. Wiring for access to ACIC has been completed. The upgrade for storage on the iSeries AS400 will be late this year.	118,799	(30,141)	88,658
				238,637	(30,141)	208,496
Solid Waste Improvements						
02037	Collection Bins - Curbside Recycling	18 gallon plastic bins with molded lids are used for the curbside recycling program. The bins are required to have at least 50% post consumer recycled content. Lids are molded to ensure more capacity and provide protection from the weather for the recycled commodities.	The program is on going with no end date. The division purchases approximately 3,000 bins and 4,000 lids each year for the program. These containers are purchased when needed and are necessary for the continuance of the recycling program.	4,052	-	4,052
02038	Composting Site Improvements	A new concrete composting pad for processing windrows of compost complete with a drainage basin to catch any run-off water, expanding the concrete pad for the leaf and grass storage area, and new composting equipment which will better process the windrows of compost to incorporate moisture, air and frequent mixing of yardwaste materials is needed to improve operations at the site.	Improvements to the composting site are dependent upon approval of adequate funds. Current estimates for the pad improvements are $250,000. The construction of the pad will need to occur after the spring compost sale. A request to City Council will occur in April 2004.	125,670	-	125,670

City of Fayetteville, Arkansas
2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
02098	Dumpster Lease Program	Commercial dumpsters in the range of 2 to 8 cubic yards for the waste disposal needs of commercial customers. These containers are stored and distributed to customers when a service request is generated. New reconfiguration of commercial trucks, new accounts, replacements, and the commercial cardboard recycling program requires that sufficient supplies of new dumpsters be available.	The program is on going. Purchase of the containers are based on the demand by customers.	119,983	-	119,983
02112	Roll-Off Containers	Roll-off or drop box containers are used in the commercial sector and in conjunction with the neighborhood clean-ups. These containers are utilized to store, handle and transport bulky commercial waste for disposal. The implementation and expansion of neighborhood clean ups and the commercial Drop Box program requires that an adequate supply of these containers are available for use by the division.	This program is on going. Purchase of the roll-off containers are based on demand by customers.	6,894	-	6,894
03010	Commercial Cart Program	The commercial cart program provides 95 gallon refuse carts to businesses that request them. The carts replace the need for dumpsters providing a more flexible disposal system and are offered at cost to the commercial sector.	The program is on going. Purchase of the carts are based on the demand by customers. This program provides trash service to those businesses whose trash volumes are too small for regular dumpsters.	12,500	-	12,500
03016	Recycling Improvements	The division uses source separated SAC recycling trucks for the collection of materials from the curbside program. These trucks need modification of the storage bins located on the truck body. These design improvements will enable our workers to more efficiently handle and process the growing volume of recyclable materials generated through the weekly curbside service.	The improvements to the trucks is currently on hold. The modifications to the trucks were planned in anticipation of changing recycling markets for glass containers. Alternate markets would have allowed commingling of glass containers thereby allowing glass to be collected into one large bin on the trucks. Modifications to the glass program are on hold because of funding issues to build the glass pulverizing site and purchase collection vehicles and carts necessary for beginning program.	40,000	-	40,000

City of Fayetteville, Arkansas
2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
03034	Recycling Facility Conveyor Belt	The Solid Waste Division received a recycling grant from the Arkansas Department of Environmental Quality and the Tri-County Solid Waste District in the amount of $30,000 for the replacement of a Conveyor Belt leading to the recycling baler. The replacement of this belt will allow the recycling program to process the volume of recyclable materials necessary to maintain recycling program operations.	Conveyor is in the process of being constructed and will be installed in January 2004.	3,037	-	3,037
				312,136	-	312,136
Street Improvements						
00019	Hollywood St - 6th & Sang Ave Intersection	New Intersection and traffic signal for the Fayetteville Public Schools (Ramey Jr. High and the bus terminal) and for the City's Fire Station on Hollywood.	Construction should be complete by February 2004.	11,358	-	11,358
00050	Old Missouri Road Improvements	Old Missouri Road, Phase 1. Minor widening and improvements including a turn lane at Butterfield Elementary School, additional sidewalks, and raising of the roadway along Missouri Creek.	Construction should be complete by February 2004.	14,009	-	14,009
01011	Cleveland Street - Garland to Frisco	Street widening and improvements including curbs, gutters, underground drainage, and sidewalks.	Construction should be complete by early 2004.	3,074	-	3,074
02116	Street ROW / Intersection / Cost Sharing	Street ROW, intersection projects and cost shares with private developments as needed.	On going, schedule varies with projects.	251,517	-	251,517
03006	Gregg Ave - Highway 71 to Mud Creek Brdg	Street widening from two to four lanes from Futrall north to Van Asche/Mud Creek. Sidewalk to be added on the east side only. City to provide for all utility relocations. This is a Federal aid cost share project administered by AHTD. City to provide all funds over $1M.	Bid opening is October 2003 and the project should be complete by October 2004.	511,545	-	511,545
03007	Old Missouri - Rolling Hills to Old Wire	Old Missouri Road, Phase 3. Minor widening and improvements to Old Missouri Road from Rolling Hills to Old Wire Road.	Design should be complete by first quarter 2004 and construction completed as early as fourth quarter 2004.	513,000	-	513,000
03008	Old Missouri - Joyce to Mud Creek	Old Missouri Road, Phase 2. Minor widening, turn lanes, drainage and sidewalks from Mud Creek bridge north to Joyce Boulevard.	Design should be complete by first quarter of 2004 and construction completed as early as fourth quarter of 2004.	817,000	-	817,000

City of Fayetteville, Arkansas

2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
98097	Dickson Street Enhancements	Street and sidewalk improvements including infrastructure relocations and improvements, new curbs, wide sidewalks, landscape islands, brick pavers, and seating areas.	Construction should be complete December 2003.	43,870	-	43,870
Transportation Improvements				2,165,373	-	2,165,373
02041	Parking Garage(s)	City participation in Parking Improvement District plans.	This project is on hold awaiting the implementation of the Downtown Master Plan.	30,000	-	30,000
02042	Parking Lot Overlays	Overlay, crack sealing, surface sealing, and restriping of 12 downtown parking lots.	The asphalt overlay is complete for Lot 3 and crack seal and bumper removal is currently underway. Estimated 50% of project to be completed by November 2003 and the remainder of the project will be completed in the spring of 2004 as weather permits.	11,111	-	11,111
02044	M.U.T.C.D. Sign Material	Material used to make traffic control signs and street markers in-house.	Project is on going.	19,680	-	19,680
02052	In-House Pavement Improvements	13.4 miles of overlay and street improvements needed to preserve the infrastructure.	Project is on going.	319,388	-	319,388
02053	Sidewalk Improvements	Continue to provide sidewalk connectivity throughout the City.	Project is on going.	350,493	-	350,493
02085	Parking Deck Rehabilitation	Rehab on the Municipal Parking Deck located on the east side of the Radisson Hotel.	Surface cleaning portion of this project is complete and the surface/structure rehab will begin in the spring of 2004.	194,814	-	194,814
Vehicles & Equipment Improvements				925,486	-	925,486
01025	Fleet Operations Maintenance System	Upgrade work order system/parts tracking.	Evaluation of potential vendor products and specification development in process. Completion is expected for first quarter 2004.	70,659	-	70,659
02076	Fleet - Back Hoe/Loaders	Replace existing backhoes and front end loaders according to expected life cycle and replacement evaluation criteria.	Bid award recommendation of $159,524.56 scheduled for January 6, 2004 Council meeting. **Requesting budget transfer from completed project #02086**	157,555	-	157,555
02078	Fleet - Light/Medium Utility Vehicles	Replace existing light duty and medium duty trucks and utility vehicles according to expected life cycle and replacement evaluation criteria.	Bidding and State contract purchases in process. 60% will be complete by December and the remainder in the first quarter 2004.	473,460	-	473,460

City of Fayetteville, Arkansas

2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
02079	Fleet - Medium/Heavy Utility Vehicles	Replace existing heavy duty dump trucks according to expected life cycle and replacement evaluation criteria.	Completion in the first quarter of 2004.	135,835	-	135,835
02080	Fleet - Other Vehicles/Equipment	Replace existing sweepers and other specialized street and utility maintenance equipment according to expected life cycle and replacement evaluation criteria.	The bidding is in process with completion expected by December 16, 2003. **Transfer balance $12,242 from Project 02086.**	219,586	-	219,586
02081	Fleet - Police/Passenger Vehicles	Replace existing passenger and police vehicles in accordance with expected life cycle and replacement evaluation criteria.	50% complete by December 16, 2003 and the remainder in the first quarter 2004.	521,714	-	521,714
02083	Fleet - Tractor/Mower	Replace existing tractors and mowing equipment in accordance with expected life cycle and replacement evaluation criteria.	Completion expected in the first quarter of 2004.	338,556	-	338,556
02101	Fuel Storage Improvements - Replacement	Upgrades and repairs to fuel pumps and equipment.	Project is on hold while a re-evaluation of the entire fuel delivery process is conducted. Completion expected in the second quarter of 2004.	16,913	-	16,913
				1,934,278	-	1,934,278
Wastewater Treatment Improvements						
02032	W.W.T.P. Building Improvements	New roof on the old operations building.	Funds committed in 2003 and to be paid upon completion in 2004. Completion expected February 27, 2004.	20,524	-	20,524
02068	Upgrade/Replace Lift Stations - W.W.T.P.	Increase pump capacity at Hamestring Creek lift station to reduce overflow and to accommodate additional housing.	Funds committed in 2003 and to be paid upon completion in 2004. Completion expected January 31, 2004.	8,605	-	8,605
02070	Testing Equipment - W.W.T.P.	The distillation unit is needed to conduct the Ammonia Distillation study as required by EPA. The existing laboratory dishwasher is 12 years-old and needs to be replaced.	Funds committed in 2003 and to be paid upon completion in 2004. Completion expected February 27, 2004.	805	-	805
02133	Wastewater System Improvements Project	WSIP Project - Sales Tax Funded.	Completion is targeted for 2006, the design contracts were approved in July 2003 and the environmental consultant contracts in September 2003. Updated Project Schedule being developed by Program Manager.	34,575,984	-	34,575,984

City of Fayetteville, Arkansas
2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
99035	Ultraviolet Disinfection System	An enclosure or building over and around the exposed portion of the UV system to protect the equipment.	Completion expected December 31, 2004.	54,184	-	54,184
Water & Sewer Improvements				34,660,102	-	34,660,102
00018	Garland Avenue - Water/Sewer Relocations	Water and sanitary sewer relocations to accommodate the AHTD widening of Highway 112 (Garland) from Maple to North.	Final Completion is expected in early 2004.	15,000	-	15,000
01023	Mount Sequoyah W&S System Upgrade	Study and design project to replace numerous leaking and outdated water and sanitary sewer mains on Mount Sequoyah, in particular those currently under houses and outside known easements.	Study should be completed by the second quarter of 2004, the first phase design could be completed as early as the third quarter of 2004, and the first phase of construction could be completed as early as the second quarter of 2005.	1,926,438	-	1,926,438
02017	Sanitary Sewer Rehabilitation	To eliminate sewer overflows and comply with federal and state laws and codes.	This project is on going. Approximately $310,000 will be obligated in January 2004 for cured-in-place lining under an existing term contract. Roughly $2.0 million will be obligated in January for dig-and-replace construction in Illinois Basins 1-5, 1 and 19 and the south Industrial Park. This subproject will be obligated in January as it requires the cumulative funds from both 2003 and 2004 to execute. The project will bid in December 2003.	1,043,354	-	1,043,354
02030	North College Waterline - Maple to North	Relocations and improvements of the water mains along North College Avenue from Maple to North Street.	Design should be completed by the first quarter of 2004 and construction could be completed as early as fourth quarter 2004.	1,169,889	-	1,169,889
02067	Water and Sewer Cost Sharing	Cost shares, as needed, that are associated with private developments.	On going, schedule varies depending on projects.	15,717	-	15,717
02117	S.C.A.D.A. System Upgrade	To improve controls on the City's water transmission lines.	This work will be executed after Black and Veatch completes its evaluation of the 36" transmission main. Once that evaluation is completed, a determination will be made on what actions to take. These will include installing SCADA on major valves.	13,925	-	13,925

City of Fayetteville, Arkansas

2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
02125	Waterline Replacement - Accelerated	Accelerated replacement of leaking water mains. Task 1 includes Mashburn, Blair, Lytton, Huntsville, Baxter, Cleburn, Fritz, Prospect & Rush streets. Task 2 includes South College and Lewis Avenues.	Task 1 is under construction and should be completed by April 2004. The design of Task 2 should be completed by December 2003 and construction could be completed by July 2004.	366,097	-	366,097
02129	Gregg Ave Waterline Relocation	Relocation and improvement of the water mains along Gregg Avenue. Phase I is from Van Asche to Futrall. Phase II is from Futrall to Sycamore.	Notice to Proceed was given in October 2003 with substantial completion in January 2004 and final completion in February 2004.	12,469	-	12,469
03018	36" Waterline Replacement & Protection	Analysis of the corrosion problems on the main 36-inch water supply line from Beaver Water District, including the recommendation of appropriate action and corrective measures.	It is anticipated that the study will be completed by April 2004.	934,246	-	934,246
03026	Broyles Road Extension Improvements	To comply with Fayetteville development requirements and to provide suitable access to treatment plant, Broyles Road from Persimmon to Settlers Trail needs widening and improvements.	A consultant is designing the project, surveys are complete, the power line relocation has been coordinated and bidding/construction is planned for 2004. Construction timing is driven by environmental permitting issues, with the permit timeline being the middle of 2004.	29,426	-	29,426
03043	Water & Sewer Maintenance Capital	This project is for the purchase and replacement of Water & Sewer capital equipment that has a cost of $5,000 and greater.	The items will be purchased throughout 2004 for operational needs.	46,000	-	46,000
03052	Fire Station #7 Construction - W/S Improvements	This project is to construct water & sewer lines to the new Fire Station #7.	The Water & Sewer lines will be constructed in 2004 prior to completion of the new fire station. **$30,479 transferred from project #01013 Fayetteville Boys & Girls Club Sewer Improvements.**	30,479	-	30,479
98047	Collection System Capacity Management	To provide access from the west side treatment plant to Wedington Drive. Street improvement begins at Wedington and ends at Persimmon Street.	The design is nearing completion, the right-of-way purchase has been approved, and the project is nearing bidding. Construction completion will be in 2004.	221,657	-	221,657
98076	Water & Sewer Operations Center Building	To provide adequate facilities for the Water/Sewer field operations divisions.	Final design is underway. The project is expected to bid in 2003 with an estimated construction completion date near the end of 2004.	2,850,416	-	2,850,416
				8,675,113	-	8,675,113

City of Fayetteville, Arkansas

2003 Capital Project Re-Budget Request Summary (Project Descriptions)

Project	Project Title	Project Description	Project Status	2004 Budget	2004 Grants	2004 Total
Water & Sewer Services Improvements						
02065	Water Meters	Automation of meter reading is driven by the need for increased efficiency in managing a large number of accounts with a minimum of administrative costs. The meter replacement program also enhances revenues by minimizing unaccounted for (unbilled) water amounts.	This is an on going project. Full scale application has been implemented. **$310,000 has been given back to Water & Sewer Fund Balance in order to fund the W&S Operations Center capital project.**	106,475	-	106,475
02068	Backflow Prevention Assemblies	This project is for installation or replacement of backflow prevention assemblies on City facilities to meet backflow prevention mandate order by the Arkansas Department of Health.	City employees are installing these assemblies where they are needed. This phase of the project is close to being complete. These backflow prevention assemblies will require inspection, testing, and maintenance by licensed City employees, which is required by the ADH. This project is on going.	7,676	-	7,676
03038	Business Office Improvements	Various furnishings and equipment needed following a partial renovation of the Billing & Collection Division.	Work in progress.	49,261	-	49,261
03039	Meter Operations Center Furnishings	This project is to purchase equipment and furnishings for the new Water & Sewer Operations Center building.	This project is currently on hold awaiting for the construction of the new center.	85,000	-	85,000
				248,412	-	248,412
Non-Capital Project Items						
WorkC	Workers Compensation Insurance	This item is to cover the cost of the City's premium for Worker's Compensation Insurance in the General Fund.	The cost for 2004 was received in late December 2003 and due to rate changes in Police and Fire, the City's premium increased. In 2003, there is over $70,000 in unspent funds remaining in the Human Resources program that can be used to fund the additional expense.	63,515	-	63,515
Utility	Gary Hampton Utility Expense	This item is to cover the cost of the increased utility expense for the Gary Hampton Softball Complex.	The cost for 2004 was received in late December 2003 and due to a miscalculation made by Ozarks Electric, the Gary Hampton Softball Complex were charged incorrectly for electric usage since the creation of the park.	25,000	-	25,000
				88,515	-	88,515
				60,231,587	(1,626,361)	58,605,226

STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
___ CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council Meeting of: February 3 ~~January 20~~, 2004

FROM:

Kevin Springer	Budget & Research	Finance & Internal Services
Name	Division	Department

ACTION REQUIRED: City Council is requested to approve a budget adjustment which will allow for the rebudget of all projects appropriated in the 2003 Budget. The items which are approved will become part of the 2004 budget.

COST TO CITY:

See Attachment	See Attachment	See Attachment
Cost of this request	Category/Project Budget	Program Category / Project Name
See Attachment	See Attachment	See Attachment
Account Number	Funds Used to Date	Program / Project Category Name
See Attachment	See Attachment	See Attachment
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: ___ Budgeted Item X Budget Adjustment Attached

Budget Manager — Date: 1-6-04

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager — Date: 1/7/04
Internal Auditor — Date: 1/7/04
City Attorney — Date: 1/7/04
Purchasing Manager — Date: 1/7/04

STAFF RECOMMENDATION: Staff recommends approval of the budget adjustment.

Division Head — Date: 1-6-04
Department Director — Date:
Finance & Internal Services Dir. — Date: 1-7-04
Chief Administrative Officer — Date: 1-7-04
Mayor — Date:

Received in Mayor's Office Date:

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

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

1-7-04

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: Mayor and City Council

From: Gary Dumas Gary Dumas

Date: January 5, 2004

Subject: Waste Hauler Contracts

Recommendation:

Approve Resolution authorizing the Mayor to execute the attached non-exclusive franchise contract with

Waste Management of Arkansas,
Roll Off Service Inc.,
Ozark Sanitation.

Background:

As the Council directed, the staff has been in negotiation with Waste Management of Arkansas and Roll Off Service, Inc. since last spring in an effort to develop a contract which would allow them and other waste haulers to provide specific services within the corporate limits of Fayetteville.

These negotiations begin first with meeting with Waste Management of Arkansas, Roll Off Service, Inc. and HMI, Inc. HMI, Inc. has since ceased operation with Fayetteville.

At the conclusion of these negotiations a contract was forwarded on July 25, 2003 for execution by the Haulers. Roll Off Service, Inc. executed and returned their copy, while Waste Management of Arkansas forwarded their copy to their attorneys who requested numerous changes and additional negotiations. Some of the changes requested by Waste Management of Arkansas were incorporated into a second contract. These changes benefited all waste providers and did not impose any additional regulation, only clarified the rules and reduced the bureaucratic red tape. This second contract was again sent on November 18, 2003 to Roll Off Service, Inc. and Waste Management of Arkansas for execution.

Discussion:

All other waste hauling providers known to have service available within the City of Fayetteville have been contacted concerning this required franchise. Only those listed within the Recommendation have executed and returned their contract.

Any waste hauler providing service within the City of Fayetteville not having a fully executed contract will be subject to any and all legal and equitable remedies available to the City and will not be permitted to provide service to any Fayetteville customer.

Implementation of the Franchise and all related existing Ordinances will begin at the beginning of the month. That start date is anticipated to be February 1, 2004.

RESOLUTION NO. ______

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE NON-EXCLUSIVE FRANCHISE CONTRACTS WITH WASTE MANAGEMENT OF ARKANSAS, ROLL-OFF SERVICES, INC., AND OZARK SANITATION TO COLLECT AND TRANSPORT SPECIFIC TYPES OF SOLID WASTE WITHIN THE CITY LIMITS OF FAYETTEVILLE.

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 execute non-exclusive franchise contracts with Waste Management of Arkansas, Roll-Off Services, Inc., and Ozark Sanitation to collect and transport specific types of solid waste within the city limits of Fayetteville. Copies of the contracts marked Exhibit "A" are attached hereto and made a part hereof.

PASSED and **APPROVED** this 3rd day of February, 2004.

APPROVED:

By: ________________________
DAN COODY, Mayor

ATTEST:

By: ________________________
SONDRA SMITH, City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: Mayor and City Council

From: Gary Dumas Gary Dumas

Date: January 8, 2004

Subject: Non-Exclusive Franchise Contracts

The following are the highlights of the non-exclusive franchise contracts.

1. Haulers agree that they may only collect and haul Solid Waste using roll-off style containers with capacities of twenty (20) cubic yards or greater. No cardboard, loose or pre-baled, or recyclables, including scrap metal shall be hauled whatsoever from any customer within the corporate limits of the City of Fayetteville

2. Haulers agree that they shall utilize the City's transfer station for all Class 1 waste collected pursuant to this Franchise and shall deliver all Class 4 waste to the Tontitown Landfill.

3. The City shall have the right to conduct an audit of Hauler's customer files and records for all customers located within the City, provided that such audit privilege shall be limited to once per calendar quarter at hauler's expense.

4. Haulers agree that they shall submit to the City on an annual basis a list of all commercial vehicles used to provide services in the City, proof of appropriate vehicle registration, and proof of the insurance.

5. Haulers agree that they shall provide a list of vehicle operators collecting and hauling waste along with proof of their valid and appropriate commercial drivers' licenses issued by the State of Arkansas.

6. Haulers agree that they shall comply with all federal, state and local laws applicable to the safety, environmental and transportation matters.

7. Haulers agree that they shall be required to pay a monthly franchise fee of ten (10%) percent of the gross revenue received for all services provided under this Franchise conducted within the City.

8. The City reserves the right to inspect all vehicles and containers to ensure that the vehicles are safe and well-maintained and that all containers are well-maintained and water tight, if necessary.

9. Haulers agree that they shall be required to establish an individual credit or service relationship with the City of Fayetteville transfer station operator and the Tontitown Landfill operator.

10. Haulers agree that any vehicle operator emptying or hauling waste or any waste hauler operating without a valid Franchise shall be subject to any and all legal and equitable remedies available to the City of Fayetteville, and shall be responsible for paying all costs associated therewith, including reasonable attorney's fees.

11. Hauler agrees to protect, indemnify, defend and save harmless the City to the extent caused by (i) Hauler's breach of any term, condition, covenant or warranty contained in this Franchise, or (ii) Hauler's negligent act or omission or willful misconduct related to the delivery of waste to the City transfer station.

12. Hauler shall maintain insurance coverage during the term of this Franchise:

CITY OF FAYETTEVILLE
Nonexclusive Franchise Agreement to Haul and Dispose of Solid Waste

This Nonexclusive Franchise Agreement (the "Franchise"), is entered into on this _______ day of ______________ 2003, between the **City of Fayetteville, Arkansas,** a municipal corporation (the "City"), and **Roll Off Service, Inc.** (the "Hauler"), and shall be in full force and effect on the date first written above. Pursuant to City Ordinance No. 50.29, the City and the Hauler agree as follows:

1. Hauler agrees that from and after the original date of this Franchise, all customer service agreements for facilities within the corporate limits of the City entered into before or after the effective date of this agreement, or renewed shall have terms of no more than two (2) years and any subsequent extensions shall be for terms of no more than one (1) year.

2. The term of this Franchise shall be for three (3) years, unless otherwise terminated pursuant to the terms hereof.

3. Hauler agrees and understands that it may only collect and haul Solid Waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of twenty (20) cubic yards or greater, or roll-off style compactor containers with a capacity of twenty (20) cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal. Hauler shall not collect any Class 1 or Class 4 material collected in other containers. No cardboard, loose or pre-baled, or recyclables, including scrap metal shall be hauled whatsoever from any customer within the corporate limits of the City of Fayetteville

4. Hauler agrees and understands that it shall utilize the City's transfer station for all Class 1 waste collected pursuant to this Franchise and shall deliver all Class 4 waste to the Tontitown Landfill. Hauler shall be required to pay all transfer station fees to the transfer station operator and all Class 4 landfill fees to the landfill operator, as they may be established and amended, from time to time.

5. Hauler shall pay all Franchise Fees due hereunder, along with the required supporting information, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of the Franchise Fees received after the due date shall be assessed a 2% penalty per month. If Hauler fails to pay the Franchise Fees within forty-five (45) days of the due date, the City may revoke this Franchise upon delivery of written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the Franchise Fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a blind list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary customer, and (iv) the Franchise Fee shall be based upon all activity from each customer account within the City, and shall include the normal billing charges for all free or discounted services (excluding those services provided at no cost for non-profit organizations), including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges. The City shall have the right to conduct an audit of Hauler's customer files and records for all customers located within the City, provided that such audit privilege shall be limited to once per calendar quarter at hauler's expense. During such audit, the City may review certain trade secret information, including rates, frequency of service, customer lists, and other customer information,

provided that such trade secret information may not be copied or removed by the City. Nor shall such information be divulged to any third party by the City, its employees, officers, or elected officials without the express written consent of the Hauler.

6. Hauler agrees and understands that it shall submit to the City on an annual basis a list of all commercial vehicles used to provide services in the City, proof of appropriate vehicle registration, and proof of the insurance required under Section 16.

7. Hauler agrees and understands that it shall provide a list of vehicle operators collecting and hauling waste in the City of Fayetteville, along with proof of their valid and appropriate commercial drivers' licenses issued by the State of Arkansas. The Hauler shall also provide, maintain, and implement a plan to insure that the vehicle operators maintain their commercial driver's licenses in accordance with applicable federal and state laws.

8. Hauler agrees that it shall comply with all federal, state and local laws applicable to the safety, environmental and transportation matters related to providing solid waste collection services under this Franchise.

9. In consideration of the right to provide the services described under this Franchise, Hauler agrees and understands that it shall be required to pay a monthly franchise fee of ten (10%) percent (the Franchise Fee) of the gross revenue received for all services provided under this Franchise. Upon execution of this Franchise, a Franchise Fee deposit shall be paid in advance to the City. This deposit shall be equal to one-half of the total Franchise Fees that were or would have been paid by the Hauler within to the City during the previous twelve (12) months. Such deposit shall be reviewed on an annual basis. Any disagreement in estimated gross revenue will be decided in the favor of the City. The deposit shall be refunded, less any unpaid Franchise Fees, when the Hauler ceases operation within the City.

10. The City reserves the right to inspect all vehicles and containers to ensure that the vehicles are safe and well-maintained and that all containers are well-maintained and water tight, if necessary.

11. Hauler agrees and understands that it shall be required to establish an individual credit or service relationship with the City of Fayetteville transfer station operator and the Tontitown Landfill operator. Hauler agrees that it shall comply with all practices, policies and procedures as established by the transfer station operator from time to time. Any tipping fee deposits required by the transfer station or landfill operators shall be refunded, less any unpaid tipping fees, when the Hauler ceases hauling activities governed by this Agreement.

12. Hauler agrees and understands that any vehicle operator emptying or hauling waste or any waste hauler operating without a valid Franchise shall be subject to any and all legal and equitable remedies available to the City of Fayetteville, and shall be responsible for paying all costs associated therewith, including reasonable attorney's fees.

13. This Franchise, nor any rights or obligations hereunder, may not be assigned or transferred to any third party or affiliate.

14. For the purposes of this contract, the Point of Contact of the City of Fayetteville shall be Gary Dumas or his successor. The Point of Contact for the Hauler shall be Tom Smith.

Communications pertaining to day-to-day aspects of this contract shall be through these individuals. Either party may change its designated Point of Contact upon ten (10) days prior written notice to the other party.

15. Hauler agrees to protect, indemnify, defend and save harmless the City, its officials, officers, employees, agents, subcontractors, representatives and assigns from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorneys' fees), to the extent caused by (i) Hauler's breach of any term, condition, covenant or warranty contained in this Franchise, or (ii) Hauler's negligent act or omission or willful misconduct related to the delivery of waste to the City transfer station or the Tontitown Landfill.

16. Insurance: Hauler shall maintain the following insurance coverage during the term of this Franchise:

(a) Hauler shall provide and maintain, during the term of this Franchise, comprehensive general liability insurance, to protect against all claims arising out of the performance of its services hereunder that result in bodily injury, death or property damage. The policy or policies shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the City sixty (60) days notice in writing.

(b) Upon written request, Hauler shall furnish the City with evidence that the insurance required of it is in force.

(c) The types of coverage and limits of liability of all insurance required herein shall be as follows:

COVERAGE	LIMITS OF LIABILITY
Workmen's Compensation	Statutory
Employer's Liability	$500,000
Bodily Injury Liability except Automobile	$1,000,000 each occurrence
Property Damage Liability except Automobile	$1,000,000 each aggregate
Automobile Bodily Injury	$1,000,000 each person
Comprehensive General Liability	$1,000,000 each occurrence
Automobile Property Damage Liability	$1,000,000 each occurrence

Excess Umbrella Liability	$1,000,000 each occurrence

17. Termination:

(a) Except as otherwise provided herein, if Hauler breaches this Franchise or defaults in the performance of any of the requirements or conditions contained herein, and such breach continues for fifteen (15) days after the City has given the Hauler written notice of such breach or default, the City may: (i) terminate this Franchise fifteen (15) days after the fifteen (15) days in which to cure; or (ii) cure the breach or default at the expense of the Hauler; and (iii) have recourse to any other right or remedy to which it may be entitled by law.

(b) The City may terminate this Franchise upon written notice to the Hauler if the Hauler makes an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, receivership or insolvency, or files an answer in any involuntary proceeding of that nature admitting the material allegations of the petition, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted against the offending and such proceeding is not dismissed within sixty (60) days.

(c) In the event that this Franchise is terminated for any reason, any amounts payable to the City by Hauler for services rendered for any reason whatsoever shall become immediately due and payable as of the date of such termination.

18. All notices required or permitted under this contract shall be submitted in writing to the other party to this contract, by certified mail, return receipt requested, which notice shall be effective three (3) days after deposit therein addressed to the following:

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

Roll Off Service, Inc.
Attn: Tom Smith
Post Office Box 1700
Lowell, Arkansas 72745

19. Hauler agrees and understands that this Franchise and documents submitted to the City pursuant hereto are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville requesting such documents, Hauler will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

20. This agreement shall be interpreted according to and enforced under the laws of the State of Arkansas. Capitalized terms herein shall have the same meaning as set forth in ADEQ Reg. No. 22.

21. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance, and shall not be construed as a general waiver of either party's right to seek appropriate remedies for any other breaches by either party.

22. Each paragraph of this agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs shall remain in full force and effect.

23. This contract constitutes the entire understanding of the parities and no modification or variation of the terms of this contract shall be valid unless made in writing and signed by the duly authorized agents of the City of Fayetteville and the Hauler.

24. Each of the undersigned warrants that he or she has the full right, power, and authority to execute this contract on behalf of the party indicated for the purposes herein contained.

25. To the extent a definition or a specific term is not provided herein but is nonetheless required by the context, it is the intention of the parties to incorporate herein the definitions contained in applicable law and regulation in effect as the date hereof, except to the extent subsequent law or regulation shall expressly or implicitly mandate a revised definition.

26. The obligations of the parties to this Franchise, which by their nature would continue beyond the termination, cancellation or expiration of this Franchise, shall survive the termination (for any reason), cancellation or expiration of this Franchise.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

CITY OF FAYETTEVILLE

By: ______________________
DAN COODY, as Mayor

ATTEST:

By: ______________________
SONDRA SMITH, City Clerk

ROLL OFF SERVICE, INC.

By: Tom Smith
As: President

CITY OF FAYETTEVILLE

Nonexclusive Franchise Agreement to Haul and Dispose of Solid Waste

This Nonexclusive Franchise Agreement (the "Franchise"), is entered into on this ______ day of ______________ 2003, between the **City of Fayetteville, Arkansas**, a municipal corporation (the "City"), and **Waste Management of Arkansas** (the "Hauler"), and shall be in full force and effect on the date first written above. Pursuant to City Ordinance No. 50.29, the City and the Hauler agree as follows:

1. Hauler agrees that from and after the original date of this Franchise, all customer service agreements for facilities within the corporate limits of the City entered into before or after the effective date of this agreement, or renewed shall have terms of no more than two (2) years and any subsequent extensions shall be for terms of no more than one (1) year.

2. The term of this Franchise shall be for three (3) years, unless otherwise terminated pursuant to the terms hereof.

3. Hauler agrees and understands that it may only collect and haul Solid Waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of twenty (20) cubic yards or greater, or roll-off style compactor containers with a capacity of twenty (20) cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal. Hauler shall not collect any Class 1 or Class 4 material collected in other containers. No cardboard, loose or pre-baled, or recyclables, including scrap metal shall be hauled whatsoever from any customer within the corporate limits of the City of Fayetteville

4. Hauler agrees and understands that it shall utilize the City's transfer station for all Class 1 waste collected pursuant to this Franchise and shall deliver all Class 4 waste to the Tontitown Landfill. Hauler shall be required to pay all transfer station fees to the transfer station operator and all Class 4 landfill fees to the landfill operator, as they may be established and amended, from time to time.

5. Hauler shall pay all Franchise Fees due hereunder, along with the required supporting information, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of the Franchise Fees received after the due date shall be assessed a 2% penalty per month. If Hauler fails to pay the Franchise Fees within forty-five (45) days of the due date, the City may revoke this Franchise upon delivery of written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the Franchise Fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a blind list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary customer, and (iv) the Franchise Fee shall be based upon all activity from each customer account within the City, and shall include the normal billing charges for all free or discounted services (excluding those services provided at no cost for non-profit organizations), including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges. The City shall have the right to conduct an audit of Hauler's customer files and records for all customers located within the City, provided that such audit privilege shall be limited to once per calendar quarter at hauler's expense. During such audit, the City may review certain trade secret information, including rates, frequency of service, customer lists, and other customer information,

provided that such trade secret information may not be copied or removed by the City. Nor shall such information be divulged to any third party by the City, its employees, officers, or elected officials without the express written consent of the Hauler.

6. Hauler agrees and understands that it shall submit to the City on an annual basis a list of all commercial vehicles used to provide services in the City, proof of appropriate vehicle registration, and proof of the insurance required under Section 16.

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10. The City reserves the right to inspect all vehicles and containers to ensure that the vehicles are safe and well-maintained and that all containers are well-maintained and water tight, if necessary.

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13. This Franchise, nor any rights or obligations hereunder, may not be assigned or transferred to any third party or affiliate.

14. For the purposes of this contract, the Point of Contact of the City of Fayetteville shall be Gary Dumas or his successor. The Point of Contact for the Hauler shall be Kevin Gardner.

Communications pertaining to day-to-day aspects of this contract shall be through these individuals. Either party may change its designated Point of Contact upon ten (10) days prior written notice to the other party.

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(b) Upon written request, Hauler shall furnish the City with evidence that the insurance required of it is in force.

(c) The types of coverage and limits of liability of all insurance required herein shall be as follows:

COVERAGE	LIMITS OF LIABILITY
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(a) Except as otherwise provided herein, if Hauler breaches this Franchise or defaults in the performance of any of the requirements or conditions contained herein, and such breach continues for fifteen (15) days after the City has given the Hauler written notice of such breach or default, the City may: (i) terminate this Franchise fifteen (15) days after the fifteen (15) days in which to cure; or (ii) cure the breach or default at the expense of the Hauler; and (iii) have recourse to any other right or remedy to which it may be entitled by law.

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18. All notices required or permitted under this contract shall be submitted in writing to the other party to this contract, by certified mail, return receipt requested, which notice shall be effective three (3) days after deposit therein addressed to the following:

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

Waste Management of Arkansas
Attn: George Wheatley
2900 West 68th Street
Little Rock Arkansas 72209

19. Hauler agrees and understands that this Franchise and documents submitted to the City pursuant hereto are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville requesting such documents, Hauler will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

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21. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance, and shall not be construed as a general waiver of either party's right to seek appropriate remedies for any other breaches by either party.

22. Each paragraph of this agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs shall remain in full force and effect.

23. This contract constitutes the entire understanding of the parities and no modification or variation of the terms of this contract shall be valid unless made in writing and signed by the duly authorized agents of the City of Fayetteville and the Hauler.

24. Each of the undersigned warrants that he or she has the full right, power, and authority to execute this contract on behalf of the party indicated for the purposes herein contained.

25. To the extent a definition or a specific term is not provided herein but is nonetheless required by the context, it is the intention of the parties to incorporate herein the definitions contained in applicable law and regulation in effect as the date hereof, except to the extent subsequent law or regulation shall expressly or implicitly mandate a revised definition.

26. The obligations of the parties to this Franchise, which by their nature would continue beyond the termination, cancellation or expiration of this Franchise, shall survive the termination (for any reason), cancellation or expiration of this Franchise.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

CITY OF FAYETTEVILLE

By: ______________________________
DAN COODY, as Mayor

ATTEST:

By: ______________________________
SONDRA SMITH, City Clerk

Waste Management of Arkansas

By:
As: DIRECTOR, GOVERNMENT AFFAIRS

STAFF REVIEW FORM - FINANCIAL OBLIGATION

XXX AGENDA REQUEST
CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council Meeting of: February 3, 2004

FROM:

Gary Dumas		Operations Department
Name	Division	Department

ACTION REQUIRED: Approve resolution authorizing the Mayor to execute non-exclusive franchise contract(s) for the collection and transporting of specific types of trash and waste.

COST TO CITY:

~($200,000)	$ -	Solid Waste
Cost of this request	Category/Project Budget	Program Category / Project Name
5500-0955-4105-07 5500-0955-4105-08 5500-0955-4105-09	$	Franchise from Waste Management Franchise from Roll Off Service Franchise from Ozark Sanitation
Account Number	Funds Used to Date	Program / Project Category Name
	$ -	Solid Waste
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: ____ Budgeted Item ____ Budget Adjustment Attached

Budget Manager — Date: 1-8-04

CONTRACT/GRANT/LEASE REVIEW:

Marsha Farthing — Accounting Manager — Date: 1/8/04
Nancy Smith — Internal Auditor — Date: 1/8/04
City Attorney — Date: 1/9/04
Purchasing Manager — Date: 1/9/04

STAFF RECOMMENDATION:

Division Head — Date

Gary Dumas — Department Director — Date: 1-8-04

Finance & Internal Services Dir. — Date: 1-9-04

Chief Administrative Officer — Date: 1-13-04

Dan Coody — Mayor — Date: 1/14/04

Received in Mayor's Office 1/9/04 Date

Cross Reference:

Previous Ord/Res#: ____

Orig. Contract Date: ____

Orig. Contract Number: ____

New Item: **Yes** No

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Tim Conklin, Community Planning and Engineering Services Director T. C.

From: Dawn T. Warrick, AICP, Zoning and Development Administrator DW

Date: January 13, 2004

Subject: Residential Planned Zoning District for Southern View Phase II (R-PZD 04-01.00)

RECOMMENDATION

Planning Staff recommends approval of an ordinance creating the Residential Planned Zoning District (R-PZD) for Southern View Phase II. This action will establish a unique zoning district for development of a 6.71 acre tract located north of Old Farmington Road and east of Futrall Drive, immediately south of the Southern View Phase I apartment development.

BACKGROUND

The proposal is for a mixed use development. Six structures with varying façades contain a mixture of residential and commercial activities. The land use will be comprised of at least 51% residential use with the remaining use areas to be commercial. Each three story structure is proposed to contain 6,733 s.f. of commercial area on the ground floor with 19 apartment units (31 bedrooms) on the upper two floors. The total commercial area proposed is 40,398 s.f., with a total number of residential units at 114 (186 bedrooms). The applicant has provided 302 parking spaces on-site to accommodate this project. Eight interchangeable building elevations have been proposed for the front and rear sections of the buildings. The Planning Commission did require that these elevations be mixed throughout the development, providing that the tower feature be applied no more than three times, and that no two identical façades would be installed side by side or directly across from each other.

DISCUSSION

The Planning Commission voted 6-1-0 in favor of this request on Monday, January 12, 2004. Approval of a planned zoning district requires City Council approval as it includes zoning (land use) as well as development approval (large scale development). Recommended conditions included in the attached staff report were approved by the Planning Commission.

BUDGET IMPACT

None.

ORDINANCE NO. ______

AN ORDINANCE ESTABLISHING A RESIDENTIAL PLANNED ZONING DISTRICT TITLED (R-PZD 04-01.00) LOCATED ON FUTRALL DRIVE AND OLD FARMINGTON ROAD EAST OF I-540 CONTAINING 6.713 ACRES, MORE OR LESS; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FAYETTEVILLE; AND ADOPTING THE ASSOCIATED RESIDENTIAL DEVELOPMENT PLAN AS APPROVED BY THE PLANNING COMMISSION.

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

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

From C-2, Thoroughfare Commercial to R-PZD 04-01.00 as shown in Exhibit "A" attached hereto and made a part hereof.

Section 2. That the change in zoning classification is based upon the approved master development plan and development standards as shown on the plat and approved by the Planning Commission on January 12, 2004.

Section 3. That this ordinance shall take affect and be in full force at such time as all of the requirements of the development plan have been met.

Section 4. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this ______ day of __________, 2004.

APPROVED:

By:____________________
DAN COODY, Mayor

By: ______________________
SONDRA SMITH, City Clerk

EXHIBIT "A"
R-PZD 04-01.00

PART OF THE SE1/4 OF THE SE1/4 AND PART OF THE S1/2 OF THE S1/2 OF THE NE1/4 OF THE SE1/4 OF SECTION 18, T-16-N, R-30-W, FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A POINT AT THE SE CORNER OF THE SE1/4 OF SECTION 18, T-16-N, R-30-W, SAID POINT BEING A FOUND IRON PIN; THENCE N 87°11'35" W 225.00 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 71 BYPASS (NOW INTERSTATE 540); THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING FIVE COURSES: N 10°43'38" W 44.34 FEET; THENCE N 67°02'38" W 42.40 FEET; THENCE N 41°41'38" W 74.30 FEET; THENCE N 29°10'38" W 402.99 FEET; THENCE N 20°18'34" W 214.21 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE S 87°06'32" E 624.58 FEET; THENCE S 02°47'10" W 648.61 FEET TO THE POINT OF BEGINNING, CONTAINING 6.713 ACRES, MORE OR LESS, BEING SUBJECT TO ANY AND ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR OF FACT.

BASIS OF BEARINGS ARE BASED ON CITY OF FAYETTEVILLE GPS COORDINATE SYSTEM.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of January 12, 2004

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

PLANNING DIVISION CORRESPONDENCE

TO:	Fayetteville Planning Commission
FROM:	Jeremy Pate, Associate Planner
	Matt Casey, Staff Engineer
THRU:	Dawn Warrick, A.I.C.P., Zoning & Development Administrator
DATE:	January 06, 2004

R-PZD 04-01.00: Residential Planned Zoning District (Southern View II, pp 519) was submitted by Crafton, Tull & Associates on behalf of Lindsey Management Co. for property located at Futrall Drive and Old Farmington Road, east of I-540. The property is currently zoned C-2, Thoroughfare Commercial and contains approximately 6.713 acres. The request is to rezone the property to a Residential Planned Zoning District to allow for a mixed use development comprised of 114 dwelling units and 40,398 SF of commercial space proposed. Planner: Jeremy Pate

Proposal: The request is for a Residential Planned Zoning District on 6.71 acres currently zoned C-2, Thoroughfare Commercial, directly south of the constructed Southern View Phase I multi-family development. The applicant requests a rezoning and Large Scale Development approval for a mixed use development consisting of six buildings. Each of the proposed buildings will contain 6,733 SF of retail space, 14 2-Bedroom dwelling units and 3 1-Bedroom units.

Proposed Development:
R-PZD, Residential Planned Zoning District

	Land Use	Square Feet	# of Units	# of Bedrooms	Parking Required
Bldgs 1-6	Commercial/Retail	6,733 SF	N/A	N/A	27 spaces
Bldgs 1-6	Multi-Family Residential 2 -Bedroom	N/A	12	24	24 spaces
Bldgs 1-6	Multi-Family Residential 1 -Bedroom	N/A	7	7	7 spaces
Individual Total	**Mixed-Use Retail/Multi-family Residential**	**6.733 SF Retail**	**19**	**31**	**58 spaces**
TOTAL (x 6 Bldgs)	**Mixed-Use Retail/Multi-family Residential**	**40,398 SF Retail**	**114**	**186**	**348***

**The applicant proposes 302 parking spaces, which is within the 30% +/- ordinance requirement.*

Total proposed dwelling units on the 6.71 acres numbers 114, therefore the proposed density for the R-PZD is **16.9 DU/acre.**

Access: The development is proposed to have four means of access, two from Old Farmington Road, one from Futrall Drive and one from the existing Southern View Phase I development to the north. A pedestrian access has been added from the existing Southern View I apartments, pursuant to Subdivision Committee discussion. A formal waiver request for the Design Overlay District requirement of 250 feet between an intersection and a curb cut has been submitted by the developer. Staff is in support of the request for the proposed curb cuts along Old Farmington Road. The two entrances fulfill the intent of providing an enhanced "Main Street" streetscape, along with providing needed parking in the "rear" to meet ordinance requirements. Access on both sides of the building is desirable for fire protection and emergency vehicles.

Buildings and parking in the development have been situated to create a desirable, pedestrian-oriented streetscape along the two primary entrances east from Futrall Drive and north from Old Farmington Road. Parallel parking and 10-foot wide sidewalks are incorporated with the primary interior streets, and the majority of parking is located to the rear of the structures. Additionally, a landscape buffer is proposed along Futrall Drive to ameliorate the impacts of proposed parking lots.

Elevations of the proposed structures have been submitted for Planning Commission review. The development is proposed to be under single ownership, with dwelling units rented and retail space leased. All interior streets, landscaping, common areas and buildings will be maintained by the developer.

Existing Development: The site is currently vacant.

Surrounding Land Use/Zoning:

Direction	Land Use	Zoning
North	Southern View Phase I Multi-family dwellings	RMF-18, Res. Multifamily, 18 DU/acre
South	Sines AutoBody Shop	C-2, Thoroughfare Commercial
East	Fayetteville Public Schools	P-1, Institutional
West	Futrall Drive, I-540	N/A

Water & Sewer: Water and sewer lines are available to the site.

Phasing: Phase lines are shown in bold on the site plan, dividing the project construction into two phases, the first of which will incorporate all street infrastructure, landscaping, sidewalks and buildings 2 and 5.

Street Improvements Proposed: Improvements to Old Farmington Road a minimum of 14' from centerline including curb & gutter, pavement etc. Six-foot sidewalks are required to be constructed along both Futrall Drive and Old Farmington Road.

Adjacent Master Street Plan Streets: Futrall Drive (Collector), minimum of 35 feet from centerline; Old Farmington Road (Local), minimum of 25 feet from centerline

Tree Preservation: There are no existing trees on-site.

Design Overlay District:

- **Greenspace:** The applicant has complied with the 25'greenspace requirement along the rights-of-way.
- **Signage:** *Monument Sign:* The applicant is indicating one (1) monument sign along Old Farmington Road, to be compliance with DOD requirements. All sign illumination is to utilize indirect lighting.

  Wall Sign: Wall signage is to be determined by tenant occupancy of the leased Commercial/Retail space. Two wall signs may be installed per business (two right-of-way frontages), not to exceed 20% of that wall area or 200 SF, whichever is less.
- **Curb Cuts:** **The applicant requests a waiver of the 250 feet required from an intersection to a curb cut.** The original lot configuration does not have adequate depth to satisfy the DOD requirement. Staff is in support of this request.
- **Lighting:** The applicant shall comply with the requirement for 35-foot maximum height, utilizing full cut-off lighting fixtures that are shielded and directed downward to the parking lot and light spread not to reflect into the adjacent properties.
- **Exterior appearance:** Elevations have been submitted for all four sides of the building. Planning Commission determination of architectural treatment of fronts, along with Commercial Design Standards, is required.
- **Building Material:** Materials samples have been submitted, indicating the proposed brick colors, etc.
- **Site Coverage:** Approximately 31% of the site has been left in open space.
- **Fencing:** Fencing is not proposed with this development.
- **Outdoor Storage:** N/A
- **Access:** Pedestrian access is being provided with new 6-foot sidewalks along Futrall Drive and Old Farmington Road. Bicycle racks are being provided within the development, as are 10-foot sidewalks along buildings to allow for spillover and outdoor shopping space.

Background: The proposal was first heard at Technical Plat Review on May 28, 2003 and in subsequent meetings tabled by staff due to concerns with site development plans. The proposal was resubmitted and heard at Technical Plat Review on December 17, 2003. The revisions produced from that meeting and a subsequent meeting with staff were presented before the Subdivision Committee on December 30, 2003. Discussion at that meeting included breezeways between buildings, "placemaking" on the empty corner between Blds 3&4, trees along the "Main Street", pedestrian access to Southern View I, and graphic treatment of the building elevations.

Recommendation:
Forward to the City Council with a recommendation for approval of the requested rezoning to R-PZD 04-01.00.

Planning Commission approval of the proposed Large Scale Development plan R-PZD 04-01.00 subject to the following conditions:

Conditions of Approval:

1. Planning Commission recommendation to the City Council regarding the rezoning of the subject property to the unique district **R-PZD 04-01.00** with all conditions of approval as determined by the Planning Commission.

2. An ordinance creating this R-PZD shall be approved by City Council.

3. Planning Commission determination of Commercial Design Standards. *Staff finds the structures fully meet all aspects of Commercial Design Standards. *Addition to Condition w/Planning Commission approval: No two facades shall be constructed next to or across from one another. The end facades shall be addressed to more fully comply with Commercial Design Standards. The tower element shall not be used more than three times within the development.*

4. Planning Commission determination of a waiver request for the proposed building within the 100-foot setback of the 100-year water surface elevation of the proposed retention pond. *Staff is in support of this request.*

5. Planning Commission determination of a waiver request for the Design Overlay District requirement of 250 feet between an intersection and a curb cut, along Old Farmington Road. Approximately 110 feet is the proposed distance from the Futrall Drive intersection to the first entrance curb cut along Old Farmington Road. *Staff is in support of the waiver request.*

6. All setbacks, protective easements, and designated uses are binding with the approval of the R-PZD. Submitted building elevations are likewise binding to the project.

7. An AHTD permit is required for any work done within the Highway Department right-of-

way.

8. Street improvements to Old Farmington Road shall include 14 feet from centerline including curb, gutter, pavement and 6-foot sidewalks. Six-foot sidewalks are also required along Futrall Drive, at the right-of-way line.

9. No fences shall be allowed within the utility easements along Futrall Drive and Old Farmington Road.

10. All parking lot lights are to be shielded, directed downward and away from adjacent properties utilizing full cut-off sodium lighting fixtures.

11. All signage shall comply with Design Overlay District requirements.

12. All trash enclosures shall be screened from view with materials that are compatible with and complementary to the proposed buildings.

13. All utilities shall be screened with materials complementary to the proposed buildings.

14. Each building shall be constructed to provide a mixture of facades as viewed from surrounding drives and streets.

15. The building permit process for Phase II of the current proposal shall begin within one (1) year from the final Certificate of Occupancy issued for Phase I.

Standard Conditions of Approval:

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

17. Staff approval of final detailed plans, specifications and calculations (where applicable) for grading, drainage, water, sewer, fire protection, streets (public and private), sidewalks, parking lot(s) and tree preservation. The information submitted for the plat review process was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with City's current requirements.

18. Payment of parks fees in the amount of **$40,086** shall be required prior to building permit. Prior to R-PZD approval, this amount shall be considered and approved by City Council to meet ordinance requirements for over 100 residential units *(scheduled for the February 03, 2004 meeting).*

19. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.

PLANNING COMMISSION ACTION: __yes__ **Required**

_____Approved **_____Denied**

Date: __January 12, 2004__

Comments:

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.

____

By

____

Title

____

Date

Findings associated with R-PZD 04-01.00

Sec. 166.06. Planned Zoning Districts (PZD).

(B) *Development standards, conditions and review guidelines*

(1) *Generally.* The Planning Commission shall consider a proposed PZD in light of the purpose and intent as set forth in Chapter 161 Zoning Regulations, and the development standards and review guidelines set forth herein. Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as to preserve and enhance the neighborhood. Proper planning shall involve a consideration of tree preservation, water conservation, preservation of natural site amenities, and the protection of watercourses from erosion and siltation. The Planning Commission shall determine that specific development features, including project density, building locations, common usable open space, the vehicular circulation system, parking areas, screening and landscaping, and perimeter treatment shall be combined in such a way as to further the health, safety, amenity and welfare of the community. To these ends, all applications filed pursuant to this ordinance shall be reviewed in accordance with the same general review guidelines as those utilized for zoning and subdivision applications.

FINDING: The proposed mixed-use development proposes both residential and commercial uses, thereby increasing desired commercial activity in this area and providing a variety in housing types. The project density (16.9 DU/Acre) is compatible with surrounding uses. Buildings have been located to create a streetscape environment, utilizing pedestrian connections, larger sidewalks, street furniture and landscaping, parking located behind the buildings, and more appropriate horizontal to vertical ratios for pedestrian use. Parallel parking is proposed along the "Main Street" corridors, to enhance the visual sense of a town streetscape. For those parking lots visible from Futrall Drive and I-540, a vegetative screen has been provided to enhance the viewshed and contribute to the amenity of the community.

(2) *Screening and landscaping.* In order to enhance the integrity and attractiveness of the development, and when deemed necessary to protect adjacent properties, the Planning Commission shall require landscaping and screening as part of a PZD. The screening and landscaping shall be provided as set forth in §166.09 Buffer Strips and Screening. As part of the development plan, a detailed screening and landscaping plan shall be submitted to the Planning Commission. Landscape plans shall show the general location, type and quality (size and age) of plant material. Screening plans shall include typical details of fences, berms and plant material to be used.

FINDING: Screening in the form of landscaping along Futrall Drive to buffer proposed parking areas from the right-of-way is proposed by the applicant. All landscaping shall comply with City Code with regard to street frontage, Design Overlay District requirements and parking lot standards.

(3) *Traffic circulation.* The following traffic circulation guidelines shall apply:

(a) The adequacy of both the internal and external street systems shall be reviewed in light of the projected future traffic volumes.

(b) The traffic circulation system shall be comprised of a hierarchal scheme of local collector and arterial streets, each designed to accommodate its proper function and in appropriate relationship with one another.

(c) Design of the internal street circulation system must be sensitive to such considerations as safety, convenience, separation of vehicular and pedestrian traffic, general attractiveness, access to dwelling units and the proper relationship of different land uses.

(d) Internal collector streets shall be coordinated with the existing external street system, providing for the efficient flow of traffic into and out of the planned zoning development.

(e) Internal local streets shall be designed to discourage through traffic within the planned zoning development and to adjacent areas.

(f) Design provisions for ingress and egress for any site along with service drives and interior circulation shall be that required by Chapter 166 Development of this code.

FINDING: The internal street system proposed by the development provides adequate and necessary means of access to the proposed structures, especially with regard to emergency vehicles. Vehicular and pedestrian connections are being provided to the north, west and south, allowing for an efficient flow of traffic, helping to mitigate the potential effects of Futrall Drive as a one-way street.

(4) *Parking standards.* The off-street parking and loading standards found in Chapter 172 Parking and Loading shall apply to the specific gross usable or leasable floor areas of the respective use areas.

FINDING: The applicant has complied with these requirements.

(5) *Perimeter treatment.* Notwithstanding any other provisions of a planned zoning district, all uses of land or structures shall meet the open space, buffer or green strip provisions of this chapter of this code.

FINDING: The proposed development is comprised of approximately 31% open space, which is compliant with Design Overlay District requirements of a minimum 25%. The applicant has proposed a vegetative screen to alleviate the impacts of the proposed parking areas along Futrall Drive.

(6) *Sidewalks.* As required by §166.03.

FINDING: Six-foot sidewalks are required to be constructed along Old Farmington Road and Futrall Drive, at the right-of-way line. Additionally, the developer is proposing ten-foot sidewalks along the interior streets, and a pedestrian connection north to the existing apartment complex.

(7) *Street Lights.* As required by §166.03.

FINDING: Street lights shall be installed pursuant to city code.

(8) *Water.* As required by §166.03.

FINDING: An 8" water line is available along Old Farmington Road; 8' lines are to be extended to serve the development.

(9) *Sewer.* As required by §166.03.

FINDING: Adequate sewer service is available to the site.

(10) *Streets and Drainage.* Streets within a residential PZD may be either public or private.

(a) *Public Streets.* Public streets shall be constructed according to the adopted standards of the City.

(b) *Private Streets.* Private streets within a residential PZD shall be permitted subject to the following conditions:

(i) Private streets shall be permitted for only a loop street, or street ending with a cul-de-sac. Any street connecting one or more public streets shall be constructed to existing City standards and shall be dedicated as a public street.

(ii) Private streets shall be designed and constructed to the same standards as public streets with the exceptions of width and cul-de-sacs as noted below.

(iii) All grading and drainage within a Planned Zoning District including site drainage and drainage for private streets shall comply with the City's Grading (Physical Alteration of Land) and Drainage (Storm water management) Ordinances. Open drainage systems may be approved by the City Engineer.

(iv) Maximum density served by a cul-de-sac shall be 40 units. Maximum density served by a loop street shall be 80 units.

(v) The plat of the planned development shall designate each private street as a "private street."

(vi) Maintenance of private streets shall be the responsibility of the developer or of a neighborhood property owners association (POA) and shall not be the responsibility of the City. The method for maintenance and a maintenance fund shall be established by the PZD covenants. The covenants shall expressly provide that the City is a third party beneficiary to the covenants and shall have the right to enforce the street maintenance requirements of the covenants irrespective of the vote of the other parties to the covenants.

(vii) The covenants shall provide that in the event the private streets are not maintained as required by the covenants, the City shall have the right (but shall not be required) to maintain said streets and to charge the cost thereof to the property owners within the PZD on a pro rata basis according to assessed valuation for ad valorem tax purposes and shall have a lien on the real property within the PZD for such cost. The protective covenants shall grant the City the right to use all private streets for purposes of providing fire and police protection, sanitation service and any other of the municipal functions. The protective covenants shall provide that such covenants shall not be amended and shall not terminate without approval of the City Council.

(viii) The width of private streets may vary according to the density served. The following standard shall be used:

Paving Width
(No On-Street Parking)

Dwelling Units	One-Way	Two-Way
1 - 20	14'	22'
21+	14'	24'

***Note:** If on-street parking is desired, 6 feet must be added to each side where parking is intended.

(ix) All of the traffic laws prescribed by Title VII shall apply to traffic on private streets within a PZD.

(x) There shall be no minimum building setback requirement from a private street.

(xi) The developer shall erect at the entrance of each private street a rectangular sign, not exceeding 24 inches by 12 inches, designating the street a "private street" which shall be clearly visible to motor vehicular traffic.

FINDING: All interior streets and parking areas are to be maintained by a management company formed by the owner of the property.

(11) *Construction of nonresidential facilities.* Prior to issuance of more than eight building permits for any residential PZD, all approved nonresidential facilities shall be constructed. In the event the developer proposed to develop the PZD in phases, and the nonresidential facilities are not proposed in the initial phase, the developer shall enter into a contract with the City to guarantee completion of the nonresidential facilities.

FINDING: N/A

(12) *Tree preservation.* All PZD developments shall comply with the requirements for tree preservation as set forth in Chapter 167 Tree Preservation and Protection. The location of trees shall be considered when planning the common open space, location of buildings, underground services, walks, paved areas, playgrounds, parking areas, and finished grade levels.

FINDING: There are no existing trees on the site.

(13) *Commercial design standards.* All PZD developments that contain office or commercial structures shall comply with the commercial design standards as set forth in §166.14 Site Development Standards and Construction and Appearance Design Standards for Commercial Structures.

FINDING: The applicant has submitted elevations of all four sides of the structures to ensure compliance with Commercial Design Standards and Design Overlay District requirements. Material samples have also been submitted.

(14) *View protection.* The Planning Commission shall have the right to establish special height and/or positioning restrictions where scenic views are involved and shall have the right to insure the perpetuation of those views through protective covenant restrictions.

FINDING: N/A

(E) *Revocation.*

(1) *Causes for revocation as enforcement action.* The Planning Commission may recommend to the City Council that any PZD approval be revoked and all building or occupancy permits be voided under the following circumstances:

(a) *Building permit.* If no building permit has been issued within the time allowed.

(b) *Phased development schedule.* If the applicant does not adhere to the phased development schedule as stated in the approved development plan.

(c) *Open space and recreational facilities.* If the construction and provision of all common open spaces and public and recreational facilities which are shown on the final plan are proceeding at a substantially slower rate than other project components.

Planning staff shall report the status of each ongoing PZD at the first regular meeting of each quarter, so that the Planning Commission is able to compare the actual development accomplished with the approved development schedule. If the Planning Commission finds that the rate of construction of dwelling units or other commercial or industrial structures is substantially greater than the rate at which common open spaces and public recreational facilities have been constructed and provided, then the Planning Commission may initiate revocation action or cease to approve any additional final plans if preceding phases have not been finalized. The city may also issue a stop work order, or discontinue issuance of building or occupancy permits, or revoke those previously issued.

(2) *Procedures.* Prior to a recommendation of revocation, notice by certified mail shall be sent to the landowner or authorized agent giving notice of the alleged default, setting a time to appear before the Planning Commission to show cause why steps should not be made to totally or partially revoke the PZD. The Planning Commission recommendation shall be forwarded to the City Council for disposition as in original approvals. In the event a PZD is revoked, the City Council shall take the appropriate action in the city clerk's office and the public zoning record duly noted.

(3) *Effect.* In the event of revocation, any completed portions of the development or those portions for which building permits have been issued shall be treated to be a whole and effective development. After causes for revocation or enforcement have been corrected, the City Council shall expunge such record as established above and shall authorize continued issuance of building permits.

FINDING: Phase II of the proposal shall begin the permitting process not more than one (1) year after final Certificates of Occupancy are issued for the Phase I buildings, to ensure no cause for revocation of the proposed Planned Zoning District.

(F) *Covenants, trusts and homeowner associations.*

(1) *Legal entities.* The developer shall create such legal entities as appropriate to undertake and be responsible for the ownership, operation, construction, and maintenance of private roads, parking areas, common usable open space, community facilities, recreation areas, building, lighting, security measure and similar common elements in a development. The city encourages the creation of homeowner associations, funded community trusts or other nonprofit organizations implemented by agreements, private improvement district, contracts and covenants. All legal instruments setting forth a plan or manner of permanent care and

maintenance of such open space, recreation areas and communally-owned facilities shall be approved by the City Attorney as to legal form and effect, and by the Planning Commission as to the suitability for the proposed use of the open areas. The aforementioned legal instruments shall be provided to the Planning Commission together with the filing of the final plan, except that the Guarantee shall be filed with the preliminary plan or at least in a preliminary form.

(2) *Common areas.* If the common open space is deeded to a homeowner association, the developer shall file with the plat a declaration of covenants and restrictions in the Guarantee that will govern the association with the application for final plan approval. The provisions shall include, but not necessarily be limited to, the following:

(a) The homeowner's association must be legally established before building permits are granted.

(b) Membership and fees must be mandatory for each home buyer and successive buyer.

(c) The open space restrictions must be permanent, rather than for a period of years.

(d) The association must be responsible for the maintenance of recreational and other common facilities covered by the agreement and for all liability insurance, local taxes and other public assessments.

(e) Homeowners must pay their pro rata share of the initial cost; the maintenance assessment levied by the association must be stipulated as a potential lien on the property.

FINDING: All common space is to be maintained by a private management company formed by the property owner.

Sec. 161.25 Planned Zoning District

(A) Purpose. The intent of the Planned Zoning District is to permit and encourage comprehensively planned developments whose purpose is redevelopment, economic development, cultural enrichment or to provide a single-purpose or mixed-use planned development and to permit the combination of development and zoning review into a simultaneous process. The rezoning of property to the PZD may be deemed appropriate if the development proposed for the district can accomplish one or more of the following goals.

(1) Flexibility. Providing for flexibility in the distribution of land uses, in the density of development and in other matters typically regulated in zoning districts.

(2) Compatibility. Providing for compatibility with the surrounding land uses.

(3) Harmony. Providing for an orderly and creative arrangement of land uses that are harmonious and beneficial to the community.

(4) Variety. Providing for a variety of housing types, employment opportunities or commercial or industrial services, or any combination thereof, to achieve variety and integration of economic and redevelopment opportunities.

(5) No negative impact. Does not have a negative effect upon the future development of the area;

(6) Coordination. Permit coordination and planning of the land surrounding the PZD and cooperation between the city and private developers in the urbanization of new lands and in the renewal of existing deteriorating areas.

(7) Open space. Provision of more usable and suitably located open space, recreation areas and other common facilities that would not otherwise be required under conventional land development regulations.

(8) Natural features. Maximum enhancement and minimal disruption of existing natural features and amenities.

(9) General Plan. Comprehensive and innovative planning and design of mixed use yet harmonious developments consistent with the guiding policies of the General Plan.

(10) Special Features. Better utilization of sites characterized by special features of geographic location, topography, size or shape.

FINDING: The applicant's proposed development introduces flexible land use in this area, allowing for residential and commercial uses to coincide. Commercial uses are highly desired in this area, and the 40,398 SF proposed will serve both residents living immediately adjacent to and citizens visiting the area. The mixed-use development promotes a harmony of residential and retail, in the traditional sense of neighborhood development. The housing type proposed will provide a variety from Southern View I, to the north, and will not have a negative impact future development in the area.

The proposal is consistent with the General Plan 2020 in which it meets the guiding policies for Residential Areas which are:

> **9.8a Utilize principles of traditional residential urban design to create compatible, livable and accessible neighborhoods.**
>
> **9.8.e Utilize more intense development patterns downtown, where appropriate, and encourage mixed uses in new developments to promote better community design, maintain human scale, and enhance pedestrian activity.**
>
> **9.8.f Site new residential areas accessible to roadways, alternative transportation modes, community amenities, infrastructure, and retail and commercial goods and services.**

The proposal is consistent with the General Plan 2020 in which it meets the guiding policies for Community Commercial areas which are:

> **9.10.a Provide centers that are accessible and compatible with adjacent residential development.**

The proposal is consistent with the General Plan 2020 in which it meets the guiding policy for Mixed Use Areas which is:

> **9.14.a Allow mixing of uses and integration of design through the planning process.**

The proposal is consistent with the General Plan 2020 in which it meets the guiding policy for Community Character which is:

> **9.19.f Allow compatible commercial development within and adjacent to residential development.**

(B) Rezoning. Property may be rezoned to the Planned Zoning District by the City Council in accordance with the requirements of this chapter and Chapter 166, Development. Each rezoning parcel shall be described as a separate district, with distinct boundaries and specific design and development standards. Each district shall be assigned a project number or label, along with the designation "PZD". The rezoning shall include the adoption of a specific master development plan and development standards.

FINDING: Staff has reviewed the proposed development with regard to findings necessary for rezoning requests. Those findings are attached to this report. An ordinance will be drafted in order to create this Planned Zoning District which will incorporate all conditions placed on the project by the Planning Commission. This ordinance will be forwarded to the City Council for approval.*

(C) R - PZD, Residential Planned Zoning District.

(1) Purpose and intent. The R-PZD is intended to accommodate mixed-use or clustered residential developments and to accommodate single-use residential developments that are determined to be more appropriate for a PZD application than a general residential rezone. The legislative purposes, intent, and application of this district include, but are not limited to, the following:

(a) To encourage a variety and flexibility in land development and land use for predominately residential areas, consistent with the city's General Plan and the orderly development of the city.

(b) To provide a framework within which an effective relationship of different land uses and activities within a single development, or when considered with abutting parcels of land, can be planned on a total basis.

(c) To provide a harmonious relationship with the surrounding development, minimizing such influences as land use incompatibilities, heavy traffic and congestion, and excessive demands on planned and existing public facilities.

(d) To provide a means of developing areas with special physical features to enhance natural beauty and other attributes.

(e) To encourage the efficient use of those public facilities required in connection with new residential development.

FINDING: The R-PZD proposed is consistent with the City's General Plan for mixed-use development, and allows a more flexible means of development to better accommodate the need for commercial and residential land use. The harmonious relationship of different land uses and activities in a single development is promoted by the City's General Plan. Land use incompatibility is minimized, and public infrastructure improvements will benefit the City.

(2) Permitted uses.

Unit 1	City-wide uses by right	
Unit 2	City-wide uses by conditional use permit	
Unit 3	Public protection and utility facilities	
Unit 4	Cultural and recreational facilities	
Unit 5	Government facilities	
~~Unit 8~~	~~Single-family dwellings~~	**REMOVED BY APPLICANT**
~~Unit 9~~	~~Two-family dwellings~~	**REMOVED BY APPLICANT**
~~Unit 10~~	~~Three-family dwellings~~	**REMOVED BY APPLICANT**
Unit 12	Offices, studios and related services	
Unit 13	Eating places	
Unit 15	Neighborhood shopping	
Unit 19	Commercial recreation, small sites	
Unit 24	Home occupations	
Unit 25	Professional offices	
Unit 26	Multi-family dwellings	

FINDING: The applicant is proposing to retain the use of all Use Units associated with the R-PZD, with the exception of Use Units 8, 9, and 10.

(3) Condition. In no instance shall the residential use area be less than fifty-one percent (51%) of the gross floor area within the development.

FINDING: Commercial area totals 40,398 SF; residential units comprise two floors of each building, for a total of 114 units.

***Required Findings for Rezoning Request.**

RECOMMENDATION:

LAND USE PLAN: General Plan 2020 designates this site Regional Commercial. Rezoning this property to R-PZD 04-01.00 is compatible with surrounding land uses in the area.

FINDINGS OF THE STAFF

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

Finding: **This area is designated Regional Commercial on the Future Land Use Map. That designation is reflective of the current zoning of the site which is C-2, Thoroughfare Commercial. The property to the north, Southern View I, was rezoned and developed as multi-family residential in 2002-03. Concerns cited by the Planning Commission at the time regarding the loss of prime commercial space are included in the minutes of the Rezoning request (see attached). The R-PZD proposal helps alleviate some of those concerns by providing needed commercial space along a major corridor, with a residential component, which historically provides potential for safer neighborhood shopping and longer business hours. Connectivity of pedestrian and vehicular access routes will satisfy the City's policies of connectivity and providing mixed use areas in appropriate areas.**

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: **A desire for commercial land use in this area has been expressed by Planning Commission and City Council, specifically with the Rezoning request of the northern property in 2002. In order to facilitate a development that fulfills the objectives of the city and the needs of the developer, a rezoning request to utilize mixed use development in an R-PZD is justified.**

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: **The proposed zoning will increase traffic in the area. The streets surrounding the property are classified as a Collector (Futrall) and a Local (Old Farmington). A Collector Street is designed to carry between 4,000 and 6,000 vehicles per day. A Local Street should carry up to approximately 4,000 vpd. Development on this particular site should help traffic circulation to and from the area, enabling vehicles to travel east along Old Farmington in an effort to get south (Futrall is one-way north) to 6th Street. The proposal will not appreciably increase traffic danger and congestion.**

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

Finding: The proposed zoning would slightly alter the population density in this area. It should not, however, undesirably increase the load on public services.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

   a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

   b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

(C) ***R – PZD, Residential Planned Zoning District.***

(1) *Purpose and intent.* The R-PZD is intended to accommodate mixed-use or clustered residential developments and to accommodate single-use residential developments that are determined to be more appropriate for a PZD application than a general residential rezone. The legislative purposes, intent, and application of this district include, but are not limited to, the following:

(a) To encourage a variety and flexibility in land development and land use for predominately residential areas, consistent with the city's General Plan and the orderly development of the city.

(b) To provide a framework within which an effective relationship of different land uses and activities within a single development, or when considered with abutting parcels of land, can be planned on a total basis.

(c) To provide a harmonious relationship with the surrounding development, minimizing such influences as land use incompatibilities, heavy traffic and congestion, and excessive demands on planned and existing public facilities.

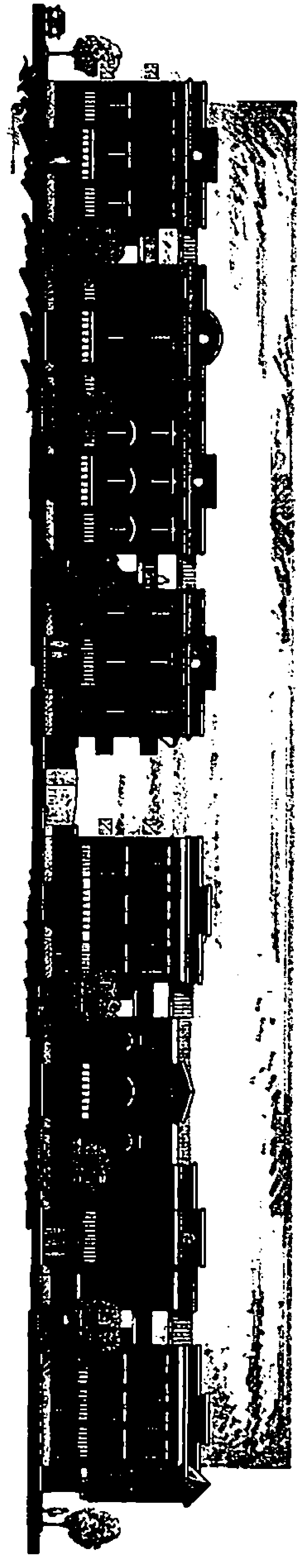
(d) To provide a means of developing areas with special physical features to enhance natural beauty and other attributes.

(e) To encourage the efficient use of those public facilities required in connection with new residential development.

(2) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 12	Offices, studios and related services
Unit 13	Eating places
Unit 15	Neighborhood shopping
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Professional offices
Unit 26	Multi-family dwellings

(3) *Condition.* In no instance shall the residential use area be less than fifty-one percent (51%) of the gross floor area within the development.



STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

x AGENDA REQUEST

For the Fayetteville City Council Meeting of: February 3, 2004

FROM:

Dawn Warrick	Planning	CP&E
Name	Division	Department

ACTION REQUIRED: Ordinance approval.

SUMMARY EXPLANATION:

R-PZD 04-01.00: Residential Planned Zoning District (Southern View II, pp 519) was submitted by Crafton, Tull & Associates on behalf of Lindsey Management Company for property located on Futrall Drive and Old Farmington Road east of I-540. The property is currently zoned C-2, Thoroughfare Commercial and contains approximately 6.713 acres. The request is to rezone the property to R-PZD 04-01.00 to allow for a mixed use development comprised of 114 dwelling units and 40,398 sq.ft. of commercial space.

STAFF RECOMMENDATION: Approval.

Dawn T. Warrick	1/14/04	Received in Mayor's Office	1/15/04
Division Head	Date		Date RH
[signature]	1/15/04		
City Attorney	Date		
[signature]	1-20-04	Cross Reference:	
Department Director	Date		
[signature]	1-16-2004	Previous Ord/Res#:	
Finance & Internal Services Dir.	Date	Orig. Contract Date:	
Hugh Earnest	1-16-04	Orig. Contract Number:	
Chief Administrative Officer	Date	New Item:	Yes No
Mayor	Date		

ENTERED 1-15-04

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Tim Conklin, AICP, CP&E Services Director T.C.
Dawn T. Warrick, AICP, Zoning and Development Administrator DW

From: Craig Carnagey, Sr. Planner / Landscape Administrator cc

Date: January 13, 2004

Subject: Amendment to Chapter 167 establishing standards and requirements that would allow subdivision developments the option to mitigate on-site for the removal of trees and clarifying that parkland dedications are not to be included in tree preservation areas.

RECOMMENDATION

Staff recommends approval of an ordinance amending Chapter 167 Tree Preservation and Protection of the Unified Development Code to allow an on-site mitigation option for subdivisions and to clarify the treatment of parkland dedication areas with regard to tree preservation requriements for development.

BACKGROUND

Currently, Chapter 167.04 (J)(4) of the Unified Development Code of the City of Fayetteville requires developers of subdivisions that remove trees below the designated percent minimum to pay money for this removal into an escrow account as a method of mitigation. The City of Fayetteville uses this money to replant trees within the subdivision, or within a one mile radius of where the subdivision is located. Subdivision developers have not had the option to implement their own on-site mitigation plans unless a variance to the ordinance was submitted. The proposed amendments would provide subdivision developers the same option as large scale developers, to either pay into the Tree Escrow Account, or submit for approval a plan with guarantees to plant their own trees within a development.

Other items

Insertion of the word Parkland Dedication under 167.04(C)&(D) In most circumstances within a proposed subdivision, land to be dedicated for a park, and areas to be designated for tree preservation, are kept as separate dedications. Parkland is typically accepted to create a community use with design elements for active recreation such as sport fields. These community park design elements often require the removal of trees. A tree preservation area is considered a natural area to be left relatively untouched by any form of development. While these two uses at times coincide, they have historically been considered separate uses within a subdivision in Fayetteville. One of the amendments proposed here simply explicates this in the language of the ordinance by stating that an applicant shall not include land dedicated for a park when calculating the sites preserved tree canopy. This will ensure that the integrity of tree preservation areas within subdivisions are protected.

DISCUSSION

After discussion within the Planning Division, with the City Attorney, and the Tree and Landscape Advisory Committee, this amendment was recommended to the Planning Commission. On January 12, 2003, the Planning Commission voted 7-0-0 to forward this item to the City Council with a recommendation for approval.

The amendment allowing on-site mitigation as an option for residential subdivisions is formatted in a manner to reflect the recent waiver request for the Legacy Pointe subdivision (ADM 03-22). This action was approved by the Planning Commission with an 8-0-0 vote on September 8, 2003 (minutes attached). The waiver was then approved by the City Council on consent at the October 7, 2003 meeting.

The request to include the word 'parkland' throughout is to clarify the intent to maintain parkland and tree preservation requirements separately for development projects.

BUDGET IMPACT

None.

ORDINANCE NO. ______

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT CODE, 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:

<u>Section 1</u>. That Section §167.04 C. is hereby repealed and the following is inserted in its stead:

§167.04 TREE PRESERVATION AND PROTECTION DURING DEVELOPMENT.

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 <u>and park land</u> 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.

<u>Section 2</u>. That Section §167.04 D. 1. is hereby repealed, and the following is inserted in its stead:

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 <u>and park land</u> dedications. The number of trees required to be planted shall be calculated using the Base Density for High Priority trees.

Section 3. That Section §167.04 F. is hereby repealed, and the following is inserted in its stead:

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~~ may choose either Residential On-Site Mitigation, or 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.

Section 4. That Section §167.04 I. is hereby amended by inserting Exhibit **A**, attached hereto and made a part hereof.

Section 5. That §167.04 J. 4. is hereby repealed, and Exhibit **B**, attached hereto and made a part hereof, is inserted in its stead.

PASSED and **APPROVED** this _____ day of ______________, 2004.

APPROVED:

By: ______________________

DAN COODY, Mayor

ATTEST:

By: ______________________

SONDRA SMITH, City Clerk

Exhibit A

§167.04 TREE PRESERVATION AND PROTECTION DURING DEVELOPMENT.

I. Request for On-Site Mitigation.

9. **Residential On-Site Mitigation.** Applicants requesting On-Site Mitigation for Residential Subdivisions shall comply with all the provisions of §167.04 I. 1-7, as well as the following:

a. The Applicant's Mitigation Plan shall meet or exceed the required number of Mitigation Trees based on the Forestation Requirements as set forth at §167.04 I. 4.

b. All Plans requesting Residential On-Site Mitigation shall include a binding three (3) year maintenance and monitoring plan, which shall hold the Applicant responsible for the health of all planted trees.

i. Approval of a Plan requesting Residential On-Site Mitigation shall be contingent upon the Applicant depositing with the City 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. The irrevocable Letter of Credit must cover the entire three (3) year maintenance and monitoring period. Applicant shall submit cost estimates to the Landscape Administrator for approval.

ii. 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 Letter of Credit.

iii. In the absence of such a finding, the Applicant shall be required 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.

iv. 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.

c. The Applicant shall establish a bona fide Property Owners Association with a Bill of Assurance and Protective Covenants sufficient to ensure the continued health and vitality of the mitigation trees within the subdivision. The Bill of Assurance and Protective Covenants shall be filed of record with the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, and file-marked copies thereof shall be provided to the Landscape Administrator prior to Final Plat approval.

d. Developers requesting mitigation trees be planted along the street right of way of a Subdivision shall submit a street tree planting plan that complies with the standards outlined in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual in order to ensure that new trees planted are of the highest quality, require low maintenance, and do not interfere with public safety. The species of trees to be planted shall be selected from the Approved Street Tree Species List, or be otherwise specifically approved by the Landscape Administrator.

i. The Applicant's Mitigation Plan for planting street trees shall describe in detail the method for tracking the development of the individual lots, which shall best ensure that required number and species of Mitigation Trees are planted.

ii. The applicant shall submit an annual schedule of the initial structural pruning for all Mitigation Trees planted along street right of ways with the name and contact information of the International Society of Arboriculture (ISA) Certified Arborist or pruning service performing the work.

Exhibit B

§167.04 TREE PRESERVATION AND PROTECTION DURING DEVELOPMENT.

J. Request for Off-Site Alternatives.

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~~ <u>may choose</u> 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. <u>If it is not possible to plant street trees within the subdivision,</u> 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.

e. The City of Fayetteville shall refund the portion of the money contributed under this section, including the accrued interest that has not been expended seven (7) years from the date of the contribution. Interest shall be based on a four percent (4%) annual rate.

f. Refunds shall be paid to the Applicant who made the original contribution.

g. Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the Applicant no later than thirty (30) days after the date which the refund becomes due. The sending by regular mail of the notices to the Applicant shall be sufficient to satisfy the requirement of notice.

h. The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.

i. At the time of the contribution to the Tree Escrow Account, the Landscape Administrator shall provide the Applicant with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any contribution to the Tree Escrow Account under this Ordinance.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of January 12, 2004

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Craig Carnagey, Landscape Administrator
THRU: Dawn Warrick, AICP, Zoning & Development Administrator
Tim Conklin, AICP, Community, Planning & Engineering Services Director
DATE: January 7, 2003

ADM 03-29.00: Administrative Item (Tree Preservation and Protection Ordinance) An amendment to Chapter 167 establishing standards and requirements that would allow subdivision developments the option to mitigate on-site for the removal of trees.

RECOMMENDATION:
Staff recommends the Planning Commission forward the amendments to Chapter 167 for adoption by the City Council.

PLANNING COMMISSION ACTION: Required YES
Approved Denied
Date: January 12, 2003

CITY COUNCIL ACTION: Required YES
Approved Denied
Date: January 20, 2003

BACKGROUND:

Currently, Chapter 167.04 (J)(4) of the Unified Development Code of the City of Fayetteville requires developers of subdivisions that remove trees below the designated percent minimum to pay money for this removal into an escrow account as a method of mitigation. The City of Fayetteville is then required to use this money to replant trees within the subdivision, or within a one mile radius of where the subdivision is located. The original intent of this provision was to insure that the health and survival of mitigation trees would not be adversely affected as individual lots were developed.

The first subdivision to be platted under this new provision was Legacy Pointe. The developer of this subdivision requested a variance from this provision in order to plant mitigation trees on their own. Attached with this variance was a comprehensive planting plan with guarantees submitted to the City. This variance was recommended by staff and approved by both the Planning Commission and City Council (October 7, 2003). Since this time several subdivision developers have requested to plant their own mitigation trees using similar standards as Legacy Point with guarantees. To date, staff has not had the option to allow developers to implement their own on-site mitigation plans unless a variance to the ordinance was submitted. After discussion within the Planning Division, with the City Attorney, and the Tree and Landscape Advisory Committee, this amendment was forwarded to allow subdivision developers the choice to either pay into the Tree Escrow Account, or submit for approval, a plan with guarantees to plant their own trees within a development.

Other items

<u>Insertion of the word Parkland Dedication under 167.04(C)&(D)</u> In most circumstances within a proposed subdivision, land to be dedicated for a park, and areas to be designated for tree preservation, are kept as separate dedications. Parkland is typically accepted to create a community use with design elements for active recreation such as sport fields that often require the removal of trees. A tree preservation area is considered a natural area to be left relatively untouched by any form of development. While these two uses at times coincide, they have historically been considered separate uses within a subdivision in Fayetteville. One of the amendments proposed here simply explicates this in the language of the ordinance by stating that an applicant shall not include land dedicated for a park when calculating the sites preserved tree canopy.

FINDINGS:

The amendments to Chapter 167.04 (I) and (J) incorporates standards and requirements for a subdivision developer to implement their own on-site mitigation plan. These standards and requirements provide a guarantee to the City of Fayetteville that a mitigation plan will be implemented in a manner that is compatible with current urban forestry standards and guarantee the planting, maintenance and viability of all trees installed during a developer's project.

General Amendments:
Exhibit A

- *a.* An applicants plan shall meet or exceed the required number of mitigation trees prescribed for their development.
- *b.* All mitigation plans shall submit a binding three year maintenance and monitoring plan. This plan shall include an irrevocable letter of credit equal to the estimated cost of materials and labor for planting and maintaining all trees. Upon completion of this three year period an inspection will be performed by the City to determine that no less than 90% of all required trees planted are healthy and viable. If such a finding is made the letter of credit will be returned to the applicant, otherwise the applicant will be requested to replant, or the City will use the necessary dollar amount from the letter of credit to replant trees.
- *c.* The applicant will establish a Property Owners Association with a Bill of Assurance and Protective Covenants sufficient to ensure the continued health and vitality of the mitigation trees planted within the subdivision.

d. Developers requesting mitigation trees be planted along the street right of way within a subdivision shall submit a separate street tree planting plan that complies with the standards outlined in the City's Tree and Landscape Manual. A method for tracking the development of individual lots to ensure trees are planted at appropriate times will be included with this plan, as well as an annual schedule of initial structural pruning with the name of the ISA (International Society of Arboriculture) Certified Arborist hired to perform this work.

Exhibit B

Removes some language not applicable if this amendment is adopted, and describes the terms for refunding a developers money paid into the Tree Escrow Account if those funds have not been used within a specified time frame.

Other Items

All other changes made in this amendment proposal are minor additions of language to either further clarify the above mentioned amendments or include the word parkland when considering how to calculate tree canopy.

ADM 03-22.00: Administrative (Sloan Petition for Tree Ordinance Variance, Legacy Pointe Subdivision) Mr. Charles W. Sloan, the Developer of Legacy Pointe Subdivision off Double Springs Road, has requested an alternate method of compensation to the City of Fayetteville's Tree Escrow Account for the removal of trees on the above mentioned property.

Hoover: Moving on to item number four, ADM 03-18.00 Sloan Variance Petition for the Tree Ordinance.

Carnagey: Mr. Charles Sloan, the developer of Legacy Pointe subdivision off of Double Springs Road has requested an alternate method of compensation to the City of Fayetteville for removal of trees on the above-mentioned property. The method proposed is for the developer to plant, establish and maintain all trees that are currently required for mitigation planting. There are really two issues here. One is whether or not the developer meets the criteria of Chapter 156.03, which is a petition for a variance from the requirements of Chapter 167. The applicant, the developer Mr. Sloan, and David Whitaker will address. The other issue is whether the method that the developer is proposing to plant, establish and maintain all of these trees, meets the requirements that are laid out for planting mitigation trees in the landscape manual. I will give you a little bit of background on this section. In accordance with the city's tree preservation protection ordinance, all residential subdivisions requesting tree removal below the minimum canopy requirement are required to contribute to the tree escrow account. During the Preliminary Plat process the developer reserved the right to request a tree variance before Final Plat approval. The preliminary subdivision plat for Legacy Pointe subdivision, including the tree preservation plan, has been approved by the Planning Commission. Currently the developer is required to compensate the city for the removal of trees at a replacement cost of $175 per tree for 238 1" caliper trees. A letter of credit in the amount of $41,650 has been deposited with the city by the developer. Currently the city is required to use this money for mitigation planting on or in the vicinity of the Legacy Pointe subdivision. The developer's proposal, the method of compensation, as stated before, is for the developer to replace the required mitigation trees, establish and maintain those trees. He is requesting to plant a minimum of 156 5" to 6" caliper trees, one tree per single family and townhouse lot will be planted. Each property owner will be given the choice of either planting one 5" to 6" caliper tree or multiple 2" caliper trees. These trees will be planted by a professional tree company approved by the city's Landscape Administrator, Legacy Pointe's Property Owner's Association shall be responsible to the City of Fayetteville to ensure that each tree is planted, established and maintained for no less than 25 years as per the covenants of the Legacy Pointe Property Owner's Association. The developer shall deposit an Irrevocable Letter of Credit with the city in the amount of $41,650 as guarantee for the establishment of these trees. Upon completion of a three year establishment period the Landscape Administrator shall inspect the subdivision and determine whether 90% of the planted trees are healthy and have a reasonable chance of surviving. In the absence of such a condition the city shall request from the developer the replacement of any dead or unhealthy trees. Failure from the developer to take these remedial steps within 60 days of a written request will result in the city's right to use the guarantee funds to achieve compliance. The findings for this proposal are that the square footage of canopy cover for planting 156 4" to 6" caliper trees is greater than planting 238 1" caliper trees. Currently the city does not have the ability to plant, establish and maintain mitigation trees. We don't have the capacity currently. We have requested a proposal for subcontractors to plant mitigation trees but as of right now the city is not in a position to plant these trees. The combination of the Letter of Credit the developer has deposited with the city and the Protective Covenants on file with the county provides a high level of guarantee to the city that these trees will be planted, established and maintained. This guarantee provides assurance equal to the city contracting out of house the planting, establishing and maintenance of mitigation trees. My recommendation is for the approval of the variance, specifically regarding the method of planting these mitigation trees with the following conditions. 1) The trees shall be planted during the appropriate planting season (between October 15th and April 15th). The developer shall describe the method he will use to track development of each individual lot that will ensure the required trees are planted. The developer shall provide a final date when all required trees will be planted by and the developer will describe the method used to ensure that maintenance, establishment, protection, watering, and initial structural pruning of trees are taken care of. I would also like included in that the name of an IESA Certified Arborist or the equivalent to be the contact name of that person to be provided to my office. That is all of the section of this petition that I have to address. I believe David has some additional comments.

Hoover: Thank you. Would the applicant come forward?

Sloan: Hello, I'm Charlie Sloan, the developer. When we got into this process of doing Legacy Pointe we did have to remove some trees. We knew that there was a tree ordinance that was written. We got to searching the tree ordinance and there is a provision for commercial to be replanted but there is nothing for residential. If you take a tree down you pay. That is all there is. From our other subdivisions we have always required planting of trees and through the homeowner's association and grounds keeping committees if the tree were to be damaged or any kind of disease or anything like that we require that it is replaced. If you don't replace it the homeowner's association will replace it. We have got into that situation before. We immediately file a lien on their property after certain notice and we start foreclosure proceedings if they don't pay to go through, it is just like collecting dues. We were already in the process, because it is part of our covenants, to plant trees before we found out that the situation on the amount of money that we have up here and what was happening with having to plant trees back with the city. First of all, I didn't think the city ought to be in the tree planting business for our subdivision. I dislike the fact that they are going to wait three years after our subdivision is established to come back in and plant trees. All we were asking was we require it anyway. I will put up the money, which I already have, and it has to stay there during our construction stage until we get enough houses in there to plant the trees. Then from that point I have a three year period additionally that the money has to set up until we meet the three year requirement of the tree ordinance. One of my questions was if you come in and plant a tree two years or three years from now in somebody's yard, after the three year period beyond that time, what can they do with that tree? They can cut it down if they want to. You can't go back on that home owner on anything. What we are saying is the trees we plant they can't cut it down. They have to maintain it. I understand it is very difficult to chase after a bunch of home owners so I am the guy you chase after. This whole thing could be handled easily with your tree administrator, one person, who I will meet with and go out there and I know I am obligated for a period of time with our subdivision. I feel like this is a good compromise. It makes it feasible, it is something that we don't have to go in there and add additional cost to. A lot is already going to have to absorb the cost of building putting those trees in. I think we will put a better tree in. We use, we don't go out there and allow the home owner's to put them in. We have someone that has to install, they have to buy from a certain place, they have to have that person come and install them, who will then guarantee the tree anyway for two or three years after they install it. They usually gives instructions and everything to the home owners of how to maintain the trees and everything. I feel like we have offered a good compromise. We need a way for subdivisions to replant trees. I think I'm the test case. We are the first subdivision on this tree ordinance. We were all shocked at the dollar amount because I am basically in a cow pastor. It is not flat land but it rolls but they have raised a lot of cattle on this land and there is not very many trees. The few that did have to come down there was just no way of going around it. There are a few trees and we spent a lot of money working utilities around and getting variances to put water and sewer on the same side of the street so we didn't have to take down a few trees. There needs to be some avenue that a developer is allowed to take down trees and then replant and we are trying to bring that compromise to you. That is where we are today. Thank you. We are fine with the conditions.

Hoover: Thank you. I will ask if there is any public comment on this ADM 03-18.00. Seeing none, I will bring it back to the Commissioners.

Bunch: A question for the assistant city attorney. I know you sat in on the rewriting of the tree ordinance and who is better qualified to tell us about this? Are we on good legal grounds to accept this compromise?

Whitaker: What I'm going to do is despite my initial billing this evening, you are going to know that my habit has always been that I am not going to tell you whether you should or should not grant a variance. I will remind you that that's a fact based determination that you folks are empowered to make. What I can say is that under the circumstances here where by staff's own memos and communications to you the city is at this time not able to provide the service contemplated by the revision committee when this language in 167.04(J)(4)(a) was adopted. That could be for you what would be the unique situation you would require to grant such a variance. Understanding that it is indeed a variance from, and that is why they are here, that all residential subdivisions would do it. This is not a complete surprise. We had anticipated that there would be sections of that rather hard thought document, that when the rubber hit the road there would be some adjustments made, this is one of the hardest ones we have hit so far. I think at some point soon we need to look at some modifications so that every residential subdivision that comes through in the interim before a mechanism for the city to plant the trees and maintain them. It doesn't have to come and request a variance but perhaps there could be an option of the two procedures, either pay into the tree fund, or as I'm not sure it's clear from what you've seen, but basically what the applicant and his counsel have done is drop down one subsection and adopted many of the provisions that apply currently for on site mitigation and off site forestation for non-residential subdivisions, simply moving them into the residential setting and then sort of as an overlay of extra protection, introducing voluntary measures such as strict covenants and pre-existing property owners association with very specific requirements for trees and protections for those trees on each lot. I think that together certainly then moves into the second prong of what 156.03(C)(5) talks about when it says "Provided that such variance shall not have the affect of nullifying the intent and purpose of the chapter." I think with the alternative that the applicant has provided you accompanied by Mr. Carnagey's conditions of approval, I think you certainly are in a position to satisfy that second prong and indeed there are those, myself included, who think that if this can work it would actually afford a better out come than the original language of the ordinance would have as far as canopy cover in that subdivision.

Bunch: Thank you. One other question, either for staff or the applicant. On the sixty days to come into compliance, is that 60 days to file an action to be taken since obviously there could be more than 60 days before a tree could be planted, since another part of the presentation by the Landscape

Administrator gave specific planting dates.

Carnagey: That would be sixty days for a response.

Bunch: I just wanted to clarify that, thank you.

Hoover: Is there any other discussion?

Estes: I have a question. The Letter of Credit that is issued by Arvest and the requirement by the P.O.A. that it will ensure that each tree is planted, established and maintained for no less than 25 years. How will this be enforced? Is that Letter of Credit going to sit there for 25 years?

Sloan: I believe the intent of the ordinance, let's say I start this subdivision this afternoon and start putting houses in there, let's say it takes a year to get the houses in there before we get the houses established, then we will plant trees. Those trees, according to what the city was going to do is they were going to come in and plant trees and maintain them for three years. Now what my proposal intends to be is I will leave the Letter of Credit up until that three year time frame is left, all I have to do with the ordinance is the trees have to live three years according to your ordinance, not my ordinance. My ordinance they have to be maintained for 25 years to go along with the covenants. I am only leaving the Letter of Credit up for three years. If he comes along and looks good, from that date on we document it and I have three years that I have to leave the money up and he will come back at that three year period and check to make sure they are healthy. Once 90% of the subdivision is done then my money is released at that point. Technically that might be a four, five, or six year period that I have the money up. Granted, I would love to take the money off the table at the time the tree is planted but that doesn't meet the spirit of the ordinance. The ordinance was to try to maintain some kind of, so the city would be able to enforce that to make sure we keep a tree there for a three year period. We are just trying to take the city out of being the ones to plant the trees, come by and water trees for the next three years. I think that is undue work on the city that we can take care of has home owners out there and as developers.

MOTION:

Shackelford: Madam Chair, after reviewing this I really like this proposal. One of the areas of the tree preservation act that I had the most concern with was in regards to the residential housing development. I like this idea. I think developers and home owners are always going to have a greater vested interest and reservation for their property than the city will. Based on that, and the fact that our own city staff is telling us that we cannot provide this service, I think that this variance meets the intent and purpose of the ordinance as it has been written. Based on that and findings of fact by our city staff and written conditions of approval, I will make a motion that we approve this ADM 03-22.00.

Bunch: Not only does this meet but it far exceeds what our city requirements are and I will happily second it and think that it is wonderful that the private development community is showing that there is value in this and working to not only meet our city standards, but to exceed them.

Hoover: Thank you. We have a motion by Commissioner Shackelford and a second by Commissioner Bunch. Is there any more discussion? Seeing none, Renee?

Roll Call: Upon the completion of roll call the motion to recommend approval of ADM 03-22.00 was approved by a vote of 8-0-0.

Thomas: The motion carries by a vote of eight to zero.

Whitaker: If you would like, and I think it is important based on this process, which has actually gone on for more than a year now, with your consent we would like to go ahead and work with the Planning staff on proposed language with the jest that should they want to bring in protective covenants and property owner's associations with the kind of assurance that Mr. Sloan's project did, that would be an option as well. It would still allow the tree fund to exist for those who didn't feel like they wanted to be bothered with that level of commitment.

Carnagey: I think it is important that what David is saying is explained. City staff, personnel may not have the capacity to plant mitigation trees but we should still allow the ability for applicants to pay into the tree fund and the city can actually contract that work out. Like I said in my report, we have an RFP submitted right now for landscape contractors to go in and plant some of these mitigation trees that we are requiring developments to plant.

Hoover: Thank you. Is there any other discussion? Seeing none, I will adjourn the meeting. Thank you.

Meeting adjourned: 7:26 p.m.

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

x AGENDA REQUEST

For the Fayetteville City Council Meeting of: February 3, 2004

FROM:

Dawn Warrick	Planning	CP&E
Name	Division	Department

ACTION REQUIRED: Ordinance approval.

SUMMARY EXPLANATION:

ADM 03-29.00: Tree Preservation and Protection Ordinance An ordinance amending Chapter 167 Tree Preservation and Protection of the Unified Development Code to allow an on site mitigation option for subdivisions and to clarify the treatment of parkland dedication areas with regard to tree preservation requirements for development.

STAFF RECOMMENDATION: Approval.

Dawn Warrick 1/15/04
Division Head Date

Received in Mayor's Office 1/15/04
Date P.H.

[signature] 1/15/04
City Attorney Date

[signature] 1-20-04
Department Director Date

Cross Reference:

[signature] 1-16-2004
Finance & Internal Services Dir. Date

Previous Ord/Res#: ______

Orig. Contract Date: ______

Hugh Earnest 1-16-04
Chief Administrative Officer Date

Orig. Contract Number: ______

New Item: Yes No

______ ______
Mayor Date

ENTERED 1-16-04

Tentative Agenda
For
City Council Meeting
February 3, 2004

A meeting of the Fayetteville City Council will be held on February 3, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

A. CONSENT:

1. **Approval Of The Minutes:** Approval of the January 20, 2004 meeting minutes.

B. OLD BUSINESS:

1. **Impact Fees for Road, Police and Fire Improvements:** An ordinance waiving the requirements of competitive bidding and approving a contract with Duncan and Associates to calculate Impact Fees for Road, Police and Fire Improvements in the amount of $25,890.00 with a contingency amount of $1,500.00 and approving a Budget Adjustment of $27,390.00.
   This Ordinance was left on the first reading at the January 6, 2004 City Council meeting.
   This Ordinance was tabled at the January 6, 2004 City Council meeting until the February 3, 2004 City Council meeting.

Staff will ask to table until Feb. 17, 2004 City Council meeting

2. **R-PZD 03-6.00; Benton Ridge, Long, LLC:** An ordinance establishing a Residential Planned Zoning District titled (R-PZD 03-6.00) located on the east side of Crossover Road north of Huntsville Road and south of Wyman Road containing 8.34 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the Planning Commission.
   This ordinance was left on the first reading at the January 6, 2004 City Council meeting.
   This ordinance was left on the second reading at the January 20, 2004 City Council meeting.

3. **R-PZD 03-7.00; Brophy Condominiums, Ralph Brophy:** An ordinance establishing a Residential Planned Zoning District titled (R-PZD 03-7.00) located east of College Avenue, north of Township on Brophy Circle containing 6.01 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the Planning Commission.
   This ordinance was left on the first reading at the January 6, 2004 City Council meeting.
   This ordinance was left on the second reading at the January 20, 2004 City Council meeting.

4. **WIV-Fayetteville Cost-Share:** An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with WIV-Fayetteville, LLC in an amount of $25,512.00 plus a contingency of $3,826.00 for a total of $29,338.00 for the construction of 350 feet of 8-inch water main.
   This ordinance was left on the second reading at the January 20, 2004 city Council meeting.

5. **Mount Sequoyah Woods Conservation Easement:** A resolution to reaffirm its commitment to sell most of its development rights to the Fayetteville Natural Heritage Committee on the 67 acres of Mount Sequoyah Woods purchased by the City of Fayetteville pursuant to Resolution No. 46-03.
   This resolution was tabled at the January 20, 2004 City Council meeting.

C. NEW BUSINESS:

Consent

1. **Telecommunications Task Force:** A resolution to establish a Task Force to recommend a plan and an implementation strategy for a Telecommunications Policy and Infrastructure Development.

2. **Southern View Phase II, Money in Lieu of Land:** A resolution accepting the parks and Recreation Advisory Board's recommendation to accept $40,086.00 cash in lieu of the required park land dedication for Southern View Phase II.

[redacted]

3. **Re-budget 2003 Budget Items:** A resolution approving a budget adjustment to re-appropriate ~~$58,661,024.00~~ in order to retain project funding for identified and scheduled capital improvements and fund increased workers compensation premiums.
   $58,605,226.00

4. **Non-Exclusive Franchise Contracts:** A resolution authorizing the Mayor to execute non-exclusive franchise contracts with Waste Management of Arkansas, Roll-Off Services, Inc., and Ozark Sanitation to collect and transport specific types of solid waste within the city limits of Fayetteville.

Consent

5. **ADEA Post Closure Trust Fund:** A resolution authorizing the Fayetteville Parks & Recreation Division to apply for a Post Closure Trust Fund Grant from the Arkansas Department of Environmental Quality (ADEQ) for the C & L Landfill study and remediation.

Consent

6. **Wastequip May Fab Bid Award:** A resolution approving the purchase of 2 to 8 yard trash containers from Wastequip in an amount not to exceed $63,000.00 to service multi-family and commercial solid waste customers.

Consent

7. **Bes-Pac Contract:** A resolution approving the purchase of trash compactors and roll-off container/compactors in an amount not to exceed $85,859.00 from Bes-Pac, Inc., and Downing Sales, Inc.

Consent 8. **ESRI 2004 Service and Maintenance Fees:** A resolution approving the annual maintenance agreement in the amount of $20,692.30 with ESRI, Inc. for Geographic Information System (GIS) software maintenance and upgrades.

Consent 9. **Hansen 2004 Service and Maintenance Fees:** A resolution approving a purchase request to Hansen Technology, Inc. in the amount of $44,852.10 for software service and maintenance fees.

10. **R-PZD 04-1.00 – Southern View II:** An ordinance establishing a residential planned zoning district titled (R-PZD 04-1.00) located on Futrall Drive and Old Farmington Road east of I-540 containing 6.713 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the associated residential development plan as approved by the Planning Commission.

Consent 11. **Van Scoyoc Associates:** A resolution authorizing the Mayor to negotiate a contract for services with Van Scoyoc Associates.

Consent 12. **Rules of Order and Procedure:** A resolution to clarify that the Rules of Order and Procedure of the Fayetteville Mayor/City Council should follow the "Procedural Rules for Municipal Officials" by the Arkansas Municipal League.

13. **ADM 03-29.00 – Chapter 167 Tree Preservation Amendment:**

D. INFORMATIONAL:

Council Tour: February 2, 2004

Tentative Agenda
For
City Council Meeting
February 3, 2004

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New Resolution

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New Resolution

8. **Van Scoyoc Associates:** A resolution authorizing the Mayor to negotiate a contract for services with Van Scoyoc Associates.

9. **Rules of Order and Procedure - Handbook Arkansas Municipal Officials:** A resolution to clarify that the Rules of Order and Procedure of the Fayetteville Mayor/City Council should follow the "Procedural Rules for Municipal Officials" by the Arkansas Municipal League.

10. **Rules of Order and Procedure – Voting:** A resolution to modify Section B.4. Voting on the Rules of Order and Procedure of the Fayetteville Mayor/City Council.

11. **Removal of Planning Commissioners:** An ordinance to repeal §33.111 removal of planning Commissioners and enacting §33.300 attendance requirement for all members of citizen committees, boards and commissions.

Moved to New Business #5

B. OLD BUSINESS:

1. **Impact Fees for Road, Police and Fire Improvements:** An ordinance waiving the requirements of competitive bidding and approving a contract with Duncan and Associates to calculate Impact Fees for Road, Police and Fire Improvements in the amount of $25,890.00 with a contingency amount of $1,500.00 and approving a Budget Adjustment of $27,390.00.
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   This Ordinance was tabled at the January 6, 2004 City Council meeting until the February 3, 2004 City Council meeting.
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This resolution was tabled at the January 20, 2004 City Council meeting.

C. NEW BUSINESS:

(2) ~~1.~~ **Southern View Phase II, Money in Lieu of Land:** A resolution accepting the parks and Recreation Advisory Board's recommendation to accept $40,086.00 cash in lieu of the required park land dedication for Southern View Phase II.

(3,) ~~2.~~ **Re-budget 2003 Budget Items:** A resolution approving a budget adjustment to re-appropriate $58,605,226.00 in order to retain project funding for identified and scheduled capital improvements and fund increased workers compensation premiums.

Remove

~~3.~~ **~~Non-Exclusive~~ Franchise Contracts:** A resolution authorizing the Mayor ~~to~~ execute n~~on-exc~~lusive franchise contracts ~~with Waste Management of Arkansas~~, Roll-Off Services~~, Inc., and Ozark Sanitation to collect and transport specific types of solid~~ waste within the city limits of Fayetteville.

(1) Move to #1 New Business

~~4.~~ **R-PZD 04-1.00 – Southern View II:** An ordinance establishing a residential planned zoning district titled (R-PZD 04-1.00) located on Futrall Drive and Old Farmington Road east of I-540 containing 6.713 acres, more or less; amending the official zoning map of the City of Fayetteville; and adopting the associated residential development plan as approved by the Planning Commission.

(4) ~~5.~~ **ADM 03-29.00 – Chapter 167 Tree Preservation Amendment:** An ordinance amending Title XV: Unified Development Code, of the Code of Fayetteville, to provide amendments to and clarification of various provisions concerning tree preservation and protection.

D. INFORMATIONAL:

Council Tour: February 2, 2004

Tentative Agenda
For
City Council Meeting
February 3, 2004

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5. **ADEA Post Closure Trust Fund:**

6. **Wastequip May Fab Contract:**

7. **Bes Pac Contract:**

8. **ESRI 2004 Service and Maintenance Fees:**

9. **Hansen 2004 Service and Maintenance Fees:**

10. **R-PZD 04-1.00 – Southern View II:**

11. **ADM 03-29.00 – Chapter 167 Tree Preservation Amendment:**

D. INFORMATIONAL:

Council Tour: February 2, 2004

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

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

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody**, Mayor

THRU: **Sondra Smith**, City Clerk

FROM: **Kit Williams**, City Attorney

DATE: **February 4, 2004**

RE: **Passed Resolutions and Ordinances from City Council meeting of February 3, 2004**

The following Resolutions and Ordinances were passed at last night's regular City Council meeting and are ready for the mayor's signature.

Enclosed are:

1. **Telecommunications Task Force:** Resolution to establish task force to recommend plan and an implementation strategy for telecommunications policy and infrastructure development;

2. **ADEQ Post Closure Trust Fund:** Resolution authorizing Fayetteville Parks & Recreation Division to apply for a post closure trust fund grant from ADEQ for the C & L Landfill study and remediation;

3. **Wastequip May Fab Bid Award:** Resolution approving purchase of 2 to 8 yard trash containers from Wastequip in an amount not to exceed $63,000.00 to service multi-family and commercial solid waste customers;

4. **Bes-Pas Bid Award:** Resolution approving purchase of trash compactors and roll-off container/compactors in amount not to exceed $85,859.00 from Bes-Pac Inc., and Downing Sales, Inc.;

5. **ESRI 2004 Service and Maintenance Fees:** Resolution approving annual maintenance agreement in amount of $20,692.30 with ESRI, Inc for GIS software maintenance and upgrades;

6. **Hansen 2004 Service and Maintenance Fees:** Resolution approving purchase request to Hansen Technology, Inc. in amount of $44,852.10 for software service and maintenance;

7. **Van Scoyoc Associates:** Resolution approving Memorandum of Agreement w/Van Scoyoc Associates and a budget adjustment in amount of $85,000.00 to provide consulting legislative services in amount of $75,000.00 plus expenses up to $10,000.00;

8. **Rules of Order & Procedure – Handbook Arkansas Municipal Officials:** Resolution to clarify that the Rules of Order & Procedure of the Fayetteville Mayor/City Council should follow the "Procedural Rules for Municipal Officials" by the Arkansas Municipal League;

9. **Rules of Order and Procedure – Voting:** Resolution to modify **§B. 4. <u>Voting</u>** on the Rules of Order & Procedure of the Fayetteville Mayor/City Council;

10. **R-PZD 03-6.00 – Benton Ridge, Long, LLC:** Ordinance establishing a Residential Planned Zoning District (R-PZD 03-6.00) located on east side of Crossover Road, north of Huntsville Road and south of Wyman Road containing 8.34 acres, more or less; amending official zoning map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the Planning Commission as amended by the City Council with agreement of the applicant;

11. **Mount Sequoyah Woods Conservation Easement:** Resolution to reaffirm its commitment to sell most of its development rights to the Fayetteville Natural Heritage Association, Inc. on the 67 acres of Mount Sequoyah Woods purchased by the City of Fayetteville pursuant to Resolution No. 46-03;

12. **Re-budget 200[illegible] Budget Items:** Resolution approving budget adjustment to reappropriate $58,605,226.00 in order to retain project funding for identified and scheduled Capital Improvements and fund increased Workers Compensation premiums;

13. **ADM 03-29.00 – Chapter 167 Tree Preservation Amendment:** Ordinance amending Title XV: Unified Development Code, of the Code of Fayetteville, to provide amendments to and clarification of various provisions concerning tree preservation and protection;

14. **Amendment of Monthly Water Meter Service Charge and Emergency Declaration:** Ordinance amending Table B. Monthly Water Meter Service Charge of §51.136 of the Fayetteville Code and Declaring an emergency.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

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

FROM: **Kit Williams**, City Attorney

DATE: **January 20, 2004**

RE: **"Procedural Rules for Arkansas Municipal Officials"**

The Arkansas Municipal League has published a short informative pamphlet for use by city councils entitled "Procedural Rules for Arkansas Municipal Officials." I believe everyone was provided this pamphlet during orientation, but the City Clerk has copies if anyone needs one.

This sixteen page booklet provides an excellent summary of almost all the procedural rules necessary for the City Council to conduct its business. It has clear definitions of most parliamentary terms and a helpful table at the end covering most types of motions, whether they require a second, can interrupt a speaker, are debatable or amendable, and how many votes are required to pass them.

This pamphlet on procedural rules should have been referred to as our guide to parliamentary procedure in Rule D.2. rather than the "Handbook for Arkansas Municipal Officials" which is a mere compilation of state statutes on every topic that might relate to municipal affairs. Apart from a few state statutes regarding reading ordinances, number of required votes to pass an ordinance, motion to suspend the rules, etc. (which we must follow regardless of what our Rules of Orders and Procedures might say), the Handbook addresses no parliamentary rules. Instead of 16 pages, it is over 16 hundred pages.

I think the reference to the Handbook rather than the Procedural Rules pamphlet was a simple mistake which should be corrected by adoption of an amendment to our rules substituting "Procedural Rules For Municipal Officials" for "Handbook For Municipal Officials."

Please review my attached Resolution to accomplish this. I will propose this for the February 3rd agenda.

STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council Meeting of: February 3, 2004

FROM:

Scott Huddleston	Information Technology	Finance and Internal Services
Name	Division	Department

ACTION REQUIRED: Approve Purchase Request to Hansen Information Technologies for 2004 Service and Maintenance Fees.

COST TO CITY:

$44,852.10	$ 141,500.00	Maintenance
Cost of this request	Category/Project Budget	Program Category / Project Name
1010-1710-5416 00	$ -	Maintenance
Account Number	Funds Used to Date	Program / Project Category Name
	$ 141,500.00	
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item ___ Budget Adjustment Attached

Budget Manager — Date 1-15-04

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager — Date 1/15/04
Internal Auditor — Date 1/16/04
City Attorney — Date 1/16/04
Purchasing Manager — Date 1/16/04

STAFF RECOMMENDATION:

Division Head — Date 1/15/2004
Received in Mayor's Office — Date 1/16/04 PH

Department Director — Date

Finance & Internal Services Dir. — Date 1-16-2004

Chief Administrative Officer — Date 1-21-04

Mayor — Date

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

New Item: Yes No

ENTERED 1-16-04

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

X AGENDA REQUEST

For the Fayetteville City Council Meeting of: February 3, 2004

FROM:

Name	Division	Department
Hugh Earnest		Chief Administrative Officer

ACTION REQUIRED: A resolution establishing a Task Force to recommend a comprehensive Telecommunications policy to the City Council

SUMMARY EXPLANATION: Memo attached with Resolution.

STAFF RECOMMENDATION:

	Date
Division Head	
City Attorney	1-16-04
Department Director	
Finance & Internal Services Dir.	1-16-2004
Chief Administrative Officer	1-15-04
Mayor	

Received in Mayor's Office 1/16/04 Date PH

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

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

ENTERED 1-16-04