Final Agenda
City Council Meeting
March 2, 2004

A meeting of the Fayetteville City Council will be held on March 2, 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 February 17, 2004 meeting minutes.

   APPROVED.

2. **2004 Bulk Construction Material Purchase:** A resolution awarding bids for and approving the purchase of bulk materials and services utilized by various divisions of the City of Fayetteville in the amount of ($195,000.00).

   PASSED AND SHALL BE RECORDED AS RESOLUTION 30-04.

3. **Terracon Contract:** A resolution authorizing Parks and Recreation to contract with Terracon Consultants Inc. to perform the Cummings C & L Landfill Site Characterization Study.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 31-04.

4. **Cruzen Equipment Change Order # 1 Self Serve Fueling:** A resolution approving Change Order #1 to the construction contract with Cruzen Equipment Company, Inc. in the amount of $18,135.50 to include an 87 octane Mogas pump at the Aviation Fuel Self-Serve Facility at the Fayetteville Municipal Airport; approving a project contingency in the amount of $1,814.00 and approving a budget adjustment in the amount of $19,950.00 for same.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 32-04.

B. OLD BUSINESS:

1. **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.
   This resolution was tabled at the January 20, 2004 City Council meeting until the March 2, 2004 City Council meeting.

   TABLED TO MARCH 16, 2004 MEETING.

2. **Waste Hauler Contracts:** A resolution authorizing the Mayor to execute contracts with Waste Management of Arkansas, Ozark Sanitation, and Roll-Off Services, Inc. to collect and transport specific types of solid waste within the city limits of Fayetteville.
   This resolution was tabled at the February 17, 2004 City Council meeting until the March 2, 2004 City Council meeting.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 33-04.

C. **NEW BUSINESS:**

1. **Improvement District No. 6 – Rupple Row Development:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 6 – Rupple Row Development.

   PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4546.

2. **Planning Commission Appeal – RZN 04-01.00 (Parnell):** An appeal filed by Bell Cow, Inc. regarding Planning Commission denial of RZN 04-01.00 as submitted by Eric Johnson of Triangle Builders Supply.

   THIS ITEM WAS WITHDRAWN.

3. **ADM 04-07.00 Bill of Assurance Amendment:** A resolution to approve a second amendment to the Bill of Assurance submitted with Ordinance No. 4411 as amended by Resolution No. 28-03.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 34-04.

4. **R-PZD 04-02.00 (Cross Keys):** An ordinance establishing a Residential Planned Zoning District titled (R-PZD 04-02.00) located south of Wedington Drive at the corner of N. 46th and Persimmon Street containing 38.48 acres more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the Planning Commission.

   THIS ITEM WAS AMENDED BY CITY COUNCIL AND LEFT ON THE FIRST READING.

5. **R-PZD 04-05.00 (Hickory Park):** An ordinance establishing a Residential Planned Zoning District titled (R-PZD 04-5.00) located north of 2730 E. Township Street, containing 4.429 acres more or less; amending the official zoning map of the City of Fayetteville; and adopting the Associated Residential Development Plan as approved by the Planning Commission.

   THIS ITEM WAS LEFT ON THE FIRST READING.

6. **Construction Contract for Fire Station 7:** A resolution to approve a construction contract with _____ in the amount of _____ for the construction of Fire Station No. 7.
   Bids will be opened on this at 3:00 PM on Thursday, February 26, 2004.

   THIS ITEM WAS TABLED TO MARCH 16, 2004 MEETING.

7. **Water and Wastewater Operations Center – Marinoni Contract:** A resolution to approve the construction contract for the new Water and Sewer Operations Center with Marinoni Construction, Inc. in the amount of $3,403,199.00, plus a contingency of $225,159.00 and a budget adjustment of $128,235.00.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 35-04.

8. **McClinton-Anchor Purchase Bid Waiver:** An ordinance waiving the formal competitive bidding requirements for the purchase of asphalt and aggregate materials through a bulk purchase contract with APAC-Arkansas/McClinton Anchor in an amount not to exceed $900,000.00.

   THIS ITEM WAS TABLED INDEFINITELY.

9. **VAC 04-01.00 (Michael Campbell):** An Ordinance approving VAC 04-01.00 to vacate and abandon a portion of the water and sewer easement located at 4843 Lavendon Place as described on the attached map and legal description.

   PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 4547.

D. INFORMATIONAL:

Council Tour: March 1, 2004
The Council will tour Wilson Springs and have invited the Sierra Club to join the tour.

MEETING ADJOURNED: 7:30 P.M.

Fayetteville City Council Meeting of March 2, 2004

Meeting Adjourned at 7:30 pm.

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

Subject:	Consent				
Motion To:		Approve			
Motion By: Seconded:		Jordan / Reynolds			
	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Davis	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Mayor Coody	—			

Approved Consent

30-04 to 32-04

Fayetteville City Council Meeting of March 2, 2004

Subject:	Council on Aging				
Motion To:		Tabled			
Motion By: Seconded:		Jordan Davis			
	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Davis ✓	✓			
	Lucas	✓			
	Jordan ✓	✓			
	Reynolds	✓			
	Mayor Coody	—			

#1 Old Business

Tabled for 2 weeks

Subject:	Waste Hauler Contracts				
Motion To:		Approve			
Motion By: Seconded:		Davis Jordan			
	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Davis ✓	✓			
	Lucas	✓			
	Jordan ✓	✓			
	Reynolds	✓			
	Mayor Coody	—			

#2 Old Business

Passed

Res. 33-04

Fayetteville City Council Meeting of March 2, 2004

Subject:	Improvement District #6 - Rupple Row Dev.				
Motion To:		Davis	Jordan		
Motion By: Seconded:		Jordan	Davis		
		2nd Read	3rd read	Pass	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Marr	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Davis ✓	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan ✓	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Mayor Coody	—	—	—	

#1 New Business

Passed 4546

#2 Planning Commission Appeal - RZN 04-1.00 Parnell (Withdrawn)

Subject:	ADM 04-7.00 Bill of Assurance				
Motion To:		Approve			
Motion By: Seconded:		Davis Jordan			
	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Davis ✓	✓			
	Lucas	✓			
	Jordan ✓	✓			
	Reynolds	✓			
	Mayor Coody	—			

#3 New Business

Passed

Res 3404

Fayetteville City Council Meeting of March 2, 2004

Subject:	R-PZD 04-2.00 (Cross Keys)				
Motion To:		Amend with connectivity.	as orginially submitted to Planning.		
Motion By: Seconded:		Jordan Lucas			
	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Davis	✓			
	Lucas	✓			
	Jordan ✓	✓			
	Reynolds	✓			
	Mayor Coody	—			

#4 New Business

7-1 Amend.

Left on 1st reading

Subject:	R PZD 04-5.00 Hickory Park				
Motion To:					
Motion By: Seconded:					
	Thiel	Left on First Reading			
	Cook				
	Marr				
	Rhoads				
	Davis				
	Lucas				
	Jordan				
	Reynolds				
	Mayor Coody				

#5 New Business

Left on 1st reading

Fayetteville City Council Meeting of March 2, 2004

Subject:		Construction Contract for Fire Station 7			
Motion To:		Table until March 16			
Motion By: Seconded:		Jordan Lucas			
	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	✓			
	Davis	✓			
	Lucas ✓	✓			
	Jordan ✓	✓			
	Reynolds	✓			
	Mayor Coody				

#6 New Business

Tabled until March 16, 2004

Subject:		Water & Wastewater Operations Center: Mariani Contract			
Motion To:		Approve			
Motion By: Seconded:		Jordan Davis			
	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	Absent during Vote			
	Davis	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Mayor Coody				

#7 New Business

Passed

Res. 35-04

Fayetteville City Council Meeting of March 2, 2004

Subject:	McClinton-Anchor Purchase Bid Waiver				
Motion To:		Table Indef.			
Motion By: Seconded:		Jordan Davis			
	Thiel	✓			
	Cook	✓			
	Marr	✓			
	Rhoads	Absent			
	Davis	✓			
	Lucas	✓			
	Jordan	✓			
	Reynolds	✓			
	Mayor Coody	—			

#8 New Business

Tabled Indef.

Subject:	UAC 04-1.00 (Michael Campbell)				
Motion To:		2nd Read	3rd Read		
Motion By: Seconded:		Davis Jordan	Jordan Davis	Pass	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Marr	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Davis	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Reynolds	✓	✓	✓	
	Mayor Coody	—	—	—	

#9 New Business

Passed

Final Agenda
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March 2, 2004

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D. INFORMATIONAL:

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City Council
Meeting Minutes
February 17, 2004

A meeting of the Fayetteville City Council was held on February 17, 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, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience

The meeting was called to order by Mayor Coody.

State of the City Address – Mayor Coody – A copy of the address is attached.

CONSENT:

Approval Of The Minutes: Approval of the February 3, 2004 meeting minutes.

Waste Hauler Contracts: A resolution authorizing the Mayor to execute contracts with Waste Management of Arkansas, Ozark Sanitation, and Roll-Off Services, Inc. to collect and transport specific types of solid waste within the city limits of Fayetteville.

This item was pulled from consent for discussion and added before Old Business.

Tennant Power Sweeper Purchase: A resolution to approve the purchase of a street sweeper for the Parking Division in the amount of $26,708.12 and a budget adjustment in the amount of $26,709.00.

Resolution 23-04 as Recorded in the Office of the City Clerk.

Bucket Truck and Brush Chipper Purchase: A resolution to approve the purchase of a 60 foot aerial bucket truck from Altec Industries in the amount of $86,900.00 and a brush chipper from Vermeer Sales and Service in the amount of $20,566.88 and to approve a budget adjustment in the amount of $108,602.00.

This item was pulled from consent for discussion and added before Old Business.

Arkansas Department of Aeronautics T-Hangar Construction Grant: A resolution authorizing the Fayetteville Municipal Airport Staff to apply for and accept a grant in the amount of $100,000.00 from the Arkansas Department of Aeronautics for the construction of a new T-Hangar.

Resolution 24-04 as Recorded in the Office of the City Clerk.

McClelland Engineers 8-Bay T-Hangar: A resolution approving Task Order No. 3 with McClelland Consulting Engineers in the amount of $29,500.00 for engineering design and construction oversight for the construction of an 8-Bay T-Hangar.

Resolution 25-04 as Recorded in the Office of the City Clerk.

Waive Building Permit Fees for South Fayetteville Community Development Corporation: A resolution to waive the building permit fee and other developmental fees for South Fayetteville Community Development Corporation.

Resolution 26-04 as Recorded in the Office of the City Clerk.

Alderman Davis moved to approve the consent as read with Consent Item Number 2, Waste Hauler Contracts and Consent Item Number 4, Bucket Truck and Brush Chipper Purchase removed from consent. Alderman Jordan seconded. Upon roll call the motion to approve the consent passed unanimously.

Mayor Coody: At the last Agenda Session we decided that when something comes off the Consent Agenda to go ahead and address that immediately after the Consent Agenda has been approved.

The Following Consent Items Were Pulled From Consent For Discussion.

Waste Hauler Contracts: A resolution authorizing the Mayor to execute contracts with Waste Management of Arkansas, Ozark Sanitation, and Roll-Off Services, Inc. to collect and transport specific types of solid waste within the city limits of Fayetteville.

Mr. Smith, Roll-off Service: I have some concerns tonight on the proposed contracts you have in front of you to approve. We have looked at the contracts, matter of fact I have already executed two different contracts and my request tonight to the Council is to ask that you consider tabling this issue. The reason that I probably am the only one coming forward is because my business is affected the most out the other ones that you have signed executed contracts on.

Number 3 in the contract states that we will not collect pre-bailed cardboard and scrap metal. I believe Mr. Dumas has agreed to remove the scrap metal clause from the agreement. Pre-bailed cardboard and loose cardboard is a commodity to be bought and sold globally. We have several contracts in the City of Fayetteville. There are several other companies that actually do this type of business in the city limits of Fayetteville and I think it would have a negative effect on our commerce. We collect loose cardboard, we purchase bailed cardboard. I am not sure where Mr. Dumas and the Solid Waste Department is heading with this but for them to expect us to sign a contract that will not allow us to collect pre-bailed cardboard that we purchase would be devastating. We have contracts in place with large companies to purchase their cardboard. I talked with Mr. Dumas earlier today and requested that be removed and he said he couldn't, wouldn't whatever the case may be, chose not to.

There are other issues with the contracts that I think the City should consider. I have pulled case law on several different items, one of them being a flow control issue. Because of the fact the City is flow controlling solid waste from outside the state lines to inside the state lines is an

interruption of commerce. I have brought with me tonight for the City Attorney or whoever would like to review it a case sighting that with the U.S. Supreme Court. In this case the very same thing was attempted, it was challenged in Federal Court and it was ruled against the municipality that tried to flow control.

I have agreed to sign the contract but have requested by first right of refusal to challenge it later. The problem that I have initially is just the pre-bailed clause in the contract, if it was just a simple solid waste contract that we would pay the City an agreement fee, I think originally it was a franchise fee and then the terminology evolved into just a contract with the City. Maybe we want to call it a privilege fee for us to collect and do business in the City of Fayetteville; I have no problem what so ever with it. Because of the fact that I feel like they are trying to slip a couple of things in with this agreement I would urge the City Council to consider tabling it until you find out more about it. The scrap metal, Waste Management does not collect scrap metal, Ozark Disposal does not collect scrap metal, I am the only company that collects scrap metal and again he has agreed to take that off the contract. The pre-bailed cardboard you have Fibersource, HMI, Mark Industries, Lin Paper Stock and Roll-off Service just to name a few, not counting Service Recycling out of Joplin, Missouri that comes to the City and collects pre-bailed cardboard.

Those companies are not affected by my contract but my contracts with customers that I provide that service to is affected and I am not sure what to tell these people. I asked Mr. Dumas what the intent was and what am I to tell my customers come March 1 when this contract is enforced, what are they to do with their cardboard and he said they would have to sell it to the City. For how much?

I believe you are stepping across a commerce situation and it should be taken out. I respectively request that you table the approve of these contracts until you figure out what needs to happen on that part of it, otherwise I have a mess in two weeks. I am not sure the City has looked through, maybe the Solid Waste Department has a plan, I haven't heard it and I am not criticizing Mr. Dumas. I have to say these last few weeks have been really good to work with him. I feel like that we have some synergies headed in the right direction, I understand where they are headed, I think that we have a niche that we can have a working relationship with but this is a definite stumbling block.

Again, I have agreed tonight, right before this meeting, I did not get to hook up with him to sign the agreement. My question is what do we do with the cardboard? Can we delete the cardboard, both loose and bailed; I don't know that is something that you folks need to decide. As far as the flow control issue I will be happy to share this information with you. Again it was the Supreme Court, there is another more recent, that was a 1994 case, there is another more recent case sited in the year 2000 with UNI Sanitation on the Eighth Circuit Court requiring waste collection within the city and its transfer stations only if the waste was to be disposed of within the state, they ruled that un-constitutional. When you get into commerce and crossing state lines it becomes more of an issue and definitely this is a federal level not a state level because of the fact that it crosses the state lines. I brought three cases with me that I would love to leave with you guys for you to consider and again in closing I would just urge that you table this until you do a little more research on commodity of pre-bailed cardboard.

Mayor Coody: Mr. Dumas, what is your recommendation here do you have one?

Gary Dumas: I would defer any legal questions to the City Attorney and all of these sound as if they are legal issues. When it comes to the implementation of the contract provisions with any of the customers of any of the cardboard customer we would be able to accommodate them.

Kit Williams: If you have a voluntary contract you can contract to do things that you can't force someone to do, so that if we arrived at a voluntary contract with Roll-off to do this then Roll-off would be expected to fulfill their terms of the contract. I do have a little pause when it comes to cardboard, if cardboard especially pre-bailed is a commodity that has value as opposed to solid waste, certainly the City has all kinds of power in solid waste to control it, to issue franchises if we need to prohibit people from using our streets unless they have a contract with the City. There is an issue with this cardboard if this cardboard is actually a commodity as opposed to solid waste, trash. If we were trying to do something by ordinance then I would probably say that Roll-off has made a good point and maybe we could not do that or at least I would like to look at that before we would go forward.

Certainly people are free to contract as they wish even if they would have a constitutional right not to do that. At this point it sounds like Roll-off does not wish to contract away that right. If you are going to approve the resolution it should be only the contracts that we actually have signed agreements with. I would have to tell the Roll-off representative that the contract that is before you has these terms, I am not saying whether those are good terms or not that is really primarily up to our Solid Waste Division. If you don't agree with these terms then you should not sign the contract. If you sign the contract you are expressing your agreement with those terms.

Mr. Smith, Roll-off Service: I did speak to Mr. Dumas about what happens if we don't agree with him and he told me the ordinance would be enforced starting March 1. My only disagreement with the contract at this point is the scrap metal, which he has already agreed to take off and the pre-bailed and loose cardboard, which he has refused to take off. That leaves me in a very awkward position because of the fact that if he starts enforcing this agreement, the ordinance clearly states the hauler must have a contract with the city, I'm screwed. That is why I am asking to table this issue until we can get a better determination on what this commodity to be bought and sold. With me I did bring a copy off the internet of the official board markets, this official board market clearly is a cardboard of market, both loose and bailed. It covers mixed paper, box board cuttings, news, newsprint, occsop and sorted white ledger. All of these papers are clearly recycled by the City of Fayetteville. If the City of Fayetteville moves forward and further creates an ordinance that prevents anyone from buying and selling cardboard in the City of Fayetteville, then you have another odd situation, what is the City of Fayetteville going to do with their bailed cardboard because no one is going to be allowed to come in and buy it. Currently I think they sell to a broker, one or two brokers that I know of currently buys the City of Fayetteville's bailed cardboard. As it is currently right now I would stress that I am in a very awkward situation because what do I do.

Kit Williams: I don't think I am legally empowered to give you advice on that.

Mr. Smith, Roll-off Service: If the City would consider removing those two items until further notice and then maybe look at implementing an addendum to the contract, I think that might be an easy answer, that way we don't hold up the system.

Alderman Marr: Based on your comment that this could be an item that would be commerce affected, what is the risk if we move forward verses waiting, what are the potential loss issues or cost to the City of doing that.

Kit Williams: Of course tonight we are just locking at a contract, whether or not we approve a contract that a couple of waste haulers have agreed to but Roll-off has not, so there is not a substantial risk in that. However if we then enforce our ordinance March 1 against Roll-off saying you don't have a contract and this is the only contract we offered then their potential defense would be it is an illegal contract. It was a contract where you were trying to force me to give up something I have a right to. We have lots of power in the solid waste field to control all solid waste and I think that is probably where Solid Waste Division is coming from when they look at scrap metal and cardboard that of course at one time was part of the waste stream. Now we have changed that to some extent and there is actually a market in it, so there could be some potential danger if we in fact refuse to have any contract unless it included cardboard in it and then we prevented him from hauling any waste based upon that consideration. That would be a potential risk.

Alderman Marr: How long would it take your office to evaluate this particular issue?

Kit Williams: I could probably give you a better evaluation within a couple of weeks or even a week, it wouldn't take that long to look at it. I don't know if I could give you a definitive answer even then. Part of it would be how important it is to our Solid Waste Division to ensure that no one hauls cardboard but them. That is something you should consider, what is the risk on both sides. What would we be giving up if we allow Roll-off to continue to haul cardboard as opposed to what kind of risk we would have if we try to force them to give that up?

Alderman Marr: I guess that is my question to you and Mr. Dumas. It seems like this has gone on forever and I think we need to get something in place. I am willing to wait two more weeks since we have been waiting forever if we can get this researched and get an opinion one way or the other. If we don't think we are going to have any information that changes our decision I certainly don't advocate continuing to wait.

Mr. Dumas: I think there are two issues here, one of the issues is that we begin the discussions with all three waste haulers in May, 2003 concerned having some control of the waste stream and knowing where that waste stream was going and making certain that it was disposed of appropriately. This cardboard provision has been in every version of the contract since May, a part of the reason for that besides the waste stream control is that there have been some allegations that some waste haulers have been using cardboard recycling container to collect regular trash in throughout the community. If we are to have control of the system that issue must be addressed. If the Council desires we can negotiate a contract fee for hauling loose and pre-bailed cardboard and scrap metal with Roll-off Services since they are the ones that do that and the other two haulers do not. They would have that option to come in and ask for that privilege also, if that is your direction. That will still leave us with an enforcement issue making certain that only loose or pre-bailed cardboard is collected.

Alderman Marr: Are there other methods of monitoring the waste stream control than this contractual point?

Mr. Dumas: Looking in every container out there basically.

Kit Williams: The contract itself if we do agree with them and have a contract we have audit rights and we can check customer files and things like that and hopefully that would be able to show if it was something besides cardboard that the customer was getting rid of because they would be paying for that service as opposed to Roll-off paying them for there cardboard.

Mr. Dumas: We have set up audit provisions in the current contract. Those have been fairly blind so we would not know some of their trade secrets. I would want to revisit that if we broaden the type of material that they are allowed to pick up so we can make certain that is the type of material they are picking up.

Alderman Marr: How long would it take you to do that evaluation?

Mr. Dumas: If that is your direction we will begin that negotiation tomorrow.

Alderman Marr: Do you think it could be resolved by the next Council meeting?

Mr. Dumas: I hope so.

Alderman Lucas: We have two contracts already, are we just ignoring that?

Mr. Dumas: No.

Alderman Lucas: They would just be ignored because one person doesn't want to sign the contracts?

Mr. Dumas: I think it could be looked at that way. The third hauler does haul different material than the first two as a part of their routine business. We specifically addressed this one issue in many of the discussions we had with the haulers and their representatives.

Alderman Davis: Mr. Smith, we started this process in May of 2003 and in July of 2003 we gave you a contract that had this in it, you signed it at that point in time and you didn't bring forward this concern so that bothers me. Especially after the statement you made tonight when you said "this is the disagreements at this point". Are you telling this Council that you are going to come to the next meeting and have another two or three points that you would like to discuss.

Mr. Smith: We have had a change of staff attorney at my office; our new attorney looked over this and gave me her opinion. This information that I brought forth today has been a concern, but it is based off their opinion. My goal is not to slow your process down, that is why I am more than willing to sign the existing contract if we could take the two items out.

Alderman Davis: I have no problem tabling this for a couple of week but I do want to make sure those are the only two items you want to address and the next time you are before us discussing this contract we don't find out there are other problems that you foresee. Are these the only two changes we are going to see from you?

Mr. Smith: I have four issues I would like your city attorney to review; the two I am most concerned about at this point are the cardboard and the scrap metal.

Alderman Marr: What are the other two issues?

Mr. Smith: I think you should seriously look at the flow control issues that I brought information forth tonight.

A discussion followed on the issues.

Mr. Smith: I believe the four issues I consider are loose cardboard, bailed cardboard, scrap metal and the flow control.

Alderman Reynolds: Mr. Smith, you made a statement that there are three other companies carrying cardboard out of the City of Fayetteville.

Mr. Smith: That I know of.

Alderman Reynolds: Mr. Dumas are you aware of those?

Mr. Dumas: We will check into that, I was not.

A discussion followed on who currently hauls cardboard in Fayetteville.

Alderman Reynolds: I would like to see a firm contract signed and settled by the March 2 City Council meeting.

Mayor Coody: Mr. Smith, discuss your concerns with our Solid Waste Department. We will approve something in two weeks.

Alderman Jordan: It is time for this to end. I want this hammered out in two weeks and a contract signed, this has been going on over a year. I will agree to table this for two weeks but this will be the last time I will agree to it.

A discussion followed on the contracts.

Alderman Jordan moved to table the resolution until the March 2, 2004 City Council meeting. Alderman Davis seconded. Upon roll call the motion to table passed unanimously.

Bucket Truck and Brush Chipper Purchase: A resolution to approve the purchase of a 60 foot aerial bucket truck from Altec Industries in the amount of $86,900.00 and a brush chipper from Vermeer Sales and Service in the amount of $20,566.88 and to approve a budget adjustment in the amount of $108,602.00.

Alderman Davis: I received information of how we were going to fund this project. One complaint that I get is that our City streets are not up to standard. I was informed for this purchase $54,301.00 is coming from in-house pavement improvement capital projects. I don't think that's really overall what the citizens would like their dollars to be spent on. I also understand we currently have two bucket trucks. I don't know why we can't use those bucket trucks to do this type of project. I am a little confused why we need another one and why we are using in-house pavement improvement capital to pay for this.

Perry Franklin told the Council about the two bucket trucks. He stated one bucket truck is used by traffic every day, traffic cannot function without that truck, it is really not available for them to use. We started renting a chipper and made a small carrier but it is not efficient. We do not have a piece of equipment that will reach the height that we need for tree trimming. Purchasing this will make us safer and save us money. We put this together to take advantage of some grant money and to buy a piece of equipment we could share with other departments.

Mayor Coody: The second part of that question was the funds coming out of the pavement program.

Gary Dumas: All of the activities of the Street Division including the right-of-way maintenance and the trimming activities that we do come out of the same source of funds.

This would reduce the number of trips to Solid Waste to dump the limbs. To be affective in a right-of-way maintenance program we need to be able to trim the trees appropriately.

Mayor Coody: Our paving program is not hitting full speed because of lack of money; it's because of a lack of personnel.

Gary Dumas: That is correct; one of the things we will be asking for in the near future is enhancing the size of the paving and sidewalk crew so we can get more done.

Alderman Davis: What did we do last year for this service?

Connie Edmonston, Parks: Parks alone we spent about $20,000 dollars last year in contract services. The grant that we received from the Urban Forestry Commission was $20,000 to go towards the purchase of a chipper; our City's match was to be an equal match of $20,000 which we said would be an aerial bucket truck. We also put in money for administration, purchase equipment and to perform operational and safety training for the crews to utilize this aerial bucket.

I know there is some concern about the height, going up 60 feet; Parks has done that many times in the installation of the Lights of the Ozarks. We assure you that adequate training will be done. One of the reasons that the Transportation Department wanted this piece of equipment was for crown cleaning and crown rising on trees within the City right-of-ways. The trees that we have properly pruned and kept healthy create fewer accidents in the parks. This would really help our urban forestry program for the city and with joining forces of the Parks and Transportation we can utilize these two pieces of equipment and save money for our city.

Alderman Marr: The equipment Committee looked at this and I actually thought it was a good idea for a lot of the reasons you brought up. What I didn't realize at the time that we were paying for it out of the overlay.

Connie Edmonston, Parks: Part of it is from our city parks sales tax.

Alderman Marr: Mayor, there is no other area that we could fund this out of without taking money from roads?

Mayor Coody: There may be.

Gary Dumas: There is not a shortage of funds in the Street Program. We are doing as much in the street maintenance that we can with the amount of staff that we have.

A discussion followed on the Street Fund and projects that need to be completed.

Alderman Davis: If we do not have proper staffing and we can't get it all laid ourselves then we may need to look at contracting some of it out.

Mayor Coody: If we didn't use this fund is there another fund we could use to make up the difference.

Steve Davis: Instead of taking the money from the street overlay program we just substitute General Fund Reserves. Your options are the Street Fund Reserve account, General Fund Reserve account or the Sales Tax Capital Improvement Fund Reserve account. All of those funds have more than enough money in them to fund this item.

Alderman Thiel: I am in favor of this as it is. I think it is something we need and staff has explained that well. We have the funds in the Paving Fund to complete the projects.

Alderman Marr: We often get asked by citizens about our roads. This discussion has value for the citizens to understand that we can't use all the money because of lack of personnel. We can't approve new personnel that you have not brought forward. If we do add personnel we want to make sure we have money in that account. I support the project.

Mayor Coody: Is there a way we can find another source of funds for this truck and you bring forward hiring additional personnel so that we can double our efficiently on road paving this year.

Mr. Dumas: Yes.

Alderman Reynolds: I have a problem taking this out of the Street Department. Maybe we need to bring in some subcontractors to do more paving. I was under the impression this money was coming from the Shop Fund.

Gary Dumas: We can find another source of funds if that is your direction. I think the program is necessary both in Parks and in Transportation.

Alderman Rhoads: Could we look at contracting out paving as well as bringing more employees on?

Gary Dumas: We will do that but we do it substantially cheaper than outside contractors do. If we go to out sourcing some of these over lay projects there has to be engineering work done also.

Mayor Coody: We might try to have the city staff bid a job against a private contractor to see who has the best bid. That is time consuming; I would rather just go ahead and get the job done.

Alderman Davis: Wouldn't engineering have to be done regardless?

Gary Dumas: When our crews go in and do it we do not engineer it, if we have an engineering question, we call them and ask our question, opposed to developing plans, specs and bidding it out. Added engineering cost could be from 5% to 10% on a job.

Alderman Reynolds asked about repairs that have been completed on Unit 289.

Alderman Cook: Do we not set money aside for right-of-way maintenance every year?

Gary Dumas: The Parks Department sets aside some money for contract work for their maintenance in the Parks; right-of-way maintenance does not set any aside.

Mayor Coody: Let's go ahead and approve this out of the General Fund if that is okay with everyone.

Steve Davis: In order to keep the accounting clear I would recommend that we use the Sales Tax Capital Fund Reserve account.

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

Resolution 27-04 as Recorded in the Office of the City Clerk

OLD BUSINESS:

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.
This Ordinance was left on the Second Reading at the February 3, 2004 City Council meeting.

Kit Williams: Mr. Mayor, you read what should be the amended ordinance, the original ordinance was about $6,000 more. I would ask you move to amend the ordinance to the new ordinance.

Alderman Jordan moved to amend the ordinance. Alderman Lucas seconded the amendment to the ordinance. Upon roll call the amendment passed unanimously.

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

Mr. Williams read the ordinance.

Alderman Davis: Kit, in the past you had indicated some reservation about these impact fees, do you still have those reservations?

Kit Williams: My principle reservations had to do about whether or not this would be denoted by the courts as a tax as opposed to a fee. I have not changed my opinion on that, when it comes back to us if the City Council chooses to go forward and recommend one of these impact fees by recommendation to you is going to be that you refer it to the voters because that eliminates that issue as to whether it is a fee or a tax. This is a new state statue that we are basing these on; it has never been tested by the courts.

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

Ordinance 4541 as Recorded in the Office of the City Clerk

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.
This ordinance was left on the third reading at the February 3, 2004 City Council meeting.
This Ordinance was tabled at the February 3, 2004 City Council meeting until the February 17, 2004 City Council meeting.

Tim Conklin, Planning: We have a site agreement that has been signed by the Northwest Arkansas Mall that will reimburse the City 50% of the cost not to exceed $14, 669. Staff is recommending you go forward and approve this tonight. After the project is built the Northwest Arkansas Mall will be invoiced for that 50% cost share.

Alderman Thiel: I think we all really appreciate the Northwest Arkansas Mall coming forward and cost sharing this. It will benefit them also.

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

Ordinance 4542 as Recorded in the Office of the City Clerk

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.
This Ordinance was Left on the First Reading at the February 3, 2004 City Council meeting.

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

Mr. Williams read the ordinance.

Alderman Davis: The structure that you have designed for this project looks great, I really appreciate the design. Alderman Davis expressed his concern about access to the project, visibility of the project and the success of the proposed project. He is also concerned about the addition of apartments along I-540 and at another major intersection.

A discussion followed on the project and the need for mixed use projects, the success of the project, access to the project, and the design of the project, the layout and concept of the project.

Alderman Jordan: If this is going to be developed commercial we could have a lot of flat top buildings sitting there or something like this. This is a lot more appealing to me from the road than a lot of flat top buildings.

Alderman Lucas: I think it looks good.

Alderman Jordan: I just hope that we can continue to develop this kind of development in this city. I think this is important for the future of the City.

Mayor Coody: I am grateful that Mr. Lindsey is willing to try a prototype like this. We have been working closely with the staff to provide the kind of financial incentive to encourage developers to try something new, different and better.

Alderman Davis: In the event they have a problem leasing the commercial on the bottom floor are we able to change that for them at some time in the future?

Tim Conklin: This City Council or a future City Council would have to approve that change.

Alderman Davis: I would hate for someone to be locked into a situation to where they can't get a return in the event that it doesn't fill up. As Alderman Jordan stated and I stated earlier this is a very attractive development and I appreciate what you have done on this Mr. Fugitt.

A discussion followed on the signage at the proposed project.

Alderman Reynolds: I want to thank Mr. Lindsey for taking a very tough project on in a very difficult place, I hope it works and I am excited about it.

Alderman Cook: I like this project it is way better than what could be built there the way it is zoned right now. I really do like mixed use and I appreciate Mr. Lindsey, I really don't think he is taking a chance, I think commercial is going to succeed there. This is pedestrian assessable so people can walk to this project. I really do like the street scape; it is certainly a good step in the right direction.

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

Mr. Williams read the ordinance.

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

Ordinance 4543 as Recorded in the Office of the City Clerk

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.
This Resolution was Tabled at the February 3, 2004 City Council meeting until the February 17, 2004 City Council meeting.

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

Resolution 28-04 as Recorded in the Office of the City Clerk

Attendance Requirements for Planning Commissioners and Parks and Recreation Advisory Board: An ordinance to repeal §33.111 of the Fayetteville Code and enacting a replacement §33.111 attendance requirement for members of the Parks and Recreation Advisory Board and Planning Commission.
This Ordinance was Left on the First Reading at the February 3, 2004 City Council meeting.

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

Mr. Williams read the ordinance.

Kit Williams: At the last meeting there were several amendments proposed and passed by the City Council. I would suggest for the third reading instead of suspending the rules you allow me to go ahead and read the ordinance as I reflected your amendments to make sure that is what you want.

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

Mr. Williams read the entire ordinance.

Mr. Williams: If that properly reflected your amendments that you made last week you would be able to go ahead and vote on the ordinance, if that does not then please make changes now.

Alderman Thiel: How will this attendance be handled for the rest of the year?

Mr. Williams: That is why I placed in there within the members yearly periods of service, the yearly period of service for the planning Commission would be April 1 through March 31 because that is when people get appointed.

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

Ordinance 4544 as Recorded in the Office of the City Clerk

NEW BUSINESS:

Hiring of a Building Services Full Time Employee: A resolution authorizing the hiring of one (1) full-time employee (janitor) in the Building Services Division; and approving a budget adjustment in the amount of 25,732.00 for same.

Alderman Reynolds: Are both of these employees still under the City's payroll?

Coy Hurd: One is drawing sick leave and one is on leave without pay.

Alderman Marr: At Agenda Session we talked about whether the position should be a one year temporary position or a permanent position and then we received a memo from Coy Hurd stating the position needed to be permanent because the temporary position would not carry with it fringe benefits given to a permanent position. Can we not allow someone to receive benefits in a temporary position?

Steve Davis: We are going to need additional resources when the Water and Sewer Operations building comes on line for Building Maintenance. We would need an additional janitor anyway, we are asking in advance for approval for that position that would primarily be dedicated for the Water and Sewer Operations building so we can relieve our current staff from having to work overtime while these two employees are on extended sick leave. We are asking you to consider this as a permanent position for the future Water and Wastewater Operations building. We would be asking for a permanent position in November anyway.

Alderman Marr: This position would have come on in November and we are expecting the current employees to be out until November.

Steve Davis: The gentleman that had the auto accident is expected to be out six to eight months and then he will have a rehabilition period before we expect him to be back doing his normal duties. The other gentleman has had some very significant surgery and we expect his rehabilition to be quite lengthy.

Alderman Marr: Lengthy until November?

Steve Davis: Possibly longer.

Coy Hurd: Both are drawing sick leave one is at the end of his sick leave.

Alderman Davis: This individual will eventually go to the Water and Sewer payroll.

Steve Davis: That is correct.

Mayor Coody: We wish both of these gentlemen our best.

Alderman Davis: How is sick leave accumulated at the City?

Steve Davis: Each employee earns about 4.6 hours per pay period every two weeks.

Alderman Jordan: Do we offer a catastrophic leave bank here?

Coy Hurd: There is not one in place at this point.

Steve Davis: We've crafted the beginnings of a policy for review by the Mayor.

Alderman Davis: Where are the dollars coming from to fund this?

Steve Davis: Right now they will come out of the General Fund Reserves for this initial 12 month period. The reason we asked for approximately $26,000 is that is the annual cost of a janitor with benefits. With one of the gentlemen being out of sick leave we actually expect to use $8,500 of additional cost. We are currently covering the work load of one of the gentlemen by working all other employees six hours a week of overtime. We are paying 60 hours a week of salary for 40 hours of coverage currently.

Kit Williams: Is it the City Council's decision to strike the words for one year that I had inserted at the agenda meeting and make this a permanent position?

Steve Davis: I believe there is a restriction in the personnel policy on temporary positions not receiving benefits.

Kit Williams: We have to follow those policies. I would recommend that you follow the recommendation from the staff and delete that for one year. You always have the right in the next budget year to delete a position too if you want to do that, if it doesn't work out the way you want it to.

Alderman Rhoads moved to amend the resolution to a permanent position and that at the end of this temporary period the person will transfer to the Water and Sewer Department. Alderman Jordan seconded. Upon roll call the amendment to the resolution passed unanimously.

Mayor Coody asked shall the amended resolution pass to hire the employee. Upon roll call the amended resolution passed unanimously.

Resolution 29-04 as Recorded in the Office of the City Clerk

Amend Chapter 166 of the UDC: An ordinance amending the Unified Development Code (UDC), Chapter 166: Development, Code of Fayetteville to exempt lots dedicated as Park Land from the bulk/area requirements of the Zoning Ordinance.

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

Ordinance 4545 as Recorded in the Office of the City Clerk

Mayor Coody: We are in very good financial shape and we are very efficient and productive and it is not an accident. We have a staff that works very hard to squeeze every bit of efficiency in cost savings that they can. We have a staff that does a very good job of making sure that we get the work done in the most cost effective manner possible. I want to commend them all for doing such a good job.

Meeting Adjourned at 8:10 PM

Sondra Smith
City Clerk

City Council
Meeting Minutes
February 17, 2004

A meeting of the Fayetteville City Council was held on February 17, 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, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience

The meeting was called to order by Mayor Coody.

State of the City Address – Mayor Coody – A copy of the address is attached.

CONSENT:

Approval Of The Minutes: Approval of the February 3, 2004 meeting minutes.

Waste Hauler Contracts: A resolution authorizing the Mayor to execute contracts with Waste Management of Arkansas, Ozark Sanitation, and Roll-Off Services, Inc. to collect and transport specific types of solid waste within the city limits of Fayetteville.

This item was pulled from consent for discussion and added before Old Business.

Tennant Power Sweeper Purchase: A resolution to approve the purchase of a street sweeper for the Parking Division in the amount of $26,708.12 and a budget adjustment in the amount of $26,709.00.

Resolution 23-04 as Recorded in the Office of the City Clerk.

Bucket Truck and Brush Chipper Purchase: A resolution to approve the purchase of a 60 foot aerial bucket truck from Altec Industries in the amount of $86,900.00 and a brush chipper from Vermeer Sales and Service in the amount of $20,566.88 and to approve a budget adjustment in the amount of $108,602.00.

This item was pulled from consent for discussion and added before Old Business.

Arkansas Department of Aeronautics T-Hangar Construction Grant: A resolution authorizing the Fayetteville Municipal Airport Staff to apply for and accept a grant in the amount of $100,000.00 from the Arkansas Department of Aeronautics for the construction of a new T-Hangar.

Resolution 24-04 as Recorded in the Office of the City Clerk.

McClelland Engineers 8-Bay T-Hangar: A resolution approving Task Order No. 3 with McClelland Consulting Engineers in the amount of $29,500.00 for engineering design and construction oversight for the construction of an 8-Bay T-Hangar.

Resolution 25-04 as Recorded in the Office of the City Clerk.

Waive Building Permit Fees for South Fayetteville Community Development Corporation: A resolution to waive the building permit fee and other developmental fees for South Fayetteville Community Development Corporation.

Resolution 26-04 as Recorded in the Office of the City Clerk.

Alderman Davis moved to approve the consent as read with Consent Item Number 2, Waste Hauler Contracts and Consent Item Number 4, Bucket Truck and Brush Chipper Purchase removed from consent. Alderman Jordan seconded. Upon roll call the motion to approve the consent passed unanimously.

Mayor Coody: At the last Agenda Session we decided that when something comes off the Consent Agenda to go ahead and address that immediately after the Consent Agenda has been approved.

The Following Consent Items Were Pulled From Consent For Discussion.

Waste Hauler Contracts: A resolution authorizing the Mayor to execute contracts with Waste Management of Arkansas, Ozark Sanitation, and Roll-Off Services, Inc. to collect and transport specific types of solid waste within the city limits of Fayetteville.

Mr. Smith, Roll-off Service: I have some concerns tonight on the proposed contracts you have in front of you to approve. We have looked at the contracts, matter of fact I have already executed two different contracts and my request tonight to the Council is to ask that you consider tabling this issue. The reason that I probably am the only one coming forward is because my business is affected the most out the other ones that you have signed executed contracts on.

Number 3 in the contract states that we will not collect pre-bailed cardboard and scrap metal. I believe Mr. Dumas has agreed to remove the scrap metal clause from the agreement. Pre-bailed cardboard and loose cardboard is a commodity to be bought and sold globally. We have several contracts in the City of Fayetteville. There are several other companies that actually do this type of business in the city limits of Fayetteville and I think it would have a negative effect on our commerce. We collect loose cardboard, we purchase bailed cardboard. I am not sure where Mr. Dumas and the Solid Waste Department is heading with this but for them to expect us to sign a contract that will not allow us to collect pre-bailed cardboard that we purchase would be devastating. We have contracts in place with large companies to purchase their cardboard. I talked with Mr. Dumas earlier today and requested that be removed and he said he couldn't, wouldn't whatever the case may be, chose not to.

There are other issues with the contracts that I think the City should consider. I have pulled case law on several different items, one of them being a flow control issue. Because of the fact the City is flow controlling solid waste from outside the state lines to inside the state lines is an

interruption of commerce. I have brought with me tonight for the City Attorney or whoever would like to review it a case sighting that with the U.S. Supreme Court. In this case the very same thing was attempted, it was challenged in Federal Court and it was ruled against the municipality that tried to flow control.

I have agreed to sign the contract but have requested by first right of refusal to challenge it later. The problem that I have initially is just the pre-bailed clause in the contract, if it was just a simple solid waste contract that we would pay the City an agreement fee, I think originally it was a franchise fee and then the terminology evolved into just a contract with the City. Maybe we want to call it a privilege fee for us to collect and do business in the City of Fayetteville; I have no problem what so ever with it. Because of the fact that I feel like they are trying to slip a couple of things in with this agreement I would urge the City Council to consider tabling it until you find out more about it. The scrap metal, Waste Management does not collect scrap metal, Ozark Disposal does not collect scrap metal, I am the only company that collects scrap metal and again he has agreed to take that off the contract. The pre-bailed cardboard you have Fibersource, HMI, Mark Industries, Lin Paper Stock and Roll-off Service just to name a few, not counting Service Recycling out of Joplin, Missouri that comes to the City and collects pre-bailed cardboard.

Those companies are not affected by my contract but my contracts with customers that I provide that service to is affected and I am not sure what to tell these people. I asked Mr. Dumas what the intent was and what am I to tell my customers come March 1 when this contract is enforced, what are they to do with their cardboard and he said they would have to sell it to the City. For how much?

I believe you are stepping across a commerce situation and it should be taken out. I respectively request that you table the approve of these contracts until you figure out what needs to happen on that part of it, otherwise I have a mess in two weeks. I am not sure the City has looked through, maybe the Solid Waste Department has a plan, I haven't heard it and I am not criticizing Mr. Dumas. I have to say these last few weeks have been really good to work with him. I feel like that we have some synergies headed in the right direction, I understand where they are headed, I think that we have a niche that we can have a working relationship with but this is a definite stumbling block.

Again, I have agreed tonight, right before this meeting, I did not get to hook up with him to sign the agreement. My question is what do we do with the cardboard? Can we delete the cardboard, both loose and bailed; I don't know that is something that you folks need to decide. As far as the flow control issue I will be happy to share this information with you. Again it was the Supreme Court, there is another more recent, that was a 1994 case, there is another more recent case sited in the year 2000 with UNI Sanitation on the Eighth Circuit Court requiring waste collection within the city and its transfer stations only if the waste was to be disposed of within the state, they ruled that un-constitutional. When you get into commerce and crossing state lines it becomes more of an issue and definitely this is a federal level not a state level because of the fact that it crosses the state lines. I brought three cases with me that I would love to leave with you guys for you to consider and again in closing I would just urge that you table this until you do a little more research on commodity of pre-bailed cardboard.

Mayor Coody: Mr. Dumas, what is your recommendation here do you have one?

Gary Dumas: I would defer any legal questions to the City Attorney and all of these sound as if they are legal issues. When it comes to the implementation of the contract provisions with any of the customers of any of the cardboard customer we would be able to accommodate them.

Kit Williams: If you have a voluntary contract you can contract to do things that you can't force someone to do, so that if we arrived at a voluntary contract with Roll-off to do this then Roll-off would be expected to fulfill their terms of the contract. I do have a little pause when it comes to cardboard, if cardboard especially pre-bailed is a commodity that has value as opposed to solid waste, certainly the City has all kinds of power in solid waste to control it, to issue franchises if we need to prohibit people from using our streets unless they have a contract with the City. There is an issue with this cardboard if this cardboard is actually a commodity as opposed to solid waste, trash. If we were trying to do something by ordinance then I would probably say that Roll-off has made a good point and maybe we could not do that or at least I would like to look at that before we would go forward.

Certainly people are free to contract as they wish even if they would have a constitutional right not to do that. At this point it sounds like Roll-off does not wish to contract away that right. If you are going to approve the resolution it should be only the contracts that we actually have signed agreements with. I would have to tell the Roll-off representative that the contract that is before you has these terms, I am not saying whether those are good terms or not that is really primarily up to our Solid Waste Division. If you don't agree with these terms then you should not sign the contract. If you sign the contract you are expressing your agreement with those terms.

Mr. Smith, Roll-off Service: I did speak to Mr. Dumas about what happens if we don't agree with him and he told me the ordinance would be enforced starting March 1. My only disagreement with the contract at this point is the scrap metal, which he has already agreed to take off and the pre-bailed and loose cardboard, which he has refused to take off. That leaves me in a very awkward position because of the fact that if he starts enforcing this agreement, the ordinance clearly states the hauler must have a contract with the city, I'm screwed. That is why I am asking to table this issue until we can get a better determination on what this commodity to be bought and sold. With me I did bring a copy off the internet of the official board markets, this official board market clearly is a cardboard of market, both loose and bailed. It covers mixed paper, box board cuttings, news, newsprint, occsop and sorted white ledger. All of these papers are clearly recycled by the City of Fayetteville. If the City of Fayetteville moves forward and further creates an ordinance that prevents anyone from buying and selling cardboard in the City of Fayetteville, then you have another odd situation, what is the City of Fayetteville going to do with their bailed cardboard because no one is going to be allowed to come in and buy it. Currently I think they sell to a broker, one or two brokers that I know of currently buys the City of Fayetteville's bailed cardboard. As it is currently right now I would stress that I am in a very awkward situation because what do I do.

Kit Williams: I don't think I am legally empowered to give you advice on that.

Mr. Smith, Roll-off Service: If the City would consider removing those two items until further notice and then maybe look at implementing an addendum to the contract, I think that might be an easy answer, that way we don't hold up the system.

Alderman Marr: Based on your comment that this could be an item that would be commerce affected, what is the risk if we move forward verses waiting, what are the potential loss issues or cost to the City of doing that.

Kit Williams: Of course tonight we are just locking at a contract, whether or not we approve a contract that a couple of waste haulers have agreed to but Roll-off has not, so there is not a substantial risk in that. However if we then enforce our ordinance March 1 against Roll-off saying you don't have a contract and this is the only contract we offered then their potential defense would be it is an illegal contract. It was a contract where you were trying to force me to give up something I have a right to. We have lots of power in the solid waste field to control all solid waste and I think that is probably where Solid Waste Division is coming from when they look at scrap metal and cardboard that of course at one time was part of the waste stream. Now we have changed that to some extent and there is actually a market in it, so there could be some potential danger if we in fact refuse to have any contract unless it included cardboard in it and then we prevented him from hauling any waste based upon that consideration. That would be a potential risk.

Alderman Marr: How long would it take your office to evaluate this particular issue?

Kit Williams: I could probably give you a better evaluation within a couple of weeks or even a week, it wouldn't take that long to look at it. I don't know if I could give you a definitive answer even then. Part of it would be how important it is to our Solid Waste Division to ensure that no one hauls cardboard but them. That is something you should consider, what is the risk on both sides. What would we be giving up if we allow Roll-off to continue to haul cardboard as opposed to what kind of risk we would have if we try to force them to give that up?

Alderman Marr: I guess that is my question to you and Mr. Dumas. It seems like this has gone on forever and I think we need to get something in place. I am willing to wait two more weeks since we have been waiting forever if we can get this researched and get an opinion one way or the other. If we don't think we are going to have any information that changes our decision I certainly don't advocate continuing to wait.

Mr. Dumas: I think there are two issues here, one of the issues is that we begin the discussions with all three waste haulers in May, 2003 concerned having some control of the waste stream and knowing where that waste stream was going and making certain that it was disposed of appropriately. This cardboard provision has been in every version of the contract since May, a part of the reason for that besides the waste stream control is that there have been some allegations that some waste haulers have been using cardboard recycling container to collect regular trash in throughout the community. If we are to have control of the system that issue must be addressed. If the Council desires we can negotiate a contract fee for hauling loose and pre-bailed cardboard and scrap metal with Roll-off Services since they are the ones that do that and the other two haulers do not. They would have that option to come in and ask for that privilege also, if that is your direction. That will still leave us with an enforcement issue making certain that only loose or pre-bailed cardboard is collected.

Alderman Marr: Are there other methods of monitoring the waste stream control than this contractual point?

Mr. Dumas: Looking in every container out there basically.

Kit Williams: The contract itself if we do agree with them and have a contract we have audit rights and we can check customer files and things like that and hopefully that would be able to show if it was something besides cardboard that the customer was getting rid of because they would be paying for that service as opposed to Roll-off paying them for there cardboard.

Mr. Dumas: We have set up audit provisions in the current contract. Those have been fairly blind so we would not know some of their trade secrets. I would want to revisit that if we broaden the type of material that they are allowed to pick up so we can make certain that is the type of material they are picking up.

Alderman Marr: How long would it take you to do that evaluation?

Mr. Dumas: If that is your direction we will begin that negotiation tomorrow.

Alderman Marr: Do you think it could be resolved by the next Council meeting?

Mr. Dumas: I hope so.

Alderman Lucas: We have two contracts already, are we just ignoring that?

Mr. Dumas: No.

Alderman Lucas: They would just be ignored because one person doesn't want to sign the contracts?

Mr. Dumas: I think it could be looked at that way. The third hauler does haul different material than the first two as a part of their routine business. We specifically addressed this one issue in many of the discussions we had with the haulers and their representatives.

Alderman Davis: Mr. Smith, we started this process in May of 2003 and in July of 2003 we gave you a contract that had this in it, you signed it at that point in time and you didn't bring forward this concern so that bothers me. Especially after the statement you made tonight when you said "this is the disagreements at this point". Are you telling this Council that you are going to come to the next meeting and have another two or three points that you would like to discuss.

Mr. Smith: We have had a change of staff attorney at my office; our new attorney looked over this and gave me her opinion. This information that I brought forth today has been a concern, but it is based off their opinion. My goal is not to slow your process down, that is why I am more than willing to sign the existing contract if we could take the two items out.

Alderman Davis: I have no problem tabling this for a couple of week but I do want to make sure those are the only two items you want to address and the next time you are before us discussing this contract we don't find out there are other problems that you foresee. Are these the only two changes we are going to see from you?

Mr. Smith: I have four issues I would like your city attorney to review; the two I am most concerned about at this point are the cardboard and the scrap metal.

Alderman Marr: What are the other two issues?

Mr. Smith: I think you should seriously look at the flow control issues that I brought information forth tonight.

A discussion followed on the issues.

Mr. Smith: I believe the four issues I consider are loose cardboard, bailed cardboard, scrap metal and the flow control.

Alderman Reynolds: Mr. Smith, you made a statement that there are three other companies carrying cardboard out of the City of Fayetteville.

Mr. Smith: That I know of.

Alderman Reynolds: Mr. Dumas are you aware of those?

Mr. Dumas: We will check into that, I was not.

A discussion followed on who currently hauls cardboard in Fayetteville.

Alderman Reynolds: I would like to see a firm contract signed and settled by the March 2 City Council meeting.

Mayor Coody: Mr. Smith, discuss your concerns with our Solid Waste Department. We will approve something in two weeks.

Alderman Jordan: It is time for this to end. I want this hammered out in two weeks and a contract signed, this has been going on over a year. I will agree to table this for two weeks but this will be the last time I will agree to it.

A discussion followed on the contracts.

Alderman Jordan moved to table the resolution until the March 2, 2004 City Council meeting. Alderman Davis seconded. Upon roll call the motion to table passed unanimously.

Bucket Truck and Brush Chipper Purchase: A resolution to approve the purchase of a 60 foot aerial bucket truck from Altec Industries in the amount of $86,900.00 and a brush chipper from Vermeer Sales and Service in the amount of $20,566.88 and to approve a budget adjustment in the amount of $108,602.00.

Alderman Davis: I received information of how we were going to fund this project. One complaint that I get is that our City streets are not up to standard. I was informed for this purchase $54,301.00 is coming from in-house pavement improvement capital projects. I don't think that's really overall what the citizens would like their dollars to be spent on. I also understand we currently have two bucket trucks. I don't know why we can't use those bucket trucks to do this type of project. I am a little confused why we need another one and why we are using in-house pavement improvement capital to pay for this.

Perry Franklin told the Council about the two bucket trucks. He stated one bucket truck is used by traffic every day, traffic cannot function without that truck, it is really not available for them to use. We started renting a chipper and made a small carrier but it is not efficient. We do not have a piece of equipment that will reach the height that we need for tree trimming. Purchasing this will make us safer and save us money. We put this together to take advantage of some grant money and to buy a piece of equipment we could share with other departments.

Mayor Coody: The second part of that question was the funds coming out of the pavement program.

Gary Dumas: All of the activities of the Street Division including the right-of-way maintenance and the trimming activities that we do come out of the same source of funds.

This would reduce the number of trips to Solid Waste to dump the limbs. To be affective in a right-of-way maintenance program we need to be able to trim the trees appropriately.

Mayor Coody: Our paving program is not hitting full speed because of lack of money; it's because of a lack of personnel.

Gary Dumas: That is correct; one of the things we will be asking for in the near future is enhancing the size of the paving and sidewalk crew so we can get more done.

Alderman Davis: What did we do last year for this service?

Connie Edmonston, Parks: Parks alone we spent about $20,000 dollars last year in contract services. The grant that we received from the Urban Forestry Commission was $20,000 to go towards the purchase of a chipper; our City's match was to be an equal match of $20,000 which we said would be an aerial bucket truck. We also put in money for administration, purchase equipment and to perform operational and safety training for the crews to utilize this aerial bucket.

I know there is some concern about the height, going up 60 feet; Parks has done that many times in the installation of the Lights of the Ozarks. We assure you that adequate training will be done. One of the reasons that the Transportation Department wanted this piece of equipment was for crown cleaning and crown rising on trees within the City right-of-ways. The trees that we have properly pruned and kept healthy create fewer accidents in the parks. This would really help our urban forestry program for the city and with joining forces of the Parks and Transportation we can utilize these two pieces of equipment and save money for our city.

Alderman Marr: The equipment Committee looked at this and I actually thought it was a good idea for a lot of the reasons you brought up. What I didn't realize at the time that we were paying for it out of the overlay.

Connie Edmonston, Parks: Part of it is from our city parks sales tax.

Alderman Marr: Mayor, there is no other area that we could fund this out of without taking money from roads?

Mayor Coody: There may be.

Gary Dumas: There is not a shortage of funds in the Street Program. We are doing as much in the street maintenance that we can with the amount of staff that we have.

A discussion followed on the Street Fund and projects that need to be completed.

Alderman Davis: If we do not have proper staffing and we can't get it all laid ourselves then we may need to look at contracting some of it out.

Mayor Coody: If we didn't use this fund is there another fund we could use to make up the difference.

Steve Davis: Instead of taking the money from the street overlay program we just substitute General Fund Reserves. Your options are the Street Fund Reserve account, General Fund Reserve account or the Sales Tax Capital Improvement Fund Reserve account. All of those funds have more than enough money in them to fund this item.

Alderman Thiel: I am in favor of this as it is. I think it is something we need and staff has explained that well. We have the funds in the Paving Fund to complete the projects.

Alderman Marr: We often get asked by citizens about our roads. This discussion has value for the citizens to understand that we can't use all the money because of lack of personnel. We can't approve new personnel that you have not brought forward. If we do add personnel we want to make sure we have money in that account. I support the project.

Mayor Coody: Is there a way we can find another source of funds for this truck and you bring forward hiring additional personnel so that we can double our efficiently on road paving this year.

Mr. Dumas: Yes.

Alderman Reynolds: I have a problem taking this out of the Street Department. Maybe we need to bring in some subcontractors to do more paving. I was under the impression this money was coming from the Shop Fund.

Gary Dumas: We can find another source of funds if that is your direction. I think the program is necessary both in Parks and in Transportation.

Alderman Rhoads: Could we look at contracting out paving as well as bringing more employees on?

Gary Dumas: We will do that but we do it substantially cheaper than outside contractors do. If we go to out sourcing some of these over lay projects there has to be engineering work done also.

Mayor Coody: We might try to have the city staff bid a job against a private contractor to see who has the best bid. That is time consuming; I would rather just go ahead and get the job done.

Alderman Davis: Wouldn't engineering have to be done regardless?

Gary Dumas: When our crews go in and do it we do not engineer it, if we have an engineering question, we call them and ask our question, opposed to developing plans, specs and bidding it out. Added engineering cost could be from 5% to 10% on a job.

Alderman Reynolds asked about repairs that have been completed on Unit 289.

Alderman Cook: Do we not set money aside for right-of-way maintenance every year?

Gary Dumas: The Parks Department sets aside some money for contract work for their maintenance in the Parks; right-of-way maintenance does not set any aside.

Mayor Coody: Let's go ahead and approve this out of the General Fund if that is okay with everyone.

Steve Davis: In order to keep the accounting clear I would recommend that we use the Sales Tax Capital Fund Reserve account.

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

Resolution 27-04 as Recorded in the Office of the City Clerk

OLD BUSINESS:

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.
This Ordinance was left on the Second Reading at the February 3, 2004 City Council meeting.

Kit Williams: Mr. Mayor, you read what should be the amended ordinance, the original ordinance was about $6,000 more. I would ask you move to amend the ordinance to the new ordinance.

Alderman Jordan moved to amend the ordinance. Alderman Lucas seconded the amendment to the ordinance. Upon roll call the amendment passed unanimously.

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

Mr. Williams read the ordinance.

Alderman Davis: Kit, in the past you had indicated some reservation about these impact fees, do you still have those reservations?

Kit Williams: My principle reservations had to do about whether or not this would be denoted by the courts as a tax as opposed to a fee. I have not changed my opinion on that, when it comes back to us if the City Council chooses to go forward and recommend one of these impact fees by recommendation to you is going to be that you refer it to the voters because that eliminates that issue as to whether it is a fee or a tax. This is a new state statue that we are basing these on; it has never been tested by the courts.

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

Ordinance 4541 as Recorded in the Office of the City Clerk

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.
This ordinance was left on the third reading at the February 3, 2004 City Council meeting.
This Ordinance was tabled at the February 3, 2004 City Council meeting until the February 17, 2004 City Council meeting.

Tim Conklin, Planning: We have a site agreement that has been signed by the Northwest Arkansas Mall that will reimburse the City 50% of the cost not to exceed $14, 669. Staff is recommending you go forward and approve this tonight. After the project is built the Northwest Arkansas Mall will be invoiced for that 50% cost share.

Alderman Thiel: I think we all really appreciate the Northwest Arkansas Mall coming forward and cost sharing this. It will benefit them also.

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

Ordinance 4542 as Recorded in the Office of the City Clerk

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.
This Ordinance was Left on the First Reading at the February 3, 2004 City Council meeting.

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

Mr. Williams read the ordinance.

Alderman Davis: The structure that you have designed for this project looks great, I really appreciate the design. Alderman Davis expressed his concern about access to the project, visibility of the project and the success of the proposed project. He also stated that he is concerned about the addition of apartments along I-540 and at another major intersection.

A discussion followed on the project and the need for mixed use projects, the success of the project, access to the project, and the design of the project, the layout and concept of the project.

Alderman Jordan: If this is going to be developed commercial we could have a lot of flat top buildings sitting there or something like this. This is a lot more appealing to me from the road than a lot of flat top buildings.

Alderman Lucas: I think it looks good.

Alderman Jordan: I just hope that we can continue to develop this kind of development in this city. I think this is important for the future of the City.

Mayor Coody: I am grateful that Mr. Lindsey is willing to try a prototype like this. We have been working closely with the staff to provide the kind of financial incentive to encourage developers to try something new, different and better.

Alderman Davis: In the event they have a problem leasing the commercial on the bottom floor are we able to change that for them at some time in the future?

Tim Conklin: This City Council or a future City Council would have to approve that change.

Alderman Davis: I would hate for someone to be locked into a situation to where they can't get a return in the event that it doesn't fill up. As Alderman Jordan stated and I stated earlier this is a very attractive development and I appreciate what you have done on this Mr. Fugitt.

A discussion followed on the signage at the proposed project.

Alderman Reynolds: I want to thank Mr. Lindsey for taking a very tough project on in a very difficult place, I hope it works and I am excited about it.

Alderman Cook: I like this project it is way better than what could be built there the way it is zoned right now. I really do like mixed use and I appreciate Mr. Lindsey, I really don't think he is taking a chance, I think commercial is going to succeed there. This is pedestrian assessable so people can walk to this project. I really do like the street scape; it is certainly a good step in the right direction.

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

Mr. Williams read the ordinance.

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

Ordinance 4543 as Recorded in the Office of the City Clerk

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.
This Resolution was Tabled at the February 3, 2004 City Council meeting until the February 17, 2004 City Council meeting.

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

Resolution 28-04 as Recorded in the Office of the City Clerk

Attendance Requirements for Planning Commissioners and Parks and Recreation Advisory Board: An ordinance to repeal §33.111 of the Fayetteville Code and enacting a replacement §33.111 attendance requirement for members of the Parks and Recreation Advisory Board and Planning Commission.
This Ordinance was Left on the First Reading at the February 3, 2004 City Council meeting.

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

Mr. Williams read the ordinance.

Kit Williams: At the last meeting there were several amendments proposed and passed by the City Council. I would suggest for the third reading instead of suspending the rules you allow me to go ahead and read the ordinance as I reflected your amendments to make sure that is what you want.

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

Mr. Williams read the entire ordinance.

Mr. Williams: If that properly reflected your amendments that you made last week you would be able to go ahead and vote on the ordinance, if that does not then please make changes now.

Alderman Thiel: How will this attendance be handled for the rest of the year?

Mr. Williams: That is why I placed in there within the members yearly periods of service, the yearly period of service for the planning Commission would be April 1 through March 31 because that is when people get appointed.

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

Ordinance 4544 as Recorded in the Office of the City Clerk

NEW BUSINESS:

Hiring of a Building Services Full Time Employee: A resolution authorizing the hiring of one (1) full-time employee (janitor) in the Building Services Division; and approving a budget adjustment in the amount of 25,732.00 for same.

Alderman Reynolds: Are both of these employees still under the City's payroll?

Coy Hurd: One is drawing sick leave and one is on leave without pay.

Alderman Marr: At Agenda Session we talked about whether the position should be a one year temporary position or a permanent position and then we received a memo from Coy Hurd stating the position needed to be permanent because the temporary position would not carry with it fringe benefits given to a permanent position. Can we not allow someone to receive benefits in a temporary position?

Steve Davis: We are going to need additional resources when the Water and Sewer Operations building comes on line for Building Maintenance. We would need an additional janitor anyway, we are asking in advance for approval for that position that would primarily be dedicated for the Water and Sewer Operations building so we can relieve our current staff from having to work overtime while these two employees are on extended sick leave. We are asking you to consider this as a permanent position for the future Water and Wastewater Operations building. We would be asking for a permanent position in November anyway.

Alderman Marr: This position would have come on in November and we are expecting the current employees to be out until November.

Steve Davis: The gentleman that had the auto accident is expected to be out six to eight months and then he will have a rehabilition period before we expect him to be back doing his normal duties. The other gentleman has had some very significant surgery and we expect his rehabilition to be quite lengthy.

Alderman Marr: Lengthy until November?

Steve Davis: Possibly longer.

Coy Hurd: Both are drawing sick leave and one is at the end of his sick leave.

Alderman Davis: This individual will eventually go to the Water and Sewer payroll.

Steve Davis: That is correct.

Mayor Coody: We wish both of these gentlemen our best.

Alderman Davis: How is sick leave accumulated at the City?

Steve Davis: Each employee earns about 4.6 hours per pay period every two weeks.

Alderman Jordan: Do we offer a catastrophic leave bank here?

Coy Hurd: There is not one in place at this point.

Steve Davis: We've crafted the beginnings of a policy for review by the Mayor.

Alderman Davis: Where are the dollars coming from to fund this?

Steve Davis: Right now they will come out of the General Fund Reserves for this initial 12 month period. The reason we asked for approximately $26,000 is that is the annual cost of a janitor with benefits. With one of the gentlemen being out of sick leave we actually expect to use $8,500 of additional cost. We are currently covering the work load of one of the gentlemen by working all other employees six hours a week of overtime. We are paying 60 hours a week of salary for 40 hours of coverage currently.

Kit Williams: Is it the City Council's decision to strike the words for one year that I had inserted at the agenda meeting and make this a permanent position?

Steve Davis: I believe there is a restriction in the personnel policy on temporary positions not receiving benefits.

Kit Williams: We have to follow those policies. I would recommend that you follow the recommendation from the staff and delete that for one year. You always have the right in the next budget year to delete a position too if you want to do that, if it doesn't work out the way you want it to.

Alderman Rhoads moved to amend the resolution to a permanent position and that at the end of this temporary period the person will transfer to the Water and Sewer Department. Alderman Jordan seconded. Upon roll call the amendment to the resolution passed unanimously.

Mayor Coody asked shall the amended resolution pass to hire the employee. Upon roll call the amended resolution passed unanimously.

Resolution 29-04 as Recorded in the Office of the City Clerk

Amend Chapter 166 of the UDC: An ordinance amending the Unified Development Code (UDC), Chapter 166: Development, Code of Fayetteville to exempt lots dedicated as Park Land from the bulk/area requirements of the Zoning Ordinance.

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

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

Ordinance 4545 as Recorded in the Office of the City Clerk

Mayor Coody: We are in very good financial shape and we are very efficient and productive and it is not an accident. We have a staff that works very hard to squeeze every bit of efficiency in cost savings that they can. We have a staff that does a very good job of making sure that we get the work done in the most cost effective manner possible. I want to commend them all for doing such a good job.

Meeting Adjourned at 8:10 PM

_____

Sondra Smith
City Clerk

City Council Meeting of March 2, 2004
Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Tim Conklin, Community Planning and Engineering Services Director

RECEIVED
FEB 17 2004
PLANNING DIV.

From: Dawn T. Warrick, AICP, Zoning and Development Administrator

Date: February 13, 2004

Subject: Easement Vacation for Michael Campbell (VAC 04-01.00)

RECOMMENDATION

Planning Staff recommends approval of an ordinance vacating a portion of an existing utility easement crossing the subject property, located at 4843 Lavendon Place. A portion of a home was inadvertently constructed encroaching into the easement.

BACKGROUND

The utility easement vacation request stems from a single family home that was originally permitted from inadequate site plans. The site plans submitted for building permits did not show the easement in question, and the building was constructed over the recorded sanitary sewer easement. Once the encroachment into the utility easement was discovered, the proper application and notification forms to utility companies and the City were submitted to request vacation of said easement. It is the homeowner's responsibility to relocate the sanitary sewer line prior to filing of the vacation ordinance.

DISCUSSION

Notification was provided to all utility representatives and adjoining property owners. No objections were reported regarding this requested easement vacation. This item was tabled at the February 9, 2004 Planning Commission meeting and is scheduled to be heard as an item of old business at their regular meeting on February 23, 2004. Additional information and minutes from that hearing will be provided as soon as they are available.

BUDGET IMPACT

None.

ENTERED 2/13/04

A.3.
Terracon Contract
3/2/04

MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations
Connie Edmonston, Director of Parks and Recreation CE

From: Rebecca Olman, Park Planner RTO

Date: February 12, 2004

Subject: Parks and Recreation recommends approval of a contract with Terracon Consultants, Inc. for the Cumming's C & L Landfill Site Characterization Study.

RECOMMENDATION

Parks and Recreation Staff recommends a contract be entered into with Terracon Consultants, Inc. for the amount of $49,000 plus a ten (10%) percent project contingency of $4,900 for a total project cost of $53,900 for the Cummings C & L Landfill Site Characterization Study.

BACKGROUND

Parks and Recreation, in keeping with the recommendation of the 10 Year Master Plan and on recommendation from the Park and Recreation Advisory Board (PRAB), conducted a search for Fayetteville's Community Park by evaluating 18 sites on criteria such as location within the City, total land available, appraised value, existing infrastructure, accessibility, FEMA floodway and floodplain designations, slopes over 15 percent, tree canopy, major land features and land use in terms of active and passive recreation.

Based upon these studies, PRAB selected the Cummings property as the 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 property. On August 4, 2003, PRAB voted to further investigate the landfill area.

In September 2003, 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 funding. Please find attached a letter

from ADEQ approving the Work Plan as the working document for the Site Characterization of the C & L Landfill.

A Request for Proposals (RFP) for this study was advertised with nine firms submitting proposals. On February 12, 2004, the Professional Services Selection Committee reviewed the nine proposals and selected Terracon Consultants, Inc to perform the Site Characterization Study. Members of the Selection Committee included Kyle Cook, Ward 2 Alderman; Gary Coover, City Engineer; Nancy Smith, City Auditor; Connie Edmonston, Parks and Recreation Director; and Rebecca Ohman, Park Planner. Pat Henry with ADEQ was present for the selection process.

DISCUSSION

City Council approval was given on February 3, 2004 to apply for the ADEQ Post Closure Trust Fund. The application was submitted to ADEQ on February 17, 2004. Funding has not been determined to date, however a very positive response has been received from ADEQ.

If the approval is awarded, the City would be responsible for the administration of the study according to ADEQ guidelines and a total payment of $10,000. The Work Plan, valued at $1,500, can be counted towards the total $10,000, leaving a remaining $8,500 to be spent by the City. These funds are budgeted in the Parks and Recreation Community Park Development fund designated for the Community Park project. Terracon's contract is for $49,000. The City's remaining balance of $8,500 would be applied to this total, leaving approximately $40,500 to be paid by the State. ADEQ stated that Terracon may proceed with the Study prior to project approval and funds over the pre-requisite $10,000 would be reimbursed to the City.

ADEQ has expressed great interest in the study and potential remediation of the C & L Landfill. However, if the City is not awarded the Post Closure Trust Fund, the study would be totally funded by the Community Park Development Fund. Parks and Recreation Advisory Board approved $50,000 for this landfill study on November 3, 2003. Any projected remediation costs would be accounted for in negotiations of the final cost of the property.

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

Attachments:

Contract
Attachment "A" –Scope of Services
ADEQ Work Plan Approval Letter
Site Characterization Study Cost Estimate

A.3.
Terracon Contract
3/2/04

RESOLUTION NO. _____

A RESOLUTION APPROVING A PROFESSIONAL SERVICES CONTRACT WITH TERRACON CONSULTANTS, INC. IN AN AMOUNT NOT TO EXCEED $49,000.00 TO PERFORM THE CUMMINGS PROPERTY SITE CHARACTERIZATION STUDY

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 Professional Services Contract with Terracon Consultants, Inc. in an amount not to exceed $49,000.00 to perform the Cummings Property Site Characterization study.

PASSED and **APPROVED** this the 2nd day of March, 2004.

APPROVED:

By: _____ DRAFT
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

B.1
Waste Hauler Contracts
3/2/04

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE CONTRACTS WITH ANY WASTE HAULER DOING BUSINESS IN FAYETTEVILLE IN THE FORM OF ATTACHED EXHIBIT A.

WHEREAS, the City Council has approved the form of the agreement to haul and dispose of solid waste in the City of Fayetteville at a fair and appropriate contract for any waste hauler wishing to do business in Fayetteville; and

WHEREAS, the City Council wishes to give any and all such waste haulers time to agree to this contract so that enforcement of § 50.29, Private Collectors, contract with City required (adopted in 1959) should not be actively entered until March 16, 2004.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor to execute agreements to haul and dispose of solid waste in the City of Fayetteville (in the form of Exhibit A) with any and all waste haulers operating within the City.

PASSED and **APPROVED** this _____ day of _____, 2004.

APPROVED:

DRAFT

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

AGREEMENT TO HAUL AND DISPOSE OF SOLID WASTE IN THE CITY OF FAYETTEVILLE

This Agreement ("the Agreement"), is entered into on this _____ day of February, 2004, 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. City and the Hauler agree as follows:

1. Hauler agrees that from and after the original date of this Agreement, 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 Agreement 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 capacities 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 loose cardboard or other recyclables collected in any type container shall be hauled from any customer within the corporate limits of the City of Fayetteville. The transportation of scrap metal and cardboard baled by the customer and ready for interstate commerce transportation are not controlled or affected by this contract.

4. Hauler agrees and understands that it shall utilize the City's transfer station for all Class 1 waste collected pursuant to this Agreement and shall deliver all Class 4 waste to a properly licensed landfill facility. Hauler shall 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 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 fees received after the due date shall be assessed a 2% penalty per month. If Hauler failed to pay the fees within forty-five (45) days of the due date, the City may revoke this Agreement upon delivery of written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the 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 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 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 ensure 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 Agreement. Hauler agrees that all open-top roll-off style containers will be properly covered during transit on streets and highways within Fayetteville.

9. In consideration of the right to provide the services described under this Agreement, Hauler agrees and understands that it shall be required to pay a monthly fee of ten (10%) percent (the Fee) of the gross revenue received for all services provided under this Agreement. Upon execution of this Agreement, a deposit shall be paid in advance to the City. This deposit shall be equal to one-half of the total 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 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. This Agreement has been entered into freely and voluntarily by Roll Off Service, Inc. which agrees to abide by all of the terms and conditions as a matter of contractual obligation and not under any other legal duty or because of any city ordinance. This is a contractual Agreement and is not intended to be part of or related in any way to any license or ordinance created pursuant to A.C.A. §26-77-102.

13. Neither this Agreement, nor any rights or obligations hereunder may 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) Haulers breach of any term, condition, covenant or warranty contained in this Agreement, or (ii) Hauler's negligent act or omission or willful misconduct related to the delivery of waste to the City transfer station or a properly licensed landfill facility.

16. Insurance: Hauler shall maintain the following insurance coverage during the term of this Agreement:

(a) Hauler shall provide and maintain, during the term of this Agreement, 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 Agreement 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 Agreement 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 Agreement 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 Agreement 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: Mr. Tom Smith
P.O. Box 1700
Lowell, Arkansas 72745

19. Hauler agrees and understands that this Agreement 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 Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive the termination (for any reason), cancellation or expiration of this Agreement.

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

_____
Title

C. 1.
Improvement District
6 - Rupple Row
3/2/04

ORDINANCE NO. _____

AN ORDINANCE TO ESTABLISH AND LAY OFF FAYETTEVILLE MUNICIPAL PROPERTY OWNERS' IMPROVEMENT DISTRICT NO. 6 – RUPPLE ROW DEVELOPMENT

WHEREAS, a Petition from Fayetteville Municipal Property Owners' Improvement District No. 6 – Rupple Row Development has been filed with the Fayetteville City Clerk; and,

WHEREAS, the City Clerk has presented said petition to the Mayor; and,

WHEREAS, Ark. Code Ann. Sec. 14-94-106 (2) provides that the Mayor shall thereupon set a date and time, not later than 15 days after the date of the presentation of the petition to the mayor, for a hearing before the governing body for consideration of the petition; and,

WHEREAS, the Fayetteville City council has determined from an abstractor's certificate of property ownership that those signing said petition constitute all the owners of the real property to be located in said district; and,

WHEREAS, Ark. Code Ann. Sec. 14-94-106(b)(2) provides that if the governing body determines that all of the owners of the real property to be located in the district have petitioned for the improvements, it shall then be its duty by ordinance to establish and lay off the district as defined in the petition and to appoint the commissioners as named in the petition.

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

Section 1: That the real property described in Exhibit "A" attached hereto and made a part hereof is hereby established and laid off as Fayetteville Municipal Property Owners' Improvement District No. 6 – Rupple Row Development for the purpose of constructing or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation of electric and telephone distribution systems, sanitary sewers, streets and highways, including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing within said district.

Section 2: The following three individuals are hereby named as commissioners of said improvement district: John Nock, Richard Alexander and Ryan C. Thornton.

Section 3: The name of said improvement district shall be Fayetteville Municipal Property Owners' Improvement District No 6 – Rupple Row Development.

PASSED and **APPROVED** this the 2nd day of March, 2004.

APPROVED:

DRAFT

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

C. 2.
Planning Commission Appeal
RZN 04-01.00 (Parnell)
3/2/04

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 04-01.00 FOR A PARCEL CONTAINING APPROXIMATELY 17.00 ACRES, MORE OR LESS, LOCATED SOUTH OF HWY. 62 AND WEST OF HANSHEW ROAD, FAYETTEVILLE, ARKANSAS, AS SUBMITTED BY ERIC JOHNSON OF TRIANGLE BUILDERS ON BEHALF OF TROY PARNELL.

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

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

From R-A, Residential Agricultural to RMF-12, Residential Multi-Family, 12 units per acre, as shown in Exhibit "A" attached hereto and made a part hereof.

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

PASSED AND APPROVED this _____ day of _____, 2004.

APPROVED:

DRAFT

By:_____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"

RZN 04-01.00

A PART OF THE NORTHEAST QUARTER (NE ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION TWENTY-FOUR (24), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY ONE (31) WEST, BEING MORE PARTICULARLY DESCRIBED, TO WIT: BEGINNING AT A POINT WHICH IS 558.0 FEET SOUTH OF THE NORTHEAST CORNER OF SAID 40 ACRE TRACT, AND RUNNING THENCE SOUTH 763.21 FEET TO THE SOUTHEAST CORNER OF SAID 40 ACRE TRACT, THENCE SOUTH 89 DEGREES 58 MINUTES 52 SECONDS WEST 1318.51 FEET TO THE SOUTHWEST CORNER OF SAID 40 ACRE TRACT, THENCE NORTH 00 DEGREES 02 MINUTES 31 SECONDS WEST ALONG THE WEST LINE OF SAID 40 ACRE TRACT 381.43 FEET; THENCE NORTHEAST TO THE POINT OF BEGINNING, CONTAINING 17.00 ACRES, MORE OR LESS. SUBJECT TO THAT PORTION IN HANSHEW AVENUE ON THE EAST AND SOUTH SIDE OF HEREIN DESCRIBED TRACT AND SUBJECT TO UTILITY EASEMENTS OF RECORD, IF ANY.

C. 4.
Cross Key
R-PZD 04-02.00
3/2/04

FAYETTEVILLE
FIRE DEPARTMENT
FIRE MARSHAL'S OFFICE

TO: Suzanne Morgan, Planning

FROM: Battalion Chief Kyle S. Curry

DATE: February 25, 2004

RE: Time / Distance Measurements "Cross Key"

Ms. Morgan:

As per your request I measured the travel time and distances from Fire Station #2 and the site of Fire Station #7 to a proposed development located on 46th Avenue. These times are approximations due to the variables that come into any emergency response.

Fire Station #2 to Cross Key:
Miles – approximately 3.5
Time – approximately 4 minutes 55 seconds

Site of Fire Station #7 to Cross Key:
Miles – approximately 1.0
Time – approximately 1 minute 36 seconds

FAYETTEVILLE FIRE DEPT.

C.4.
Cross Keys
R-PZD 04-02.00
3/2/04

R-PZD 04-02.00: Residential Planned Zoning District (Cross Keys, pp 438) was submitted by Chris Brackett of Jorgensen & Associates on behalf of Charles Sloan and Sloan Properties for property located south of Wedington Drive at the corner of N. 46th and Persimmon Street. The property is currently zoned R-A, Residential Agricultural and contains approximately 38.48 acres. The request is to rezone the subject property to a Residential Planned Zoning District to allow for the development of a residential subdivision with 109 single family dwellings proposed.

Bunch: Just a comment, the PZDs seem to take a little longer as they come through but the added deal is if they had to come through individually as a Rezoning and then a Preliminary Plat or Large Scale Development I think it winds up taking even more time. On the surface these things look like they are quite lengthy, and they are, but they are still shorter than having the duality. As we move to the next item on the agenda it is another Residential Planned Zoning District for Cross Keys submitted by Jorgensen & Associates on behalf of Sloan Properties for property located south of Wedington in the Persimmon and 46th area. Suzanne, can you give us the staff report on this please?

Morgan: Yes. The applicant has requested a Rezoning and Preliminary Plat for this residential development for an R-PZD. The proposed use is single family residential with 109 lots proposed with a detention pond located south of the property. Also, the proposal is to have this community fenced with a wood and brick fence. Also, the density for the entire site is to be 2.83 units per acre. The land is currently zoned R-A, Residential Agricultural and the site is located north on Persimmon Street and east on 46th Street. The item must be heard at City Council pursuant to requirements for a PZD. To the north the land use is single family residential zoned RSF-4 and R-A. To the south the land is in the Planning Area and used for single family. To the east is currently zoned RSF-4 and to the west Persimmon Place Preliminary Plat has been approved for the west of this development. Water and sewer are to be extended to serve this development. Right of way to be dedicated is 50' along all of the interior rights of way and 70' along Persimmon Street as well as 50' along 46th Street, a local street. Street improvements are construction of Persimmon Street along the southern property line. There are to be street connections to the south and west of this property. Tree preservation information, existing is .13%, preserved is .08%. Mitigation is $1,050 payment into the tree escrow account. Staff's recommendation is to forward this R-PZD to the full Planning Commission with a total of 13 conditions. Number five, Planning Commission determination of connectivity. Staff is recommending a street connection to the east to allow connectivity for future development. Number six, modified to state Planning Commission determination of street improvements. Staff is recommending 14' from centerline for 46th Street to include curb, gutter and storm sewer. Staff will be recommending a cost share for the developer to overlay the entire

width of 46th Street for the length of the project. Item seven, payment of parks fees in the amount of $60,495 for 109 single family units.

Bunch: Thank you Suzanne. Are there any additional comments from Parks?

Ohman: No Sir.

Bunch: Engineering?

Casey: Not at this time.

Bunch: At this time we will turn it over to the applicant. Will you introduce yourselves and tell us about your project please?

Brackett: Yes, my name is Chris Brackett, I'm with Jorgensen & Associates representing Charlie Sloan who is here with me. This is a PZD. The main reason why this was brought forward as a PZD is because as a firm, we were involved with the development of Persimmon Place adjacent to this and there were many concerns with the adjoining property owners with this development. Through the rezoning they had a serious problem with not being able to see exactly what we were planning on doing. With this process we felt that we were able to bring forward exactly what we were proposing and present to the adjacent property owners. Also, this development the density is more than the RSF-4 required and we had some other slight changes to that zoning. We felt that it was appropriate to bring this in as a PZD and will be happy to answer any questions you might have.

Bunch: At this time I will take public comment. Is there anyone in the audience who would like to address this R-PZD? Seeing none, I will bring it back to the Committee for comments. One of the first comments we need to address is what you just said about the density. There was considerable complaint and comment concerning the development across the street because of the density and the size of the lots and the impact that those would have on the neighborhood, whether it be from perceived property values or traffic or whatever. How is this going to exaggerate or help the situation where you are getting more of Persimmon built? Are you building both sides of Persimmon?

Sloan: Both sides.

Brackett: Persimmon brought through the Bill of Assurance we worked out with the adjoining property owners required 80' wide lots. We are at least 80' with the majority of these being 85'. My understanding of the problems with Persimmon was they didn't want the 70' wide lots and pack them in kind of development. They wanted a larger home with a little bit bigger lot

than your normal, than some of the subdivisions that have been developed in this area. This exceeds what Persimmon does and by the lack of public comment I think we've achieved something that the adjoining property owners are comfortable with.

Bunch: Can you tell us a little bit about the detention pond and how that is working? I know that it is on the property that is owned by the same owner.

Sloan: I am going to own all of it, both sides of Persimmon.

Bunch: Are there any kind of easements that need to be drawn up Matt for the detention pond since that is part of this?

Casey: Before that goes to construction we will require offsite drainage easements to be filed for that area.

Bunch: I guess by having both pieces of property that makes a much better solution by putting it down next to the drainage area.

Sloan: It really came from staff that we have that down there, we have the availability. We are going to put one down there eventually for the other side so we had space to make it fit together. We already have a natural drainage to that point so why not just go ahead and continue on with it. There are some other things planned for the land across that that may benefit it in a long run by doing it that way.

Bunch: Is all 70' of right of way for Persimmon being dedicated in this proposal?

Sloan: Yes, we are going to be able to because we will be closing on everything and then we will be able to dedicate both sides. We went back and sort of worked something out so we do make sure that we do own everything completely so we can dedicate it.

Bunch: All of your lots with just an exception of a handful of them are just over 11,000 sq.ft. The ones that are under are just barely under.

Sloan: We are putting up a 2,000 sq.ft. minimum on the space.

Bunch: How will the fence around this compare with the fence that is going in across the street and will it create a monotonous corridor down through here and a wind tunnel or what is the deal on the fences?

Sloan: Suzanne may be able to show a quick elevation of what we are proposing for a fence. I knew that there was one across the street so we were trying to do something like that. I had planned on an all brick fence but the more

you look at a solid brick fence the more you don't really like a solid brick fence. I thought maybe we can do a mixture where we have basically brick across the bottom of everything and put maybe cedar or something in between it to lighten it up and maybe breathe a little bit. Maybe we can get together with the gentleman that owns the project next door and maybe we can coordinate so they will complement each other and one doesn't look like a stark contrast from the other.

Bunch: Was the one across the street supposed to be poured concrete?

Brackett: We were required to show it as a decorated concrete fence.

Sloan: One of the neighbors called me this morning and said that they would like us to work with the owners of Persimmon Place and possibly coordinate that fence. It may be a little bit different color but the same texture, something that looks good. I am sure they would want to keep their distinct subdivision. We are trying to tie something together on this side of the street that ties together with the rest of the land across the street for future expansion.

Bunch: I think it is just a matter of keeping it from being like a concrete canyon, a little diversity in there and also a little breathing room. A solid fence was predicated on sound and visuals and everything else. Now that the situation has changed I think it is wonderful that you are working together to try to create something that is a little friendlier.

Sloan: We are going to try to. The neighbors, at least the one I talked to, said that he was going to try to get the neighbors to work together to support some kind of change. They still want the fence there but they would like to see a little bit more diversity rather than just a block fence or a solid masonry fence.

Bunch: Is this going to have a P.O.A.?

Sloan: Yes. That will be taken care of through that.

Bunch: Through this one?

Sloan: Through all of them. Hopefully this will be Phase I of an overall project and then each one will be just added to it. We will come back with the southern part with another PZD because we will have multiple size lots with a little bit bigger lots all the way up to an acre and possibly four or five acres around the existing home.

Bunch: Are you going to restrict access to lots 36 and 37 to Turner Drive?

Sloan: Yes.

Bunch: That begs the question of where is the fence. I guess the sidewalk will be outside the fence?

Brackett: Yes, the sidewalk is in the right of way, the fence will be outside of the right of way.

Ostner: Is there a space between the fence and the sidewalk?

Sloan: Yes, it will be landscaped.

Bunch: Also limiting access on lots 1 and 49?

Brackett: We have a note that all lots will access interior streets.

Bunch: There is that short turning radius and medians here will preclude some of that.

Sloan: That will stop that for sure.

Bunch: Unless there is a car space between it. Of course, you build out most of your subdivisions yourself don't you?

Sloan: I usually do but this one there will be quite a few builders, probably five or six builders in there with me at least. I don't have a problem with that. I just know on corner lots you guys like to have side garages but we are just talking about four lots being affected. I don't have a problem with it, I just hadn't thought about it.

Bunch: Do you think by the time this gets to full Planning Commission that you will have a better handle on what the fence will be?

Brackett: We are going to propose that.

Bunch: The one across the street was just a regular subdivision, it wasn't a PZD.

Brackett: Right, it came in before that ordinance was approved.

Ostner: I have a question. I'm not sure it is even for you guys. These corner elbows, I was trying to find some guidance in the development manual on the limit of width of streets. I know we accept cul-de-sacs but these are neither. How are these streets widening to 60' or 70' in the corners?

Casey: I don't know that you will find that in our manual anywhere. It has been accepted practice for years to do this in a residential subdivision. Our

minimum street standards state that the minimum radius for a street is 150'. If you did that in a subdivision like this you would have all radiuses and no straight portions of the streets. This is an option to overcome that. They allow the little bulb around the corners that gives plenty of room for turning movements. It also gives the benefit of adding additional right of way frontage for these corner lots. You are not forced to have the larger lots in the corners to make your frontage requirements. There are a few reasons for that. It has the same radius as our cul-de-sac which is 40' to the back of curb. Other than that, I don't know that you could find that anywhere in our minimum street standards or in our development code. It is just accepted practice.

Ostner: So, 150' minimum radius. I took my pen and paper last night and I'm pretty sure if it was just a curve that that would be real close to 150'.

Brackett: We've drawn it that way. A 150' cuts this lot out and it brings you out into here. Because this 150' on the centerline and then you have your additional 25' on the outside. It is substantial.

Ostner: Since this is a PZD those are all on the table. You get an extra lot in every corner. Those lots, even though their frontage at the right of way line is 70', their curb is tiny and the driveways tend to pile up as they do on many cul-de-sacs. This is just something that concerns me. I'm not sure how to resolve it because it is a standard practice but I just wanted to ask the question.

Anthes: I'm with you Alan, these things drive me crazy too. We see them a lot, I always know there is a Jorgensen plan coming through when we've got these little elbows everywhere.

Bunch: One thing that we have to remember is that these are R-PZDs and not Conditional Uses so we have to go by what the existing ordinances require on these sort of things. If we have plans to modify this I think that there is an avenue to present that to the Planning Commission and forward it to the City Council to alter the methodology of development.

Brackett: Our point of view is that it is standard practice. We do do it a lot. I don't feel that it is a safety concern. If the Planning Commission does feel like it is something that they would like to see we would hope that it would be brought forth as far as city policy before we are in the process.

Ostner: This is late into the game and I'm not sure that it is fair to ask it of you now. I understand that staff and no one has brought this up until now.

Anthes: It is just something that we have been kind of commenting on in the background and we need to start talking about. You are the first.

Bunch: You are the guinea pig to make this thing go forward to present to the City Council to see what they think of it.

Ostner: Since this is going forward as a legislative act by the Council, this 46th Street I understand is a minor arterial.

Warrick: 46th Street is a local street.

Brackett: It was a collector street before Persimmon came through and that collector street was moved over to Broyles.

Bunch: That was the relocation of the water line and everything for Broyles.

Ostner: The high speed alley that is being inadvertently created is not your fault. You all are following our procedures. I think our development standards need looking at. Part of the street's purpose is to provide frontage and we are requiring no one to have frontage. You all had to duplicate frontage on both sides. No one can face the street. We've got three streets where one could work. I think that is expensive. I think it is backwards. It is usually presented on the point of safety that this street is going to be high speed and we don't want people coming out from their driveways. I would like to challenge that philosophy. Not every street is a high speed street. I believe with frontage it reduces speed. When you create an alley of course you are going to speed, why not? No one is backing out, no one faces it. Here again, this is not really relative to your project, you followed the procedures. I want to bring that up. I don't think that is good Planning. I don't think it is good for our city to create these high speed alley ways.

Bunch: I guess what would really be the key to it is what happens if 46th is extended to the south.

Sloan: It won't be.

Bunch: As it stands right now, Persimmon is going to be a fairly close parallel if we look on this, to Hwy. 16 that is going to go down to Shiloh and it will go over to Double Springs. Broyles is being rerouted.

Ostner: That comes right back to the question is does every street that functions over 40 miles per hour have to be restricted to no frontage? I disagree. We have got lots of streets in town right now that function that way safely.

Bunch: The question here is this one being restricted for traffic reasons as much as it is aesthetic reasons. Once we have, I know that the statement is made

on here that we are restricting the access to it. I don't know if this is going to be a high speed street but it is going to be a busy street.

Ostner: Then why do we restrict access at all if it isn't going to be high speed? Why do we build streets not just to get from one place to another but lots of different functions. I believe this street has one function to get somewhere in and out, not to have dialogue, not to have yards.

Bunch: If access were granted along that street and this street were moved over we would still have the same number of streets and same number of accesses.

Ostner: This system where backs of houses touch backs of houses is sufficient, there is one frontage. This system where the backs of houses all have a very expensive street. It is awkward at the edges of development.

Bunch: If this street were here and a road was moved over that backed up to this there still would be very little gain. It would be virtually the same situation that we already have.

Ostner: No, you wouldn't have the backs of houses facing a street.

Bunch: That is one reason we have the fence in because of the backs of houses but if the houses face the street and then you have the houses back up to this and move this road over you are still going to wind up with the same amount of roads and a similar number of lots.

Ostner: No you are not. This system right here with the backs of houses on the backs of houses, four rows of houses and two streets. More than twice as much asphalt, more than twice as much traffic. This is not really on the point. I wanted to bring that up as a point of discussion.

Warrick: I would just add that I think it was during the development of Persimmon Place that 46th Street was downgraded from a collector to a local street and we don't want to have all of those curb cuts on a collector street. When that subdivision to the west was designed it was with the intent that that would be a collector street and not to have that many curb cuts onto 46th Street with it being classified in that fashion. After it was preliminary platted 46th Street was downgraded and Broyles was upgraded because of other situations.

Ostner: I understand that. There are streets that carry more traffic faster than streets that we call collectors.

Warrick: You were just asking about why we had a fence against that street for Persimmon and for this one. This one I believe the developer just chose to

mimic what was happening across the street. That was not a city requirement that they not access 46th Street.

Ostner: It makes sense. It has already been done once so you need to finish the project.

Sloan: It complies with what they requested.

Ostner: I am just trying to bring up for discussion that just because of the fact that it is a collector I disagree that it needs to have restricted access. We have streets that are bigger than collectors, Old Wire off of Mission carries a ton of traffic and people live on it.

Sloan: I agree with you. Across the street right here, we've had this discussion already. We would like to mimic what's happening with this house all the way down this thing with the wrought iron fence. These will be acre lots with an individual automatic gate to each lot which their drive would come out onto a collector street. We feel like 16 lots is not going to be a tremendous deterrent to a street.

Ostner: I think frontage is a key. An 85' lot on a major street might be dangerous, a 200' or 250' lot there is a big difference.

Sloan: That is what we propose to do on this side is to access this street this way since we are basically building it again. That gives us the opportunity to try to keep the character of the houses that are already there and then go from there to the creek. Then we would hit the creek and have a natural barrier.

Ostner: With a larger lot you are less apt to back out. You are more apt to turn around.

Sloan: We would probably require an oval drive, just like this. Each lot would have to have an oval drive so they would be heading out forward.

Ostner: That is just common sense. America was built that way and we have sort of fallen away from that.

Bunch: Looking at how this area is developing overall, regardless of how 46th Street is designated, it is going to function as a fairly heavy traffic carrier.

Sloan: We are working with the two land owners here. One of them is a friend of mine and we are basically going to be handling the development of that eventually over the next couple of years and with John Nock to go ahead and get this street built through eventually all the way through. We have

sort of a gentleman's agreement to try to get this thing resolved immediately. We are trying to funnel our people over to Rupple Road.

Bunch: As Hwy. 16 gets widened, I think the next phase is to widen it out to Double Springs. Eventually there may be a light at Double Springs and a light at Rupple. As this goes through and then being a straight shot to Shiloh, the current use of this area is going to change considerably. Of course, with the sewer plant going down through here and with the change in Broyles being a north south down to the Farmington area and Hwy. 62 we are going to see some major reconfigurations of the traffic patterns in the whole sector.

Sloan: We are trying our best to keep people off of 46th Street for the neighbor's sake. We are going to improve it on our end of it. That is a point of contingency that I have is I would rather my money be spent building sidewalks for them all the way to Hwy. 16 than building our street out. Leave the street like it is, put a sidewalk down it, back off the curb and gutter and spend the same money. Cut the check to the city or we will build it here is how many dollars we are going to spend to improve this between myself and the other developer. Let us take it and do something all the way to Hwy. 16 whether it be sidewalks, fill in one ditch on one side or whatever we need to do. Right now the rules say we need to improve this street.

Bunch: What we need is Charlie in on our long term planning for this area of town because he is doing most of the work out there.

Sloan: We hope to be back. Our goal right now is between this development and we have another project that we are trying to get annexed in, I know we are going to be held up because of the annexations. Our goal is to put Persimmon from Double Springs Road to the Boys Club. We will take care of making all of those connections with the next two projects, John Nock's project and the McBride project. That is what we are trying to piece together right now so that we have a road running parallel from Hwy. 16 from Double Springs. A lot of that comes from Farmington so they could turn down Persimmon and then turn to go to Broyles verses coming back on 16 and around.

Ostner: Hwy. 16 needs another outlet.

Sloan: We are trying to solve one of the problems as far as traffic.

Bunch: This part of Shiloh is one way isn't it?

Sloan: It is one way going south.

Bunch: There is still Betty Jo and Rupple.

Sloan: Right.

Ostner: If the north bound people stayed on Wedington the south bound could use this.

Bunch: We are diverging onto long range planning.

Sloan: We don't mind talking about long range with you.

Bunch: Especially since you are heavily invested in this area of town this is to your benefit. Moving this forward are any of the conditions of approval sticking points with the applicant issues for you all?

Ostner: Yes, number five.

Sloan: I know what is planned. We have two different neighborhoods. We are going to build a street that will give you connectivity because we are building a collector street that is only a few hundred feet away. We don't understand why we should have to connect. He has a totally different concept of what he wants to build there verses what we want over here. We don't really want to connect the two subdivisions together. I went to one of your street meeting things they had. Streets can be used for other things besides driving on like kids and things like that. I feel like if you keep making connections people will find a short cut even though there is an easier street one block down the road they are going to keep cutting through in places. He already has two or three connections that he has to make to Meadowlands that are already there that he has to tie into. We didn't see, since we would be making a connection here or here, preferably we would not make a connection here. The neighbors really didn't care to have this connection but we didn't see any reason if we are building this street for you here why we should have to make a connection here. It is not like they are going out on Hwy. 265 to go from Savanna to one of the other subdivisions.

Bunch: How about an alternative transportation path through there and have them walk or ride a bicycle as opposed to a street connection?

Sloan: We wouldn't have a problem if we had an easement or something through there to connect.

Bunch: I would personally be more in favor of that than the automobile connectivity just for the same reasons that you discussed to have the concept of a neighborhood and if there is a different theme in the

development next to it to have some sort of multi mobile connection but not necessarily automobile.

Sloan: I live on a cul-de-sac and I have two little girls and they have road their bikes out there for years on that cul-de-sac and I feel like if you can sort of keep some of the traffic contained into some of these smaller areas that it gives the kids an opportunity just to feel like you are not in a high traffic place. That is the main thing that we were looking at. We didn't see any sense in connecting those two together.

Bunch: I always use the Tulsa model of that where every ten blocks either north, south, east or west there is a major thoroughfare, regardless of what it is called, arterial or a collector or whatever. Within those ten block square areas there is traffic calming and less access just for that reason to have a neighborhood and have a place for children to play and to learn to ride bikes and learn about traffic and that sort of thing. Those of us who are addicted to automobiles have the every ten blocks we know that there is something. We don't have to have a major cut through every two blocks.

Sloan: We don't have a problem with doing that. Then across the street we have talked with Parks and Trails about connecting this neighborhood down toward the creek which will eventually have a trail through it too. We are trying to work it out where it will be more of a bicycle walking friendly neighborhood. Obviously, for kids the big draw is the Boys Club sitting over here and access to get there. That was one of the things that the neighbors commented to me, just get my children a way to get to the Boys Club without having to go around and that is what our proposal was. We will work together and make sure that we get that.

Bunch: If there is some way of coming up with an alternative path down towards Persimmon with bicycle and walking and all that, it would be a lot safer if the kids could cut through.

Sloan: That is something that I would have to get with John to coordinate but I don't think he would have a problem with it.

Anthes: What is his concept? How is it different?

Sloan: He is doing rear entry garages, smaller homes, alley ways I believe is what he is looking at.

Casey: He is showing an alley back here to access the back of the homes in the preliminary drawings that I saw. The access would go onto a public alley.

Warrick: We have looked at the adjoining project concept in concept. It is obviously, not in process yet. Staff is also recommending a connection to

the east. Our recommendation would be that lot 11 extend to connect to the vacant tract of land between 25 and 30 acres to the east. Yes, there is a concept for the development of that project. However, that concept may never come to pass. I believe it will. I fully believe that that project will come forward. As Matt said, that developer is looking at some rear entry alley access type configurations. When we spoke with him, when staff made him aware of our intent to have a cross access between this development and his he didn't love the idea but he did state of course, if he was required to connect he would connect. He was following up this project as he is following up development to the north that have stub outs with intentional connectivity to this vacant tract of land for future development. As his development is coming in behind all of these others he is having to respond to those other decisions that were made with regard to connectivity with that tract of land. In reality it is a timing issue as to who comes first and who has to react based on other people's actions and other decisions of the Planning Commission. Staff's opinion is that it is not just getting people on foot from one development to the next. It is getting mailmen, it's getting the UPS truck, the trash truck, getting everybody who needs to travel from one development to the next off of the more major streets for convenience purposes but also just because it is reasonable to do it. We are planning a street system for the city, not for individual developments and we need to ensure that they respond to each other but that they also can protect the integrity of developments. I think that it is very important that when we look at this we have to look at those macro issues. This is the city street system that we are trying to ensure reasonable connectivity in. That is why we made the recommendation. It is obviously, a point of contention and Charlie and I have agreed to disagree on this one and we will continue to do so amicably. We are looking for the Planning Commission to make a decision with regard to this connection.

Ostner: I would tend to agree with Ms. Warrick that these being developed from a development to the east in essence says this is our street and then this person says we have ours and we have ours. In my mind that is not what a city is all about. A city is all about these are our streets. If this is built in such a way that these people can't use it even to drive to their friend's house it is not a macro vision. I think lot 11 is a great place to put the connectivity. I think he could still have a completely different look. I have driven from subdivision to subdivision sideways not out on the major streets and you can tell how that changes. That could be his alley access right there, I'm not sue. I'm in favor of condition number five and it is something we have held a lot of other developers to.

Anthes: Exactly. I feel that there are a lot of other developments in this area that we are putting the same condition on and we need to be consistent in those decisions.

Bunch: What about lot 13 then as opposed to 11 or 15? From an Engineering standpoint, Matt, would that cause any problems with the turns and the radii? It would give a traffic calming affect. 15 would definitely be a straight shot through. 13 or 11, I realize 11 doesn't go through to 46.

Ostner: This is already your traffic calming, offsetting intersections is second best in my mind when intersections line up it is much safer. There are fewer intersections, there is one instead of two. No one is going to want to go through all of these stop signs as a cut through to go fast.

Sloan: How many times do I cut through Wilson Park a day?

Ostner: That is different. Those aren't offset like these. There is nothing for a quarter or half mile. That is why we all do it. There is nothing that is happening that way.

Sloan: There is a street that I'm building that is five lots down.

Ostner: That is why traffic won't cut through I believe because we find the path of least resistance and you'll go to it.

Sloan: I believe people will cut through here, through here and go through his. Even though it is not logical to do it.

Ostner: If these were lined up I believe that could be a problem.

Sloan: That is just like saying these people won't go up 46th Street if we don't have that there. They will still go up 46th Street. That is the reason I can see the neighbor's point of view. If this is here and we are funneling traffic back that way there will eventually be a light at Rupple and that is what we are hopefully planning on the traffic for that purpose.

Ostner: It is strange but cut throughs can go both ways. There is a high speed cut through and a friendly neighborly cut through. Connectivity is all about cut throughs but it is all about friendly, low speed neighborhood cut throughs. It is not high speed I'm going to cut through and ruin those people's neighborhoods. I think lot 11 would do that too.

Bunch: I know that this has been a rather drawn out meeting but I think we have touched on some important issues here because this whole area of town, these are issues that we are going to be looking at in the future and I would like to thank Charlie for giving us the opportunity to look at these. We are going to see this more and more as this area develops out so I don't think that the time that has been spent today, I think may have been wisely spent because these are issues that are constantly in front of us and that are

going to be in front of more and more rapidly and particularly as Persimmon goes through. Now that the Boys Club is built that is a motivating factor. I think you could probably tell us more than anyone since you have had considerable development in this area. I know that you are having a rather rapid build out.

Sloan: It is. This is the growth of Fayetteville right now. The bigger growth is going to be out in this area. The builders are excited about it. We have home owners calling about this area. The Boys Club is a big attraction. It is for myself. I have two little girls that made me join the new club. That is a big drawing power and we have hopefully some great plans for another benefit for the Boys Club with the next development. We hope to do some stuff that we actually build some stuff for the Boys Club and give it to them for additional recreational facilities for them. We have the space and we have some other area that we are not going to utilize so that is what we are trying to work with the other two land owners.

Bunch: Build out rates on your developments over off Double Springs Road really accelerated.

Sloan: It is unbelievable. It is going to make a great neighborhood. There are beautiful homes.

Bunch: You were concerned with phasing those in and blinked your eyes and were doing final build out. Are there any other comments on the conditions Charlie?

Sloan: No, I guess I will give into Dawn and give on number five.

Warrick: I think it is a win/win situation.

Bunch: What if it is a gated community?

Sloan: I tried one several years ago and I didn't know what the Planning Commission's feelings were on gated communities because it is a situation where it could be done very easily. We are going to put fake gates up here to match what goes up across the street. Is that a no around here?

Bunch: I don't know, we haven't run it up the flagpole yet. One of the things we will need Charlie since this is a PZD we will need a height and better description on the fence, height and location.

Warrick: I think it is pretty well described in the elevation drawing. I would be interested in understanding how it relates to the fence across on the other side.

Sloan: I just got a phone call this morning and he said please try to coordinate something.

Brackett: The fence for Persimmon was required by the Bill of Assurance. This is a voluntary act by this development and we really don't want to go into extraordinary lengths of developing this fence at this time when really what we would like to do is work with the developer across the street.

Bunch: I guess we can do that as a PZD, just call it out as an architectural type fence and then allow some latitude or does that get into substantial change venue?

Warrick: If you approve it allowing some latitude then it wouldn't be a substantial change if they came back with something different. I think that it would be appropriate for the fence to be of sufficient height to provide a screen which is typically considered 6' to 8' and if you are going to suggest that it is at least predominantly brick or masonry in structure then whether the panels set in are wood or wrought iron or some other type of material we can work that out.

Sloan: I would love to have wrought iron to match across the street but then you are looking in the backyards, I don't want you to look in my backyard so then you need to panelize that.

Bunch: I'm trying to limit the red tape on it. Normally PZDs are kind of nailed down but I think we may have some latitude depending on how you present it where we can specify an architectural fence compatible with the fence across the street.

Anthes: If you could bring a photograph of the fence across the street that may help as well.

Ostner: As part of the negotiating I would be much more willing to hand this off into the hands of the staff if you all would agree to plant a tree every 40' with a group of shrubs every 20'.

Sloan: Hopefully all the corners will be landscaped. I was hoping to come out here and do a short wrought iron fence or something that matches here and then we can do flower beds. The same thing with the entry. Chris has a common area with the entry for planters and hopefully down here we can do some small landscaping and maybe a tree wherever the panel happens to hit with the brick panel.

Ostner: I think that would make a big difference. In fact, I would include that with the fence in my mind because that is what you see, you see the fence and

the landscaping. Two fences with no landscaping can be really oppressive.

Sloan: Landscaping will be there. That is to try to break it up. Brick fences look good at first and then you need something to break it up.

Ostner: You've got a couple of trees and then some landscaping.

Sloan: I didn't know I was going to have to furnish that but that's easy enough to draw that on a cad program, stick it in there and try to come up with something pretty quickly.

Ostner: Since this is a PZD everything becomes law.

Sloan: I will try to get somebody to work on a couple of renderings and come down with something.

Ostner: I would bet that more landscaping on paper would be more helpful.

Bunch: Actually he has a little extra time because of the holiday. This is Tuesday instead of Thursday and then the agenda session so you have time to work with your neighbors and then come up with a presentation. Let's get this one on the road.

MOTION:

Ostner: I will make a motion that we forward R-PZD 04-02.00 to the full Planning Commission.

Anthes: With the connectivity at lot 11?

Ostner: With condition number five talking about a street connection to the east being made at lot 11.

Anthes: I will second.

Bunch: Do we want to specify at lot 11 or do we want to leave that to Charlie to negotiate with staff between now and the full Planning Commission?

Brackett: We are going to put it on lot 11.

Bunch: I will concur. Good luck.

R-PZD 04-02.00: Residential Planned Zoning District (Cross Keys, pp 438) was submitted by Chris Brackett of Jorgensen & Associates on behalf of Charles Sloan and Sloan Properties for property located south of Wedington Drive at the corner of N. 46th and Persimmon Street. The property is currently zoned R-A, Residential Agricultural and contains approximately 38.48 acres. The request is to rezone the subject property to a Residential Planned Zoning District to allow for the development of a residential subdivision with 108 single family dwellings proposed.

Hoover: On to item number two on the agenda, R-PZD 04-02.00 Cross Keys. This is for property south of Wedington Drive at the corner of North 46th and Persimmon Street. Suzanne?

Morgan: The developer's engineers failed to comply with the notification requirements for this item and we are requesting that this item be tabled until such time that the notification has been completed.

Hoover: Thank you. Do we need to vote on this?

Warrick: In order for it to properly go through the process notification will need to be given in a different manner than it was originally and it will have to be heard again at the Subdivision level as well as Planning Commission. I think it is more of a procedural issue on the administrative side to ensure that it gets through that process properly. Mr. Whitaker, do you think that any additional action needs to be taken?

Whitaker: I think that since it was read as an item of the agenda and folks probably were expecting to hear something about it a motion to table and a vote would be appropriate for the record.

Anthes: I move to table R-PZD 04-02.00 to follow administrative procedures.

Bunch: I will second with

Hoover: Welcome to the Monday, February 9, 2004 meeting of the Fayetteville Planning Commission. Renee, will you call the roll please?

Roll Call: Upon the completion of roll call there were nine Commissioners present.

Hoover: Thank you. The next item of business is approval of the minutes from the January 12, 2004 meeting and the January 26, 2004 meeting. Do I have a motion for approval of the minutes?

Allen: So moved.

Church: Second.

Hoover: Call the roll please.

Roll Call: Upon the completion of roll call the motion to approve the minutes from the January 12, 2004 meeting and the January 26, 2004 meeting was approved by a vote of 9-0-0.

Thomas: The motion carries nine to zero.

R-PZD 04-02.00: Residential Planned Zoning District (Cross Keys, pp 438) was submitted by Chris Brackett of Jorgensen & Associates on behalf of Charles Sloan and Sloan Properties for property located south of Wedington Drive at the corner of N. 46th and Persimmon Street. The property is currently zoned R-A, Residential Agricultural and contains approximately 38.48 acres. The request is to rezone the subject property to a Residential Planned Zoning District and to approve the development of a residential subdivision with 108 single family dwellings proposed.

Hoover: Thank you. The first item of business is under old business, it is R-PZD 04-02.00 for Cross Keys. Suzanne?

Morgan: Yes Ma'am. The subject property is located south of Wedington Drive at the corner of N. 46th and Persimmon Street. The applicant is requesting a rezoning and a Preliminary Plat approval for a residential development with an R-PZD zoning district. The proposed use is single family residential with 108 lots proposed. Density for the entire site is 2.81 units per acre. Connectivity from this proposed residential subdivision is being provided west to 46th Street, south to Persimmon Street and east to a vacant tract of land for connectivity to future development. Street improvements include construction of Persimmon Street along southern property line and a recommendation from the Engineering Division to cost share for the developer to overlay the entire width of 46th street. Findings by staff include the applicant ha submitted a Bill of Assurance and Protective Covenants for this Cross Keys subdivision. The R-PZD is located on land identified on the General Plan for residential use and the

density will not negatively impact surrounding properties. The subdivision is also near the Boys and Girls Club and will be able to promote community for this area. Permitted uses, the applicant is requesting Use Unit 1, City Wide Uses by Right, Use Unit 8, Single-Family, and Use Unit 24, Home Occupations. Staff finds that a development with 2.81 units per acre is consistent with the General Plan and connectivity is being provided. Staff recommends that this be forwarded to the City Council with a recommendation for approval of the requested rezoning and Planning Commission approval of the proposed Preliminary Plat subject to 14 conditions. Some of which include Planning Commission determination of appropriate fence material if desired and appropriate timing for installation. The fence shall not encroach upon any rights of way or easements. Condition five, Planning Commission determination of street improvements. Staff recommends 14' from centerline of the 46th Street including curb, gutter and storm sewer and to modify condition seven to read "Allowed uses in this R-PZD will be restricted to Use Unit 1, City Wide Uses by Right, Use Unit 8, Single-Family, and Use Unit 24, Home Occupations. Staff has received signed conditions of approval.

Hoover: Would the applicant come forward please?

Jorgensen: Yes, my name is Dave Jorgensen, I'm sitting in for Chris Brackett who is on seminar all week long. We are here to answer questions and try to move this along in the process speaking on behalf of the owner. As Suzanne mentioned, we did sign all of the conditions. We are in agreement with all of the conditions.

Hoover: Thank you. At this time I will open up this R-PZD 04-02.00 to the public. Is there any member of the audience who would like to address this Planned Zoning District? Yes Sir, please come forward.

Adams: My name is Gary Adams, I'm a homeowner at 760 N. 46th Avenue which is the feeder street that goes down to this proposed development. The only problem I have is the fact that 46th Street was a feeder street, I suppose now maybe it has been changed, buy only by maybe definition. It didn't meet all of the requirements. It is still lacking in those requirements and yet we've got one new subdivision going in and we are asking for another one now to be ok'd and 46th is going to be one of the major arteries for both of these subdivisions and it is going to cause a lot of potential traffic problems out our way. We've got that concern. We wish something could be done with 46th Street. We were told when the other subdivision was going in that there wouldn't be a lot of dump trucks going down our road because it would be coming in from 54th Street. If you take a drive down our road today it is mostly red clay where hundreds of dump trucks have been going up and down 46th Street to the subdivision that is being built

currently. We do have a bit of a problem with respect to 46th Street. We feel like it needs to be developed before we have additional units put in there. Everything Charlie has told me about the project does sound like a good project. It is just that I wish the city would do something with respect to 46th Street. I know that originally Charlie didn't plan to have an outlet onto 46th Street but the city apparently required him to do that and it is going to be a pretty major problem I think whenever we get all of those houses into our area. I wish something could be done on 46th Street. Thank you very much.

Hoover: Thank you. Is there any other member of the audience that would like to address this Planned Zoning District? Seeing none, I will bring it back to the Commission. Staff, would you respond to that question about street improvements on 46th Street?

Casey: Street improvements are being recommended and proposed due to development along 46th Street but only the length of the project. The other streets involved with this entire construction, the entire width of construction of Persimmon along the southern boundary of the project and also the interior streets to the project. The thought behind this was with the next phase of development that we will hopefully see this year will connect Persimmon all the way to Rupple and Rupple will be one of the main thoroughfares. Also, Broyles Avenue to the west through the Persimmon Place subdivision that we saw last year, will be constructed all the way up to Wedington this year. It has already been bid. Construction should start at any time. We are looking at Persimmon almost 100% improved through that area all the way to Rupple, Broyles all the way from Persimmon to Wedington and then the section of 46th Street along the project side. There should be plenty of improved surfaces for them to exit out to Wedington on in the near future.

Hoover: Thank you. Subdivision, were there any specific items that we need to address or were all your concerns taken care of?

Bunch: I think most of the concerns were taken care of. There was one question, it is the interconnectivity with this and the potential subdivision to the east and I don't know if that has been addressed. We might have the applicant respond to that. Basically, we talked about street improvements, fence and that sort of thing. It is a pretty straight forward project.

Jorgensen: Thank you Don. I will try to address this connectivity. By any chance do you all have in your packet a picture of this project and the project that is immediately to the east of this? It would be a large sheet of paper. I was thinking that you all had that. We have a version that shows these connections. In lieu of that, if you will refer to your vicinity map that is on the Preliminary Plat that will help us. It is up there in the right hand

corner of the Preliminary Plat. If you will notice the darkened area is the 40 acre project that we are talking about right now, Cross Keys. Immediately to the west of that in the audience they have mentioned 46th Street. Immediately to the west of that is Persimmon Street. Matt mentioned that Broyles Street, you can see a dash going up to Wedington, that is going to be constructed starting this year. The connectivity that Don is mentioning is the project immediately to the east of that shaded area which is the remainder of Meadowlands Phase II and Phase III, it is also being referred to as Rupple Row, it goes all the way from this project to Rupple Road. This project right here has 2.3 lots per acre. The project to the east of this is I'm not sure what the density is, but it is definitely more than this, it is a completely different type neighborhood. I am not going to get into a dogfight on this connectivity issue but the developer of Cross Keys and also the developer of the project to the east wish that this connection not be made. I know it has been traditional that the Planning Commission has asked for connectivity for obvious reasons but there is two different types of neighborhoods. I will let Charlie Sloan address the differences in these neighborhoods. It was thought that there would be adequate connectivity by going down to the south down to Persimmon Street and then going east over to Rupple Road or you could go west and hit Broyles Avenue and I will let Charlie address that. He's got a better idea about that.

Sloan: Hi, I'm Charlie Sloan, I'm the developer on this project and the owner. After visiting with John Nock on his project proposed to the east of us we really didn't want to make a connection. We didn't mind doing a pedestrian connection but we felt like that on my project if you count there are four lots down from where the connection is proposed, I'm building Persimmon Street. We are going to build a collector street there. We felt like we were still in the spirit of connectivity, we don't feel like you have to get out and drive around like some of the neighborhoods where you have to go maybe a mile around just to get to the next neighborhood. We are talking just a few lots over. We just felt like with that connection that we would have people cutting through. John feels like more through his project that there was more of a chance that my people would cut through his project than his would come through mine. One of the things that we talked about was traffic going through there with that connection was the fact that I attended one of the seminars here about uses of streets and street designs. One thing streets can be used for besides driving on is for children to play in. As long as you don't have traffic that doesn't belong in that neighborhood cutting through there those streets could be used for more than just traffic and that is the reason we just felt like that connection wasn't necessary. I know we discussed this twice in the Subdivision Committee meeting. I know the policy is connectivity, it is just one of those things that we wanted to address and see, we felt like maybe that was something since we are building a road right here beside us that we

wouldn't have to connect. We didn't mind doing a walking which would encourage walking, bike riding or something like that between the two neighborhoods. His has rear entry garages is what he is proposing, which will have alleyways backed up to me. We will be more of a ranch style home, bigger homes. Technically you would leave my neighborhood and go right into an alleyway of his is what you would end up with. We just felt like we were two different type projects and we would just like to keep that separation so each one could sort of keep it's identity. Yet, we didn't feel like we were impacting. I think he has got three or four connections, two connections to the Meadowlands he has to make, two on Persimmon and I think one more on Rupple so he is going to have four or five connections coming into his neighborhood. That's all I can say on that particular reason. The other thing that I had talked with Gary Adams had been 46th Street. We are improving 46th Street on the south end of 46th Street. I think that the problems they are having are up on the north end. Once again, we didn't have problems, I don't know if this is the forum to address it. Money that we would spend on the south end could be spent more or less on the north end to maybe widen that for so many feet so when people pull off of Wedington it is not a narrow road. I don't care where the money is spent as long as it is spent in the best place verses us curb and guttering the south end which the problem is really not at the south end, the problem is more at the north end. Whatever we can do, we are proposing, it's not on the plans, we are going to go ahead and extend our sidewalk up to the next street to try to make a connection so it would be easier for that neighborhood to get onto our sidewalks to come on down to hopefully be able to walk to the Boys Club and make it a little bit easier for pedestrian traffic. That's all I've got .

Hoover: Thanks. Are there any other comments?

MOTION:

Ostner: I would like to make a motion that we approve R-PZD 04-02.00 to the full Council with the conditions as stated.

Hoover: I have a motion by Commissioner Ostner, is there a second?

Allen: I will second.

Hoover: Is there more discussion?

Bunch: I would like to offer an amendment to eliminate the vehicular access to the subdivision to the east and have it remain as a pedestrian and non-motorized vehicle access way.

Hoover: Does anyone want to second the amendment?

Shackelford: I will second it.

Hoover: We have an amendment by Commissioner Bunch and a second by Commissioner Shackelford to make the eastern connection pedestrian only, not vehicular.

Bunch: Not motorized vehicle. It could be bicycles, scooters.

Shackelford: For the record, that is the connection that lies between lots 10 and 11.

Hoover: First we are going to vote on the motion to approve as is on the drawings?

Williams: No, on the amendment first.

Hoover: Is there anymore discussion about the amendment?

Anthes: A question of the applicant. You say that Putting Green Drive if it extends to the east lines up with the alley in Mr. Nock's proposal?

Sloan: Yes, he would have a street extending on. Once you leave my property the first thing you are going to hit is his alley. He will run an alley parallel with my property line. I guess I didn't make that plain. Obviously, if I put a street to my property line he is going to pick up the street. I'm just saying the first thing that we hit are his alleys feeding the back of his properties and stuff like that.

Anthes: You would cross that alley but you would still be on a street?

Sloan: Right. He would have alleys feeding into that street. We agreed to put a fence up between us and everything else. I'm just saying as you pass through there he has alleyways running behind is what he is proposing from behind his houses with all rear entry. I'm just saying that that is sort of what we would be feeding into would be his alley ways there. Obviously, it would be a street going into another street. One of the things John is wanting to propose is because he is going to rear entries is to propose the 24' wide street, the smaller residential street. Here again, that is not determined by the numbers yet but that is what he is proposing. He is going to have a little bit narrower streets so that is another reason for him not wanting my traffic cutting through his neighborhood. There is one little loop when he puts everything together there is one little short cut that people might have a tendency to take to get to Rupple Road verses going out Persimmon and taking Persimmon over to Rupple Road and coming around. That is one of the fears that he had was more traffic. I thought John would be here tonight but more of my traffic going through his project.

Anthes: Staff, have you seen this project?

Warrick: We've seen a concept drawing of this project. It is not in process. If there is a connectivity requirement or if there is not the Planning Commission will be asked to review the project to the east of this site and determine the appropriate connectivity and layout.

Anthes: My question is have you seen the layout and are you satisfied that this connection can be met?

Warrick: Yes.

Anthes: Thank you.

Hoover: Is there any other discussion on the amendment?

Graves: I just have a question on the conditions of approval number four and five have some Planning Commission determinations included and the motion was to accept those conditions or include those conditions, we need to make a determination even if it is the staff is going to decide that or whatever, we need to make some kind of determination on that I think.

Hoover: Can we do that after we vote for the amendment?

Williams: Before the amendment but not before you vote for the whole thing.

Hoover: Right.

Graves: I think the amendment has to be voted on first.

Hoover: Is there any other discussion on the amendment?

Bunch: I would like to make one comment from the General Plan 2020, and this is in your packets on page 1.15, 9.8F, it says "Site new residential areas accessible to roadways, alternative transportation modes, community amenities, infrastructure, and retail and commercial goods and services." Having an alternative transportation mode connection does promote alternative transportation and possibly would discourage people from just jumping in the car and driving over to the next door neighbor's to encourage walking and that sort of thing. There is still, if the amendment is approved, there is reasonably close access for vehicular traffic and I think that by changing that connection to an alternative transportation mode that it is in keeping with our 2020 Plan directives.

Hoover: Is there anymore discussion?

Ostner: We've discussed this at Subdivision, as might be apparent at this point. The reason I think that we should approve the drawing as drawn is that when we start doing little sidewalk cut throughs, which is what we are talking about. Changing this street connectivity, driving connectivity, to everything but driving, I believe quite the opposite happens. I believe it becomes for kids. I believe it becomes mostly for people who cannot drive or who are not driving. I think connectivity has a certain status. I think we are living in a car culture. We wrestle with that a lot but this is a car culture. If we start to let subdivisions enclose themselves without street connections, driving connections, like we did in the old days, our other streets get traveled more heavily by cars because there are no other options. That is really the point of connectivity is people say well, I have no choice, I have no other way to go, I have to get out on this street. We started doing connectivity to give people options because people do drive a lot. With a full street people have all of the options. They can drive because that is just what we do but they can also do everything else. They can walk on the sidewalk, they can take bikes and alternative transportation and that is the thing about connectivity that I believe is important. Our whole town becomes, for lack of a better word, a cut through, but we don't want it to be a fast cut through. If you have to get through and you have to take another way there is another way. I believe it should be a driving connection as it is drawn. That's it.

Allen: How would we proceed with this voting because Commissioner Ostner was the one that offered the initial motion.

Hoover: All we are going to vote on is the amendment right now not to do the vehicular eastern connection. Then we will proceed to the next level.

Shackelford: Obviously, I seconded the motion for the amendment so I'm in support of this. I agree with Commissioner Ostner that this will be a place that kids are going to use. I, on the other hand, I support that. I think this is going to make this area safer for the kids in both neighborhoods. This is an area that there are going to be a lot of kids walking and riding bikes with the close vicinity to the Boys and Girls Club. Whenever I looked at this I thought that was a good idea simply because there is pretty close connectivity to the south and east on Persimmon if you had to take vehicular transportation through here that this might be a safer alternative for the children of both neighborhoods by cutting down on some of the interior traffic on some of these smaller roads. That is kind of the thought process that I went through in my decision of whether or not I would support this.

Vaught: I have just two quick questions. It is my understanding that if we go to pedestrian only the right of way remains the same, we are not going to

shrink that down to like 6' wide that it is going to be a wider connection of some sort? Have you guys had that conversation with the developers?

Warrick: We don't require a right of way for a pedestrian connection. Usually it is an access easement.

Vaught: I would like to see it remain the width it is so you don't shrink it down and have fences on either side so it is a small little alleyway to get through between the two. Also, my concern is the connection on the other side that it remains of the same character getting them to the streets and sidewalks in the next addition. You could build alleyways all down there and that could dead-end to the back of houses if it is just a little access easement. I would like to see that continued through in the next development. I do like the idea of making it pedestrian only, or non-vehicular only. I do think kids will primarily use it but I don't think that's a bad thing. I think that could be good with the vicinity of the Boys and Girls Club and some of the other things going in this area and the heavy residential development in this area.

Hoover: Is there any other discussion? We have an amendment to do no vehicular access on the eastern connection, that would be a yes vote.

Bunch: That would be the eastern extension of what is shown as Putting Green Drive between lots 10 and 11 and east of Mulligan Drive.

Ostner: Yes means for alternative transportation only?

Hoover: Yes. Renee, would you call the roll please?

Roll Call: Upon the completion of roll call the motion to amend the conditions of approval to eliminate the eastern connection of Putting Green Drive was approved by a vote of 5-4-0 with Commissioners Anthes, Ostner, Hoover and Allen voting no.

Thomas: The motion passes five to four.

Hoover: Thank you. Looking at the Planned Zoning District as a whole. We have a motion but we have two discussion items. Item number four, staff would you respond to this? Is there a recommendation on what kind of fence? I thought usually that would be decided on before it got here.

Warrick: The applicants presented a proposal, you should have drawings in your packet. The question is should there be a fence and should it look like what they are proposing.

Anthes: On page 1.15 of our packet, calling from the General Plan 2020 regarding community character, 9.19d clearly states "Discourage perimeter walls and guard houses around the perimeter of new residential developments and promote "connectivity" to increase accessibility and provide more livable neighborhoods." We have a strange condition here in that we are building three streets where we really should be building two. These backyards could easily adjoin each other without the street and creating this alley condition going through with a raceway with fences on either side. Can you tell us, at Subdivision when this was seen we didn't know what was happening on the other side of the street from this development, do we know now?

Warrick: We know now that the applicant for Persimmon Place Subdivision, the Bill of Assurance that they provided when they were zoned for that property to be developed for the single family subdivision, Persimmon Place, one of the conditions in that Bill of Assurance was that they construct a masonry wall adjacent to 46th Street on the edge of the property. Part of that had to do with concerns of the neighbors with regard to noise and the appearance of the subdivision. They have in house submitted to the Planning Division a request for the Council to consider reconsideration of that Bill of Assurance to provide a more aesthetic fence wall that is more consistent with what is being proposed for Cross Keys. I have asked them to bring us that information so that it can be provided to the Subdivision Committee as well as the Planning Commission before it is forwarded to the full Council because it does have a lot to do with what happened through the Planning process on the Persimmon Place project. One of the reasons that I believe these two developments ended up backing up to 46th Street, which is not necessarily, a desirable condition based on the information that you just sited out of the General Plan, is that when Persimmon Place came through the Preliminary Plat process 46th Street was designated a collector on the Master Street Plan. As that project was approved and shortly thereafter in timing, that street was downgraded from a collector status on the Master Street Plan to a local street and the collector status was then granted to Broyles Road which is on the opposite side of Persimmon Place west of the project. That had to do with a better connection getting from Wedington Drive all the way south to 6th Street but it did affect what had already been approved through the Preliminary Plat process for Persimmon Place. That is kind of where we are with that process. These two projects, you are right, we do have that section of the General Plan that discourages perimeter walls. There is concern that with both of these subdivisions having large tracts of land just walled off on either side of 46th Street that we will have a condition that is not as conducive to community as we would prefer.

Hoover: If I'm understanding the plans correctly, because they have all their backyards facing the street is the need for the fencing. That is not the preferred way but I can see the reasoning behind it.

Anthes: It is because of the fact that we have this three street condition instead of a two street condition which you would normally see in this instance. Knowing that and knowing that the people that purchase these homes would probably rather have some sort of screening, the idea that that would be as they are shown masonry with a wood infill that might have a little bit more transparency to it, seems a little nicer than a huge masonry tunnel going down between those two properties.

Sloan: Precisely. I just wanted to address it. We started out trying to only duplicate what had already been passed before just for compliance sake. We didn't want to fight or do battle again. Once we sort of designed it and looked at it and went and looked at some fences, a masonry fence is pretty stark. It wasn't what we wanted. We were trying to figure out some sort of textures. You do have the back of the houses looking at you and I know in my home you don't want to see my backyard. You want me to have a fence up so that is the reason we were trying to figure out what we could do. Basically, do partially brick, partially shadowbox fence of some design and the main thing was landscaping. We talked to Commissioner Ostner about having trees every 40' or 50'. We went back and talked to the owners of Persimmon Place and said could we not work something out that compliments each other so we don't have one side looking like one thing and another side looking like something else and so they were gladly in agreement to do it. I said put a little bit more emphasis on landscaping and everything. Across the street we are coming back with a proposal that on the south side of Persimmon Street all the way from Broyles Road possibly almost to the Boys Club that will all be white wrought iron fencing. We don't want to block the view of everything to the south. We are trying to do something with this one that sort of fits that project that will come forward later on that compliments it and that is the reason, one of the things for the curved wall at the intersection so we don't have a square wall. Create more visibility and landscape that corner so that although it is not the entry. What you are seeing is perspective of a drawing sitting at 46th Street and Persimmon looking east on a road that hasn't been built yet. We are trying to make that a focal point on the corner so it is not as stark and just a square box and not just boxed off so we were just trying to look at some different products to use there. We told staff we didn't mind working with them on what we came up with between the two projects, something that is pleasing with the neighborhood. We are visiting with the neighborhood. This started from one of the neighbors saying look, I don't really want that wall. The person that wanted that wall is no longer really there, I've bought him out. Now

maybe we will have an opportunity to relook at the thing if everybody is willing to come up with something that is a little bit better of a plan.

Anthes: Will your P.O.A. maintain this wall?

Sloan: Yes, just as it would the walkway space and we have no problem leaving the same spacing on the walk way between the two projects.

Anthes: That is item four right?

Hoover: Yes. Is there any other discussion about the fencing? Onto item number five, staff's recommendation for improvements 14' from the centerline of 46th Street.

Warrick: I would ask that as the Planning Commission is making those determinations that you also determine that Persimmon Street on the south be fully constructed. It is not listed on there but is listed in the findings.

Hoover: Do you want that to be item fifteen or include that with item five?

Warrick: It is pertinent with item five that it also include the construction of Persimmon Street along the south property line to 28' with curb and gutter.

Hoover: Are there any comments about staff's recommendations. Are we in agreement or does anyone have a problem?

Vaught: I would rather see the road next to this fully developed instead of having half of it developed on the other side of 46th and leaving the other side next to this addition not fully developed. I would like to see the whole road finished out rather than take the money and shift it further north on the road as the developer mentioned. I think that that will come in time as well as more development comes through. I would like to see the road completed.

Hoover: Staff, do you have a comment on that?

Warrick: I believe that is consistent with our recommendation.

Bunch: In that same view, a question for staff. Is the other side of this being comparable improvements being put in by Persimmon Place?

Warrick: Yes, along 46th Street they have the same requirement.

Shackelford: Did we get a second to the original motion?

Hoover: We did but I can't remember who it was.

Thomas: It was by Commissioner Allen.

Hoover: I guess we need to ask the first and the second are you in agreement with Persimmon Street on the south being constructed?

Ostner: Yes, to change condition number five to include staff recommends 14' from the centerline of 46th Street including curb, gutter, and storm sewer and 28' along Persimmon along the south edge of the property.

Hoover: Is there anymore discussion? Renee?

Roll Call: Upon the completion of roll call the motion to forward R-PZD 04-02.00 to the City Council was approved by a vote of 9-0-0.

Thomas: The motion carries by a vote of nine to zero.

C.5.
Hickory Park
R-PZD 04-5.00
3/2/04

Bunch: The next item on the agenda is a Planned Zoning District for Hickory Park, it is R-PZD 04-05.00 submitted by Milholland Company on behalf of St. John's Lutheran Church for property located at 2730 E. Township and I guess also bordering on Hwy. 265. Suzanne, would you give us the staff report on that please Ma'am?

Morgan: The applicant is requesting a rezoning and Preliminary Plat approval for a residential subdivision within an R-PZD zoning district. This item must be head at the City Council. The proposal is for a single family residential subdivision with 14 units with single family homes on approximately 4.42 acres. Density for the entire site is calculated at 3.16 units per acre. The site is located north of Township Street and east of Crossover. It is zoned P-1, Institutional and the site is currently vacant. The proposed subdivision will have one access to Crossover Road. Forty feet of rightof way will be dedicated from the entrance of the subdivision to the landscaped island roundabout. The two extending drives are proposed as private drives to be the responsibility of the developer or a neighborhood property owner's association. The subivisionis proposed to have a 6' solid privacy retaining wall surrounding the east property along Crossover and landscaped island at the entry way of the subdivision as well as a landscape island with a mail kiosk at the terminus of the right of way. Surrounding land use and zoning to the north is single family residential, the Glenwood Addition which is 2.47 units per acre, it is zoned RSF-4, to the south is St. John's Luthre Church with the P-1, Institutional zoning. To the east is single family residential use with the zoning of R-A, Residential Agricultural and to the west is Cedarwood Addition, single family residential, 3.17 units per acre and zoned RSF-4. Right of way to be dedicated is 40' for interior right of way and 55' from centerline of Crossover Road, there is currently 40' along Crossover with an additional 15' proposed to be dedicated. Trip generation calculations, 14 single family detached dwellings will produce 134 two way trips per day. Crossover Road is a principal arterial. Tree preservation, there is currently existing 100% required canopy is 25% and preserved is 26.82%. Staff has received several calls regarding neighborhood concerns with drainage, traffic, tree preservation and safety issues in regard to the round about and there has been a meeting between the developers and the neighbors. Staff is recommending that you forward this to the full Planning Commission with conditions. There are a total of 16 conditions of which condition two, the Fire Department has expressed the need for a 20' interior drive pursuant to International Fire Codes. Staff is recommending a left turn lane onto Crossover. Also, the removal of utility easements along the rear of lots 1-6, and 8-11 in order to preserve a canopied buffer from adjacent properties be indicated. The proposed sewer easement be routed to avoid a greater number of significant trees. Covenants should be filed with the plat and it is my understanding that they will be getting those to us with the next revision submittal. There is a property line adjustment in process which needs to be approved prior to the Final Plat. This Property Line

Adjustment is to adjust the southwest corner just a bit further south than what it is currently shown. Condition ten, payment of parks fees in the amount of $7,770 for 14 single family lots prior to issuance of the Final Plat. Item eleven is no structure shall encroach upon any easement. Items twelve through sixteen are standard conditions.

Bunch: Thank you Suzanne. Matt, are there any additional engineering comments or staff report?

Casey: Not at this time. I'm sure that there will be plenty of questions that we will have an opportunity to discuss but no comments at this time.

Bunch: At this time if you all will introduce yourselves and tell us about your project.

Jefcoat: I'm Tom Jefcoat with Milholland Engineering representing the owner and developer of the proposed subdivision, Tracy Hoskins. The proposed subdivision, is, as stated, 14 single family lots north of the St. John's Lutheran Church.

Bunch: At this time we will take public comment. Is there anyone in the audience who would like to address the issue of Planned Zoning District for Hickory Park? If you would, please come forward, I don't know if we have a sign in sheet there or not but if you would please sign in, tell us who you are, and give us the benefit of your comments please.

Sigapuss: My name is Bob Sigapuss, I live in the Glenwood Subdivision, Hardy Lane. I am probably the representative of most of the people that live on the paraperial areas. Most of the people are not retired and have the benefit to coming to this meeting. I will speak my own mind and then add what I think was the result of the citizen's meeting on Monday night. I have three major areas I want to address here. First, existence of wetlands. At least one acre of that land in there is what I used to call as a kid, swamp. It is very low and, it is spongy, it has an ecosystem in there that I think environmentalists would say it is wetlands for sure. Under the definition of the Corp. of Engineers and EPA it is a wetlands. I suppose in determining whether it is a wetlands or not maybe it is the size of the property that is of concern. This is at least one acre. I've walked it several times and it definitely is not a stable piece of land. It occupies lots 11, 12, and 13. Not all of the lots, but a good portion of lot 12. That land where my definition of wetlands exist is about 46" below the grade of Crossover. It sits way down. Mr. Casey said that he would talk about drainage a minute ago, it is a drainage area of sorts. There is a kind of ditch that comes in a northeasterly direction across. It almost starts at the proposed interior street to the northeast corner of the property. If any of you have walked in there you can probably identify it as kind of an unusal part of that whole acreage area. I think that ought to be addressed by the

Corp. of Engineers or maybe you have one in the city, someone who specializes in wetlands. Lord knows, the city has had enough wetland issues in recent years so there probably is expertise far beyond my lamen's definition. The second problem I have is Crossover. That is a major problem. It took me seven minutes this morning to get out on Crossover from Hardy Lane. When I pulled up the hill, you go up a grade toward Township, a fellow behind me was tooting his horn and he gave me the preverbial digital because you can't gun your car up fast enough to get to 45 miles per hour. That is the speedlimit on Crossover, 45 miles per hour. The distance between the proposed entrance to Hickory Park from Township is about 450' more or less andit is about 450' from the entrance to Hardy Lane. That is a very short distance. From 7:00 a.m. until 9:00 a.m. and from 2:30 in the afternoon until 7:00 it is wall to wall cars on Crossover. It wouldn't be so bad if there were only cars but there are trucks. It is a major truck route between Hwy. 412 and the south part of Fayetteville. Why they use that as a heavy truck route I don't know, they are probably cutting off Hwy. 71 and 540. The city has made a lot of statements in recent years. The Mayor talks about the growth, smart growth, and the recent traffic study by the consultants talked about access management, it talks about an access management ordinance. Director Tim Conklin set the access management as a priority for 2004. They also discuss traffic congestion. The congestion that exists between Township and Mission and Township back up beyond Hardy Lane to Old Wire and occasionally, the traffic backs up, if you can believe it, to Joyce Blvd. When it backs up it goes a snail's pace. With 14 homes and 138 entrances and exits a day, that doesn't seem like a lot. Living on Hardy Lane, which has16 homes, we have far more than 138 entrnaces and exits a day. Some of the families have three cars and everybody in thefamily has a car. This ought to be examined a little further. Having a turn lane and just painting a white stripe, left or right, whichever is not enough. That middle lane on Crossover is narrow. When you come down that grade from Township heading towards Old Wire that traffic starts to really move. 45 miles per hour is the least that people go, they exceed that speedlimit. At night time when you are coming from south to north on Crossover and you are trying to turn into Hardy Lane the oncoming cars coming from the north to the south, they don't know what is happening there, they see these lights in the middle of the road and my god, a guy is trying to pass a car you know and here a person in a car like myself, you look in your rearview mirror and you say if you had one more coat of paint on your car you'd have a crash. The trucks are particularly dangerous there. The other night at the meeting, most of the people, probably 25 people, most of them saw Crossover as a major concern. Mr. Jefcoat agreed, I think Mr. Hoskins did also. Suggestions were made that there is a remedy but the remedy may not be too popular with St. John's Lutheran Church. That is an access off of Township behind the church's parking.

Jefcoat: I must object. I did not at any time agree or suggest or give any inference

that the church was willing, or that an access across the church's property was acceptable.

Sigapuss: I didn't say that because, I'm saying that is a remedy.

Bunch: Let him have his say and then you will have your opportunity to rebut.

Sigapuss: To deny that Crossover is not a dangerous situation is putting your head in the sand. The traffic consultants talked about that and they talked about a remedy would be a four lane at some point in the future. I talked to the Highway Department and there is no plans for Crossover for years ahead. Unfortunately, pre-planners, pre city administration and other people in the county missed the boat when they took the outer beltway off the planning map. That would've taken a lot of stress off of Crossover. Ok, so much for that, incidentally, the City Council's goals retreat last year talked about mobility, street quality, improving those things and giving attention to the city's open greenspace. This woods is an ecosystem, pure and simple. There are foxes in there, deer, all kinds of things. It is a virgin forest that has never been touched. I have approached a few people in town who are interested in urban forests and it is the same old answer, there is no money. There is nobody around really to put out the money to buy that thing. The third and last issue is the plan itself. I am not a city planner, however, at one time 45 years ago I was on the city Planning Commission for the city of South Pasadena, California, so I know how it is to have to listen to all this detail. It is the internal street, if you can look at your map there, you will see this Mockernut and Shag Bark Lane, I asked the developer the other night, how will they get the garbage trucks and the fire trucks in those areas? There are four lots that have access onto that narrow street, Mockernut. Hardy Lane, which has 28' width and a pretty wide cul-de-sac street, garbage trucks have to back up twice to get around that. That is going to be far easier than what is proposed here in this Hickory Park. The developer the other night said that that has been approved. The city said that's ok. If I were a prospective buyer I would say I'm not going to be crowded in there, what if I have guests, where do they park? There is no provision for parking. In the proposal itself, they talk about an open area. That open area is about 30' in diameter, that is not much of an open area. Hardy Lane is 90' and that looks kind of small. I think that as a Planning Subdivision Comimttee, you might take a look at that possibility of congestion. From a developer's point of view and marketing point of view I would say does this present any problems to the developer in marketing those lots. I don't know. They talked about a new concept, this PZD is something that they had seen in Atlanta and other eastern cities and it was a new kind of thing to Fayetteville. It seems to me that this is cramping the development substantially. On that point, I shall end this thing and give the developers a chance to rebut what I've said. Thank you.

Bunch: Thank you. Is there anyone else who would like to address us on this issue of Hickory Park? Is there any other public comment? Seeing none, I will bring it back to the Commission for comments and motions. First, Tom, now would be an opportunity for you if you have any answers to the comments that were made in the public comment section. Go ahead and respond to them if you would like to.

Jefcoat: On his three points that he made, the only one that I really, I can address all three. The access onto Crossover, Crossover is a busy street and it always has been a busy street. I'm sure backup does go all the way back to Joyce at times, which is a considerable distance away. Development is always going to increase the traffic flow on Crossover. I think that there is a traffic light there at Crossover and Township which does slow the traffic and does give an opportunity for some amount of safety. There is an existing curb cut that the highway has approved on the church property here that is closer to the light. There is a center turn lane on Crossover which is an additional safety factor. We are only talking about 14 lots here to generate that closeness to the light. That entrance or existing curb cut that the church has would be abandoned and this curb cut would be applied for through the Highway Department.

Bunch: Are you talking about that curb cut that appears to be there but it doesn't connect to anything?

Jefcoat: Yes.

Ostner: Ok, south of this proposed?

Jefcoat: Yes.

Bunch: Right in this vicinity I guess.

Ostner: Here is their new property line, right there?

Jefcoat: Yes. We are removing ourselves from the traffic signal somewhat.

Bunch: That begs the question what is the involvement of this piece of property and the church if you are allow to petition for their curbcut. Is that part of the deal in buying this piece of property from the church to develop or is it being developed on behalf of the church? How does that work?

Jefcoat: I think that that particular curb cut was provided for future development circulation around the church for future development of this lot. It will no longer be needed when this lot develops.

Allen: Before we move on from the public comment, I wondered if you felt that anything productive did come from your conversation with the neighbors.

Jefcoat: Yes, we had about 35 people there and I think that we had some very pleasant discussion with a lot of the people. We only had a few that are really opposed to any development at all. That was well expressed as being totally against development. Mr. Hoskins would like to speak on that and I think that the neighbors were very receptive to the plan as presented in general. There were some comments about access sidewalks and comment five, about the removal of the easement, those easements are not there. That is on preservation one thing that we have done, is give the buffer of greenspace all the ay around the outside of the property so those easements are all internal now. That was one of the design changes that were made from Tech Plat.

Hoskins: My opinion of the meeting the other night, the opinions that I got from the surrounding folks, I don't believe this gentlemen's comments were the concensus. On the contrary, I think most people are very, very receptive to the development. They have a lot of questions, we answered a lot of questions and I personally felt the majority of the neighbors were in support of the subdivision.

Jefcoat: As far as the other comments, the wetland issues, there are three criteria for wetland issues and I am a wetlands delineator and have projects submitted to the Corp. and I would not recognize that area as a wetlands. It does not have the hydric soil, the hydroponic vegetation is not there. It may have the hydrolics there to support wetlands but that is only one of the three criteria. I am not sure that the hydrolics are really there. The last comment about the tightness of the subdivision, that is one of the design features that Tracy is trying to create here, a sense of community facing all the houses inward, pulling the house fronts closer to the street, providing sidewalks on both sides of the street almost making a town square situation. There is give and take both ways as far as we do have an 80' cul-de-sac, we have worked those traffic problems out, our circulation problems out with Engineering and we've talked our way through some of it and as a developer, and Tracy is not just developing the subdivision, he is building homes in the subdivision. He is in the process of drawing up the covenants so that shared driveways fence building fronts, some of those issues he will probably address in the covenants and in the building process.

Bunch: Tom, as a person who has been involved in wetland delineation processes, can you speak a little bit to the age of this land relative to the potential development of wetlands? I know that on the proprety that the City of Fayetteville had that was formally called Wilson Springs, that that had formally been pasture land and was reverting to wetlands, comments have been made about the age of this forest area so how does that play in if this were a potential wetland if it would've been a pasture then in time it could revert to a wetland but if it is an older forested area what are the wetland

considerations there?

Jefcoat: First of all, it would have to be inundated or saturated and in this area they are certainly not inundated by flooding and it doesn't remain saturated for a long period of time. The existing trees have not developed a rooting system that shows above ground or that is surfacing itself to find the hydropnics root system for sustaining growth, they are well rooted into the ground so you do have a forested area and not a hydroponic situation where plants are surviving in an inundated or saturated condition. While it is forestland, it is not an emerging wetland.

Bunch: In other words, if it were an emerging wetland it has had plenty of times to have emerged and made itself evident since apparently the age of these trees is pretty old. I know some comments were made that it was a virgin forest so if that would be the case then if it were a wetland it would already be not only fully developed but it would be present at this time.

Jefcoat: You also may note that the soil conditions here, this is a very rocky site and there have been rocks are evident on the surface and things and there is a fairly good amount of perculation there, it is not like the water saturates.

Bunch: Are post oaks normally associated with wetlands? It looks like the predominant trees that we have are postoaks in this area, that is one of the ones that populates hillsides, I don't know how they do in wetlands.

Jefcoat: I think the designation for a postoak is FAC, which is a mid-range, it can work either way. It is not an oblique, it's not an OBL classification so you couldn't submerge it in water but it will stand some saturation but not total saturation.

Bunch: Is there anymore comment on the issues that came up with public comment or can we move onto the conditions of approval? I guess since this is a PZD just by definition it will have a hearing here, at the full Planning Commission and then a minimum of three readigs with the City Council. I think in the recent past the City Council has had some auxiliary meetings so there will be a minimum after this meeting, four more opportunities for public comment to address these issues. Part of that is because some of the people are unable to attend an 8:30 going onto 11:30 meeting in the morning but those other meetings will be evening meetings. Staff, can you tell us and Engineering, on the Fire Department, how does this cul-de-sac or public right of way with private streets on either side and a hammerhead, how does that relate to the Fire Department?

Casey: At Plat Review the Fire Department did recommend a 20' wide entrance, it is shown as 14'. I think there has been some correspondence between the applicant an the Fire Department since then. I've not heard the

outcome of that.

Bunch: You are talkinga bout the entrance off of Hwy. 265?

Casey: Yes, right there with the landscape island. One thing, before I get too involved, the public street just includes the cul-de-sac, this crossing is just a private driveway.

Bunch: That is pretty much what my question was about, the 40' radius on that cul-de-sac, is that sufficient?

Casey: That is what our street standards calls for. The Fire Department at times have asked for more. It is nothing that we have in our standards to require at this time. I don't recall if that was a comment at Plat Review. Do you remember if they had asked for that?

Jefcoat: They were interested in having a 20' lane at the entrance and that was addressed at several different levels. One was that there be a left turn lane or that the exit lane be widened to 20' or another lane put in there. You could either take it out of theisland or take it out of lot one. If it was 20' wide that would be a 6' addition to there what's shown. That would be two 10' lanes, one for turning right, one for turning left. That would give the fire truck it's 20' entrance into the 28' road system. However, most fire trucks you would suspect would be coming from the south since Crossover has a centerlane, there is plenty of turning radius to be straight to come in and I submitted to the Fire Department that with the left turn lane if you were coming in you are going to be going in an exit and they said well we get in anyway we can and I said well, if you are going to get in anyway you can and you are straight, maybe jumping the curb and driving on the sidewalk for this short distance, 100' or 60' long then that might not present a problem because it is a short distance. We had conversations with the fact that we are adding additional hard surface, runoff is an issue, trying to save as much greenspace as possible, you are just adding more asphalt. Plus, if you eliminated the island and made that smaller, you are distracting from the purpose, the intent of the developer to do something maybe a little nicer than a huge solid asphalt three lane entrance. A lot of those aspects have been talked about back and forth across the table. I think it has been satisfied that the fire truck could get in and that the access for that short distance would be successful.

Ostner: I just have one comment on that. I don't think those islands are the best solution for this street. I think it needs to be just 36' wide, 12' in and two 12' lanes out, a right and a left. In other words, lose the median.

Jefcoat: You are talking about a 36' entrance, right now it is 41'.

Ostner: It is 41' right now but there is an island in the middle, which I see as

problematic to Crossover mainly. When the Fire Department says that they need wider lanes, I wish these lanes were narrower and not the entrance. I think entrances by safety and by function need to be wider and then let it get narrower inside. That is just my take on that intersection. The left turn would be resolved and the Fire Department issue is resolved and it gets narrower so you pull that landscaping out and put it on the sides.

Jefcoat: Well, you are talking about a big, wide, harbor looking spance of asphalt to enter into a subdivision.

Ostner: You already need a left turn lane, this is not going to do it so you are going to have to change this already. 41' could change to 50' if you made that a double lane out.

Jefcoat: You are saying that you have to have a left turn lane, why are you saying that?

Ostner: That's the way I understood it from the traffic being so heavy, this guy trying to turn left could take 20 minutes and everyone would be waiting. That is the way I understood that we need a left turn lane there by function.

Bunch: Does Hardy have a left turn lane?

Jefcoat: No it does not.

Bunch: When was Hardy built?

Sigapuss: 1989.

Casey: Another thing that Suzanne and I discussed yesterday that involves this landscape island is the driveway access to lot 1 and 13. You are not providing enough space if you are entering off of Crossover and you need to turn left into lot 1 you've got your 10' from the property line requirement before the driveway starts and then a 24' wide.

Jefcoat: We talked that over with Suzanne also and we are in agreement that shortening that island up would make the drive entrance to lot 1 more attractive and better and it would also shorten the distance coming in there so we would certainly revise the island to be shorter on the west end. We would like to keep the landscaping back there.

Casey: Lot 13, would the driveway be coming off the private portion of Mockernut or off of the public right of way?

Jefcoat: We've actually talked about the builder/developer, that being accessed

both ways through there. It is very feasible that lot 13 would orientate itself and have its entrance off of Mockernut Crossing but it is very feasible for a drive to go all the way through. By shortening the island up 10' that would certainly give access to both of those lots and resolve that issue.

Ostner: I think it would be a lot safer if it only came from Mockernut. This is going to be a really quick turn in with heavy traffic on Crossover. Personally, I was going to ask if access be restricted to Mockernut only.

Bunch: We are also looking at lot 1. It is the same thing as turning into here, a person entering here if this is shortened, coming around that making a bad turn coming into lot 1 whether than going up and going around the mail kiosk.

Hoskins: At worst, the driveway to lot 1 would be on the property line between lots 1 and 2. As Tom said earlier, for the restrictive covenants we are planning on encouraging shared driveways so we will have as few cuts along the street as possible. The whole idea of the subdivision is to put some more green into it, save the trees, etc. If we want more of the same of what we've got here on North College then we can make that concrete or pavement all the way across that if you want more of what you've got out here.

Bunch: Since this is a PZD that is within the realm of our review and it would be helpful to, as opposed to not only having it in the covenants, but to show it on the drawing and it could be a requirement. That is a very important piece of information is to show a shared driveway between 1 and 2 and maybe between 14, it wouldn't be fair to those people to restrict them that much.

Hoskins: That is not a problem with showing it at least on these lots up front.

Ostner: I think all the lots need to show the driveways. I'm excited that this is a PZD and you are doing something different but I'm not sure how 11, 12, and 13 are going to have driveways. Benton Ridge we made show the driveways and it helped a lot to understand. I like the idea of doing a short 15' building setback in the front.

Bunch: While you are on the same issue look at lots 4, 5, and 6.

Hoskins: It is a shared drive.

Ostner: I think it needs to be on the drawing.

Jefcoat: We addressed that with Suzanne about putting it on the drawing. A couple of issues come up, what if that changes, what if the builder shifts it to the other side of the lot or some other idea we haven't predicted.

Ostner: With this process the design is happening up front.

Jefcoat: I understand that.

Bunch: Without a shared driveway here I would be in favor of saying that we could send this forward but with a do not recommend vote on it. This is entirely too tight right in here to have two driveways and that wold have to be part of the document package.

Jefcoat: I agree but my main objection was that if you show a shared driveway here and then the shared driveways wind up being either here or here you don't want to predict which ones of these begin to share driveways. One of those three lots could have its own drive and the other two could be shared. Certainly shared driveways need to be there.

Ostner: Here at the approval process, if we leave it just in text.

Jefcoat: I am not saying leave it in text, I just don't want it to be predetermined.

Ostner: What if these two guys build it and then those two guys don't, they want to build over there, then suddenly we don't have them.

Bunch: What if lot 7 decides they want a single drive then 5 and 6 have to, we are still in a situation of predetermining. It could be you could predetermine and say in here but this is still too narrow. If you have visitors coming in or someone that's lost driving around through the area, depending on these driveways, you are looking at a situation of possibly backing up around a blind curve or blind turn. That brings up the issue of what is this line. According to your legend it is a 6' solid privacy and retaining wall. You are using the same legend so we don't know what this is. Definitely this is your curb and gutter here. What is it?

Jefcoat: That is a low retaining wall, it should not be there. Yes, we could predict the shared driveway here which is probably the best because these two lots certainly have a frontage that they can develop a separate driveway on. Rather than say a shared driveway either here or here, if the one shared driveway is predicted here and one of the other lots would have to be there. It is likely that these two will share a driveway and these two and those two. We can go ahead and predict that and put that on the drawing.

Bunch: That is pushing 14 an awful lot, you are saying that you would make a driveway here or that you would do it here between 13 and 14?

Jefcoat: I'm only saying that there would be a shared driveway here, not that this guy wouldn't want another driveway out here somewhere.

Bunch: You are showing 40', actually a 28' road but you are still looking at a situation without knowing where these driveways are that people potentially could get lost coming in there and backing around this or pulling up in here and having to back out of it unless they pull up in somebody's driveway. I understand the concept of using a modified hammerhead with a turn around.

Jefcoat: We want to eliminate the amount of driveways in that area because we want the integrity of the sidewalk and the uniformity of the whole area.

Bunch: Every compromise has it's price. In order to preserve more landscaping and trees and to slow traffic, then you are also creating a harder turn around situation.

Jefcoat: I think our major trees are in this area and in this area so our common drive should be here. The same way with our trees located where they are the shared rive should be here and here.

Bunch: On Lot 13 with access on both sides, what is considered a front as far as building setbacks? As a PZD we determine the setbacks in advance. What is your thinking? The way this is shown if this was a driveway in that area you would have a house right up in this corner. What are your thoughts there? Give us a little bit of the benefit of your thinking on how you drew the setbacks in and also in relation to potential shared drives.

Jefcoat: Actually, I would think 13 would want to face the front just for prestige sake. 14 being a corner lot has a lot of options as to which is their front area. There again, you are sort of looking at a three sided porch with several fronts here and the through drive in the back is sort of the envision of that lot. 13 and 1 and these along this side would certainly not face the common square we would like to see but because of arrangement. We could put a building setback in this area. It is not likely that someone would build a front ended house in that depth. We could move this back further for a straighter line across there.

Bunch: One of the things that comes to play with this is the access and also in dealing with the driveways. We use as a model and as a guideline of development procedures, even though it is a PZD, these are single family homes, the minimum lot frontage is 70'. First off, you are not showing us, I don't know what my numbers are telling me here on interpreting the drawing as far as the frontage of these different lots. Do we show a line along a building setback line which is normally what we accept on corner lots with a narrow frontage. What we are doing here is a compromise where we are deviating from accepted practice because it is a PZD and because there are special considerations. To me it is a cumulative affect.

Warrick: I would say to that regard Commissioner Bunch, when we do look at

standard RSF-4 zoned subdivisions, there is an exemption granted to the frontage for cul-de-sac lots. These very much resemble what you would see as a cul-de-sac lot configuration in a standard subdivision. Staff did not see a problem with regard to that. We do encourage the use of shared drives and I think it is appropriate to show where we can predict those shared drives for tree purposes and also to cut down on having driveways go everywhere off the end of these accesses.

Bunch: One of my concerns here was also for clarity and for ease of reading the drawings because the next step goes to nine people and then the step after that goes to nine more people so that it is more user friendly from the drawing standpoint for people to understand what they are looking at.

Jefcoat: That is one reason, like Dawn said, we have shown the building setback here so that you do have more frontage here and we've done the same thing here. On that particular lot it was not done in that way because of the front on there we didn't feel it was necessary. We certainly have the 70' frontage was taken into account and that is the reason we did the setbacks where we had to get the 70'.

Ostner: I still think for me that I need to see footprints, not pulled out of a book, house plans that are to be built, but maximum squares that are buildable that would be realistic.

Jefcoat: When you say anywhere in the building setback is buildable area then you have done that and that's what we've done.

Ostner: Is this guy really going to be square to this street or is he going to turn it?

Jefcoat: That is his choice.

Ostner: I know but it is such a tight area and it is a PZD and they are getting, I noticed, similar to cul-de-sac frontages, but it is going to require driveway coordination, which feeds into house coordination.

Hoskins: These are private street anyway. This is on a public street.

Ostner: I'm just saying to coordinate the driveways for me to understand this you almost need some sort of maximum footprint, not a buildable line.

Jefcoat: That is a maximum.

Hoskins: Somebody could potentially fill that hole with a house, it would be a big house but they could do it.

Ostner: How does that work with the driveways?

Jefcoat: That is the reason that we have done this example of greenspace and we have said that we are preserving right a 27% where in reality when the house is built that is the worse case scenario should that whole buildable area be used.

Ostner: I understand that. I am just saying the driveway coordination and house coordination are not completely separate issues, they work together. If you coordinate some driveways maybe it will just work itself out.

Bunch: This drawing disagrees with what has been stated on driveways because you are showing.

Jefcoat: If we determine the driveways. There again, the driveways are not taken out of your greenspace. We can do that, yes. That is not a normal occurance.

Bunch: Just for consistency, if you are talking a shared driveway here then obviously, if it is called out tha that is a shared driveway then obviously this greenspace comes out of this but it will free up other areas for greenpsace.

Jefcoat: I think it may be a toss up as to whether we show a shared driveway or show a shared driveway. Which ever way Tracy feels more comfortable with predicting the development of those individual lots is where we show it. I think we are in agreement here that rather than just say that we are going to share driveways is to at least show it.

Bunch: That is one of the costs of the flexibility of the PZD in order to have this type of configuration. Part of that compromise is you pay for it by saying ok, this is where we are going to put the driveway. That is the tradeoff.

Hoskins: The essence of the concern is that we implement shared driveways and basically that each lot owner only has one entrance basically. In other words, do we have to determine at this point which lot lines get that shared driveway or can we put in the restrictive covenants that they have to share a driveway on one side or the other with their neighbor?

Bunch: If you wanted to do it that way if a builder came in and said he wanted to buy these two lots then that would force these two to share.

Ostner: If those two have already shared then this guy isn't left with anything but a single.

Bunch: These right in here is a moot point.

Ostner: We just said all lots have to share and if it is not coordinated up front.

Bunch: Lot where there is a frontage issue if you will.

Jefcoat: Ok.

Ostner: That is my concern.

Bunch: Our concern is the access to the individual lots and if we are to go favorable on this we are allowing less than normal frontage so it is important that we say ok, if we are doing that then we need to provide access to those and that is what we are trying to accomplish is the tradeoff between the lesser frontage and guaranteeing access.

Hoskins: Are you talking about at the setback or at the street?

Bunch: Well, there is reduced frontage here, this property line and this property line for a driveway to be put in if this is an unshared driveway. What we are saying is that there has to be a scheme or a plan for providing access to the lots with minimal frontage, even though this is a private road, minimal frontage on the road.

Jefcoat: We've got four lots there and four lots here so I guess we could split it between the two lots.

Hoskins: We'll fix it whatever it is.

Bunch: That would help as we get further down the line because right now it is rather confusing. On the same deal, let's look at this underground detention pond and who's responsibility that is and where the access is to maintain it since that is going to come very much into play with these driveways. Could you tell us a little bit on how that system works and how it will work in relationship to the driveways and what kinds of loads can be imposed on it?

Jefcoat: Right. Your two inlet boxes are here. We were going to use the stormtech system within this end of the drive and include the volume in the pipe and the cleanout would be in front of the outlet structure here so you would have access to the underground facility and the two outlets there and the one cleanout at the pipe.

Bunch: Would these have manholes on top of them for access here as well as the cleanout? What affect would that have on placing the driveway between lots 11 and 12 on top of that?

Jefcoat: That part would be concrete pipe.

Bunch: So that is concrete pipe and it wouldn't really matter but there could be a shared driveway immediately above that?

Jefcoat: Yes.

Bunch: Matt, are you with what we are talking about here?

Casey: It would just need to have some sort of private drainage easement then dedicated for the detention system to be able to be maintained since we are not creating a separate lot like you normally see in a subdivision.

Bunch: We are also looking at drainage, I guess the existing contours of the land are all draining in the traditional fashion but all the roads and everything are drained to this system?

Jefcoat: Yes. One of the issues brought up in themeeting was that these people receive drainage off of this and it does cause them a problem at some time. The development actually will capture and decrease the runoff affect that these peole have and that these people do. The only persn that receives runoff that doesn't get benefit from the development would be this particular lot and he was at the meeting and we talked about that.

Bunch: These driveways and everything go into the road?

Jefcoat: Yes, the contours all come that way so the road would actually act as an interceptor. All the runoff would be concentrated and captured and let out similar to where it is going now except the valley does come through these lots. We are actually having that water situation.

Ostner: I know we've already touched on Hwy. 265 but I think for the full Commission that a better drawing than this needs to show overview.

Bunch: Staff provided that didn't they?

Ostner: I know, this just happens to be in our packet and this is all I've got. I need something that shows your proposed development and stuff surrounding it. I know that the other committees that have to look at it are going to want to see something more too.

Warrick: You have this too.

Ostner: I know, but that's confusing.

Warrick: We will draw that line for you, this is what you will have in your packet also. Is this not sufficient to what you will need?

Ostner: I don't think it is going to be sufficient for others.

Warrick: I need more direction then because this shows all of the houses and all of

the surrounding subdivisions.

Ostner: If that showed this.

Jefcoat: If we overlaid that onto this?

Warrick: You want to see the lot layout on this?

Ostner: I want to see the curb cut at least into that scale, that would be perfect, I think everyone is going to want to see how this falls into traffic. I would call that an overview drawing.

Bunch: Ok, then the drawing that you have here Tom, how does that relate to conditions of approval five and six?

Jefcoat: The utility easements have been removed from the rear of lots so there are no utility easements. The previous layout showed the sewer going in the back of those lots. That was in order that we didn't have manholes in the street and we eliminated as much unsightliness as we could, but in order to provide the buffer zone and to have less disturbance with the trees and things we brought everything to the front so there are no utility easements in the back of the property.

Bunch: That creates a buffer between this and the properties behind it.

Jefcoat: Right, it also creates a buffer between the church. All the outside we kept the integrity of the existing trees. I must point out that this is a thickly covered site and what we've shown is the significant trees. That is not to say that there are not 21" trees and 18" trees there because there are. These are only the significant trees there. There are just multi-trees, while this may be a 24" post oak there may be 10 21" post oaks in that same area.

Bunch: The green is representative of existing canopy with the existence of significant trees highlighted.

Jefcoat: We have shown the building setback so it is possible that these trees would be lost. Because these are significant trees hopefully not.

Bunch: What about these down through here since this is a utility easement? You are showing that as a green.

Jefcoat: Some of those, we were going to preserve as many as we can through that. We are not going to just clearcut the whole easement. That is these two locations, we've got significant trees here that we are certainly going to try to protect because of the root structure here and here. We have them listed as preserved, not necessarily lost. We tried to accommodate all of our

utilities down here.

Bunch: When you are saying remove that are in a building envelope, can you interpret that for us?

Jefcoat: Yes, where it falls within the building envelope we have slated it as removed because it could be removed because it sits in the building setback.

Bunch: Not from the standpoint of a contractor looking at this coming in and saying oh my goodness, that says removed, it is in the building envelope, I have to remove it?

Jefcoat: No, it is a potential removal and that was terminology that we worked out with the Landscape Administrator. He wanted us to present the very worst case scenario.

Bunch: For purposes of calculation?

Jefcoat: Right so it is the worse case scenario. It is obvious that this one is in the middle of the lot and it most likely would be lost.

Bunch: Just maybe a note. Like I said, there is going to be a minimum of 18 people looking at this and probably many, many more.

Jefcoat: That would be a good note to put on there as to why that is the worse case scenario.

Bunch: To clarify the ones where it says remove.

Ostner: Some people say "not counted towards total." Just lose the removed word and say "not counted towards total."

Bunch: There is a lot more clarity that way.

Jefcoat: Lot 5 and 6 that we discussed, the last one I guess is no structures in the easement. That has to do mainly with the stonewall proposed out front. This retaining wall shown in the circle, what we've done there is that is about an 18" wall to level the island up and to give it some character. It is going to be a landscape island and to give it a little better look we leveled it up with an 18" wall and it is obvious because of the two contours. Had it been a 6' retaining wall we would've had many more contours. The nomenclature is wrong and we will straighten that out.

Bunch: Would that be a stone façade to match?

Jefcoat: To carry unity and to act together. It would be installed like this. That

sort of sets the character. It draws the unity throughout the development so that would be the same character as that. This retaining wall we were talking about a 5' to 6' stone wall. We did what Matt suggested, we took it out of the easement where you've got the right of way, the 5' strip for the wall and then your utility easement so it is not in a utility easement but we do show and would like to do some curbed entrances which crosses the easement. The gas line is out in the road right of way and the only utilities in the easement would be the overhead electrical. Since it is all the water and all the sewer is not in that easement the only utilities that would be in that easement would be the overhead electrical cable and things so if we provided conduit on either side of that wall in the easement we would like the curvature of that wall to cross that easement.

Bunch: You are adding conduits should sometime that overhead be buried?

Jefcoat: That overhead would be buried for this development.

Bunch: Matt, is that acceptable, just like a street crossing to have the quads in under the fence?

Casey: I think I'm comfortable with the wall crossing the easement and not running with the easement because it is a lot easier if a utility had to do some work, to put a new line in to go under that wall than to run right beside it if they are having to dig down several feet deep. I think crossing would be acceptable.

Jefcoat: Good. We have conduit under the road so what we will do is just extend it on beyond the sidewalk.

Ostner: You mentioned a maximum height for the stonewall to be 5', is that so you've got something pictured of how it steps down and follows this grade?

Jefcoat: We are not going to level the top of it, we are just going to run it with the grade. You don't have that severe of a slope there that you would want to stair step it down. It would be contoured with the existing grade.

Bunch: What sort of covenants do you have as far as house size, we are looking at compatibility issues with adjoining properties in areas so what sort of, you have house construction, house size, could you give us a preview of that? Will you have those available for the full Planning Commission?

Hoskins: We are working on the Restrictive Covenants as we speak. To give you an overview, the minimum square footage on the houses will be about 2,200 to 2,300 sq.ft. We are expecting more like 3,000 sq.ft. houses, all brick or stone, no E.I.F.S., no hardyboard siding, no vinyl siding, no aluminum siding, no vinyl soffit, etc., all natural materials, we are looking

at the gas lamps on the fronts of the houses and streets, we are looking at that but we haven't determined that yet. Minimum 8 pitch roofs, all rear or side entry garages, nothing facing the street. This is slated to be a European design type subdivision, in other words, lots of tudor and sweeping rooflines, wood windows, etc. Garage doors being carriage style garage doors instead of sealed or whatever. Those are the things that we are leaning towards, of course, a lot of it is still up in the air, but that is the intent of the subdivision.

Bunch: The covenant on the rear or side entry garages would go quite well with the issue of the driveways.

Jefcoat: Yeah. We also talked about private fences being setback from the front part of the house to half the distance of the house.

Hoskins: Right, no fences would come up to the front corner of the house.

Jefcoat: It is good for the appearance of the subdivision to have all house fronts and no visible fencing along the fronts of the houses.

Ostner: If you are looking for that kind of high end European style design have you considered narrowing these streets, they are 28' back to back, that is ample for three cars to pass, it is pretty wide.

Jefcoat: If you narrow the streets you get back to circulation problems, trash cuts, vans, visitors. The wider the street and still keeping an intimate feeling.

Bunch: What about on street parking, is that allowed?

Hoskins: That is another issue as well, the width of the streets is for on street parking right?

Jefcoat: I think in the covenants you said that there would be no on street parking, it is understood, we talked about hours of on street parking and whether it is 24 hours maximum so you don't have permanent on street parking.

Bunch: One of the concerns again would be in this area. Of course, that is a private drive but still, from a safety standpoint and emergency vehicles and access, that is a concern, whether it is a public or private right of way.

Jefcoat: Right, we wouldn't want to narrow the streets anymore than what we've got. We have thought through a lot of this.

Bunch: In this area definitely not but that works into the overall scheme and I think that people are going to be asking those questions so we want to preview them here to give you an opportunity to be prepared to answer them.

Ostner: Part of the thought behind the 28' street is that it is in essence three lanes, two driving, on parking. It doesn't matter, it's just a comment.

Bunch: Ok, I'll bite on one thing, how did you come up with the name Hickory Park when there is one hickory tree in it?

Hoskins: I had a better idea but they didn't like my idea so I let them come up with the name.

Bunch: Staff or Commissioners, is there anything that needs to be addressed as far as what we are sending forward if we do send this forward? Commissioner Allen, you've been extremely quiet on this particular one, any recap of the details that Alan and I have gotten into, can you give us an overview of it?

Allen: I think everything has been clearly stated.

MOTION:

Ostner: I will make a motion we forward R-PZD 04-05.00 to the full Planning Commission.

Allen: I second.

Bunch: I will concur and I guess that is with there were many things that were brought up today I think to which you will be responding so I think that would be a good comment to make that it would be as discussed in this meeting.

Allen: A reminder to the neighbor and to the other neighbors that if they are available to come to the hearing at the Planning Commission.

Bunch: We are adjourned.

R-PZD 04-05.00: Residential Planned Zoning District (Hickory Park, pp 294) was submitted by Millholland Company on behalf of St. John's Lutheran Church of Fayetteville for property located at 2730 E. Township Street. The property is zoned P-1, Institutional, and contains approximately 4.429 acres. The request is to rezone the subject property to a Residential Planned Zoning District and to approve the development of 14 residential lots.

Hoover: The next item on the agenda is R-PZD 04-05.00 for Hickory Park.

Morgan: This project was submitted by was submitted by Millholland Company on behalf of St. John's Lutheran Church of Fayetteville for property located at 2730 E. Township Street. The request is to rezone the subject property to a Residential Planned Zoning District and to approve the development of 14 residential lots on approximately 4.429 acres. Density for the entire site is 3.16 units per acre. The property is currently zoned P-1, Institutional and is identified as Residential on the General Plan. The site is currently vacant. To the north is Glenwood Addition zoned RSF-4 with 2.47 units per acre. To the south is St. John's Lutheran Church with P-1, Institutional zoning. To the east is single family residential usage with an R-A zoning designation. To the west is Cedarwood Addition, zoned RSF-4 and has approximately 3.17 units per acre. The existing canopy on this site is 100% and preserved is 26.82%. Staff has received calls from the neighborhood with concerns regarding drainage, traffic, tree preservation and safety issues. Staff has made the following findings: The proposed density is compatible with surrounding properties. In addition, the applicant has proposed erecting a 6' stone wall along Crossover to be used as screening between the road and the housing. There are currently manmade screenings along Crossover and this is somewhat consistent with the other subdivisions along Crossover. In addition, connectivity is being proposed from this subdivision to the east to Crossover Road. Shared drives will be utilized between lots one and two, six and seven, eleven and twelve and thirteen and fourteen in order to decrease the number of curb cuts. Pedestrian access is also provided along the sidewalks with the interior streets as well as Crossover. The developer is also proposing a landscaped island at the entrance of the subdivision and a landscaped round about with a mail kiosk at the terminus of the right of way within the subdivision. Access is being provided to Crossover Road with a 14' drive aisle into the subdivision and a 20' exit drive aisle, which would provide sufficient width for a right and left turn lane. Use Unit 8 is the proposed use for this subdivision. The proposal is unique in that there are build to lines and specific building types and materials called for in the covenants. Shared drives will be utilized. Staff is recommending to eliminate the build to lines on lots 4, 7, and 8 in order to preserve a greater amount of canopy. The proposed zoning, it is in the opinion of the Fayetteville Police Department that the Planned Zoning District will not substantially alter the population density and thereby undesirably increase

the load on police services or create a traffic danger or congestion in the area. Based on these findings, staff is recommending that this be forwarded to the City Council with a recommendation for approval of the requested rezoning and Planning Commission approval of the proposed Preliminary Plat subject to 13 conditions. Staff has received signed conditions.

Hoover: Thank you. Would the applicant come forward?

Jefcoat: I'm Tom Jefcoat with Milholland Company representing St. Lutheran's Church. The applicant is also Signature Homes, Tracy Hoskins. We do accept the conditions of approval, they have been signed. The condition of build to lines on lots 4, 7, and 8 will be added to the plat and also on the tree plat we have a correction to make on not to count the trees in the building envelopes. Those two corrections will be made. Other than that, we are in agreement with the conditions.

Hoover: At this time we will open up this PZD to public comment for Hickory Park.

Sigafuss: I'm Bob Sigafuss, I live on Hardy Lane. I'm sorry my old friend Mr. Estes isn't here tonight because he generally agreed with comments I made in the past. Hopefully, I can make something constructive of this whole decision. I would like you to take a look at the big picture, particularly the traffic considerations. East Fayetteville is under a lot of pressure. I noticed up front your goals for 2008 number four says "Improve mobility and street quality." I hope that doesn't mean you are going to start to think about that in 2008 because it has been a long standing problem on Crossover Road. Crossover is the eastern corridor of Fayetteville. College Avenue is the center and I-540 is the west. In the last couple of years this street has become a mess. 24 hours a day there is truck traffic constant. From 2:00 in the afternoon to 7:00 in the evening there is heavy traffic. This entrance to Hickory Park is only 450', maybe less, from the traffic light of Township. It is only 450' from the entrance to Hardy. Hardy is a dead-end little subdivision. There is no outlet. Hickory Park there is no outlet other than off of Crossover. This leads to a lot of problems with safety. When I make a left turn into Hardy Lane sometimes you think that you are going to meet your maker because you are in the center lane, there are three lanes, one north, one south and one center. You have that little turn and you have an instant to get across because the traffic is so heavy. With Hickory Park you are going to be much closer to the congestion and I would think that it is going to be a very difficult thing to maintain a pattern of flow on that state highway is this project is approved. Candlewood is an interesting project, it is a very nice project. They have an entrance on Crossover, they have an entrance on Township, it is an ideal situation, you can get in and out. Hickory Park

you are in and you notice from your plans it is a very narrow confines in that project. I'm not going to talk extensively about the nitty gritty because that apparently has already been accomplished. I would hope that the church, which is now the owner of the property, would rethink the highest and best use of that property. If they are willing to grant an easement off of Township, and there is room for a 28' road off of Township and at least allow an extra entrance to the project it would make this project much more feasible. That's only one of the considerations I have. The second is the question of the marsh area. 4.4 acres, of that I would estimate one acre, maybe a little more, is a swamp. It occupies lots 11, 12, and 13. Mr. Jefcoat, the engineer for Milholland disputed that at the Subdivision Committee meeting. He said he had expertise in matters of wetlands and marshlands and this was not a problem. I would like to differ with that opinion and I would like to ask the staff, how many of the staff has been in that marshland area? Ms. Morgan, Mr. Casey?

Morgan: I've been to the site but I've not walked it.

Casey: I have not walked the site.

Sigafuss: How about when you visited the other day, the Planning Commission? Did you get down into that marshland? It is a serious marshland. It is something that ought to be looked at by some third party, not take Mr. Jefcoat's word for it. He has a certain vested interest in this project. I would like at least before this project moves forward to the City Council for somebody to take a look at it and convince those of us who think that this is a wetland that it is not and it is going to be safe to develop lots 11, 12 and 13. Two parcels on Hardy Lane abut this marshland. The corner lot and the second one in on Hardy. Even during dry periods you can walk in there and the ground is spongy and it has a certain vegetation on it which looks like what the Corp. of Engineers decides is a wetland. I would think that you'd want to take a look at that first. Second, ask the principals of the church what they considered when they put this land up for sale. I know for a fact that a number of developers have looked at this land over the years and have turned it down because they felt that it was too difficult to develop and the traffic pattern there may affect the marketability of those homes. I tend to agree that it might affect the marketability of these homes. I think three of these homes are directly behind the wall off of Crossover and that drop off to the marshland is at least 3' below the grade of Crossover. It is down, it slopes to the northeast corner of that parcel. That you must address to satisfy my concerns. The church is asking for a rezoning. That is a very important serious matter. They have been living with this land, I think it is 10 acres total for their property, practically tax free for 30 years or more. Have they thought about other uses? Have they thought about maybe approaching one of the urban forest groups to take it off their hands? Have they thought about

maybe selling it to a single home owner? There is precedent on Crossover between Township and Mission, there are three or four homes that sit down there on large acreage, very nice places. It is possible that someone could come along and pay the church a fair price for it's land. I hope the church, I don't know their circumstances and why they are choosing to sell the land, it is probably financial, but whatever they are, I would like the church officials to approach the Planning Commission and the City Council and tell them why they are selling this land. I don't think you should just look at the plat and criticize or add suggestions. It is more the big picture as I said at the beginning. Please don't rush this thing through to the City Council and remember item number four, 2008, improved mobility and street quality. You are not adding to the betterment of Fayetteville by this decision. You may be going the other way. I would say either change the design or turn down the project. Thank you.

Hoover: Thank you. Is there any other member of the public that would like to address this Planned Zoning District?

McCartney: Hi, I'm James McCartney, this is my first time here. I live in Glenwood as well with Bob. What I was thinking is when you are considering this residential area here by the church that you would think about the way that Glenwood is closed off and unable to go anywhere in the neighborhood unless you go by car on Hwy. 265. What I would like to see is a continuation of the sidewalk that is in front of our development to go to the west side of Hwy. 265 and continue onto Township so that we can go to Gulley Park, potentially cross the street and go to McNair Middle School and Vandergriff. It would seem like that the financial resources are there and also the construction equipment to do something like that at this point in time. It would not be just in front of the proposed subdivision because that would also be a dead-end but it would also continue on the east side of the Lutheran Church all the way to Township. That's what I would suggest doing so that people can get out from both of those subdivisions, walk up to Township, walk down Township, go to Gulley Park to go to the concert or take the kids to the playground and what have you. Thank you.

Hoover: Thank you. Is there any other member of the public that would like to address this Planned Zoning District?

Hemingway: My name is Doug Hemingway and I'm a member of St. John's Lutheran Church. We were approached by this developer to purchase our property and I said let's see a plan. What he has done is he has designed an excellent plan. The church is most happy with it. We would like to see this really happen. The church is all for it and I would like to commend the city and the engineering staff and the developer for coming up with an excellent PZD. This is just a small piece of land where everything is

confined to a center village style and it represents what a PZD to me is. I would like to hear some more comments of how you feel about the design itself. We think it is quite excellent.

Hoover: Thank you. Is there any other member of the public?

Mainfort: Robert Mainfort, 2408 N. Hampton Ct. My property is located essentially southwest of the proposed project area at the corner of Hampton Ct. and Township. The speaker before last raised a couple of issues that I would like to address. For starters, there is absolutely no comparability between the proposed development we are discussing tonight and Candlewood. This represents 14 single family units. Candlewood the last time I walked through there has at least several more structures than that. Most residents of the area I think are not concerned with matters of access because of Crossover. The other matter ties in with accessibility and basically creating access off of Township. This would go more or less through my backyard and that of about six other people who would not be pleased by this. More over, I would suggest that the speaker before last is being somewhat hypocritical in proposing this when on the one hand posing that certain areas he considers marshlands and then proposing an access road that would destroy a very large amount of habitat currently preserved. Both the church and the developer we think have been good neighbors on this and I strongly suggest that we proceed with this. Thank you.

Hoover: Thank you. Is there any other member of the public? Seeing none, I will bring it back to the Commission and staff. I guess first would you address traffic on Hwy. 265 and accessibility?

Warrick: I will take that, at least to start. Hwy. 265 is a principal arterial, it is a state highway. It is designed when it is fully built to it's principal arterial standard to sustain the volume of over 20,000 vehicle trips per day. The current Arkansas Highway and Transportation Division count on this particular strip of Hwy. 265 in this location is approximately 16,000 vehicle trips per day. A single family home generates between nine and ten vehicle trips per day. This subdivision would generate fewer than 140 vehicle trips per day on a count based on I.T.E., the Institute of Traffic Engineers software and reporting mechanisms. The developer has proposed an entry that allows for a single access into the development, a one way entrance and there is a wide enough exit to provide for a two lane exit, a right turn and a left turn. Incidentally, that also allows for the necessary vehicle width for fire protection. The applicant has thought about the option to allow for stacking distance if people are stacked up at a peak hour. This portion of the city, like I mentioned, Hwy. 265 is a highway. It is located in a highly residential area, there are several schools in the area. There are peaks and there are times when there is a wait in order to move. Traffic movements are slower at certain times.

That is not uncommon. You will always have peak times and off peak times so just as far as the numbers are concerned and as far as our evaluation of the situation staff is not concerned that 140 vehicles will detrimentally impact the traffic flow in this particular area.

Hoover: Thank you. I guess I would like to direct the discussion to the suggestion of a sidewalk connecting this subdivision down to Township, which I personally thought was an excellent idea.

Vaught: My question would be for the City Attorney. Can we require improvements like that on a project like that, not a part of this site?

Whitaker: We probably cannot, however, of course, we do have money in the sidewalk fund and it might be a very good time if this project goes through, to do a cost share with their developer who will already have his equipment out there and can probably build that sidewalk in a cost share with the city much more economically at the time that this would develop as opposed to some other time. I certainly share your agreement with Vandergriff being close and the park being close, that pedestrian access to those areas would be very helpful.

Vaught: Would that be a recommendation that we would make to the City Council for a cost share then?

Whitaker: It would be a little bit too early to do a cost share, that would have to be when the project was finally approved and coming back after final approval when they start building it but certainly your recommendation that at that point in time that the city consider a cost share would be appropriate.

Hoover: I guess I'm confused. Are you saying that it would be alright to suggest that with this?

Williams: Certainly I think you can suggest it now. At this point it is pretty early in the game to get to the final thing but I think that you can certainly make that suggestion as part of your recommendation.

Warrick: I believe that if the Planning Commission wishes to see that connection and a cost share consideration you need to make a definitive finding. This is the Preliminary Plat for this subdivision. They will build off of this approval. When you see it as a Final Plat it will be constructed, installed and complete. This is the time to look at those types of requirements.

Hoover: Can we have the applicant come back?

Vaught: This is an R-PZD so City Council will see it next. They won't start construction until after the City Council approves it so if we recommend, can we make it a condition or is it just a recommendation?

Warrick: It is a recommendation. The City Council can certainly make it a condition if they deem that to be appropriate.

Williams: The problem with trying to make a requirement not on the site that is being built on is I think we might be possibly overstepping our bounds on what the impact of this housing development of 14 houses and a sidewalk of that length, because we should also have it along the front of the church too along Township, I think that would be out of proportion to the impact that they would be incurring here and also it would be on somebody else's property and so in this case we need cooperation with the church to make sure that we have enough right of way to build the sidewalk with them and want their cooperation as opposed to trying to make it an actual requirement of this subdivision. Within this subdivision along Township we certainly can but beyond that I would make it a recommendation as opposed to requirement.

Hoover: In the past we have required some offsite improvements.

Williams: I've not seen an offsite sidewalk improvement.

Hoover: There are other improvements. I don't think that a sidewalk is necessarily different from a road or something else.

Williams: Those have always been based also on a rational nexus and proportionality of how much this development will require for a bridge or something is what you are thinking about. Here, we haven't done a rational nexus test to see what that would be when you look at all the sidewalks within the subdivision and then also the sidewalk that will be required along Township within the subdivision. Then to say that they must build a sidewalk along the church's property, which is much longer here, the church has already developed. We don't know for sure if we even have the land at this point in time so I think that it would be a little bit premature to try to require that. I think this can be worked out but I would recommend that you do it in a recommendation instead of trying to require it at this time since we don't have the facts and figures at this point to make that kind of determination.

Hoover: I'm correct in assuming in a PZD we have the right to request or recommend what we think is compatible with the neighborhood and all the series of lists of items that we have?

Williams: You certainly have a right to recommend this. I think that probably with the Planning Commission unanimously recommending this and the support from the neighbors that it will be done. I would rather see that as a recommendation as opposed to some sort of requirement that we have to follow and meet other tests in order to make that a requirement.

Hoover: We might get a response from the applicant.

Jefcoat: It is a two fold problem if not more. The sidewalk would be on property not owned by the applicant. The church would have to agree to the property as was stated, we are looking at close to 500' of sidewalk offsite if you go down Township. If you connect to Township you are looking at 200' of sidewalk. You are looking at a considerable amount of sidewalk. The applicant most likely would certainly consider a portion of that cost share and a proportional amount, certainly not half and half. There are some other considerations. While you may recommend that, it certainly would be nice to see the sidewalk at least continued to Township, the question is to how much of that responsibility belongs to the client. That is not for us to recommend or say at this point.

Hoover: Are there other discussion items on this?

Anthes: Standard condition of approval number eleven, I believe we just saw another project tonight where we required a 4' sidewalk with a 6' greenspace and this says a 4' sidewalk with a 4' greenspace. Can you speak to why we would do one or the other?

Casey: Our requirements are that the sidewalk be located at the right of way. The greenspace will vary from project to project depending on the right of way width. I believe this is a 24' street. We have minimum greenspace requirements but the ordinance actually says it should be located at the right of way so that's why we see the varying greenspaces sometimes.

Anthes: You can't really plant a tree in 4' but you can in 6'.

Jefcoat: I might address that to help clarify that up some. It also preserves trees outside the sidewalk so that is one reason we are trying, we have got a very thick canopy and a lot of trees here. That additional footage outside the sidewalk helps us protect some of those existing trees.

Anthes: Because you are clearing the other part anyway, is that what you're saying? Another question is on page 4.5 at the bottom, talking about the International Fire Code requirements for the egress from the subdivision, are we meeting the code with the turn around and the mail kiosk in that area?

Casey: The proposed cul-de-sac does meet our current minimum street standards as far as radius.

Anthes: My next question is there was a pretty considerable amount of language in the tree preservation protection report that had some strong recommendations about reducing density, cluster developments, rerouting streets, build to lines, using words like significant, unnecessarily requiring, my question is of staff and Subdivision Committee, whether these concerns expressed by Mr. Carnagey have been incorporated in any way by the developer.

Carnagey: This development does meet the minimum requirements of our tree preservation ordinance. As you see in my report, there are recommendations that I have forwarded. However, the conditions of approval that I submitted to Subdivision Committee have been met by this applicant and therefore, because they meet the minimum requirements staff has no reservations about forwarding this project at this time.

Anthes: Those are all of my questions, thank you.

Bunch: Just some comments from Subdivision. Just like Commissioner Anthes questioned the tree report was prior to Subdivision and prior to additions and changes by the applicant. There have been a considerable number of alterations. There was a meeting with the neighborhood that incorporated some changes. Another thing that has been changed is the landscape island has been shortened in its east/west dimension to allow better access to lots1 and 13. Also, the width of the outbound has been altered to allow left turn lanes. Shared drives have been added and this was to offset the utilization of some very narrow frontages and accesses on particularly lots 13, 12, 11, 7 and 6. If you will notice in the covenants as well as in the findings and on the drawings, there are shared drives that have now been added. This is to improve the access to the lots but also to eliminate having a maze of concrete at the end of each one of these streets where there might be a 24' driveway on a 25' frontage and that sort of thing. It is an unusual concept to have a public street that ends in a cul-de-sac and then to have hammerhead private streets going from that. Also, one of the things I noticed is it has underground detention ponds. These are some of the things that we discussed at Subdivision was the accessibility to cleanouts for the underground detention system. Also, the access with the shared drives and such with the private drives. That has all been addressed in the covenants as far as the maintenance and that sort of thing. This is a project that has had quite a bit of attention. The developer worked with staff considerably and made quite a number of changes. They worked with the neighborhood and they also worked with Subdivision Committee and there have been changes so it is definitely one

utilizing what a PZD is for where there are multiple inputs and the changes are incorporated.

Hoover: Thank you for the report.

Ostner: Can you elaborate about the build to lines, where they are?

Jefcoat: The build to lines are the front building setbacks only, except for lots 7, 8 and 4 where we have significant trees on the fronts of those lots. The build to line has been eliminated on those front building setbacks to try to come up with an alternative to save those trees.

Ostner: It is the front setback line is to pull the buildings to the street?

Jefcoat: Yes.

Ostner: Since there are so many trees, I'm curious, how many provisions are being made for these trees or are any trees supposed to remain after the lots sale or is it just up to the lot owner to go ahead and develop as he or she wishes?

Jefcoat: There is an architectural review committee setup in the covenants and they would have the right to approve any significant tree that was removed from inside the building envelope. In order to meet our minimum canopy, all trees within the building envelope, including the significant trees, were not considered in the count in order to meet our minimum canopy, therefore, that is the worse case scenario if all the trees within the building envelope were to be removed. Also, we have left a buffer strip. Normally utilities such as sewer would be along the rear property lines, these have been located in the front, utilities have all be pulled to the front which in the case of the north side of the subdivision, is the high side. That sewer line there will be constructed at a deeper depth than you would normally find on a short line like that in order to preserve the trees along the back and to give an additional buffer benefit to the neighbors to the north. There have been considerable considerations.

Shackelford: As I look at this property I think that it is in accordance with some of the surrounding properties, in particular, Hardy Lane. If you look at the development that happened in the late 1980's and early 1990's just south of this property it is a single entrance road with 16 units, pretty much a carbon copy of what we are talking about doing here. I think we have gone through great lengths to make the best compromises in this area we can to allow development and still maintain the integrity of the overall neighborhood. I am going to go ahead and make a motion that we recommend approval of R-PZD 04-05.00 with the addition of the language that we recommend the city research a cost share for sidewalk

construction on the east side of the church property and the south side of the church property along Township.

Vaught: I will second.

Hoover: We have a motion by Commissioner Shackelford and a second by Commissioner Vaught, is there more discussion?

Bunch: Yes. Could we ask the representatives from the church what they would be willing to contribute on this if it is going to be a neighborhood effort to try to get sidewalks in and access Gulley Park. The city wanted to make, we are asking the city in a sense to cost share and we are asking the developer to take a look at cost share, what contribution would the church be willing to make on this?

Hoover: I think that we can't do that here, I think that will happen at City Council, am I correct?

Williams: You can ask them, I don't know if they can speak for the church. I don't know if they have someone here that can actually do that. I don't think it would be binding.

Bunch: Just to get the dialogue started since there was a representative of the church here that spoke to us in the public comment session and also to look at the principal of neighbors working together and since the church is the seller of the property they do have a vested interest in it.

Hemingway: At the neighborhood meeting that we had this was brought up and it was quickly stopped when I said we'll put in our share. That is when the neighbors were requesting the sidewalk. We said we'll put in our share. There was no more discussion of a sidewalk. These people that are requesting a sidewalk, we are not opposed to a sidewalk, we are just opposed to spending a whole lot of money to do it. If there can be some kind of agreement with the neighbors that want this we will be happy to put in our share. That is what we have come to the conclusion of saying, does that seem fair to you all?

Hoover: Thank you. Is there any other discussion?

Jefcoat: I would like to address one other thing that the client has brought to my attention. We are interested in just the sidewalk going to Township on the east side of the church. I'm not sure the church would like to see the sidewalk on the south side of the church and that has nothing to do in the process of the client. Also, while we are doing the assessment consideration, it has been pointed out that the users of the sidewalk, those

in the Hardy Lane subdivision should be assessed their equal portion for the sidewalk also.

Hemingway: I would just like to state that there is a sidewalk now on Township on our side so it would just be the east side.

Shackelford: I was not aware that there was a sidewalk on the south property line so I would like to change my recommended motion to strike that part of it that we research a cost share on the south property line along Township.

Hoover: Is that ok with the second?

Vaught: That's good.

Hoover: Is there any other discussion? Renee?

Roll Call: Upon the completion of roll call the motion to forward R-PZD 04-05.00 to the City Council was approved by a vote of 9-0-0.

Thomas: The motion carries nine to zero.

C.7.
Water & Wastewater Operations Center - Marioni Contract.
3/2/04

STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
X CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council Meeting of: March 2, 2004

FROM:

Greg Boettcher	Water/Sewer/Meter	Water and Wastwater
Name	Division	Department

ACTION REQUIRED: Resolution approving award of the Water and Sewer Operations Center construction contract to Marioni Construction, Inc. of Fayetteville, Arkansas in the amount of $3,403,199.00. Action includes the acceptance of the deductive bid alternates No. 1 and No. 2 plus the removal of the allowance for subgrade undercut. The proposed project budget includes $225,159.00 for contingent needs. A budget adjustment to transfer $128,235.00 from the Water and Wastewater fund balance is also requested to fully fund the project budget.

COST TO CITY: A net financial authorization of $3,628,358.00.

$3,628,358.00	$3,610,441.00	Water and Sewer Operations Center
Cost of this request	Category/Project Budget	Program Category / Project Name
5400.5600.5804.00	$110,318.00	Water and Wastewater Improvements
Account Number	Funds Used to Date	Program / Project Category Name
98076	$3,500,123.00	Water and Sewer
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item X Budget Adjustment Attached

Budget Manager — Date: 2-19-04

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager — Date: 2/20/04
Internal Auditor — Date: 2/20/04
City Attorney — Date: 2/19/04
Purchasing Manager — Date: 2/23/04

STAFF RECOMMENDATION:

Division Head — Date: 2-17-04
Department Director — Date: 2-17-04
Finance & Internal Services Dir. — Date: 2-19-04
Chief Administrative Officer — Date: 2-19-04
Mayor — Date: 2/19/04

Received in Mayor's Office 2/19/04 Date 4:11

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

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

ENTERED 2/19/04

Staff Review Form - Page 2

Description _____ Meeting Date March 2, 2004

Comments: Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Manager

ADA Coordinator

Internal Auditor

Grants Coordinator

City Council Meeting of February 17, 2004
Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Hugh Earnest, Chief Administrative Officer

From: Greg Boettcher, Water/Wastewater Director

Date: February 18, 2004

Subject: Resolution approving a contract with Marinoni Construction, Inc. for Water and Wastewater Operations Center at Industrial Drive

---

RECOMMENDATION

Fayetteville City Administration recommends approval of an authorization totalling $3,628,358.00, said amount including a contract with Marinoni Construction, Inc. of Fayetteville, Arkansas in the amount of $3,403,199.00 with $225,159.00 for contingent needs as detailed in the March 2004 project budget.

BACKGROUND

On April 23, 2003 the Fayetteville City Council approved a $237,490.00 contract with Cromwell Architects Engineers, Inc. for architectural services related to the design and construction of a new Fayetteville Water and Wastewater Operations Center. This approval included a 9.5% contingency of $22,510.00 bringing the total funding to $260,000.00. As of this date, the services have not utilized any of the contingency funds, the work underrunning predicted reimbursable expenses by $17,000.00. Through the bidding phase of this project the professional services component of this project is below the approved contract amount; the consultant also meeting the contract's schedule requirements.

This design relates to a new operations center on approximately 61 acres, said land being located at the end of Industrial Drive in the South Industrial Park. The architect submitted this development plan under a large scale development review process, securing approval from the Planning Division on November 13, 2003. Final costruction drawings, contract documents and specifications were furnished to the City of Fayetteville on January 5, 2004 in conformance with the schedule in the architectural services agreement. The project has been released for competitive sealed construction bids with a bid opening date of February 10, 2004.

DISCUSSION

The City of Fayetteville received six bids for the construction of the Water and Wastewater Operations Center, a copy of the architect's bid tabulation being attached hereto. Review of the bids, bidder qualifications, bid alternatives and bid prices, has been performed by Cromwell Architects Engineers Inc, with the firm providing a formal contract award recommedation, a copy of which is attached hereto.

It is recommended that the contract be awarded to Marioni Construction, Inc. of Fayetteville, Arkansas in the amount of $3,403,199.00. The time for completion of the work is 365 calendar days after the Notice to proceed with liquidated damages set at $176.00 per day.

BUDGET IMPACT

The $3,628,358.00 fiancial commitment for the new Water and Wastewater Operations Center is has been reconciled with the 2003 preliminary cost predictions of $3 million, the difference in cost being attributed to refinement of the building program to meet actual needs, unforseen costs associated with subsurface conditions, fire sprinkler requirements and current pricing factors. The recommended budget for this project requires a budget adjustment of $128,235.00 from the water and wastewater fund balance. The water and wastwater department budgets for 2004 include separate allowances for office furnishing costs, warehouse shelving and other related expenses to render the building fully functional.

CROMWELL
ARCHITECTS ENGINEERS

February 25, 2004

Mr. Greg Boettcher
City of Fayetteville
113 W. Mountain
Fayetteville, AR 72701

Re: Water & Sewer Operations Center
A/E Project No. 2003.035

Dear Mr. Boettcher:

We recommend that the City of Fayetteville award a construction contract on the Water & Sewer Operations Center to John P. Marinoni Construction Co., Inc., 1142 N. Futrall Drive, Fayetteville, AR 72703. Marinoni was the certified low bidder on the project that bid on February 10, 2004.

After checking references and the prior experience of this contractor, we have every reason to believe that Marinoni will construct the project in accordance with the contract. While this recommendation is no guarantee that the contractor will perform, we have no reason to believe otherwise. This letter confirms Marinoni's qualifications to perform the work.

Sincerely,

Charles J. Penix, AIA
President

c. Thad Kelly

CROMWELL ARCHITECTS ENGINEERS
101 S. SPRING STREET LITTLE ROCK, ARKANSAS 72201-2490 (501) 372-2900 FAX (501) 372-0482

AIA® Document A101™ – 1997

Standard Form of Agreement Between Owner and Contractor
where the basis of payment is a STIPULATED SUM

AGREEMENT made as of the Second (2nd) day of March in the year of Two Thousand Four (2004)
(In words, indicate day, month and year)

BETWEEN the ~~Owner~~ City:
(Name, address and other information)

The City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas.

and the Contractor:
(Name, address and other information)

John P. Marinoni Construction Co., Inc.
1142 N. Futrall Drive
Fayetteville, Arkansas 72703

The Project is:
(Name and location)

City of Fayetteville Water and Sewer Operations Center
Architect Engineer Project No. 2003-035

The Architect is:
(Name, address and other information)

Cromwell Architects Engineers, Inc.
101 S. Spring Street
Little Rock, Arkansas 72201

The ~~Owner~~ City and Contractor agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the ~~Owner~~ City.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement to be established in a written Notice to Proceed issued by the Architect Engineer.

If, prior to the commencement of the Work, the ~~Owner~~ City requires time to file mortgages, mechanic's liens and other security interests, the ~~Owner's~~ City's time requirement shall be as follows:

Not Applicable

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than 365 days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

~~Portion of Work~~ ~~Substantial Completion Date~~

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

$179.00 per calendar day for each day of delay until the Work is Substantially Complete

ARTICLE 4 CONTRACT SUM

§ 4.1 The ~~Owner~~ City shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Three Million Four Hundred Three Thousand One Hundred Ninety-Nine ($ 3,403,199.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the ~~Owner~~ City:

(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the ~~Owner~~ City subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires)

Deductive Alternate No. One (1) Complete Fire Alarm System -($10,200.00)

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Deductive Alternate No. Two (2) Pipe Rack	-($46,000.00)
1. Undercutting allowance	
• Undercut below finished subgrade 3,000 cy at the unit price	-($39,000.00)
• Undercut below bottom of footings 30 cy at the unit price	-($600.00)

§ 4.3 Unit prices, if any, are as follows:

Description	Units	Price ($ 0.00)
Undercutting unit price:		
• Below finished subgrade		$13.00
• Below bottom of footing elevations		$20.00

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the ~~Owner~~ City shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the ~~last day of the month, or as follows:~~

twenty-fifth (25th) day of the month.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the twenty-fifth (25th) day of a month, the ~~Owner~~ City shall make payment to the Contractor not later than the twenty-fifth (25th) day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the ~~Owner~~ City not later than thirty (30) days after the Architect receives the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (~~)~~ 10%). Pending final determination of cost to the ~~Owner~~ City of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;

.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the ~~Owner,~~ City, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10%);

.3 Subtract the aggregate of previous payments made by the ~~Owner;~~ City; and

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.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the ~~full amount~~ ninety-five percent (95%) of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and *(Section 9.8.5 of AIA Document A201-1997 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*

.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-1997.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

Reference Section 9.3.2 of General Conditions

§ 5.1.9 Except with the ~~Owner's~~ City's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the ~~Owner~~ City to the Contractor when:

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The ~~Owner's~~ City's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for ~~Payment, or as follows:~~ Payment

ARTICLE 6 TERMINATION OR SUSPENSION

§ 6.1 The Contract may be terminated by the ~~Owner~~ City or the Contractor as provided in Article 14 of AIA Document A201-1997.

§ 6.2 The Work may be suspended by the ~~Owner~~ City as provided in Article 14 of AIA Document A201-1997.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

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No interest shall be paid on late payments.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the ~~Owner's~~ City's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 7.3 The ~~Owner's~~ City's representative is:
(Name, address and other information)

The Honorable Dan Coody
City of Fayetteville
113 W. Mountain Street
Fayetteville, Arkansas 72701

§ 7.4 The Contractor's representative is:
(Name, address and other information)

John P. Marinoni
John P. Marinoni Construction Company, Inc.
1142 N. Futrall Drive
Fayetteville, Arkansas 72703

§ 7.5 Neither the ~~Owner's~~ City's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 7.6 Other provisions:

None

ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

§ 8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between ~~Owner~~ City and Contractor, AIA Document A101-1997.

§ 8.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

§ 8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated December 31, 2003, and are as follows

Document	Title	Pages
Section 00800	Supplementary Conditions	1

§ 8.1.4 The Specifications are those contained in the Project Manual dated as in Section 8.1.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
Title of Specifications exhibit: Reference Exhibit "A", attached		

§ 8.1.5 The Drawings are as follows, and are dated December 31, 2003 unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
Title of Drawings exhibit: Reference Exhibit "B", attached		

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§ 8.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
Addenda No. One (1)	February 5, 2004	284
Addenda No. Two (2)	February 6, 2004	34

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

§ 8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Exhibit "A"	Table fo Contents
Exhibit "B"	Index of Drawings
Exhibit "C"	Contractor's Bid Proposal

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the ~~Owner~~ City.

~~OWNER *(Signature)*~~	~~CONTRACTOR *(Signature)*~~
CITY *(Signature)*	CONTRACTOR *(Signature)*
(Printed name and title)	*(Printed name and title)*
CITY *(Signature)*	
(Printed name and title)	

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Exhibit "A", Reference AIA Document A101-1997, paragraph 8.1.4

CITY OF FAYETTEVILLE
WATER AND SEWER OPERATIONS CENTER
Fayetteville, Arkansas

2003-035
Dec 2003

TABLE OF CONTENTS

Certifications
Table of Contents

BIDDING REQUIREMENTS AND CONTRACT FORMS

00100 Bid Solicitation
00200 Instructions to Bidders
AIA Document A701-1997, Instructions To Bidders
00300 Information Available To Bidders
Geotechnical Report
00410 Bid Proposal Form
00700 General Conditions
AIA Document A201-1997, General Conditions Of The Contract For Construction
00800 Supplementary Conditions
00860 Wage Rates Requirements
Prevailing Wage Determination
ARK FORM PW-2 Request For Determination of Prevailing Wage Rates Omitted Classifications

DIVISION 1 - GENERAL REQUIREMENTS

01100 Summary
01210 Allowances
01230 Alternates
01250 Contract Modification Procedures
01270 Unit Prices
01290 Payment Procedures
01310 Project Management And Coordination
01320 Construction Progress Documentation
01322 Photographic Documentation
01330 Submittal Procedures
01390 Project Forms
AIA A310 Bid Bond (1970)
AIA A312 Performance Bond and Labor and Materials Payment Bond (1984)
CSI 1.5A Subcontractors and Major Material Suppliers List (1994)
CSI 12.1A Submittal Transmittal (1996)
CSI 13.1A Substitution Request (1996)
CSI 13.2A Request For Interpretation (1994)
CSI 14.1A Punch List (1996)
01400 Quality Requirements
01420 References
01425 Definitions
01500 Temporary Facilities And Controls
01600 Product Requirements
01700 Execution Requirements
01731 Cutting And Patching
01770 Closeout Procedures
01781 Project Record Documents
01782 Operation And Maintenance Data

01810 General Commissioning Requirements
01815 HVAC Commissioning Requirements
01820 Demonstration And Training

DIVISION 2 - SITE CONSTRUCTION
02080 Piped Utilities - Basic Materials And Methods
02230 Site Clearing
02231 Tree Protection And Trimming
02240 Dewatering
02260 Excavation Support And Protection
02281 Termite Control
02300 Earthwork
02510 Water Distribution
02553 Natural Gas Distribution
02630 Storm Drainage
02741 Hot-Mix Asphalt Paving
02751 Cement Concrete Pavement
02764 Pavement Joint Sealants
02821 Chain-link Fences And Gates
02920 Lawns And Grasses
02930 Exterior Plants

DIVISION 3 - CONCRETE
03310 Concrete Work

DIVISION 4 - MASONRY
04200 Unit Masonry

DIVISION 5 - METALS
05320 Metal Decking - Floor (Composite)
05400 Light Gage Metal Framing
05500 Miscellaneous Metals

DIVISION 6 - WOOD AND PLASTICS
06100 Rough Carpentry
06400 Architectural Woodwork

DIVISION 7 - THERMAL AND MOISTURE PROTECTION
07200 Building Insulation
07270 Firestopping
07411 Metal Roof Panels
07412 Metal Wall Panels
07600 Flashing And Sheet Metal
07920 Joint Sealants

DIVISION 8 - DOORS AND WINDOWS
08100 Steel Doors And Frames
08331 Overhead Coiling Doors
08361 Sectional Overhead Doors
08411 Aluminum-Framed Entrances And Storefront

08710 Door Hardware
08800 Glass And Glazing
08952 Fiberglass-Sandwich-Panel Assemblies

DIVISION 9 - FINISHES
09253 Gypsum Sheathing
09260 Gypsum Board Assemblies
09510 Acoustical Ceilings
09653 Rubber Wall Base
09672 Seamless Monolithic Aggregate Polymer Flooring (SMAP)
09900 Painting

DIVISION 10 - SPECIALTIES
10200 Louvers And Vents
10155 Toilet Compartments
10522 Fire Extinguishers And Cabinets
10800 Toilet Accessories

DIVISION 11 - EQUIPMENT
NOT APPLICABLE

DIVISION 12 - FURNISHINGS
12491 Horizontal Louver Blinds

DIVISION 13 - SPECIAL CONSTRUCTION
13120 Metal Building System
13851 Fire Alarm
13930 Sprinkler Systems

DIVISION 14 - CONVEYING SYSTEMS
NOT APPLICABLE

DIVISION 15 - MECHANICAL
15010 Basic Mechanical Requirements
15060 Hangers And Supports
15070 Mechanical Vibration Control
15071 Seismic Protection
15075 Mechanical Identification
15080 Mechanical Insulation
15105 Basic Piping
15110 Valves
15120 Piping Specialties
15140 Domestic Water Piping
15150 Sanitary Waste And Vent Piping
15160 Storm Drainage Piping
15180 Hydronic Piping
15185 Equipment Vents & Drains
15190 Natural Gas
15410 Plumbing Fixtures
15425 Plumbing Specialties

15546 Water Treatment
15550 Breechings, Chimneys, And Stacks
15700 HVAC Equipment
15811 Ductwork
15840 Air Terminals
15850 Diffusers, Registers, And Grilles
15910 Direct Digital Control Systems
15950 Testing, Adjusting, & Balancing

DIVISION 16 - ELECTRICAL
16000 Electrical - General Provisions
16010 Electrical
16100 Basic Materials And Methods - Identification
16130 Conduits
16140 Outlet Boxes
16150 Pull Boxes & Junction Boxes
16160 Pulling Cables
16170 Wire And Cables
16190 Equipment Disconnect
16191 Overcurrent Protective Devices
16192 Wiring Devices
16200 Power Generation
16400 Service And Distribution - Metering
16410 Grounding
16420 Service Disconnects
16421 Transient Voltage Surge Suppressor
16440 Panelboards
16500 Lighting
16722 Cable Television

END TABLE OF CONTENTS

Exhibit B
Index of Drawings

12/31/2003	G001	TITLE SHEET
2/5/2004	G002	INDEX, SYMBOLS AND ABBREVIATIONS
12/31/2003	C001	SITE SURVEY
2/5/2004	C002	SITE PLAN
12/31/2003	C003	OVERALL SITE PLAN
12/31/2003	C004	TREE PRESERVATION PLAN
2/5/2004	C005	UTILITY PLAN
2/5/2004	C006	GRADING AND EROSION CONTROL PLAN
2/5/2004	C007	PLANTING PLAN
2/5/2004	C008	DETAIL SHEET
2/5/2004	C009	DETAIL SHEET
2/5/2004	A101	FIRST FLOOR PLAN
2/5/2004	A101D	FIRST FLOOR DIMENSION PLAN
2/5/2004	A102	MEZZANINE FLOOR PLAN
12/31/2003	A103	REFLECTED CEILING PLAN
2/5/2004	A104	ROOF PLAN
12/31/2003	A105	ENLARGED TOILET PLANS AND DETAILS
12/31/2003	A106	VEHICILE STORAGE BUILDING
12/31/2003	A107	PIPE STORAGE PLAN, ELEVATION AND SECTION
12/31/2003	A201	DOOR SCHEDULE AND DETAILS
12/31/2003	A202	FINISH SCHEDULE
2/5/2004	A203	ALUMINUM STOREFRONT FRAME ELEVATIONS
2/5/2004	A301	EXTERIOR ELEVATIONS
2/5/2004	A302	EXTERIOR ELEVATIONS / BUILDING SECTIONS
12/31/2003	A303	BUILDING SECTIONS
12/31/2003	A304	BUILDING SECTIONS
12/31/2003	A401	WALL SECTIONS
12/31/2003	A402	WALL SECTIONS
2/5/2004	A403	WALL SECTIONS
2/5/2004	A404	WALL SECTIONS
2/5/2004	A501	PLAN DETAILS
2/5/2004	A502	PLAN DETAILS
2/5/2004	A503	VERTICAL DETAILS
2/5/2004	A504	VERTICAL DETAILS
12/31/2003	A505	ROOF DETAILS
12/31/2003	A601	PARTITION TYPES / DETAILS
12/31/2003	A602	INTERIOR DETAILS
2/5/2004	S001	STRUCTURAL GENERAL NOTES & QUALITY CONTROL
12/31/2003	S101	FOUNDATION AND SLAB PLAN
2/5/2004	S102	FOUNDATION AND SLAB PLAN
2/5/2004	S103	SCHEMATIC ROOF PLAN
12/31/2003	S104	SCHEMATIC ROOF PLAN, ROOF UPLIFT PLAN AND MEZZANINE PLAN
2/5/2004	S201	FOUNDATION DETAILS

2/5/2004	S301	FRAMING DETAILS
2/5/2004	S302	FRAMING DETAILS
2/5/2004	FA101	FIRE ALARM PLAN
2/5/2004	FS101	FIRE SPRINKLER PLAN
2/5/2004	FS201	FIRE SPRINKLER DETAILS
12/31/2003	MP001	HVAC & PLUMBING LEGEND
2/5/2004	M101	FIRST FLOOR HVAC PLAN
12/31/2003	M102	FIRST FLOOR HVAC PIPING PLAN
12/31/2003	M103	VECHICLE STORAGE BUILDING HVAC & PLUMBING PLAN
2/5/2004	M501	HVAC DETAILS
2/5/2004	M601	HVAC SCHEDULES
2/5/2004	M701	HVAC CONTROLS
12/31/2003	M702	HVAC CONTROLS
12/31/2003	P101	FIRST FLOOR PLUMBING PLAN
12/31/2003	P501	PLUMBING DETAILS
12/31/2003	P601	PLUMBING SCHEDULES AND NOTES
12/31/2003	P901	PLUMBING RISERS
2/5/2004	E001	ELECTRICAL SYMBOL AND LIGHT FIXTURE SCHEDULE
2/5/2004	E101-L	FIRST FLOOR LIGHTING PLAN
2/5/2004	E101-P	FIRST FLOOR POWER PLAN
2/5/2004	E101-S	FIRST FLOOR SYSTEMS PLAN
2/5/2004	E501	ELECTRICAL DETAILS
2/5/2004	E502	ELECTIRCAL DETAILS
2/5/2004	E601	ELECTRICAL SINGLE LINE DIAGRAM
2/5/2004	E701	ELECTRICAL PANEL BOARD SCHEDULE
2/5/2004	E702	ELECTRICAL PANEL BOARD SCHEDULE
2/5/2004	ES101	ELECTRICAL SITE PLAN

Exhibit "C", Reference AIA Document A101-1997, paragraph 8.1.7

CITY OF FAYETTEVILLE
WATER AND SEWER OPERATIONS CENTER
Fayetteville, Arkansas

2003-035
Dec 2003

DOCUMENT 00410 - BID PROPOSAL FORM

FROM: JOHN P. MARINONI CONSTRUCTION CO., INC.
1142 N. Futrall Dr.
Fayetteville, Ar. 72703

Contractor License No. 0033500404 (hereinafter called "Bidder")

TO: City of Fayetteville, Arkansas (hereinafter called "Owner")

RE: WATER AND SEWER OPERATIONS CENTER
Architect Engineer Project No. 2003-035

The Undersigned, having received and examined the Project Manual and the Drawings for the above-referenced Project proposes to furnish all labor, materials, equipment, supervision and all associated and related items required for the Work, as required by and in strict accordance with the above-named documents for the following sum:

1.1 BASE PROPOSAL

Bidder agrees to perform all of the Work necessary to complete the Total Project as described in the Project Manual and indicated on the Drawings for the sum of:

Three Million Four Hundred Ninety Eight Thousand Nine Hundred Ninety Nine $3,498,999.00

(Amount shall be indicated in both words and figures. In case of discrepancy, the amount indicated in words shall govern.)

In conformance with Arkansas Act 291 of 1993 (Arkansas Statutes § 22-9-212 et seq.) included in the above base proposal is the following line item amount (exclusive of prime bidder's overhead and profit which is in the base bid) for the costs of compliance with requirements of OSHA "Standard for Excavation and Trenches Safety System, 29 CFR 1926, Subpart P:"

Two Hundred Fifty Dollars $ 250.00

(If trenching and excavation is not required indicate the amount of $1.00.)

1.2 ALTERNATE PROPOSALS

Bidder agrees to perform all of the Work necessary to complete the Alternate(s) as described in the Project Manual and indicated on the Drawings for the following amount(s).

Bidder understands that the Owner reserves the right to accept or reject Alternate Proposals. Alternates, if accepted, will be taken in reverse order as listed.

ALTERNATE No. 1; COMPLETE FIRE ALARM SYSTEM:
DEDUCT: $ 12,200.00

ALTERNATE No. 2; PIPE RACK:
DEDUCT: Forty Six Thousand $ 46,000.00

1.3 UNIT PRICES

The Undersigned agrees that the following UNIT PRICES shall govern changes in the Work, whether they be ADDITIONS or DEDUCTIONS to the Contract Sum required during the course of the Work. Unit Prices shall be the same for Additions or Deductions. All Unit Prices shall be total installed costs including overhead, profit, geotechnical engineering and all other necessary costs. Proposing separate add and deduct unit prices shall subject this Bid Proposal to being rejected as "non-responsive."

ITEM & UNIT OF MEASURE	ADDITION or DEDUCTION (Enter one price only)
A. GENERAL EXCAVATION:	
1. UNDERCUTTING:	
a. Unsuitable material below finished subgrade removed and backfilled with specified fill material per cu. yd. in place.	$ 13.00
b. Unsuitable material below the bottom of footing elevations indicated on the Drawings; removed and backfilled with specified material per cu. yd. in place.	$ 20.00

2. UNDERCUTTING ALLOWANCE: The Contractor shall include in the base bid contract amount an allowance for undercutting of existing unsuitable material and replacement with suitable fill material at the above contract unit price for following:

(Use the same unit prices indicated above in the following allowances to the base bid contract amount.)

a. **Undercutting below finished subgrade.**
3,000 CY at the unit price indicated in paragraph 1.3A.1.a above = $ 39,000

b. **Undercutting below bottom of footing elevations.**
30 CY at the unit price indicated in paragraph 1.3A.1.b above = $ 600

~~1.3~~1.4 ADDENDA

The Undersigned has received and examined the following addenda numbered 1 (2/5/04) 2 (2/6/04), and has incorporated the provisions in this Bid.

~~1.4~~1.5 FURTHER CONDITIONS

The Undersigned, by submitting this Bid, further agrees:

A. That this Bid shall be valid and may not be withdrawn within 30 days after the scheduled closing time for receiving bids.

B. To accept the provisions of the "INSTRUCTIONS TO BIDDERS."

C. To enter into and execute a Contract, if awarded on the basis of this Proposal, and to furnish the Performance Bond and Labor and Material Payment Bond in accordance with the General Conditions of the Contract.

D. THE CONTRACTOR shall ensure that the CITY OF FAYETTEVILLE receives lien waivers from all subcontractors, sub-subcontractors and material suppliers before WORK begins on the PROJECT. THE CONTRACTOR shall give WRITTEN NOTICE to the subcontractors, sub-subcontractors and material suppliers providing WORK on the PROJECT that states the following: "According to Arkansas law, it is understood that no liens can be filed against public property if valid and enforceable payment and performance bond is in place. regarding this Project and agreement, the valid and enforceable bonds are with ____(name of surety) Westfield Insurance Co. ." The CONTRACTOR shall have each subcontractor, sub-subcontractor and material supplier execute a written receipt evidencing acknowledgement of this statement.

E. To accomplish the Work in accordance with the Contract Documents, of which this Proposal is made a part.

F. To allow any Federal, State or Local inspector, acting in their official capacity, access to the project site.

G. That Bidder has included all costs for complying with requirements for paying prevailing wages as determined by Arkansas Department of Labor and for compliance with Arkansas Code Section 22-9-301 et seq.

H. Upon receipt of a Notice to Proceed to perform the designated Work expeditiously and with adequate forces to completion within 365 calendar days, including anticipated weather delay days.

I. That the Owner will suffer financial damage if the Project is not Substantially Complete on the date mutually agreed upon as set forth in the Contract Documents. The Undersigned shall pay to the Owner the sum indicted below as mutually agreed upon fixed, agreed, and liquidated damages:

$ 179.00 per calendar day for each day of delay until the Work is Substantially Complete.

J. To coordinate and schedule all Work with Owner.

K. That it is understood that the Owner may reject any or all bids and waive any informalities or irregularities.

1.51.6 SUBCONTRACTORS

In accordance with Arkansas Code, §§ 22-9-204, et seq, of the State of Arkansas, I (We) submit the names of the following subcontractors, we propose to use, and their State Contractor License Nos.

	Name	No.
A.	MECHANICAL WORK - HVAC (indicative of heating, air conditioning, and ventilating)	
	Johnson	0004651004
B.	PLUMBING WORK	
	Johnson	
C.	ELECTRICAL WORK	
	Marro	014590204
D	ROOFING WORK	
	Marinoni	0033500904

(Include Prime Bidder's name and license number if Prime Bidder is doing this work itself and the Prime Bidder's contractor license is qualified for this specialty.)

1.61.7 ATTACHMENTS

Enclosed with this bid proposal are the following: *(Mark all that apply.)*

[x] Bid Security

[x] Power of Attorney for bid bond for the bid security.

Respectfully submitted:

Bidder: JOHN P. MARINONI CONSTRUCTION COMPANY, INC.

By: John P. Marinoni Date: 2/10/2004
John P. Marinoni

Title: C.E.O.

Business Address: 1142 N. Futrall Dr.
Fayetteville, Ar. 72703

Telephone Number: (479) 442-8049

(SEAL)
(If Bid is by)
(a Corporation)

END OF DOCUMENT

B·H·C

Broom • Hiller • Clark & Associates

5500 Super Lane, Fort Smith, AR 72903 (501) 452-4000

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, **John P. Marinoni Construction Company, Inc.**
1142 North Futrall Drive
Fayetteville, AR 72703-1101

, as Principal, (hereinafter called the "Principal"),

and the **Westfield Insurance Company**
P. O. Box 5001
Westfield Center, Ohio 44251-5001

, a corporation

duly organized under the laws of the State of **Ohio** , as Surety, (hereinafter called the "Surety"), are held and firmly bound unto **City of Fayetteville, P.O. Box F, Fayetteville, AR 72701**

as Obligee, (hereinafter called the "Obligee"), in the sum of **FIVE PERCENT (5%) TOTAL AMOUNT BID**_____ Dollars ($ (5%)), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for **City of Fayetteville Water & Sewer Operations Center, in accordance with plans and specifications prepared by Cromwell Architects & Engineers.**

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a contract with the Obligee in accordance with the terms of such bid and give such bond or bonds as may be specified in the bidding or contract documents with good and sufficient surety for the faithful performance of such contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter into such contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this **10th** day of **February** A.D., **2004**.

John P. Marinoni Construction Company, Inc.
Principal
(SEAL)

Betty J. Marinoni
Witness

By John P. Marinoni
Title

Becky Tipton
Witness

Westfield Insurance Company
Surety

By Scott R. Clark
Scott R. Clark, Attorney-in-Fact

(SEAL)

Conforms to American Institute of Architects Document A-310,
February 1970 Edition

WESTFIELD
INSURANCE
A member of Westfield Group℠

RIDER

Policyholder and/or Bondholder Disclosure:
NOTICE OF TERRORISM INSURANCE COVERAGE

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act of 2002 (the "Act"). The Act became effective immediately and establishes a temporary Federal program that provides for a system of shared public and private compensation for an "insured loss" resulting from certified acts of foreign "terrorism", as defined under the Act. The Act further requires that all in-force exclusions for acts of terrorism, as defined in the Act, already contained in a policy/bond or included as an endorsement in a policy/bond, become nullified as of November 26, 2002.

Coverage for acts of terrorism is included in your current policy/bond and/or in any policy/bond quoted for you. You should know that, effective November 26, 2002, under your existing coverage, any losses caused by certified acts of terrorism would be partially reimbursed by the United States under a formula established by federal law. Under this formula, the United States pays 90% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage.

The actual coverage provided by your policy/bond for acts of terrorism, as is true for all coverages, is limited by the terms, conditions, exclusions, limits, other provisions of your policy/bond, any endorsements to the policy/bond and generally applicable rules of law.

During your current policy/bond period, the portion of your premium that is attributable to coverage for acts of terrorism is $0.00. If it becomes necessary to include a premium for terrorism coverage in a future renewal of your policy/bond, you will receive notification of that premium through a separate line in your policy/bond.

Should you have any question regarding this notice, please contact your insurance agent.

One Park Circle • P.O. Box 5001 • Westfield Center, OH 44251-5001 • 1.800.243.0210 • fax 330.887.0840 • www.westfieldgrp.com

THIS POWER OF ATTORNEY SUPERCEDES ANY PREVIOUS POWER BEARING THIS SAME POWER # AND ISSUED PRIOR TO 09/29/03, FOR ANY PERSON OR PERSONS NAMED BELOW.

POWER NO. 0320052 04

General Power of Attorney

CERTIFIED COPY

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.

Westfield Center, Ohio

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint

SAM B. HILLER, LARRY R. CLARK, THOMAS L. COOLEY, JANICE A. BUTLER, SCOTT R. CLARK, MARTY C. CLARK, VICCI L. HILLER, SHANNON C. SCHMIDLY, BECKY S. TIPTON, JOINTLY OR SEVERALLY

of **FORT SMITH** and State of **AR** its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship- - - -

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department: Water & Wastewater Division: Water & Sewer Maintenance Program: Capital Water Mains	Date Requested	Adjustment Number
2004		3/2/2004	

Project or Item Requested:
$128,235 is requested in the Water & Wastewater Operations Center.

Project or Item Deleted:
None. $128,235 from the Water & Sewer Use of Fund Balance account.

Justification of this Increase:
The increased funded is needed for the construction contract with Marinoni Construction, Inc.

Justification of this Decrease:
There is sufficient funding available to comply with City policy.

Increase Budget (Decrease Revenue)

Account Name	Account Number				Amount	Project Number	
Building costs	5400	5600	5804	00	128,235	98076	1

Decrease Budget (Increase Revenue)

Account Name	Account Number				Amount	Project Number	
Use of fund balance	5400	0940	4999	99	128,235		

Approval Signatures

Requested By	Date
Budget Manager	2-19-04 Date
Department Director	2-17-04 Date
Finance & Internal Services Director	2-19-04 Date
Mayor	Date

Budget Office Use Only

Type: A B C D E

	Initial	Date
Date of Approval		
Posted to General Ledger		
Posted to Project Accounting		
Entered in Category Log		

WATER AND WASTEWATER OPERATIONS CENTER

Proposed Project Budget
March 2004

COST CATEGORY		REQUESTED FUNDS
Low Base Bid	$3,498,999.00	
Deductive Alt. No. 1	(10,200.00)	
Deductive Alt. No. 2	(46,000.00)	
Undercut Allowance	(39,600.00)	
Base Contract Award Value		**$3,403,199.00**
Construction Contingency (5%)		**170,159.00**
Telecommunications Wiring and Devices		**25,000.00**
Demolition of Abandoned Structures		**30,000.00**
TOTAL PROJECT CONSTRUCTION BUDGET		**$3,628,358.00**

TOTAL PROJECT COSTS	**$3,628,358.00**
2004 BUDGETED FUNDS	**$3,500,123.00**
BUDGET ADJUSTMENT	**$ 128,235.00***

***BUDGET ADJUSTMENT TO TRANSFER FUNDS FROM WATER/SEWER FUND'S ACCOUNT BALANCE (RETAINED EARNINGS)**

BID TABULATION
City of Fayetteville
Water and Sewer Operations Center
Fayetteville, AR

Bid Opening: 2:00pm 10-February 2004
Location: City Hall, Room 326, Fayetteville, AR

Architect Engineer Proj. No: 2003-035

CROMWELL ARCHITECTS ENGINEERS
7 North Block Avenue
Fayetteville, Arkansas 72701

Certified by: Thad Kelly A.I.A.
Date: 12 FEB 2004

	Marinoni Construction	EWI Constructors	Cordova Constructors	Crossland Construction	Branco Enterprises	Oakridge Builders	Lillich Bossier	Goodwin & Goodwin
Contractor License No.	0033500404	0022980404		0019621104	0028640404	0006960904	0085610404	
			NO BID					NO BID
A. Base Proposal	3,498,999.00	3,772,300.00		3,645,000.00	4,065,000.00	3,815,000.00	3,660,000.00	
Standard for OSHA trench safety	250.00	1,800.00		1,500.00	1,000.00	500.00	3,000.00	
Alternate Proposals								
Alt. No. 1 Complete Fire Alarm System	10,200.00	14,800.00		13,000.00	15,000.00	15,300.00	11,000.00	
Alt. No. 2 Pipe Rack	46,000.00	28,300.00		42,000.00	40,000.00	11,500.00	44,000.00	
Unit Prices:								
1. Undercutting:								
a. Below finished subgrade	13.00	10.50		10.90	11.50	10.45	13.20	
b. Below bottom of footing elevations	20.00	10.50		15.00	25.00	50.00	18.00	
2. Undercutting Allowance:								
a. Undercut below fin. Subgrade 3,000 CY at the unit price above	39,000.00	31,500.00		10.90	11.50	31,350.00	39,600.00	
b. Undercut below bottom of footings 30 CY at unit price above	600.00	315.00		15.00	25.00	1,500.00	540.00	
Addenda 1, 2	1 & 2	1 & 2		1 & 2	1 & 2	1 & 2	1 & 2	
Subcontractors:								
A. Mechanical Work - HVACR	Johnson	Johnson		NABCO	Amer. Air	Johnson	NABCO	
License number	0004651004	0004651004		0025860404	012660304	0004651004	0025860404	
B. Mechanical Work - Plumbing	Johnson	Johnson		NABCO	Multi	Johnson	NABCO	
License number	0004651004	0004651004		0025860404	0025810304	0004651004	0025860404	
C. Electrical Work	Marrs	Marrs		Broadway	Marrs	Marrs	Broadway	
License number	014390204	014390204		0144130305	014390204	014390204	0144130305	
D. Roofing Work	Marinoni	EWI		Crossland	Advance	Oakridge	Whitshire	
License number	0033500404	0022980404		0019621104	0141440804	0006960904	00850404	
Bid Security	5% Bid Bond	5% Bid Bond		5% Bid Bond	5% Bid Bond	5% Bid Bond	5% Bid Bond	

RESOLUTION NO. _____

A RESOLUTION TO APPROVE THE CONSTRUCTION CONTRACT FOR THE NEW WATER AND SEWER OPERATIONS CENTER WITH MARINONI CONSTRUCTION, INC. IN THE AMOUNT OF $3,403,199.00, PLUS A CONTINGENCY OF $225,159.00 AND A BUDGET ADJUSTMENT OF $128,235.00

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 a construction contract for the low bidder, Marinoni Construction, Inc. to build the new Water and Sewer Operations Center in the amount of $3,403,199.00, plus a contingency amount of $225,159.00.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment of $128,235.00 as required for this project.

PASSED and **APPROVED** this the 2nd day of March, 2004.

APPROVED:

By: _____ DRAFT
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

C. 9.
VAC 04-01.00
Michael Campbell
3/2/04

City Council Meeting of March 2, 2004
Agenda Item Number

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

Date: February 25, 2004

Subject: Easement Vacation for Michael Campbell (VAC 04-01.00)

RECOMMENDATION

Planning Staff recommends approval of an ordinance vacating a portion of an existing utility easement crossing the subject property, located at 4843 Lavendon Place. A portion of a home was inadvertently constructed encroaching into the easement.

BACKGROUND

The utility easement vacation request stems from a single family home that was originally permitted from inadequate site plans. The site plans submitted for building permits did not show the easement in question, and the building was constructed over the recorded sanitary sewer easement. Once the encroachment into the utility easement was discovered, the proper application and notification forms to utility companies and the City were submitted to request vacation of said easement. While the building encroaches the utility easement, no structure was built over the sewer line itself.

DISCUSSION

Notification was provided to all utility representatives and adjoining property owners. No objections were reported regarding this requested easement vacation. This item was tabled at the February 9, 2004 Planning Commission meeting and was heard at their regular meeting on February 23, 2004. Planning Commission voted 8-0-0 to forward this vacation request to the City Council with a recommendation for approval.

Since the Planning Commission meeting on February 23, 2004, staff has continued to work with the property owner to resolve this problem. The attached report contains a modified condition of approval suggested by the Water & Wastewater Director which is more specific than the condition approved by the Planning Commission. The condition will provide for a $9,000.00 contribution to offset costs when the City needs to relocate the sewer line in the future and will also provide assurances that the City will be released from any damages which may be caused by line failures in the area of the easement which is proposed to be vacated.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE APPROVING VAC 04-01.00 TO VACATE AND ABANDON A PORTION OF THE WATER AND SEWER EASEMENT LOCATED AT 4843 LAVENDON PLACE AS DESCRIBED ON THE ATTACHED MAP AND LEGAL DESCRIPTION.

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

WHEREAS, the City Council has determined that the following described utility easement is not required for corporate purposes.

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

Section 1. That the City of Fayetteville, Arkansas hereby vacates and abandons all of its rights together with the rights of the public generally, in and to the following described water and sewer utility easement:

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

Section 2. That a copy of this Ordinance duly certified by the City Clerk along with the map attached hereto and labeled Exhibit "B" shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County when the conditions of this easement vacation have been met.

PASSED AND APPROVED this _____ day of _____, 2004.

APPROVED:

By_____ DRAFT
Dan Coody, Mayor

ATTEST:

By_____
Sondra Smith, City Clerk

EXHIBIT "A"
VAC 04-01.00

ALL THAT CERTAIN TRACT OF PARCEL OF LAND BEING A PART OF LOT 15 OF STONEWOOD SUBDIVISION TO THE CITY OF FAYETTEVILLE, AND BEING MORE PARTICULALY DESCRIBED BY METES AND BOUNDS, AS FOLLOWS: COMMENCING AT A ½ INCH I PIN FOUND FOR THE NE CORNER OF LOT 15 OF STONEWOOD SUBDIVISION TO THE CITY OF FAYETTEVILLE; THENCE SOUTH 89°40'40" WEST FOR A DISTANCE OF 26.70 FEET WITH THE NORTH BOUNDARY LINE OF SAID LOT 15 TO THE WEST LINE OF AN EXISTING UTILITY EASEMENT; THENCE SOUTH 06°29'17" WEST FOR A DISTANCE OF 36.03 FEET WITH SAID WEST LINE TO THE POINT OF INTERSECTION OF THE EAVE OF AN EXISTING HOUSE FOR THE POINT OF BEGINNING; THENCE WITH SAID EAVE THROUGH THE FOLLOWING CALLS: THENCE NORTH 88°52'20" EAST FOR A DISTANCE OF 4.61 FEET; THENCE SOUTH 00°16'07" EAST FOR A DISTANCE OF 28.62 FEET; THENCE SOUTH 88°52'20" WEST FOR A DISTANCE OF 8.01 FEET TO THE ABOVE MENTIONED WEST LINE OF THE UTILITY EASEMENT; THENCE NORTH 06°29'17" FOR A DISTANCE OF 28.87 FEET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED PROPERTY CONTAINING 180.58 SQUARE FEET, MORE OR LESS.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of February 09, 2004

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

PLANNING DIVISION CORRESPONDENCE

TO:	**Fayetteville Planning Commission Members**
THRU:	**Dawn Warrick, AICP. Zoning & Development Administrator**
FROM:	**Jeremy Pate, Associate Planner**
	Matt Casey P.E. Staff Engineer
DATE:	~~**February 9, 2004**~~ ***Updated February 25, 2004***

VAC 04-01.00: Vacation (Michael Campbell, pp 60) was submitted by the City of Fayetteville on behalf of Michael and Nandra Campbell for property located at 4843 Lavendon Place. The property is zoned RSF-4, Residential Single-family, 4 units per acre. The request is to vacate a portion of the water and sewer easement located on the property. Planner: Jeremy Pate

Findings: See the attached maps and legal descriptions for the exact locations of the requested utility easement vacation.

Background: The utility easement vacation request stems from a single family home that was originally permitted from inadequate site plans. The site plans submitted for building permits did not show the easement in question, and the building was constructed over the recorded sanitary sewer easement. Once the encroachment into the utility easement was discovered, the proper application and notification forms to utility companies and the City were submitted to request vacation of said easement. Staff is actively working with the applicant, researching the best means to resolve the subject utility encroachment. Prior to filing of the vacation ordinance, the method of resolution shall be determined and completed.

No objections from the adjacent property owners have been submitted to the City.

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

UTILITIES	RESPONSE
Ozarks Electric	N/A
AEP/SWEPCO	No Objections
Arkansas Western Gas	No Objections
SW Bell	No Objections.

Cox Communications	No Objections.
City of Fayetteville:	
Water/Sewer	No Objections – See conditions of approval
Transportation	No Objections
Solid Waste	No Objections
Engineering	No objections

Recommendation: Approval of the proposed utility easement vacation 04-01.00 subject to the following conditions.

Conditions of Approval:

1. ~~The method of relocation/encasement, etc. of the sanitary sewer main shall be determined and completed prior to vacating this portion of the easement.~~
1. ***Payment of $9,000.00 which represents estimated construction costs to relocate the sewer line when necessary and a release (filed of record with the Circuit Clerk) issued to the City of Fayetteville for any damage caused to the structure from any sewer line failures within the vacated area.***

PLANNING COMMISSION ACTION: **__yes__ Required**
___X___ Approved _____ Denied

Date: February 23, 2004

CITY COUNCIL ACTION: **__yes___ Required**
_____ Approved _____ Denied

Date: __/ /_____

Hoover: Welcome to the February 23rd Planning Commission meeting. Renee, would you call the roll please?

Roll Call: Upon the completion of roll call there were eight Commissioners present with Commissioner Ostner being absent.

Hoover: Can I have a motion for approval of the minutes of the February 9th meeting?

Shackelford: So moved.

Bunch: Second.

Hoover: Renee, cal the roll please.

Roll Call: Upon the completion of roll call the motion to approve the minutes of the February 9, 2004 meeting was approved by a vote of 8-0-0.

Thomas: The motion carries eight to zero.

VAC 04-01.00: Vacation (Michael Campbell, pp 60) was submitted by the City of Fayetteville on behalf of Michael and Nandra Campbell for property located at 4843 Lavendon Place. The property is zoned RSF-4, Residential Single-family, 4 units per acre. The request is to vacate a portion of the water and sewer easement located on the property.

Hoover: Two items have been tabled by the applicant, items number two and three, the Conditional Uses for Wal-Mart at Mall Avenue and Hwy. 62 so if you are here to speak about those, they remain tabled by the applicant until further notice. Onto item number one, VAC 04-01.00. Jeremy?

Pate: Thank you Madam Chair. This property is located at 4843 Lavendon Place. The applicant is requesting to vacate a portion of a utility easement. There was a structure built over this utility easement without the owner knowing and once that encroachment was discovered the proper application and notification forms have been filled out and submitted to the city. There are no objections from any of the utilty companies, nor the city. Staff has been actively working with the applicant determining the most feasible means to either relocate or encase the sanitary sewer line that is in this location. That is the condition of approval. Staff is recommending to forward this onto the City Council with the condition of approval that the method of relocation, encasement, etc., of the sanitary sewer main shall be determined by city staff and completed prior to vacating this portion of the easement.

Hoover: Would the applicant come forward and explain why you need this Vacation?

Campbell: Good evening, my name is Michael Campbell, I'm the owner of this property on Lavendon. We purchased this property and built the house on it and at the end of the time the property was completed we found out that there was an encroachment to the easement that did not appear on the plat that we were given when we bought the property. We brought this to the city's attention at the first of December and have been working with them since then to try to come up with a resolution.

Hoover: At this time we will open it up to public comment. Is there anyone that would like to address this VAC 04-01.00 at 4843 Lavendon Place? Seeing none, I will bring it back to the Commission.

Williams: I can say that I've had meetings with Mr. Campbell and his attorney and Engineering staff for the city trying to work on this. This Vacation certainly needs to be done although the resolution to this problem has not been determined yet. It is a difficult and expensive problem. Once that problem is resolved this Vacation needs to be approved so that Mr. Campbell will be able to sell this property.

Hoover: Are there any Commissioner comments?

MOTION:

Allen: I move for approval of VAC 04-01.00.

Church: I will second it.

Hoover: There is a motion by Commissioner Allen and a second by Commissioner Church, is there anymore discussion?

Bunch: Are we approving this at this level or are we forwarding it to the City Council with a recommendation?

Hoover: We are forwarding it.

Allen: I move that we forward this to the City Council.

Church: And I second it.

Hoover: Is there any other discussion? Renee?

Roll Call: Upon the completion of roll call the motion to forward VAC 04-01.00 to the City Council was approved by a vote of 8-0-0.

SBC ARKANSAS

CONCURRENCE TO VACATE A PORTION OF A DEDICATED EASEMENT

BE IT KNOWN BY THESE PRESENTS that Southwestern Bell Telephone LP, a Texas limited partnership, d.b.a. SBC Arkansas, hereby concurs in the closing a portion of the following dedicated utility easement located in Washington County, Arkansas, to-wit:

All that certain tract or parcel of land being a part of Lot 15 of Stonewood Subdivison to the City of Fayetteville, and being more particularly described by metes and bounds, as follows: Commencing at a 1/2-inch I pin found for the NE Corner of Lot 15 of Stonewood Subdivison to the City of Fayetteville; thence South 89°40'40" West for a distance of 26.70 feet with the north boundary line of said Lot 15 to the west line of an existing utility easement; thence south 06°29'17" West for a distance of 36.03 feet with said west line to the point of intersection of the eave of an existing house for the POINT OF BEGINNING; thence with said eave through the followings calls: thence North 88°52'20" East for a distance of 4.61 feet; thence South 00°16'07" East for a distance of 28.62 feet; thence South 88°52'20" West for a distance of 8.01 feet to the above mentioned west line of the utility easement; thence North 06°29'17" for a distance of 28.87 feet to the POINT OF BEGINNING. The above described property containing 180.58 square feet, more or less.

Signed and executed this 2nd day of February, 2004.

By: F. Jean Davis
Director-Engineering/Construction

RECEIVED
FEB 0 - 2004
PLANNING DIV.

CORPORATE ACKNOWLEDGMENT

STATE OF ARKANSAS
COUNTY OF FAULKNER

On this the 2nd day of February, 2004, before me, the undersigned authority, duly commissioned and qualified in and for the state and county set forth above, personally came and appeared F. Jean Davis, who, after being duly sworn, declared that he is the Director-Engineering/Construction for Southwestern Bell Telephone LP, a Texas limited partnership, d.b.a. SBC Arkansas, and that he executed the foregoing instrument as the act and deed of said company of his own free will and for the purposes and considerations therein expressed and with due authority.

In witness whereof I hereunto set my hand and official seal.

LYNDA E. SOMMERFELDT PALMER
COMM. EXP. 10
NOTARY PUBLIC
FAULKNER COUNTY, AR

Instrument prepared by SBC
1111 W. Capitol, Room 941
Little Rock, AR 72201 (501-373-5255)

Lynda E. Sommerfeldt Palmer
Notary Public
My commission expires August 10, 2011

SBC Southwestern Bell

Lynda Palmer
Manager-Engineering (ROW)
Right-of-Way

SBC Southwestern Bell
Telephone Company
1111 W. Capitol Avenue
Room 985
Little Rock, AR 72201

501.373.5255 Phone
501.373.4634 Fax
ls7770@sbc.com

Febuuary 4, 2004

Jan Gambill, Sr.
City of Fayetteville
125 W. Mountain
Fayetteville, AR 72701

Dear Mr. Gambill:

RE: Easement closure: Lavedon Place

Please find enclosed SBC Southwestern Bell Telephone's concurrence in your request to relinquish our interest in the above referenced area.

This concurrence must be recorded at the Washington County Courthouse in the Circuit Clerk's office to be complete and legal. I would appreciate you returning a copy of the document to me at the above address for my files.

If you have any questions or comments, please call me at 501-373-5255.

Sincerely,

Lynda Palmer

attachments

RECEIVED
FEB 0 6 2004
PLANNING DIV.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of February 09, 2004

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

PLANNING DIVISION CORRESPONDENCE

TO:	**Fayetteville Planning Commission Members**
THRU:	**Dawn Warrick, AICP. Zoning & Development Administrator**
FROM:	**Jeremy Pate, Associate Planner**
	Matt Casey P.E. Staff Engineer
DATE:	**February 9, 2004**

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Background: The utility easement vacation request stems from a single family home that was originally permitted from inadequate site plans. The site plans submitted for building permits did not show the easement in question, and the building was constructed over the recorded sanitary sewer easement. Once the encroachment into the utility easement was discovered, the proper application and notification forms to utility companies and the City were submitted to request vacation of said easement. It is the homeowner's responsibility to relocate the sanitary sewer line prior to filing of the vacation ordinance.

No objections from the adjacent property owners have been submitted to the City.

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

UTILITIES	RESPONSE
Ozarks Electric	N/A
AEP/SWEPCO	No Objections
Arkansas Western Gas	No Objections
SW Bell	No Objections.
Cox Communications	No Objections.

City of Fayetteville:

Water/Sewer	No Objections – See conditions of approval
Transportation	No Objections
Solid Waste	No Objections
Engineering	No objections

Recommendation: Approval of the proposed utility easement vacation 04-01.00 subject to the following conditions.

Conditions of Approval:

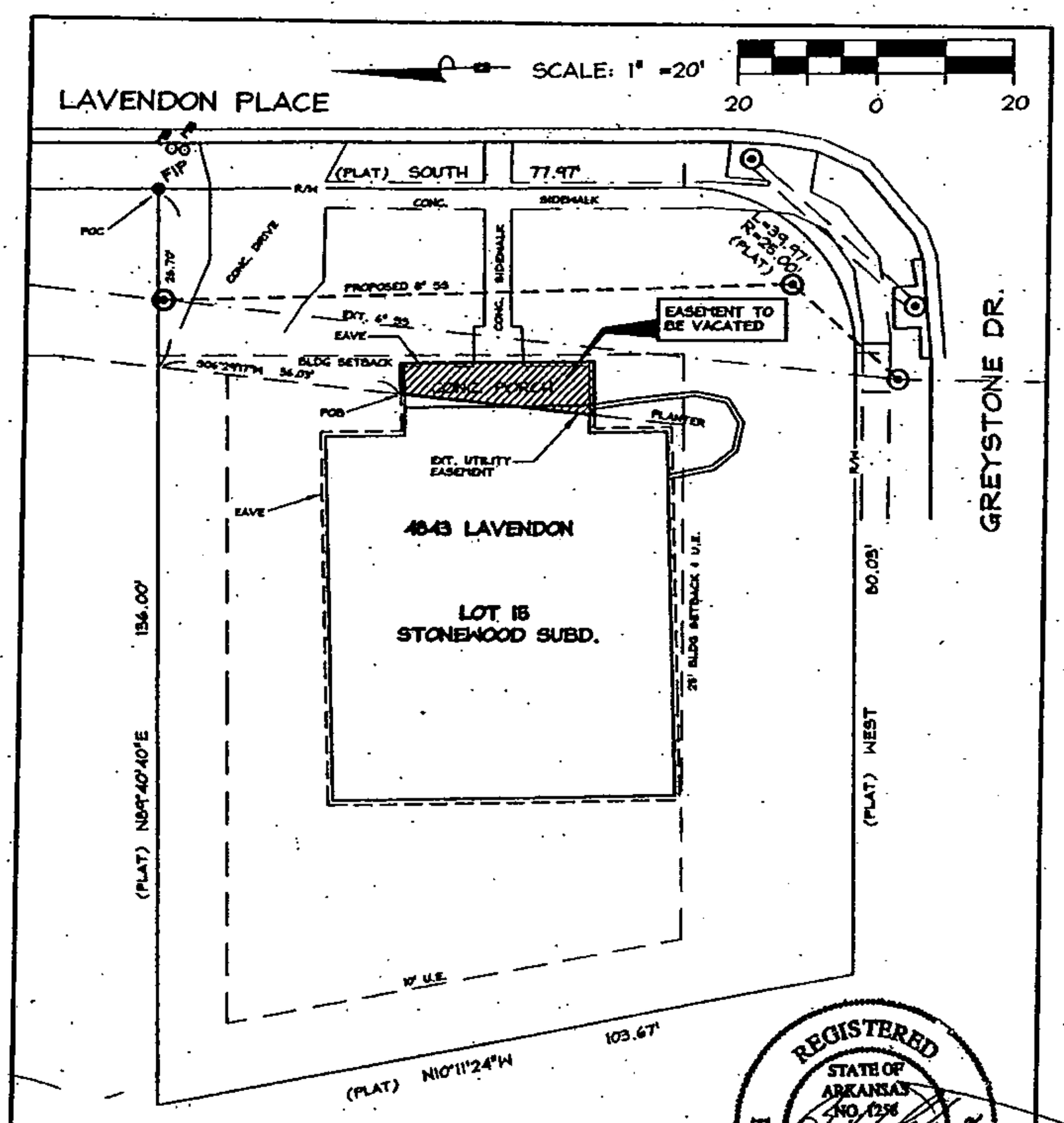
1. The sanitary sewer main shall be relocated prior to vacating this portion of the easement.

PLANNING COMMISSION ACTION: __yes__**Required**
_____**Approved** _____**Denied**

Date: _____

CITY COUNCIL ACTION: __yes__**Required**
_____**Approved** _____**Denied**

Date: __/__/____



PROPERTY DESCRIPTION
LOT FIFTEEN [15] OF
STONEWOOD SUBDIVISION.

LEGAL DESCRIPTION FOR PARTIAL VACATION OF UTILITY EASEMENT

All that certain tract or parcel of land being a part of Lot 15 of Stonewood Subdivision to the City of Fayetteville. And being more particularly described by metes and bounds as follows:

COMMENCING at a ½" I.Pin found for the NE Corner of Lot 15 of Stonewood Subdivision to the City of Fayetteville;
THENCE - South 89° 40' 40" West for a distance of 26.70 feet with the north boundary line of said Lot 15 to the west line of an existing utility easement;
THENCE - South 06° 29' 17" West for a distance of 36.03 feet with said west line to the point of intersection of the eave of an existing house for the POINT OF BEGINNING;

THENCE - with said eave through the following calls:
THENCE - North 88° 52' 20" East for a distance of 4.61 feet;
THENCE - South 00° 16' 07" East for a distance of 28.62 feet;
THENCE - South 88° 52' 20" West for a distance of 8.01 feet to the above mentioned west line of the utility easement;
THENCE - North 06° 29' 17" East for a distance of 28.87 feet to the POINT OF BEGINNING. The above described property having been surveyed by Bart L. Petray contains 180.58 square feet of land more or less.

DATE: DECEMBER, 23, 2003

Copy — 504te — LaDawonya

BUILDING PERMIT APPLICATION

City of Fayetteville Building Safety Division
113 West Mountain Street
Fayetteville, AR 72701
Phone: 479-575-8233 Fax: 479-575-8316

Office Use Only — Review Routing & Approval			
DIVISION	COPY TO:	/S/ = OK	APPROVAL DATE
Planning			
Engineering			
Landscape			
SW/Trails			
Solid Waste			
Fire			
Inspections		/S/	5-28-03

Date Submitted: May 27, 2003 Permit #: 3703

SITE ADDRESS: 4843 ~~Greystone~~ Lawndale Place
Zone: ____ Lot: 15 Block: ____ Subdivision: Stonewood
Sec-Twn-Rng: ____ Plat: ____ Par #: ____

Owner: Michael Campbell	Mailing Address: 2943 Shadow Crest Spg	Zip: 72762	Phone: 479-750-0272
Architect/Engineer: CADesign	Mailing Address: 2049 Reed Avenue Spg	Zip: 72764	Phone: 479-576-2738
Contractor: Ted Morrison	Mailing Address: 2621 Willow Bend Spg	Zip: 72762	Phone: 479-750-4488
Review Contact: Ted Morrison	Phone:	Fax: 530-3447	Cell:

State Contractor's License Number: ____ Expires: ____
Number of Residential Permits Applied for in the State of Arkansas this year? ____ Residential: ____

Work: ✓ NEW ____ ADDITION ____ ALTERATION ____ REPAIR ____ MOVING ____ DEMOLITION
____ FOOTING ONLY ____ EXTERIOR ONLY ____ TENANT FINISH ____ DESIGN/BUILD ____ OTHER ____
Residential: ✓ Single Family ____ Multifamily, Condos (No. of units: ____) Townhouse w/zero lot line ____ Other ____

Valuation of Work		Building Information			
Building:	$ 180,000.00	# of Stories:	2	Sum Total Area	3284 sq. ft
Electrical:	$ 4200.00	Height:	27'	Total Heated/Cooled:	2782 sq. ft
Plumbing:	$ 8525.00	Length:	61'	Total Unheated:	502 sq. ft
Mechanical:	$ 4750.00	Width:	50'	Add./Alt. Area:	N/A sq. ft
Misc.:	$	Slab Floor:	✓ Y ____ N	Basement:	N/A sq. ft.
Total:	$ 197,475.00	Structure: Wood ✓ Metal ____ Masonry ____ Foam Form ____ Other ____			

Building will comply with Arkansas Energy Code Requirements (Yes/NA): YES Wall Insulation Type: Batt X Cellulose ____
Is a retaining wall to be constructed? (Yes/No): NO Engineering Approval: ____
Is slope of site greater than 15%? (Yes/No): NO Engineering Approval: ____
Flood Plain?(Yes/No): NO :Base Flood Elevation: N/A :Lowest Finished Floor: N/A Planning Approval: ____
Public Sewer: ✓ Y ____ N AR. Plbg. Approval #: ____ Washington Co. Septic Approval #: N/A

DESCRIPTION OF WORK: Construct new single family residence.

Use of Building: Single Family Previous Use: N/A

OFFICE USE FOR PLAN REVIEWERS ONLY:

Construction Type: ____ Occupancy Group: ____
Max. Occupancy Load: ____ Fire Zone: ____
Protection (hours): ____ Sprinklered: Y: ____ N: ____

NOTICE

SEPARATE PERMITS ARE REQUIRED FOR ELECTRICAL, PLUMBING, GAS, MECHANICAL, AND SIGNS.
THIS PERMIT BECOMES NULL AND VOID IF WORK/CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 6 MONTHS, OR IF WORK/CONSTRUCTION IS SUSPENDED OR ABANDONED FOR A PERIOD OF 6 MONTHS.

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of law and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

Michael T. Campbell — 5-27-03
Signature of Owner/Contractor/ Authorized Agent (Date)

Note: Inspection of permitted work may reveal code violations not discovered during plan review.

The following section of the Grading and Excavation Ordinance applies to all construction within the City of Fayetteville. Questions on compliance should be directed to the City Engineer=s office at 575-8206 (125 W. Mountain Street).

161.04 MINIMAL EROSION CONTROL REQUIREMENTS

(A) The potential for soil loss shall be minimized by retaining natural vegetation wherever possible.

(B) All graded and otherwise disturbed areas shall be stabilized within 15 days after each state of final grade is established. Stabilization methods such as baled straw, filter fabric, ditch checks, diversion ditches, brush barriers, sediment basins, matting, mulches, grasses, and ground cover shall be used.

(C) No intermittent or perennial stream, including a 25 foot perimeter strip measured from the top of the bank, shall be graded, developed, channeled or physically altered unless adequate guarantees are made for erosion and sedimentation control. Likewise, cuts or fills shall be set back sufficiently for intermittent and perennial streams and other storm water drainage systems to guarantee that there will be no damage from erosion or sedimentation.

(D) Excavation material shall not be deposited in or so near streams and other storm water drainage systems that it may be washed downstream by high water or runoff.

(E) Fording of streams with construction equipment or other activities which destabilize stream banks shall not be permitted. (Ord. 3551, passed 6-4-91)

(F) Any debris, soil or mud from development sites reaching a public street shall be immediately removed. Failure to immediately remove debris, soil or mud from a public street may result in thwe issuance of a stop work order by the Mayor or his/her designated representative. The stop work order shall in full force and effect until the street is restored and adequate menaures are in place to insure that the streets will remain clear.

Failure to immediately remove debris, soil or mud from public streets may result in the City performing such clean-up operations. In this event all cost, including labor, equipment, and materials shall be billed to the property owner who is subject to the requirements of Chapter 161; Physical Alteration of Land. (Ord. 3947, passed 2-6-95)

As a condition of this Building Permit Application, I agree to the requirements or Section 161.04 requiring minimal erosion control procedures as set forth above.

Applicants Signature: Michael T. Campbell

APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE

The applicant must provide a site plan, drawn to scale, showing setbacks and measurements from overhangs on all proposed structures, existing structures, utility easements, off-street parking, driveways, landscaping and other proposed permanent improvements like pools, hot tubs, heating or a.c. units, decks, carports, etc. The distance from any proposed structure to property lines must be clearly indicated. Floor plans may be required for certain uses to verify zoning compliance.

NOTE: Property lines can be accurately determined only by survey. The street is not the front property line.

SECTION (A) ZONING REQUIREMENTS:

$PROPERTY ZONED: Residential SITE ADDRESS: 4843 ~~Greystone~~ Lauredon Place

$PROPERTY OWNER: Michael Campbell HOME PHONE: 750-0272

$PROPERTY OWNER-S ADDRESS: 2943 Shadow Crest CITY: Springdale STATE: AR ZIP: 72762

$NUMBER OF DWELLING UNITS: 1 * IS THIS PROPERTY SUBJECT TO RESTRICTIVE COVENANTS? YES ✓ NO ____

*IF YES, HAS THE APPROPRIATE REVIEW BOARD APPROVED THIS PROJECT? YES ✓ NO ____

*NOTE: THE CITY DOES NOT ENFORCE RESTRICTIVE COVENANTS. THIS INFORMATION IS FOR NOTIFICATION PURPOSES ONLY.

THOSE NOT APPLYING FOR A BUILDING PERMIT, PLEASE CONTINUE TO SECTION (C) OTHERWISE COMPLETE ENTIRE APPLICATION

SECTION (B) BUILDING SETBACKS:

$SCALE USED FOR SITE PLAN: 1/32" = 1'0"

$PROPOSED BUILDING HEIGHT: 27'

XARE THERE OTHER STRUCTURES EXISTING ON THE LOT?

YES (NO) If yes, please describe: NA

XSETBACKS:		FOR OFFICIAL USE ONLY:	
	PROPOSED:	MINIMUM:	COMMENT:
NORTH:	25'		
SOUTH:	27'		
EAST:	28'		
WEST:	31'		

SECTION (C) NON-RESIDENTIAL REQUIREMENTS:

$BUSINESS NAME: ____ BUSINESS PHONE: ____

$NAME ON LEASE: ____ HOME PHONE: ____

$HOME ADDRESS: N/A CITY: ____ STATE: ____ ZIP: ____

$INTENDED USE OF STRUCTURE: ____ PREVIOUS USE OF STRUCTURE: ____

$IS THE STRUCTURE VACANT? YES NO If yes, how long has the structure been vacant? ____

$IS THE BUSINESS A HOME OCCUPATION? YES NO If yes, provide: permit ID #: ____ PC approval date: ____

$DOES THE USE REQUIRE AN AIR PERMIT FROM THE ARKANSAS DEPARTMENT OF ENVIRONMENT QUALITY? YES NO
If yes, please provide a copy of the permit.

$DOES THE USE PRODUCE AN ODOR? YES NO If yes, please describe the odor: ____

$NUMBER OF EMPLOYEES: ____

$OUTDOOR STORAGE OF MATERIAL AND/OR EQUIPMENT? YES NO If yes, please describe: ____

$SQ. FT. OF TOTAL BUILDING: ____ SQ. FT. OF YOUR BUSINESS: ____ SQ. FT. OF EXPANSION: ____

NOTE: When a Home Occupation or change of use invites the public onto its premises by signage, advertisements or otherwise then a Change of Occupancy is required. A Change of Occupancy usually requires alterations to bring structure in to code compliance for the proposed occupancy. Application for a Change of Occupancy can be obtained from the Building Safety Division or at the City Web site.

4843 N LAWENDON PL

ADDRESS 3703

4843 Lawendon Place

PERMIT #

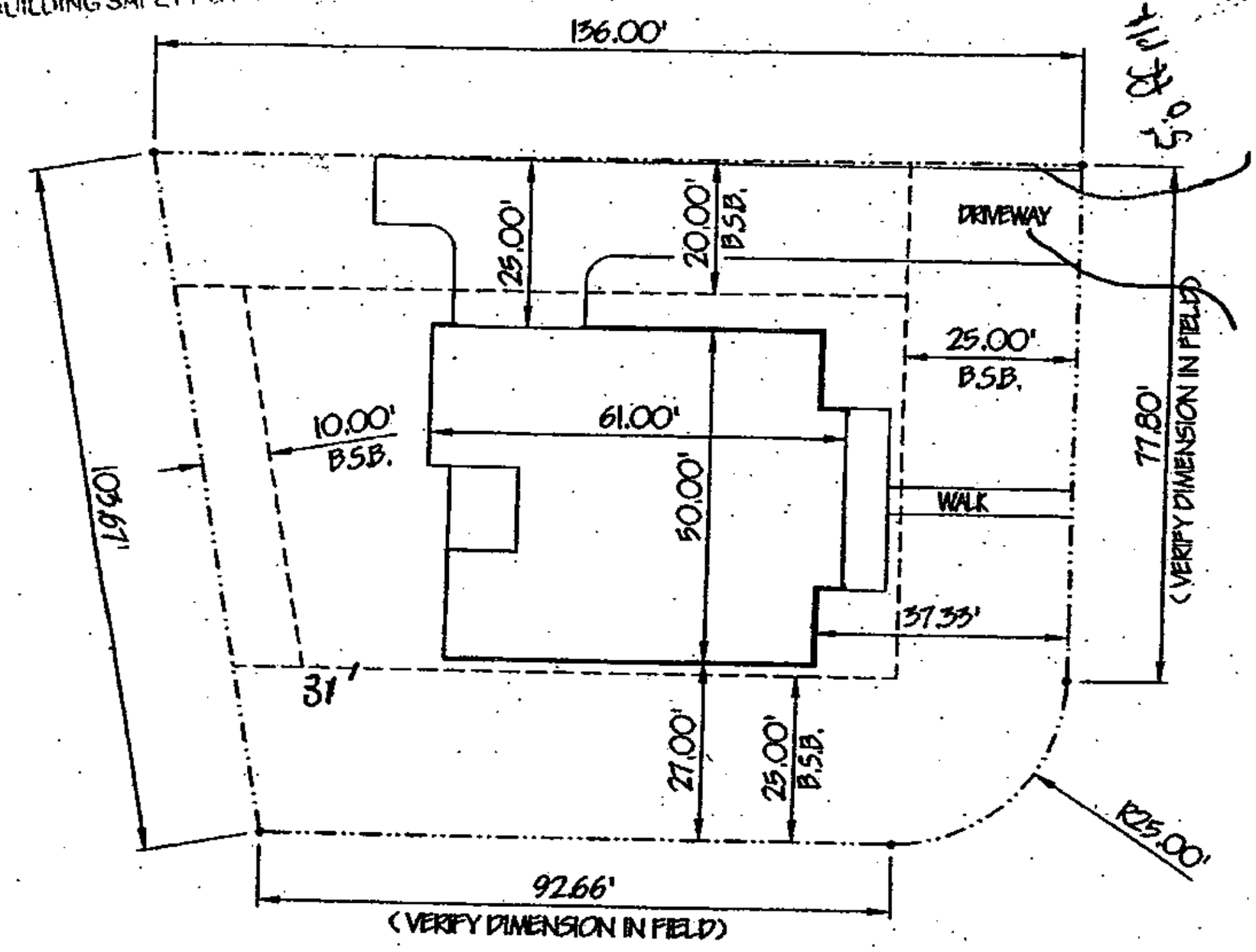
CONSTRUCTION CONFORMS TO SITE DRAWING SUBMITTED FOR APPROVAL AND MINIMUM SET BACKS ARE NOT VIOLATED

OWNER/APPLICANT DATE

$304320

BUILDING OFFICIAL DATE

FAYETTEVILLE
BUILDING SAFETY & PLANNING DIVISION



NORTH

LOT PLAN
area = 30 ACRES (m.o.l.)
scale - 1/32" = 1'-0"

TEL: 479.530.3447 OFC: 479.750.4488
Ted MORRISON Homes
FAX: 479.750.4478 SPRINGDALE, AR

Project Information:
Lot #15
~~HAR-BER~~ 6/D - Springdale, Arkansas

NOTES:
1. DIMENSIONS TO FRAME CONSTRUCTION.
2. POSITIONING OF HOUSE ON LOT SHOWN FOR REFERENCE ONLY. ACTUAL POSITIONING TO BE VERIFIED BY OTHERS.
3. REFER TO SURVEY ON FILE FOR ADDITIONAL INFORMATION.

CADesign Drafting Service, Inc.
2049 Reed Avenue
Springdale, Arkansas 72764
Phone (479) 756-2738 Pager (479) 718-4411
FAX (479) 927-0016

CAD-1555
5/3/03

Sheet Number
1 of 1

VAC04-01.00

Close Up View

MICHAEL CAMPBELL

R-O

RSF-4

R-A

R-A

CROSSCREEK RD

CASTLEWOOD LN

HIGH MEADOWS DR

LAVENDER PL

TRAILS END LN

SUBJECT PROPERTY

GREYSTONE DR

GREYSTONE DR

R-O

RSF-4

GREYSTONE DR

CASTLEWOOD LN

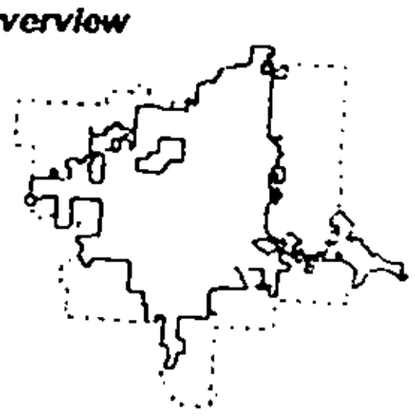
TRAILS END LN

STONEWALL KING

LADY LEE PL

STONEWALL KING

Overview



Legend

VAC04-01.00 Overlay District

Master Street Plan

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

Historic Collector

City Limits

Outside City

FLOODWAY

100 YEAR

500 YEAR

LIMIT OF STUDY

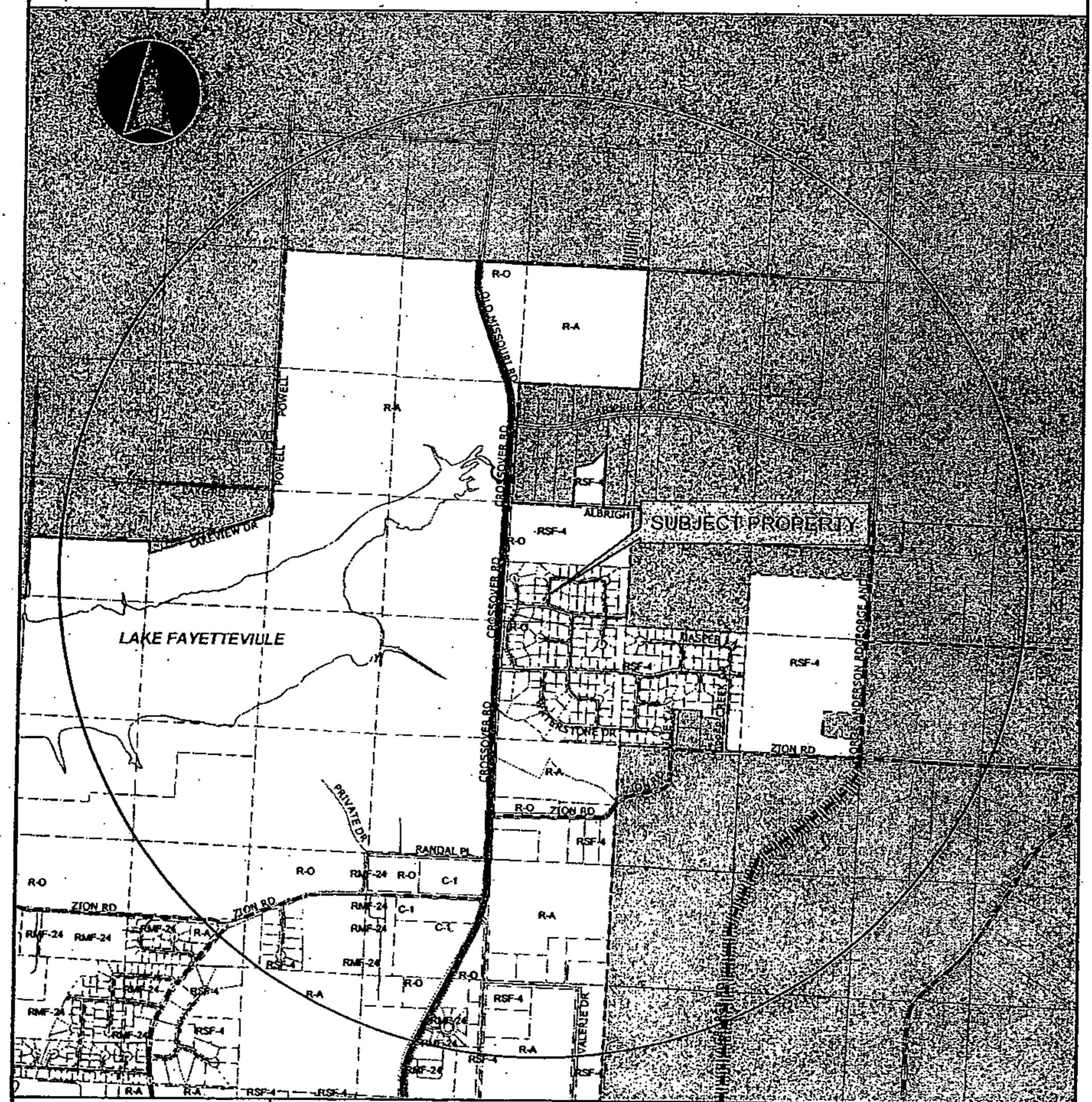
Baseline Profile

0 75 150 300 450 600 Feet

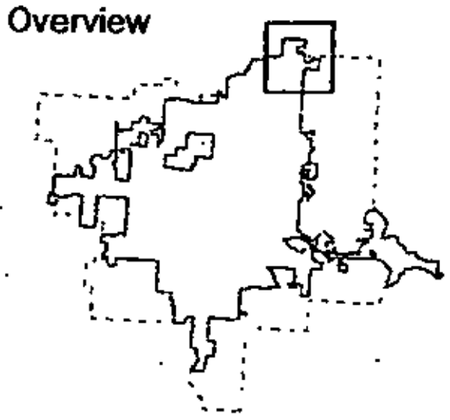
VAC04-01.00

One Mile View

MICHAEL CAMPBELL



Overview



Legend

Subject Property

VAC04-01.00

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

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

x AGENDA REQUEST

For the Fayetteville City Council Meeting of: March 2, 2004

FROM:

Dawn Warrick	Planning	CP&E
Name	Division	Department

ACTION REQUIRED: Ordinance approval.

SUMMARY EXPLANATION:

VAC 04-01.00: Vacation (Michael Campbell, pp 60) was submitted by the City of Fayetteville on behalf of Michael and Nandra Campbell for property located at 4843 Lavendon Place. The property is zoned RSF-4, Residential Single-family, 4 units per acre. The request is to vacate a portion of the water and sewer easement located on the property.

STAFF RECOMMENDATION: Approval.

Dawn J. Warrick 2/13/04
Division Head Date

2/25/04
City Attorney Date

2-13-04
Department Director Date

Finance & Internal Services Dir. Date

Chief Administrative Officer Date

Mayor Date

Received in Mayor's Office

Date

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

New Item: Yes No

Tentative Agenda
City Council Meeting
March 2, 2004

A meeting of the Fayetteville City Council will be held on March 2, 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 February 17, 2004 meeting minutes.

2. **2004 Bulk Construction Material Purchase:** A resolution awarding bids for and approving the purchase of bulk materials and services utilized by various divisions of the City of Fayetteville in the amount of ($195,000.00)

3. **Terracon Contract:** A resolution authorizing Parks and Recreation to contract with Terracon Consultants Inc. to perform the Cummings C & L Landfill Site Characterization Study.

4. **Cruzen Equipment Change Order # 1 Self Serve Fueling:** A resolution approving Change Order #1 to the construction contract with Cruzen Equipment Company, Inc. in the amount of $18,135.50 to include an 87 octane Mogas pump at the Aviation Fuel Self-Serve Facility at the Fayetteville Municipal Airport; approving a project contingency in the amount of $1,814.00 and approving a budget adjustment in the amount of $19,950.00 for same.

B. OLD BUSINESS:

1. **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.
   This resolution was tabled at the January 20, 2004 City Council meeting until the March 2, 2004 City Council meeting.

2. **Waste Hauler Contracts:** A resolution authorizing the Mayor to execute contracts with Waste Management of Arkansas, Ozark Sanitation, and Roll-Off Services, Inc. to collect and transport specific types of solid waste within the city limits of Fayetteville.
   This resolution was tabled at the February 17, 2004 City Council meeting until the March 2, 2004 City Council meeting.

C. NEW BUSINESS:

1. **Improvement District No. 6 – Rupple Row Development:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 6 – Rupple Row Development.

2. **Planning Commission Appeal – RZN 04-01.00 (Parnell):** An appeal filed by Bell Cow, Inc. regarding Planning Commission denial of RZN 04-01.00 as submitted by Eric Johnson of Triangle Builders Supply.

3. **ADM 04-07.00 Bill of Assurance Amendment:** A resolution to approve a second amendment to the Bill of Assurance submitted with Ordinance No. 4411 as amended by Resolution No. 28-03.

4. **R-PZD 04-02.00 (Cross Keys):** An ordinance establishing a Residential Planned Zoning District titled (R-PZD 04-02.00) located south of Wedington Drive at the corner of N. 46th and Persimmon Street containing 38.48 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. **R-PZD 04-05.00 (Hickory Park):** An ordinance establishing a Residential Planned Zoning District titled (R-PZD 04-5.00) located north of 2730 E. Township Street, containing 4.429 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.

6. **Construction Contract for Fire Station 7:** A resolution to approve a construction contract with _____ in the amount of _____ for the construction of Fire Station No. 7.

7. **Water and Wastewater Operations Center – Marinoni Contract:** A resolution to approve the construction contract for the new Water and Sewer Operations Center with Marinoni Construction, Inc. in the amount of $3,403,199.00, plus a contingency of $225,159.00 and a budget adjustment of $128,235.00

8. **McClinton-Anchor Purchase Bid Waiver:** An ordinance waiving the formal competitive bidding requirements for the purchase of asphalt and aggregate materials through a bulk purchase contract with APAC-Arkansas/McClinton Anchor in an amount not to exceed $900,000.00

D. INFORMATIONAL:

Council Tour: March 1, 2004

STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council Meeting of: March 2, 2004

FROM:

Terry Gulley	Transportation	Operations
Name	Division	Department

ACTION REQUIRED: A resolution approving 2004 bids for construction materials and services utilized by various divisions of the City of Fayetteville.

COST TO CITY:

$195,000.00	$ 1,050,000.00	In-House Pavement Improvements
Cost of this request	Category/Project Budget	Program Category / Project Name
Various const. accts.	$ 33,729.00	N/A
Account Number	Funds Used to Date	Program / Project Category Name
Various	$ 1,016,271.00	Sales Tax Capital
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item ____ Budget Adjustment Attached

Budget Manager — Date: 2/11/04

CONTRACT/GRANT/LEASE REVIEW:

Marsha Fawkins — Accounting Manager — Date: 2/11/04
Nancy Smith — Internal Auditor — Date: 2/11/04
D. P. White — City Attorney — Date: 2/12/04
P. Allen — Purchasing Manager — Date: 2/12/04

STAFF RECOMMENDATION:

Terry L. Gulley — Division Head — Date: 2-10-04
Gary Dawson — Department Director — Date: 2-19-04
Steph Dawson — Finance & Internal Services Dir. — Date: 2-19-04
Greg Sarrett — Chief Administrative Officer — Date: 2-19-04
Dan Coody — Mayor — Date: 2/19/04

Received in Mayor's Office — Date: 2/17/04 f.H.

Cross Reference:

Previous Ord/Res#: ____

Orig. Contract Date: ____

Orig. Contract Number: ____

New Item: Yes No

ENTERED

Staff Review Form - Page 2

Description Approval of 2004 bids for const. materials Meeting Date March 2, 2004

Comments: Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Manager

ADA Coordinator

Internal Auditor

Grants Coordinator

RESOLUTION NO. _____

A RESOLUTION AWARDING BIDS FOR AND APPROVING THE PURCHASE OF BULK MATERIALS AND SERVICES UTILIZED BY VARIOUS DIVISIONS OF THE CITY OF FAYETTEVILLE IN THE AMOUNT OF ($195,000.00).

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 awards bids for and approves the purchase of bulk materials and services utilized by various divisions of the City of Fayetteville in the amount of ($195,000.00).

PASSED and **APPROVED** this 2nd day of March 2004.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

DRAFT

City Council Agenda Item

Preprint agenda date and item number inserted by city clerk

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Terry Gulley, Transportation Manager

Date: February 10, 2004

Subject: A resolution approving 2004 bids for construction materials and services utilized by various divisions of the City of Fayetteville

Recommendation: Transportation Division staff recommends a resolution approving the purchase of various bulk materials and services in the amount of One Hundred Ninety-Five Thousand Dollars ($195,000).

Background: The purchase of various bulk materials and services is necessary to maintain current infrastructure and implement capital improvements projects outlined in the annual 2004 Budget & Work Program.

Discussion: Sealed formal bids for street repair, construction materials, and pavement markings were publicly read and results are attached to this memo. Staff recommends awarding the ready-mix concrete bid to Tune Concrete Co., the hot-applied thermoplastic pavement marking bid to Time Striping, Inc., the curb and gutter bid to Jerry D. Sweetser, Inc., and the red hillside gravel bid to Les Rogers, Inc.

Budget Impact: Budgets for the acquisition of these materials and services is budgeted city-wide and sufficient funds are available for the 2004 purchases.

Attached: Bid 04-05 Concrete
Bid 04-07 Thermal Striping
Bid 04-08 Curb and Gutter
Bid 04-10 Red Hillside Gravel

BID: 04-05
DATE: 1/16/04
TIME: 2:00 PM

CITY OF FAYETTEVILLE, ARKANSAS
2004-2005

Concrete

Tune Concrete Co

ITEM #	DESCRIPTION		UNIT PRICE
1	3000 PSI, 1 1/4" Max. Aggregate Size, 4" Slump - per cubic yard		$ 53.50 cu yd
2	3500 PSI, 1 1/4" Max. Aggregate Size, 4" Slump - per cubic yard		$ 55.50 cu yd
3	4000 PSI, 1 1/4" Max. Aggregate Size, 4" Slump - per cubic yard		$ 57.50 cu yd
4	5000 PSI, 1 1/4" Max. Aggregate Size, 4" Slump - per cubic yard		$ 63.50 cu yd
5	1% Calcium Chloride Admixture		$ 2.00 cu yd
6	2% Calcium Chloride Admixture		$ 4.00 cu yd
7	Air entraining admixture		$ 1.00 cu yd
8	Hot Water		$ 2.00 cu yd
9	3/4" Rock		$ 2.00 cu yd
10	Exposed Aggregate		$ 12.00 cu yd
11	Flowable Fill		$ 45.00 cu yd
12	Concrete Sand- per Ton	Minimum 25 Tons	$15.00
13	Masonry Sand- per Ton	Minimum 25 Tons	$15.00

uaranteed Delivery: 12 Hour Notice

Note: Tune Concrete- 1 yard minimum

P Vice
Peggy Vice:

Ben Bell 1/16/03
Witness :

Certified Bid Tabulation

BID: 04-07
DATE: 1/23/04
TIME: 4:00 PM
CITY OF FAYETTEVILLE

THERMAL STRIPING BID

Items	Bidders
	TIME STRIPING
1. Hot Truck Applied Thermoplastic White or Yellow (4")- Per Lineat Foot	$0.34
2. Hot applied Thermoplastic Arrows Each	$100.00
3. Hot Applied Thermoplastic Words Each (4"Thick)	$125.00
4. Hot Applied Thermoplastic Railroad Emblems Each	$750.00
5. Hot Applied Thermoplastic Handicap Emblems Each	$200.00
6. Hot 4' Hand Applied Thermoplastic for Parking Spaces - Per Linear Foot	$0.50

CERTIFIED BY : P Vice
P. VICE PURCH MGR

R Williams
WITNESS

1-23-04
DATE

BID: 04-08
DATE: 1/23/04
TIME: 2:00 PM
CITY OF FAYETTEVILLE

CURB AND GUTTER

Items	Bidders
	Jerry D. Sweetser Inc.
1. Price Per Linear Foot of Hand Formed Curb and Gutter	$8.25
2. Price Per Linear Foot of Machine Placed Curb and Gutter	$7.75
3. Price Per Square Foot of Sidewalk (4"Thick)	$4.10
4. Price Per Square Foot of Driveway Approach (6" Thick)	$5.00
5. Price Per Square foot of Street Repair (8" Thick)	$6.00

CERTIFIED BY: P Vice
P. VICE PURCH MGR

K Williams
WITNESS

1/23/04
DATE

BID: 04-10
DATE: 1/16/04
TIME: 3:00 PM
CITY OF FAYETTEVILLE

Red Hillside Gravel

Items	Bidders
	Les Rogers Inc.
1. Red Hillside Gravel (Per Cubic Yard)	$0.65
2. Delievery Price (Per Cubic Yard)	$2.75
3. Loading Charge if City Picks up Product	$0.60

CERTIFIED BY : P Vice
P. VICE PURCH MGR

B Williams
WITNESS

01/16/04
DATE

STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
X CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council Meeting of: March 2, 2004

FROM:

Name	Division	Department
Rebecca Ohman	Parks and Recreation	Public Works

ACTION REQUIRED: Resolution authorizing Parks and Recreation to contract with Terracon Consultants Inc. to perform the Cummings C & L Landfill Site Characterization Study.

COST TO CITY:

$49,000.00	$ 359300	Community Park Development
Cost of this request	Category/Project Budget	Program Category / Project Name
2250.9255.5314.00	$ —	Parks Development Capitol
Account Number	Funds Used to Date	Program / Project Category Name
02002-1	$ 359300	Parks Development
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item ___ Budget Adjustment Attached

Budget Manager — Date: 2-13-04

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager — Date: 2/17/04
Internal Auditor — Date: 2/17/04
City Attorney — Date: 2/17/04 — * See Comments
Purchasing Manager — Date: 2/19/04

STAFF RECOMMENDATION:

Division Head — Date: 2/13/04
Department Director — Date: 2-19/04
Finance & Internal Services Dir. — Date: 2-19-04
Chief Administrative Officer — Date: 2-17-04
Mayor — Date: 2/19/04

Received in Mayor's Office _____ Date

Cross Reference:

Previous Ord/Res#: _____

Orig. Contract Date: _____

Orig. Contract Number: _____

New Item: Yes No

Staff Review Form - Page 2

Description Cummings Site Characterization Study Meeting Date March 2, 2004

Comments: Reference Comments:

Budget Manager

Accounting Manager

Provision 12 - Pmt/vent - v/invoices should be due net 30 not upon receipt. Also need to address 1½% int rate

City Attorney

Please address the concerns of Accounting + Audit, Then Re-submit. Thanks, JM

Purchasing Manager

ADA Coordinator

Internal Auditor

On Attachment A - last page - addressing Reimbursable Expenses - is this the same thing as Direct Expenses (which shall not exceed $1700) ? ✓

Grants Coordinator

MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations
Connie Edmonston, Director of Parks and Recreation

From: Rebecca Ohman, Park Planner RTO.

Date: February 12, 2004

Subject: Parks and Recreation recommends approval of a contract with Terracon Consultants, Inc. for the Cumming's C & L Landfill Site Characterization Study.

RECOMMENDATION

Parks and Recreation Staff recommends a contract be entered into with Terracon Consultants, Inc. for the amount of $49,000 plus a ten (10%) percent project contingency of $4,900 for a total project cost of $53,900 for the Cummings C & L Landfill Site Characterization Study.

BACKGROUND

Parks and Recreation, in keeping with the recommendation of the 10 Year Master Plan and on recommendation from the Park and Recreation Advisory Board (PRAB), conducted a search for Fayetteville's Community Park by evaluating 18 sites on criteria such as location within the City, total land available, appraised value, existing infrastructure, accessibility, FEMA floodway and floodplain designations, slopes over 15 percent, tree canopy, major land features and land use in terms of active and passive recreation.

Based upon these studies, PRAB selected the Cummings property as the 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 property. On August 4, 2003, PRAB voted to further investigate the landfill area.

In September 2003, 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. Please find attached a letter

from ADEQ approving the Work Plan as the working document for the Site Characterization of the C & L Landfill.

A Request for Proposals (RFP) for this study was advertised with nine firms submitting proposals. On February 12, 2004, the Professional Services Selection Committee reviewed the nine proposals and selected Terracon Consultants, Inc to perform the Site Characterization Study. Members of the Selection Committee included Kyle Cook, Ward 2 Alderman; Gary Coover, City Engineer; Nancy Smith, City Auditor; Connie Edmonston, Parks and Recreation Director; and Rebecca Ohman, Park Planner. Pat Henry with ADEQ was present for the selection process.

DISCUSSION

City Council approval was given on February 3, 2004 to apply for the ADEQ Post Closure Trust Fund grant. The application was submitted to ADEQ on February 13, 2004. An answer regarding grant award is expected by February 24, 2004, in time for the City Council's Agenda Session.

If the grant is awarded, the City would be responsible for the administration of the study according to ADEQ guidelines and total payment of $10,000. The Work Plan, valued at $1,500, can be counted towards the total $10,000, leaving a remaining $8,500 to be spent by the City. These funds are budgeted in the Parks and Recreation Community Park Development fund designated for the Community Park project. Terracon's contract is for $49,000. The City's remaining balance of $8,500 would be applied to this total, leaving approximately $40,500 to be paid by the proposed grant.

ADEQ has expressed great interest in the study and potential remediation of the C & L Landfill. However, if the City is not awarded the Post Closure Trust Fund grant, the study would be totally funded by the Community Park Development Fund. Parks and Recreation Advisory Board approved $50,000 for this landfill study on November 3, 2003. Any projected remediation costs would be accounted for in negotiations of the final cost of the property.

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

Attachments:

Contract
Attachment "A" –Scope of Services
ADEQ Work Plan Approval Letter
Site Characterization Study Cost Estimate

CITY OF FAYETTEVILLE
CONTRACT FOR SERVICES

This Contract is entered into on this ____ day of _____, 2004, between the City of Fayetteville, a municipal corporation, and Terracon Consultants, Inc.

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the City of Fayetteville and Terracon Consultants Inc. agree as follows:

1. All of the provisions of Attachment-A are hereby incorporated by reference as if set forth word for word herein.

2. Terracon Consultants, Inc. agrees and understands that it shall make available all records for review by the City of Fayetteville and its auditors as reasonably requested. Terracon Consultants, Inc. agrees and understands that it shall submit, upon request, to the City of Fayetteville, any and all documents demonstrating compliance with applicable federal, state, and local rules and regulations. The City of Fayetteville's failure to request supporting documentation, however, shall not excuse any failure on the Terracon Consultants, Inc.'s part to have used the standard of care in its profession to comply with the applicable federal, state, and local rules and regulations. Terracon Consultants, Inc. agrees and understands that all contracts for services, and other procurement for materials, services, or construction shall be carried out in compliance with applicable federal, state, and local rules and regulations.

3. Terracon Consultants, Inc. shall hold harmless, and indemnify the City from any and all claims, actions, suits, charges and judgments whatsoever that arise out of negligent performance or nonperformance of the services or subject matter called for in this contract, provided that nothing herein shall be construed to alter, limit or otherwise compromise that immunity afforded the City of Fayetteville under the Constitution and Statutes of the State of Arkansas.

4. Terracon Consultants, Inc. agrees and understands that any 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.

5. Nothing in this agreement shall be construed to give any rights or benefits to any party other than Terracon Consultants, Inc. and the City of Fayetteville.

6. Terracon Consultants, Inc. agrees and understands that 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, Terracon Consultants, Inc. 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.

7. This agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

8. The parties agree and understand that this contract is exclusive of any and all previous contracts which may exist, and that it in no way alters, amends or abridges any rights, obligations or duties of the parties contained in such contracts.

9. It is agreed that the failure of any party to invoke any of the available remedies under this agreement or under law in the event of one or more breaches or defaults by any party under the agreement shall not be construed as a waiver of such provisions and conditions and shall not prevent the parties from invoking such remedies in the event of any future breach or default.

10. 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.

11. This contract constitutes the entire understanding of the parties 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 Terracon Consultants, Inc.

12. 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.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

CITY OF FAYETTEVILLE

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

TERRACON CONSULTANTS, INC.

By: _____

Attachment - A

C & L Landfill Site Characterization Study

Fayetteville, Arkansas

PROVISIONS

1. **Authorization to Proceed**
   Signing this Agreement shall be construed as authorization by the City of Fayetteville for Terracon Consultants, Inc to proceed with the Services.

2. **Compensation**
   The CITY OF FAYETTEVILLE shall compensate TERRACON CONSULTANTS, Inc. for services provided under this agreement on a basis of Labor Costs multiplied by a multiplier of 2.945, plus reimbursement of Direct Expenses **not to exceed $49,000**.

3. **Labor Costs**
   Labor Costs shall be the amount calculated by the number of hours actually worked by each of TERRACON CONSULTANTS, Inc.'s employees on CITY OF FAYETTEVILLE's Project, multiplied by an amount charged for each such employee's work, which is calculated by dividing each such employee's annualized, non-overtime compensation (whether salary or paid to such employee at an hourly rate, as the case may be) divided by 2,080 hours per year

4. **Direct Expenses**
   TERRACON CONSULTANTS, Inc.'s Direct Expenses shall be those costs incurred on or directly for the CITY OF FAYETTEVILLE's Project, including but not limited to necessary transportation costs including mileage at TERRACON CONSULTANTS, Inc.'s current rate when its automobiles are used, meals and lodging, laboratory tests and analyses, computer services, word processing services, telephone, printing and binding charges. Reimbursement for these EXPENSES shall be on the basis of actual charges when furnished by commercial sources and on the basis of usual commercial charges when furnished by TERRACON CONSULTANTS, INC. Direct expenses shall not exceed **$1,700**. Costs of permits or filing fees required by regulatory agencies or departments obtained for the City of Fayetteville shall be paid by the City of Fayetteville.

5. **Outside Services**
   When technical or professional services are furnished by an outside source, when approved by CITY OF FAYETTEVILLE, an additional amount shall be added to the cost of these services for TERRACON CONSULTANTS, Inc's administrative costs.

6. **Cost Estimates**
   Any cost estimates provided by TERRACON CONSULTANTS, Inc. will be on a basis of experience and judgment. Since TERRACON CONSULTANTS, Inc. has no control over market conditions or bidding procedures, TERRACON CONSULTANTS, Inc. does not warrant that bids or ultimate construction costs will not vary from these cost estimates.

7. **Professional Standards**
   TERRACON CONSULTANTS, Inc. shall be responsible, to the level of competency presently maintained by other practicing professionals in the same type of work in CITY OF FAYETTEVILLE's community, for the professional and technical soundness, accuracy, and adequacy of all sampling and analysis, quality and safety standards, site characterization studies and other work and materials furnished under this Agreement. TERRACON CONSULTANTS, Inc. makes no warranty, expressed or implied.

8. **Additional Services**
   Services in addition to those specified in Scope of Services will be provided by TERRACON CONSULTANTS, Inc. if authorized in writing according to Section 4 of the CONTRACT FOR SERVICES.

Additional services will be paid for by CITY OF FAYETTEVILLE according to the following Hourly Rate Schedule:

Staff Classification Or Duties	Billing Rate	Staff Classification Or Duties	Billing Rate
Project Manager	$130.00 per hr	Senior Engineer	$115.00 per hr
Design Engineer	$80.00 per hr	Senior Tech/ Designer	$80.00 per hr
Tech/ CADD	$55.00 per hr	Survey Crew	$90.00 per hr
Clerical	$45.00 per hr		

9. Sales Tax

Applicable sales tax is not included in the above-proposed fee. Sales tax at an applicable rate will be indicated on invoice statements.

10. Limitation of Liability

TERRACON CONSULTANTS, Inc.'s liability to the CITY OF FAYETTEVILLE for any cause or combination of causes is in the aggregate, limited to an amount no greater than the fee earned under this Agreement.

11. Dispute Resolution

All disputes arising out of this Agreement shall be mediated by the parties within a reasonable time after the first request for mediation, prior to either party filing a suit in a court of law, provided, however, that neither party shall be obligated to mediate prior to requesting injunctive relief.

12. Payment to Terracon Consultants, Inc. / Interest on Past-due Amounts

Monthly invoices will be issued by TERRACON CONSULTANTS, Inc. for all Services performed under the terms of this agreement. Invoices are due and payable within net thirty days. Any interest charged or collected in excess of the highest legal rate will be applied to the principal amount owing to TERRACON CONSULTANTS, Inc., and if such interest exceeds the principal balance of CITY OF FAYETTEVILLE's indebtedness to TERRACON CONSULTANTS, Inc., will be returned to CITY OF FAYETTEVILLE.

13. Termination for Non-payment of Fees

TERRACON CONSULTANTS, Inc. may terminate this contract by giving written notice if any TERRACON CONSULTANTS, Inc. invoice remains unpaid for more than 60 days. TERRACON CONSULTANTS, Inc.'s right to terminate this contract shall not be waived by TERRACON CONSULTANTS, Inc.'s continued performance during any period of investigation by TERRACON CONSULTANTS, Inc. to determine the reasons for CITY OF FAYETTEVILLE'S nonpayment.

14. Termination

Either CITY OF FAYETTEVILLE or TERRACON CONSULTANTS, Inc. may terminate this Agreement by giving 30 days' written notice to the other party. In such event CITY OF FAYETTEVILLE shall forthwith pay TERRACON CONSULTANTS, Inc. in full for all work previously authorized and performed prior to effective date of termination. If no notice of termination is given, relationships and obligations created by this Agreement shall be terminated upon completion of all applicable requirements of this Agreement.

15. Legal Expenses

In the event legal action is brought by TERRACON CONSULTANTS, Inc. to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, CITY OF FAYETTEVILLE shall pay TERRACON CONSULTANTS, Inc. reasonable amounts for fees, costs and expenses as may be set by the court.

16. Assignment to Related Entity

Notwithstanding anything in this Agreement to the contrary, in the event TERRACON CONSULTANTS, Inc. is not qualified and licensed in the relevant jurisdiction to provide any services required hereunder, TERRACON CONSULTANTS, Inc. may, without the consent of any other party, assign all or any part of its obligation to provide such services to an entity related to TERRACON CONSULTANTS, Inc. which is qualified and licensed to provide such services in the jurisdiction involved and which is contractually bound to TERRACON CONSULTANTS, Inc. to provide such services.

PROJECT ASSUMPTIONS

The cost, fees, and scope of services for this proposal has been prepared using the following assumptions:

- The total budget at this time is $49,000 Dollars for the Site Characterization Report (SCR).
- The SCR must be received by The City on or before May 4, 2004.
- A report of findings must be issued prior to drafting the SCR.

INFORMATION TO BE SUPPLIED BY THE CITY OF FAYETTEVILLE

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- **Pertinent Mapping**- The City will provide recent aerial photos and property information.
- **Access Agreement** – The City will provide a copy of the signed Access Agreement.

SCOPE OF SERVICES

The Basic Services proposed for this project include site characterization of the former C & L Landfill, in Fayetteville, Arkansas, evaluation of impacts to soil, groundwater and surface waters in the vicinity of the former landfill, generation of a site characterization report for the City of Fayetteville and ADEQ. The Basic Services are further defined as follows:

1. **Meetings**
   - Kick-Off Meeting – set parameters and define goals and objectives for the SCR.
   - Site visit – discuss landfill boundaries, areas of concern or of particular interest, establish staging areas.
   - Three (3) Progress Meetings – review work for payment.
   - Final Report Review – Discussion of findings and recommendations.

2. **Site Specific Health and Safety Plan**
   - Create plan in compliance with OSHA Standard 29 CFR 1910.120.
   - Submit Plan to ADEQ for review and approval.

3. **Sampling and Analysis**
   - Provide plan for the sampling analysis of surrounding soils, groundwater, surface water and quality control sampling.

4. **Management and Disposal of Contaminated Waste**
   - Provide plan for the storage, study and disposal of waste at the appropriate permitted landfill or disposal facility of all waste generated as part of the sampling and analysis.

5. **Quality Assurance Protection Plan**
   - Provide information necessary for maintaining quality assurance/quality control during the site investigation process.

6. **Report**
   - Generate an SCR for submittal to the City of Fayetteville and ADEQ.
   - A plan that includes corrective action options, recommendations and cost estimate.

CORRESPONDANCE

1. The City of Fayetteville's representative shall be Rebecca Ohman, until written notice is provided to Terracon ~~Carter and Burgess~~ designating a new representative.
2. The Terracon Consultants, Inc representative shall be Tom Knudson, until written notice is provided to the City of Fayetteville designating a new representative.

REIMBURSABLE EXPENSES

1. Out of pocket expenses related to mileage, meals with travel, courier expenses, printing, postage and graphic reproduction shall be reimbursed at cost as set forth in the cost justification.
2. Cost of permits or filing fees required by regulatory agencies or departments obtained for the City of Fayetteville shall be paid by the City of Fayetteville.

ADDITIONAL SERVICES

Additional services shall consist of, but not be limited to, the following items:

- City of Fayetteville generated changes to scope once work is in progress, will be billed at hourly rates per proposals approved by the City of Fayetteville, until the work is at the same level of completion as it was prior to the change.
- Additional meetings at the request of the City.
- The City of Fayetteville shall approve all changes to the contract and authorize all additional services.

ADEQ

A R K A N S A S
Department of Environmental Quality

January 29, 2004

Rebecca Ohman
City of Fayetteville
Parks and Recreation Division
113 West Mountain Street
Fayetteville, AR 72701

RE: Approval of Proposed Site Assessment Work Plan for Former C & L Landfill Site; Fayetteville, AR; AFIN 72-00159; Permit # 0015-S
Document Identifier # 22252

Dear Mrs. Ohman:

ADEQ Solid Waste Management Division (SWMD) staff has reviewed the Draft Site Assessment Work Plan received on December 15, 2003, for the closed C&L Landfill site located in Fayetteville, AR. The work plan was prepared for the City of Fayetteville by Terracon consultants and is designed to initiate site assessment activities to evaluate the potential impacts on soil, ground water and surface water from the former 33 acre landfill site. Terracon has previously completed some field investigation activities at this site including analysis of surface and ground water samples. Results from the additional proposed site assessment activities outlined the work plan will be used to generate a more comprehensive Site Characterization Report for the property in and around the 35 acre closed landfill site.

Based on our visit to the closed landfill site on Wednesday, December 17th and based on the information presented in the Draft Work Plan presented for our review, the SWMD hereby approves the proposed work plan activities, with the following recommendations. First, ADEQ recommends Terracon sample surface water quality both up and down gradient from the closed landfill. Secondly, it is recommended the constituents analyzed for in both the soil and water quality samples be tested by an ADEQ certified laboratory. Lastly, the detection limits utilized during sampling should be reasonably low and the values reported for each constituent analyzed should be reported at the detection limit. This information will help ADEQ to determine the potential environmental risk, if any, in and around this old closed landfill site.

ADEQ SWMD staff looks forward to working with you on this project in the future. Please call me at (501) 682-0598 should you have any questions regarding the above information.

Sincerely,

Gerald Delavan, P.G.
Geologist Supervisor
Solid Waste Management Division

cc: Geoffrey H. Little, Technical Branch Manager, SWMD
Justin Sparrow, SWMD District Inspector

E:\Facilities\AFIN-51_to_75\72-00159 Closed C&L Landfill\LtrWorkPlanApproveC&L.doc

SOLID WASTE MANAGEMENT DIVISION
8001 NATIONAL DRIVE / POST OFFICE BOX 8913 / LITTLE ROCK, ARKANSAS 72219-8913 / TELEPHONE 501-682-0602 / FAX 501-682-0611
www.adeq.state.ar.us

Terracon
10930 East 56th Street
Tulsa, Oklahoma 74146
(918) 250-0461 Fax: (918) 250-4570

February 9, 2004

Ms. Peggy Vice
Purchasing Manager
City of Fayetteville
113 West Mountain Street
Fayetteville, Arkansas 72701

Phone: (479) 575-8289
Fax: (479) 575-8241

Re: Request for Proposal Cummings Property Site Characterization Study
RFP #04-04
Estimated Fees for Project

Dear Ms. Vice:

We have enclosed one copy of the estimated total project cost for the Request for Proposal Cummings Property Site Characterization Study, in response to the City of Fayetteville's RFP #04-04.

We appreciate the opportunity to perform these services for you. Please contact us if you have questions regarding this information or if we can provide any other services.

Sincerely,

TERRACON CONSULTANTS, INC.

Tom Knudson

Thomas D. Knudson
Senior Project Manager

Russel J. Zora, CHMM
Environmental Department Manager

ESTIMATED TOTAL PROJECT COST

C & L Landfill Site Characterization Study
City of Fayetteville, Arkansas
Parks and Recreation Division
RFP #04-04

TERRACON CONSULTANTS, INC.

February 9, 2004

Field Labor 30 hours @ $90/hr 50 hours @ $55/hr	$5,500
Management and Reporting 4 hours @ $115/hr 64 hours @ $90/hr 20 hours @ $55/hr 4 hours @ $40/hr	$7,500
Drilling	$9,300
Laboratory	$25,000
Expenses (Equipment rental, mileage, per diem, sampling supplies)	$1,700
ESTIMATED TOTAL	**$49,000.00**

Assumptions and Constraints

In order to comply with the proposed schedule, the following items are required to be provided by the client at the time of notification to proceed:

- The City of Fayetteville will provide to Terracon, prior to mobilization, legal right of entry to the site (and other areas if required) to conduct the scope of services.
- The City of Fayetteville will coordinate with the landowner to secure authorization to install monitoring wells on the site.
- The City of Fayetteville will notify Terracon, prior to mobilization, of any restrictions, special site access requirements, or known potentially hazardous conditions at the site (e.g., hazardous materials or processes, specialized protective equipment requirements, unsound structural conditions, etc.)
- Utilities on private land that are not located by public companies will be located by property owner/operator.
- Work can be performed during normal business hours (Monday through Friday, 7:00 am to 7:00 pm).
- Traffic control services are not required.
- The site is readily accessible by truck.

Transportation and disposal of unaffected or affected soil and/or development water is considered out-of-scope of this proposal, and upon request, may be addressed in a separate proposal once a final volume of waste is determined.

The Agreement for Services under which Terracon will perform the work is attached for your review and is considered a part of this proposal. This proposal is valid for 90 days from the date of this proposal and is based on the assumption that all field services will be performed under modified Level D safety personal protective procedures.

Terracon's services will be performed in a manner consistent with generally accepted practices of the professional undertaken in similar studies in the same geographic area during the same period. Terracon makes no warranties, either expressed or implied, regarding the findings, conclusions or recommendations.

Findings, conclusions and recommendations resulting from these services will be based upon information derived from the most recent on-site activities and other services performed under this scope of work; such information is subject to change over time. Certain indicators of the presence of hazardous substances, petroleum products, or other constituents may have been latent, inaccessible, unobservable, nondetectable or not present during these services, and we cannot represent that the site contains no hazardous substances, toxic substances, petroleum products, or other latent conditions beyond those identified during this LSI. Subsurface conditions may vary from those encountered at specific borings or wells or during other surveys, tests, assessments, investigations or exploratory services; the data, interpretations, and our recommendations are based solely upon data obtained at the time and within the scope of these services.

It should be noted, if affected soil or groundwater is discovered during the LSI, the individual operating, in charge of, or responsible for the activity/facility may be required to report the release to the regulatory agency.

A.3
Terracon Contract
Page 15 of 20

City Of Fayetteville

(Not a Purchase Order)

Requisition No.:

Date: 2-13-04

P.O Number:

Expected Delivery Date:

Vendor #: 5557

Vendor Name: Terracon Consultants, Inc.

Mail Yes:__ No:____

Address: 10930 East 56th Street

Fob Point:

Taxable Yes:_ No:____

Quotes Attached Yes:____ No:____

City: Tulsa

State: OK

Zip Code: 74146

Ship to code:

Divison Head Approval: Stu Hatfield

Requester: Rebecca Ohman

Requester's Employee #: 2214

Extension: 472

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	Professional Services as described in attached Scope of Work, Attachment "A"	1	LS		$49,000.00	2250.9255.5314.00	O 2002.01		
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: $49,000.00

Tax: $2,592.50

Total: $51,592.50

Approvals:

Mayor: _____

Department Director: _____

Purchasing Manager: _____

Finance & Internal Services Director: _____

Budget Manager: _____

IT Manager: _____

Dispatch Manager: _____

Utilities Manager: _____

Other: _____

ed 6/17/03

Attachment - A

C & L Landfill Site Characterization Study

Fayetteville, Arkansas

PROVISIONS

1. **Authorization to Proceed**
   Signing this Agreement shall be construed as authorization by the City of Fayetteville for Terracon Consultants, Inc to proceed with the Services.

2. **Compensation**
   The CITY OF FAYETTEVILLE shall compensate TERRACON CONSULTANTS, Inc. for services provided under this agreement on a basis of Labor Costs multiplied by a multiplier of 2.945, plus reimbursement of Direct Expenses **not to exceed $49,000**.

3. **Labor Costs**
   Labor Costs shall be the amount calculated by the number of hours actually worked by each of TERRACON CONSULTANTS, Inc.'s employees on CITY OF FAYETTEVILLE's Project, multiplied by an amount charged for each such employee's work, which is calculated by dividing each such employee's annualized, non-overtime compensation (whether salary or paid to such employee at an hourly rate, as the case may be) divided by 2,080 hours per year

Reimbursable

4. **~~Direct~~ Expenses**
   TERRACON CONSULTANTS, Inc.'s Direct Expenses shall be those costs incurred on or directly for the CITY OF FAYETTEVILLE's Project, including but not limited to necessary ~~transportation costs including mileage at TERRACON CONSULTANTS, Inc.'s current rate when its automobiles are used,~~ meals and lodging, laboratory tests and analyses, computer services, word processing services, telephone, printing and binding charges. Reimbursement for these EXPENSES shall be on the basis of actual charges when furnished by commercial sources and on the basis of usual commercial charges when furnished by TERRACON CONSULTANTS, INC. Direct expenses shall not exceed **$1,700**. → Add

5. **Outside Services**
   When technical or professional services are furnished by an outside source, when approved by CITY OF FAYETTEVILLE, an additional amount shall be added to the cost of these services for TERRACON CONSULTANTS, Inc's administrative costs.

6. **Cost Estimates**
   Any cost estimates provided by TERRACON CONSULTANTS, Inc. will be on a basis of experience and judgment. Since TERRACON CONSULTANTS, Inc. has no control over market conditions or bidding procedures, TERRACON CONSULTANTS, Inc. does not warrant that bids or ultimate construction costs will not vary from these cost estimates.

7. **Professional Standards**
   TERRACON CONSULTANTS, Inc. shall be responsible, to the level of competency presently maintained by other practicing professionals in the same type of work in CITY OF FAYETTEVILLE's community, for the professional and technical soundness, accuracy, and adequacy of all sampling and analysis, quality and safety standards, site characterization studies and other work and materials furnished under this Agreement. TERRACON CONSULTANTS, Inc. makes no warranty, expressed or implied.

8. **Additional Services**
   Services in addition to those specified in Scope of Services will be provided by TERRACON CONSULTANTS, Inc. if authorized in writing according to Section 4 of the CONTRACT FOR SERVICES. Additional services will be paid for by CITY OF FAYETTEVILLE according to the following Hourly Rate Schedule:

To be revised per Terracon's Billing Rate, prior to contract signing. RTC.

Staff Classification Or Duties	Billing Rate
Project Manager	$130.00 per hr
Design Engineer	$80.00 per hr
Tech/ CADD	$55.00 per hr
Clerical	$45.00 per hr
Senior Engineer	$115.00 per hr
Senior Tech/ Designer	$80.00 per hr
Survey Crew	$90.00 per hr

9. Sales Tax
Applicable sales tax is not included in the above-proposed fee. Sales tax at an applicable rate will be indicated on invoice statements.

10. Limitation of Liability
TERRACON CONSULTANTS, Inc.'s liability to the CITY OF FAYETTEVILLE for any cause or combination of causes is in the aggregate, limited to an amount no greater than the fee earned under this Agreement.

11. Dispute Resolution
All disputes arising out of this Agreement shall be mediated by the parties within a reasonable time after the first request for mediation, prior to either party filing a suit in a court of law, provided, however, that neither party shall be obligated to mediate prior to requesting injunctive relief.

12. Payment to Terracon Consultants, Inc. / Interest on Past-due Amounts
Monthly invoices will be issued by TERRACON CONSULTANTS, Inc. for all Services performed under the terms of this agreement. Invoices are due and payable ~~on receipt~~ net 30 days. ~~CITY OF FAYETTEVILLE agrees to pay interest at the rate of 1½% per month on all past-due amounts, unless not permitted by law.~~ Any interest charged or collected in excess of the highest legal rate will be applied to the principal amount owing to TERRACON CONSULTANTS, Inc., and if such interest exceeds the principal balance of CITY OF FAYETTEVILLE's indebtedness to TERRACON CONSULTANTS, Inc., will be returned to CITY OF FAYETTEVILLE. It is the intent of TERRACON CONSULTANTS, Inc. and CITY OF FAYETTEVILLE to abide by all applicable laws regulating the maximum amount of interest that may be charged. To the greatest extent allowed by applicable law, CITY OF FAYETTEVILLE and TERRACON CONSULTANTS, Inc. agree that in the event CITY OF FAYETTEVILLE and TERRACON CONSULTANTS, Inc. enter into any compromise or settlement calling for the payment of past due principal and accrued and unpaid interest on any past-due invoice, ~~TERRACON CONSULTANTS, Inc. may charge and CITY OF FAYETTEVILLE agrees to pay interest on such combined past due principal and accrued and unpaid interest amount (the "New Principal Balance") at the rate of 1½% per month or at the highest rate allowed by law, subject, as provided herein, to TERRACON CONSULTANTS, Inc.'s agreement to credit excess interest or return same to CITY OF FAYETTEVILLE after the New Principal Balance is paid.~~

13. Termination for Non-payment of Fees
TERRACON CONSULTANTS, Inc. may terminate this contract by giving written notice if any TERRACON CONSULTANTS, Inc. invoice remains unpaid for more than 60 days. TERRACON CONSULTANTS, Inc.'s right to terminate this contract shall not be waived by TERRACON CONSULTANTS, Inc.'s continued performance during any period of investigation by TERRACON CONSULTANTS, Inc. to determine the reasons for CITY OF FAYETTEVILLE'S nonpayment.

14. Termination
Either CITY OF FAYETTEVILLE or TERRACON CONSULTANTS, Inc. may terminate this Agreement by giving 30 days' written notice to the other party. In such event CITY OF FAYETTEVILLE shall forthwith pay TERRACON CONSULTANTS, Inc. in full for all work previously authorized and performed prior to effective date of termination. If no notice of termination is given, relationships and obligations created by this Agreement shall be terminated upon completion of all applicable requirements of this Agreement.

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~~REIMBURSABLE EXPENSES~~ Remove

1. ~~Out-of-pocket expenses related to mileage, meals with travel, courier expenses, printing, postage and graphic reproduction shall be reimbursed at cost as set forth in the cost justification.~~ Price + $1,200
2. Cost of permits or filing fees required by regulatory agencies or departments obtained for the City of Fayetteville shall be paid by the City of Fayetteville. move to Reimbursable Expenses

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- Additional meetings at the request of the City.
- The City of Fayetteville shall approve all changes to the contract and authorize all additional services.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
DAN COODY, MAYOR

MEMORANDUM

TO: Dan Coody, Mayor
Members of the City Council
THRU: Staff Review Committee
FROM: Ray M. Boudreaux, Director, Aviation and Economic Development
DATE: February 13, 2004
SUBJECT: Mogas Tank and delivery system for Self Service Fuel Station at Fayetteville Municipal Airport, Drake Field

---

Requested Action: Approve Change order to Self Serve Fueling Station to provide Self Serve 87 Octane Mogas.

Discussion: The Airport Board and the Fayetteville City Council approved installation of a self serve fueling station at the Fayetteville Municipal Airport, Drake Field. This project is nearing completion. Subsequent to the award of the self serve contract, the Airport Board and The Fayetteville City Council also approved the new Airport Minimum Standards. During discussions of the changes to the Standards, the Airport Board was unwilling to ease the restrictions on the storage of fuels in the T Hangars due to safety considerations. While all agreed that fuel should not be stored in the hangars, Board Members felt some responsibility to the tenants since the practice had long been overlooked. To insist on removal of the Mogas cans would place an undue hardship on the tenants.

Some aircraft are permitted to use auto fuel through a FAA STC and the engines actually run better with the lower octane fuel. Currently aircraft owners fill gas cans at the local gas station and bring it to the airport to fill their aircraft. Unused fuel is stored in the hangar. Many of the aircraft owners expressed concern that while storage of fuel was unsafe, the difficulty in carrying heavy gas cans to fill the wing tanks while standing on a ladder was also unsafe.

After much discussion, it was determined that the Airport should provide an alternative. The alternative agreed upon by the Airport Board was to install a Mogas tank at the self serve station and to enforce the restriction of no fuel stored in the hangars except for that in the aircraft tanks. The Airport Board voted to install a Mogas Tank in the Self Service fuel station at their Feb 12, 2004 meeting.

The Self Serve System is being designed, supplied and installed by Cruzen Equipment Company. Cruzen was the low bidder on the project and has provided excellent fire proof equipment and delivery systems. This Council item is to authorize a change order to install the second tank and delivery system at a cost not to exceed $19,950 including contingency. The same card reader will be used for both types of fuel.

Budget Considerations: Funds are budgeted for this project. A budget adjustment is attached.

Attachments: Staff Review Form
Budget Adjustment
Proposal from Cruzen Equipment Co.

Aviation and Economic Development Department
Fayetteville Municipal Airport, Drake Field
4500 South School Avenue, Suite F
Fayetteville, Arkansas 72701
Ray M. Boudreaux, Director

RESOLUTION NO. _____

A RESOLUTION APPROVING CHANGE ORDER #1 TO THE CONSTRUCTION CONTRACT WITH CRUZEN EQUIPMENT COMPANY, INC. IN THE AMOUNT OF $18,135.50 TO INCLUDE AN 87 OCTANE MOGAS PUMP AT THE AVIATION FUEL SELF-SERVE FACILITY AT THE FAYETTEVILLE MUNICIPAL AIRPORT; APPROVING A PROJECT CONTINGENCY IN THE AMOUNT OF $1,814.00; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF $19,950.00 FOR SAME.

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 Change Order #1 to the construction contract with Cruzen Equipment Company, Inc. in the amount of $18,135.50 to include an 87 octane Mogas pump at the aviation fuel self-serve facility at the Fayetteville Municipal Airport. A copy of the Change Order, marked Exhibit "A" is attached hereto, and made a part hereof.

Section 2. That the City Council of the City of Fayetteville, Arkansas, hereby approves a Project Contingency in the amount of $1,814.00.

Section 3. That the City Council of the City of Fayetteville, Arkansas, hereby approves a Budget Adjustment in the amount of $19,950.00 for this project.

PASSED and **APPROVED** this 2nd day of March, 2004.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

DRAFT

QUOTATION & CONTRACT

CRUZEN EQUIPMENT COMPANY, INC.
1705 EAST 5TH STREET
NORTH LITTLE ROCK, ARKANSAS 72114
TELEPHONE (501) 374-4825
FAX (501) 374-8830

No. QN 7510

In reply, refer to above number

PAGE 1 OF 3

TO: CITY OF FAYETTEVILLE PURCHASING DIVISION
113 WEST MOUNTAIN, ROOM 306
FAYETTEVILLE AR 72701

DATE 02/12/04

ATTN. OF: PEGGY VICE, PURCHASING MANAGER

YOUR INQUIRY: MOTOR VEHICLE GASOLINE SELF-SERVE SYSTEM FOR DRAKE FIELD

We are pleased to submit quotation on our interpretation of your requirements, subject to terms and conditions printed on reverse side of this proposal.

FUEL EQUIPMENT TOTAL	$12,139.08
INSTALLATION TOTAL	$5,035.00
QUOTE TOTAL	$17,174.08 *

PLUS APPLICABLE TAXES

* Or, ask about our Lease Program for low monthly payments and tax benefits.

TERMS OF PAYMENT:

1. Gilbarco equipment payment due in our Memphis office 7 days from date of invoice.
2. Labor and equipment billed monthly as job progresses.
3. Net due upon receipt of invoice.
4. Note Terms and Conditions on reverse side of contract.

TOTAL PROPOSAL—$ 17,174.08
PLUS APPLICABLE TAXES

TERMS OF PAYMENT: SEE ABOVE

CRUZEN EQUIPMENT COMPANY, INC.

By: Rod Martin

By: Rod Martin, Sales

This Quotation is not an offer and is subject to approval, and acceptance by an authorized officer or manager of Cruzen Equipment Company, Inc.

Purchaser's Name

BY

The Purchaser hereby offers to enter into this Agreement according to the specifications, terms and price stated on the front and the Terms and Conditions on the reverse side.

Date:

Cruzen Equipment Company, Inc. by a duly authorized officer or manager does hereby accept and approve this Contract.

CRUZEN EQUIPMENT COMPANY, INC.

By:

By:

Date:

QUOTATION & CONTRACT

CRUZEN EQUIPMENT COMPANY, INC.
1705 EAST 5TH STREET
NORTH LITTLE ROCK, ARKANSAS 72114
TELEPHONE (501) 374-4825
FAX (501) 374-8830

No. QN 7510

In reply, refer to above number

PAGE 2 OF 3

TO: CITY OF FAYETTEVILLE PURCHASING DIVISION
113 WEST MOUNTAIN, ROOM 306
FAYETTEVILLE AR 72701

DATE: 02/12/04

ATTN. OF: PEGGY VICE, PURCHASING MANAGER

YOUR INQUIRY: MOTOR VEHICLE GASOLINE SELF-SERVE SYSTEM FOR DRAKE FIELD

We are pleased to submit quotation on our interpretation of your requirements, subject to terms and conditions printed on reverse side of this proposal.

TANK, FITTINGS AND ACCESSORIES:

1	1,000 GALLON FIREGUARD HORIZONTAL ABOVE GROUND TANK U/L 2085, 54" x 144", WITH 6" PRIMARY & SECONDARY EMERG. VENTS, FULL LENGTH SKIDS AND COATED WITH WHITE ACRYLATHANE	5,946.00	5,946.00
1	MORRISON 749-0100-AV 8 OZ. PRESSURE/VACUUM 2" PRIMARY VENT	38.51	38.51
1	MORRISON 354-0200-AV UPDRAFT 2" SECONDARY VENT	9.10	9.10
1	MORRISON 918-0100-AG CLOCK GAUGE WITH BATTERY OP. ALARM	616.25	616.25
1	MORRISON 419-0600-1T 2" x 4' DROP TUBE	19.72	19.72
1	MORRISON 517-0200-AC 3-1/2 GALLON SPILL CONTAINER	103.36	103.36
1	OPW 1P-2105 HAND SUMP PUMP	32.30	32.30
1	FP4040B 4" x 4" PIPE NIPPLE	13.00	13.00
1	MORRISON 305C-0100-AC 4" TOP SEAL CAP	21.00	21.00
1	MORRISON 305L-0200-AA 4" TOP SEAL ADAPTER	21.93	21.93
1	MORRISON 419-0900-1T 4" x 5' DROP TUBE	27.20	27.20
1	MORRISON 346DI-0400-AV 1-1/2" EXTERNAL EMERGENCY VALVE	140.93	140.93
1	MORRISON 710-0150-1V 1-1/2" SOLENOID VALVE, 120V COIL	437.58	437.58
1	MORRISON 691B-0700-1V 1-1/2" FULL PORT LOCKING BALL VALVE	24.74	24.74
1	MORRISON 78DI-0200-AV 1/2" PRESSURE RELIEF VALVE	48.07	48.07
1	GASBOY 8753Q-IL MECHANICAL RETAIL HI-SPEED SUCTION PUMP, WITH: VR10-4 COMPUTER, CZ- 10:1 MONEY PULSAR & PP- PREPAY VALVE	2,986.00	2,986.00
1	GASBOY 048577 PRESSURE REGULATING VALVE	383.00	383.00
1	VELCON VF609A AV-GAS FILTER WITH CARTRIDGE & PRESSURE GAUGE	298.95	298.95
1	HANNAY N818-25-26B REEL ONLY, SELF-REWIND	558.85	558.85
1	AVIATION FUEL HOSE, 1" x 50 FT, M x M, (CERTIFIED)	241.89	241.89
1	HANNAY 3/4" HOSE BALL STOP	15.00	15.00
1	MORRISON 218-0400-AN 1" AV-GAS OVERWING NOZZLE, WITH GROUND	155.70	155.70

TOTAL TANK, FITTINGS & ACCESSORIES $12,139.08

PLUS APPLICABLE TAXES

TOTAL PROPOSAL—$

PLUS APPLICABLE TAXES

QUOTATION & CONTRACT

CRUZEN EQUIPMENT COMPANY, INC.
1705 EAST 5TH STREET
NORTH LITTLE ROCK, ARKANSAS 72114
TELEPHONE (501) 374-4825
FAX (501) 374-8830

No. QN 7510

In reply, refer to above number

PAGE 3 OF 3

TO: CITY OF FAYETTEVILLE PURCHASING DIVISION
113 WEST MOUNTAIN, ROOM 306
FAYETTEVILLE AR 72701

DATE: 02/12/04

ATTN. OF: PEGGY VICE, PURCHASING MANAGER

YOUR INQUIRY: MOTOR VEHICLE GASOLINE SELF-SERVE SYSTEM FOR DRAKE FIELD

We are pleased to submit quotation on our interpretation of your requirements, subject to terms and conditions printed on reverse side of this proposal.

FUEL SYSTEM INSTALLATION:
Work to be performed:

* FILE (7) DAY CONSTRUCTION NOTICE WITH STATE AUTHORITIES
* SET TANK, INSTALL FITTINGS, PRESSURIZE TANK, AND TEST
* RUN 2" GALVANIZED PRODUCT LINE
* PRESSURIZE PRODUCT LINES TO 50 PSI AND SOAP TEST
* SET PUMP, FILTER SYSTEM, REEL AND COMPLETE ELECTRICAL
* WIRE NEW PUMP INTO APPLIED TECHNOLOGY SYSTEM AND HAVE CONFIGURATION UPDATED
* TEST SYSTEM AND INSTRUCT SITE PERSONNEL ON USE

TOTAL INSTALLATION	$5,035.00

CONTRACT/PROPOSAL NOTES:

* OWNER IS SPECIFICALLY RESPONSIBLE FOR OBTAINING ALL PERMITS NECESSARY FOR WORK PRIOR TO START OF CONSTRUCTION
* SECURITY, IF NECESSARY DURING CONSTRUCTION IS TO BE BY THE OWNER
* TERMS OF GASBOY EQUIPMENT ARE: NET PAYMENT TO BE IN OUR OFFICE WITHIN SEVEN (7) DAYS OF FACTORY SHIP DATE AS NOTIFIED BY OUR OFFICE.
* THIS PROPOSAL CONTAINS NO PROVISIONS FOR BID/PERFORMANCE BONDS NOR FEES FOR SAME, ANY STIPULATION REQUIRING SAID BONDS MUST BE AN EXTRA CHARGE TO THE CONTRACT

TOTAL PROPOSAL—$

PLUS APPLICABLE TAXES

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department: General Government Division: Aviation & Economic Development Program: Airport Maintenance	Date Requested	Adjustment Number
2004		3/2/2004	

Project or Item Requested:

$19,950 in the Capital Building Costs account.

Project or Item Deleted:

None. To increase the Use of Fund Balance account by $19,950.

Justification of this Increase:

1) Will provide funds to add a motor fuel (MoGas) fuel tank, pump and hose reel to the East-side 100LL aviation fuel self-serve facility.

Justification of this Decrease:

Request of the Airport Board, in consideration of fuel storage safety in T-hangars

Sufficient funding remains to comply with City policy.

Increase Expense (Decrease Revenue)

Account Name	Account Number				Amount	Project Number	
Building costs	5550	3960	5804	00	19,950	0 3014	1

Decrease Expense (Increase Revenue)

Account Name	Account Number				Amount	Project Number	
Use of fund balance	5550	0955	4999	99	19,950		

Approval Signatures

Requested By	Date
Budget Manager	2-13-04 Date
Department Director	Feb 13, 2004 Date
Administrative Services Director	2-17-04 Date
Mayor	Date

Budget Office Use Only

Type: A B C (D) E

	Date	Initial
Date of Approval		
Posted to General Ledger		
Posted to Project Accounting		
Entered in Category Log		

STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
X CONTRACT REVIEW
GRANT REVIEW

100LL Self Serve
Cruzen Equip. Co. Inc.
Change Order #1

For the Fayetteville City Council Meeting of: March 2, 2004

FROM:

Ray M. Boudreaux	Aviation & Economic Development	General Government
Name	Division	Department

ACTION REQUIRED: Approval of the City Council and forward for Signature of the Mayor on Change Order #1 with Cruzen Equipment, in the amount of $17,174.08 (plus applicable tax - 961.42). Approval of a 10% project contingency in the amount of $1,814.00. Approval of a budget adjustment in the amount of $19,950.00.

$18,135.5

COST TO CITY:

$19,950.00	$ 37,966.00	East Side Fuel Station
Cost of this request	Category/Project Budget	Program Category / Project Name
5550.3960.5804.00	$ 36,082.83	Airport Capital Expense
Account Number	Funds Used to Date	Program / Project Category Name
03014.1	$ 1,883.17	Airport
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item X Budget Adjustment Attached

Budget Manager — Date 2-13-04

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager — Date 2/13/04
Internal Auditor — Date 2/13/04
City Attorney — Date 2/17/04
Purchasing Manager — Date 2/17/04

STAFF RECOMMENDATION:

Division Head — Date
Department Director — Date FEB 13, 2004
Finance & Internal Services Dir. — Date 2-17-04
Chief Administrative Officer — Date 2-18-04
Mayor — Date 2/18/04

Received in Mayor's Office 2/17/04 Date

Cross Reference:

Previous Ord/Res#: 148-03

Orig. Contract Date: 10/7/2003

Orig. Contract Number: 930

New Item: Yes X No

SIGN HERE

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: **Mayor Dan Coody and City Council Members**

From: **Hugh Earnest, Chief Administrative Officer**

Date: **December 17, 2003**

Subject: **Lease with the Council on Aging**

Recommendation
The lease as attached is recommended for approval by the Council.

Background
The new Senior Citizen Center that was opened for service in July of 2003 is operated by the Council on Aging. This particular non-profit agency was very active in fund raising for and the design of the current structure. The Council is a service provider at this location as well as being responsible for the operation of nine centers in Washington County. The Council on Aging (COA) has a contract with Area Agency on Aging in Harrison for providing services at the Senor Center. Area Agency on Aging, also a non-profit, contracts with a number of third-party providers for a wide range of services for seniors and also directly operates senior centers in some locations. It should be noted that some 25 years ago, the state set up eight separate Area Agencies on Aging blanketing the state. These non-profits all operate through a number of Federal and State programs set up to deliver services to seniors.

Current situation
The opening of the new Senior Center has given us an opportunity to develop a lease for the use of the building by the Council on Aging. The lease with the Council on Aging essentially defines responsibility for maintenance of the building, lays out terms and conditions in the unlikely case that the city should choose to discontinue use of the facility for services to seniors, and stipulates a lease period and hours of operation.

Budget Impact
There is no direct budget impact, other than a formalization of the obligation of the owners of the building to be responsible for certain maintenance items as detailed in the lease.

Tabled to 1/20/04 mtg
Tabled to 3/2/04 mtg

RESOLUTION NO. _____

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

WHEREAS, the taxpayers of the City of Fayetteville with assistance of private and public donors paid for the construction of the Fayetteville Senior Activity Center at Walker Park; and

WHEREAS, the Council On Aging, Inc. is an Arkansas Not For Profit Corporation which assisted with the design and construction of the Senior Center and had efficiently and successfully operated the Fayetteville Senior Center on Sang Avenue for many years to the great benefit of Fayetteville citizens; and

WHEREAS, it is to the overall benefit of the City of Fayetteville, the Council On Aging, and Fayetteville citizens for the City to lease to the Council On Aging the premises of the new Fayetteville Senior Activity Center in consideration of the Council On Aging's operation of the Senior Center to provide recreational, cultural and nutritional services to Fayetteville citizens.

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 approves the lease and agreement to provide services with the Council On Aging, Inc., attached as Exhibit "A" so that the Council On Aging, Inc. can continue to operate the Fayetteville Senior Activity Center to provide recreational, cultural and nutritional services to Fayetteville citizens.

PASSED and **APPROVED** this the 20th day of January, 2004.

APPROVED:

DRAFT

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

LEASE AGREEMENT TO PROVIDE SERVICES

WHEREAS, the taxpayers of the City of Fayetteville with assistance of private and public donors paid for the construction of the Fayetteville Senior Activity Center at Walker Park (hereinafter "Senior Center"); and

WHEREAS, the Council on Aging, Inc. (hereinafter "Council On Aging:) is an Arkansas Not For Profit Corporation which assisted with the design and construction of the Senior Center and had efficiently and successfully operated the Fayetteville Senior Center on Sang Avenue for many years to the great benefit of Fayetteville citizens; and

WHEREAS, IT IS TO THE OVERALL BENEFIT OF THE City of Fayetteville, the Council On Aging, and Fayetteville citizens for the City to lease to the Council On Aging the premises of the new Fayetteville Senior Activity Center in consideration of the Council On Aging's operation of the Senior Center to provide recreational, cultural and nutritional services to Fayetteville citizens; and

WHEREAS, the City of Fayetteville, as the owner of the structure, recognizes that the Council on Aging is the current contractor of record occupying the structure, and is operating programs for Senior Citizens under the terms and conditions as established by the Area Agency on Aging and agreed to by the City. The City further recognizes that the contractor for provision of said services is subject to change as part of a selection process which will occur at periodic intervals.

NOW THEREFORE, The City of Fayetteville for the consideration stated above and listed below agrees to lease the Fayetteville Senior Activity Center in Walker Park to the Council On Aging, Inc. and the Council On Aging, Inc. agrees to operate and maintain the Senior Center for the benefit of senior citizens of Fayetteville and elsewhere as more particularly described below.

1. The Council On Aging, Inc. can and shall utilize the kitchen in the Fayetteville Senior Activity Center both to provide nutritious meals to those at the Center and to Seniors in the community through the Meals On Wheels or other similar programs.

2. The Council On Aging, Inc. shall operate the Senior Center with sufficient staff to maintain the premises and assist attendees at least five days a week year round during the term of this lease.

3. The City (as the owner of the structure) and the Council on Aging, mutually agree that the maintenance responsibility of the structure shall be as follows:

* All routine maintenance such as cleaning, painting, landscaping, service calls and filter replacement for heating and cooling units, refrigeration and cooking units are the responsibility of the Council on Aging (or whatever successor agency is employed to deliver services in the structure). The Council on Aging (or successor agency) will be responsible for payment of all utility bills and service contracts, as well as maintenance and replacement of the facility's minor systems and components (some examples are light switch replacement, thermostat repair or replacement, light bulb and ballast replacement).

* The City (as owner of the structure) recognizes its responsibility for repair and replacement of issues arising from failure in the structural component of the building. The City further agrees to perform periodic inspections of the structure in order to insure that the facility retains its structural integrity. It further agrees to meet on a periodic basis with representatives of the agency providing service in the facility to ensure that significant operations and repair issues are not overlooked. The City assumes responsibility for needed repair of major building systems (examples are HVAC system and mechanical systems).

4. The term of this *Lease and Agreement to Provide Services* shall be Twenty (20) years beginning on _____, 2003, and ending on _____, 2023. Either party to this *Lease and Agreement to Provide Services* may terminate this *Lease and Agreement* upon giving on year's written notice to the other party. The notice to voluntarily terminate this *Lease and Agreement* shall be effective to begin the one year period prior to termination upon receipt of the notice by the Executive Director of the Council On Aging, Inc. or COA staff member in charge at the Fayetteville Senior Activity Center, or upon receipt by the Mayor of the City of Fayetteville or senior City staff member in the Mayor's Office.

5. The City of Fayetteville agrees to use the Fayetteville Senior Activity Center for the operation of a senior activity center as defined by the applicable state and federal regulations as long as required by such regulations. If the City chooses to discontinue using the Senior Center as a senior activity center such that the Council On Aging, Inc. would be required to reimburse funds received from a federal or state agency, the City will reimburse the required funds either to the Council On aging, Inc. or directly to the governmental agency.

6. The City of Fayetteville will be responsible for any insurance necessary for the structure housing the Fayetteville Senior Activity Center and the Council On Aging, Inc. shall insure all of the contents of this building as well as purchasing and maintaining in

force a liability insurance policy from a company acceptable to the City for any injury or damages resulting from its or visitors' use (including foodservice) of the premises in an amount of at least $1,000,000.00 with a no-fault medical expenses rider of at least $5,000.00 per person. A copy of the Council On Aging, Inc.'s current insurance policy shall be provided to the Fayetteville City Clerk and a copy of any change, modification, renewal or termination of said insurance shall be provided the City Clerk within five (5) days of receipt.

7. The Council On aging, Inc. shall be responsible to fully pay and keep current all utilities (gas, electric, telephone, cable, water, sewer, solid waste, etc.) necessary to properly operate the Senior Center.

8. This Lease and Agreement constitutes the entire agreement between the City of Fayetteville and the Council On Aging, Inc. Any changes or modifications must be in writing and agreed to by the City Council of Fayetteville and the Board of Directors of the Council On Aging, Inc. to be effective.

In Agreement With All of the Terms, Promises, and Conditions stated above and after formal approval by the Board of Directors of the Council On Aging, Inc. and the Fayetteville City Council we execute this Lease and Agreement to Provide Services by signing below on this the ____day of October, 2003.

COUNCIL ON AGING

By:_____
JANET LINEBAUGH
Executive Director

Witness:_____

_____
Name & Title

CITY OF FAYETTEVILLE

By:_____
DAN COODY
Mayor

ATTEST:

_____
Sondra Smith
City Clerk

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

X AGENDA REQUEST

For the Fayetteville City Council Meeting of: January 6th, 2004

FROM:

Hugh Earnest		Chief Adminstrative Officer
Name	Division	Department

ACTION REQUIRED: Passage of a Resolution authorizing a lease with the Council On Aging

SUMMARY EXPLANATION: See attached memo

STAFF RECOMMENDATION:

Received in Mayor's Office 12/19/03
Date

Division Head — Date

The proposed lease I drafted required operation of the Center 6 days a week. Different responsibility to repair HVAC, plumbing, electrical
City Attorney — Date

Department Director — Date

Cross Reference:

Previous Ord/Res#:

Finance & Internal Services Dir. — Date 12-19-03

Orig. Contract Date:

Chief Administrative Officer — Date 12-18-03

Orig. Contract Number:

Mayor — Date 12/19/03

New Item: Yes No

ENTERED 12/19/03

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

Date: **January 15, 2003**

To: **The Mayor and Council**

From: **Hugh Earnest**

Subject: **Hours of Operation at Senior Citizen Center**

Recommendation
We would ask that our staff and the COA staff work on a comprehensive review of the operation of the center. That review will cover possible changes in personnel, changes in days of service coupled with a survey of the client base at the center to better ascertain areas of interest. We will have the review completed by March 1st. of this year.

Background
The city council has requested, as part of the approval of a lease between the city and the Council on Aging, that city staff and representatives of the Council explore the feasibility of increasing the hours of operation of the new Senior Center in Walker Park. The center has been in operation since May of 2003 and it has been a tremendous addition to the services provided seniors in this area. The contract for services between the Council on Aging and the Area Agency on Aging is determined by past history and future predictions. In the event that contracted services go beyond the predicted contract amounts, the services must be paid in some form by the community.

The Council on Aging is a non-profit organization that receives funding from Federal, State, City and the United Way. The yearly revenues for 2003-2004 are as follows:

Federal and State	49%	$608,920
Contributions	44.5%	$534,000
United way	3.8%	$ 49,000
City	2.7%	$ 32,900

The money requested from the City is used exclusively for Hillcrest Towers. Last year, the City allocation was $31,500. This year, the City allocation is $32,900. This is a $1,400 increase that will be used at the new senior center.

It should also be noted that the Council on Aging provides services to 9 centers in Washington County. A key part of that service is meals on wheels as well as meals on site in 9 centers across the county. The kitchen in our Senior Center is used to provide

meals for Fayetteville, West Fork, Goshen, Elkins, Greenland and Elm Springs. These meals are provided at no cost and individuals are asked to contribute to cover the cost of the meals. The center also is currently open for dances and special events on weekends. Council staff opens the center to seniors on request for various events.

Current Situation

The executive director of the Council on Aging has provided us with the following estimates of cost for providing additional services at the center

Saturday full service (noon meal)	$ 70,000
Saturday no meal	$ 30,940
Sunday full service	$140,000
Sunday no meal	$ 61,880

We have discussed the possibility of using volunteers for opening the center with no meal preparation on Saturdays and Sundays. However, we jointly share the concern that such an approach places both the City and the Council at some risk if no oversight supervision is provided.

Mrs. Linebaugh certainly shares the views of many that this wonderful center be used to its maximum capacity. However, as is true in far too many situations, the current budget constraints of this particular non-profit will require additional funding from outside sources if additional service is provided.

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.

Tabled to March 2, 2004

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 CONTRACTS WITH WASTE MANAGEMENT OF ARKANSAS, OZARK SANITATION, AND ROLL-OFF SERVICES, INC., 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 contracts with Waste Management of Arkansas, Ozark Sanitation, and Roll-Off Services, Inc., 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 17th day of February 2004.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

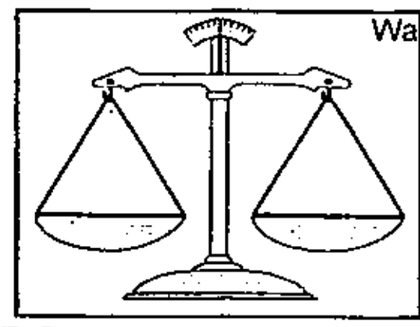
By: _____
SONDRA SMITH, City Clerk

DRAFT

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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



LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **City Council**

FROM: **Kit Williams**, City Attorney

DATE: **January 30, 2004**

RE: **Agreement to Haul and Dispose of Waste**

Attached please see what I have recommended for our Agreement to Haul and Dispose of Solid Waste. As you can see, it tracks very closely to the proposed contract in your packet. The primary difference is paragraph 12 which has been completely rewritten to ensure that the waste hauler agrees that this is a voluntary contractual agreement as opposed to a franchise imposed by city ordinance.

The City can legally impose a franchise on license requirement by city ordinance (especially if we have trouble arriving at an agreed voluntary contract), but that imposed franchise by ordinance would have to be differently structured and probably more difficult to administer for both the waste hauler and the City. That is why the contracts negotiated by Gary Dumas with Waste Management and Roll Off (with only the minor changes I proposed) are the preferable ways to authorize commercial waste hauling in Fayetteville.

CITY OF FAYETTEVILLE
Agreement to Haul and Dispose of Solid Waste

This Agreement ("the Agreement"), is entered into on this _____ day of February, 2004, 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. City and the Hauler agree as follows:

1. Hauler agrees that from and after the original date of this Agreement, 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 terms of this Agreement 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, 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 prebaled, 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 Agreement and shall deliver all Class 4 waste to the Tontitown Landfill. Hauler shall 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 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 fees received after the due date shall be assessed a 2% penalty per month. If Hauler failed to pay the fees within forty-five (45) days of the due date, the City may revoke this Agreement upon delivery of written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the 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 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 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 ensure 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 Agreement.

9. In consideration of the right to provide the services described under this Agreement, Hauler agrees and understands that it shall be required to pay a monthly fee of ten (10%) percent (the Fee) of the gross revenue received for all services provided under this Agreement. Upon execution of this Agreement, a deposit shall be paid in advance to the City. This deposit shall be equal to one-half of the total 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 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. This Agreement has been entered into freely and voluntarily by Waste Management of Arkansas which agrees to abide by all of the terms and conditions as a matter of contractual obligation and not under any other legal duty or because of any city ordinance. This is a contractual Agreement and is not intended to be part of or related in any way to any license or ordinance created pursuant to A.C.A. §26-77-102.

13. Neither this Agreement, nor any rights or obligations hereunder may 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.

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) Haulers breach of any term, condition, covenant or warranty contained in this Agreement, 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 Agreement:

(a) Hauler shall provide and maintain, during the term of this Agreement, 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 Agreement 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 Agreement 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 Agreement 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 Agreement 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

Waste Management of Arkansas
Attn: Mr. George Wheatley
2900 West 68th Street
Little Rock, AR 72209

19. Hauler agrees and understands that this Agreement 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 Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive the termination (for any reason), cancellation or expiration of this Agreement.

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: _____

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:

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 — Name
Division
Operations Department — 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		Franchise from Waste Management
5500-0955-4105-08		Franchise from Roll Off Service
5500-0955-4105-09	$	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:

Marsla Fautsch — Accounting Manager — Date 1/8/04
Nancy Smith — Internal Auditor — Date 1/8/04
D. P. White — City Attorney — Date 1/9/04
P Vice — Purchasing Manager — Date 1/9/04

STAFF RECOMMENDATION:

Division Head — Date
Department Director — Date 1-8-04
Finance & Internal Services Dir. — Date 1-9-04
Chief Administrative Officer — Date 1-13-04
Mayor — Date 1/15/04

Received in Mayor's Office 1/9/04 Date

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

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

Deleted from 2/3/04 Added to 2/17/04 Agenda.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: Mayor and City Council

From: Gary Dumas Gary Dumas

Date: January 26, 2004

Subject: Waste Hauler Contracts – Delete from Agenda

Negotiations between the City and the waste haulers and their legal representatives culminated in December with the signed contracts currently in the Council packet. After several months and numerous contract versions with the City Attorney's Office authoring all contract documents, executed copies were returned from Waste Management and Roll Off Service.

On Friday January 23, the City Attorney contacted the Administration with numerous revisions.

Revised contracts have been forwarded to all haulers and should be returned quickly.

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

XXXX AGENDA REQUEST

For the Fayetteville City Council Meeting of: March 2, 2004

FROM:

Sondra Smith	City Clerk	City Clerk
Name	Division	Department

ACTION REQUIRED: An ordinance to establish Fayetteville Municipal Property Owner's Improvement District No. 6 - Rupple Row Development

SUMMARY EXPLANATION:

A petition filed by James N. McCord to form Fayetteville Municipal Property Owners' Improvement District No. 6 Rupple Row Development. The petition is being filed under the Arkansas Municipal Property Owners' Improvement District law. Arkansas Code Ann. 14-94-101 et seq. The property comprises approximately 40 acres. It is located approximately 600 feet south of Wedington Drive, immediately west of Rupple Road and south of the proposed extension of Persimmon Street.

STAFF RECOMMENDATION:

Sondra Smith — Division Head — 2/17/04 Date

Received in Mayor's Office — Date

City Attorney — Date

Department Director — Date

Finance & Internal Services Dir. — 2-19-04 Date

Chief Administrative Officer — 2-19-04 Date

Mayor — 2/19/04 Date

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

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

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

February 17, 2004

Honorable Dan Coody, Mayor
City Administration Building
113 W. Mountain
Fayetteville, AR 72701

RE: Petition to form Fayetteville Municipal Property Owners' Improvement District No. 6
Rupple Row Development

Dear Mayor:

Pursuant to Arkansas Code Ann. Sec. 14-94-105 (e)(3), you are hereby notified that the enclosed Petition to form Fayetteville Municipal Property Owners' Improvement District No. 6 – Rupple Row Development has been filed in the office of the Fayetteville City Clerk. Pursuant to Ark. Code Ann. Sec. 14-94-106 (a)(1), I hereby present you with the Petition.

Sincerely,

Sondra Smith

Sondra Smith
City Clerk/Treasurer

cc: Kit Williams, City Attorney
James N. McCord

113 WEST MOUNTAIN 72701 479-521-7700
FAX 479-575-8257

JAMES N. McCORD
Attorney at Law
11 N. WEST AVE.
SUITE #202
FAYETTEVILLE, ARKANSAS 72701

TELEPHONE (479) 695-1134
FACSIMLE (479) 695-1135
jimmccordlaw@alltel.net

February 11, 2004

Ms. Sondra Smith, City Clerk
City Administration Building
113 West Mountain
Fayetteville, AR 72701

VIA HAND DELIVERY

Re: Petition to Form Fayetteville Municipal Property Owners' Improvement District No. 6 – Rupple Row Development

Dear Ms. Smith:

Enclosed for filing in the office of the Fayetteville City Clerk are three (3) executed counterparts of a Petition to Form Fayetteville Municipal Property Owners' Improvement District No. 6 – Rupple Row Development. Please file mark each Petition, retain one for your permanent file, retain one for presentation to the Mayor, and return the other counterpart to me. The Petition is being filed under the Arkansas Municipal Property Owners' Improvement District law, Ark. Code Ann. Sec. 14-94-101 et seq.

The property to be located in the improvement district comprises approximately 40 acres. It is located approximately 600 feet south of Wedington Drive, immediately west of Rupple Road and south of the proposed extension of Persimmon Street reflected on the City's Master Street Plan (see enclosed vicinity map). A residential subdivision is proposed for the property.

Ark. Code Ann. Sec. 14-94-105(e)(3) provides that notice of the filing of the Petition shall be given by first class mail to the mayor by the clerk. Ark. Code Ann. Sec. 14-94-106 provides:

(a)(1) Upon the filing of the petition with the clerk, it shall be the duty of the clerk to present the petition to the mayor.

(2) The mayor shall thereupon set a date and time, not later than fifteen (15) days after the date of the presentation of the petition to the mayor, for a hearing before the governing body for consideration of the petition.

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(b)(1) At the hearing, it shall be the duty of the governing body to hear the petition and to ascertain whether those signing the petition constitute all the owners of the real property to be located in the district.

(2)(A) If the governing body determines that all the owners of the real property to be located in the district have petitioned for the improvements, it shall be its duty by ordinance to establish and lay off the district as defined in the petition and to appoint the commissioners as named in the petition.

***

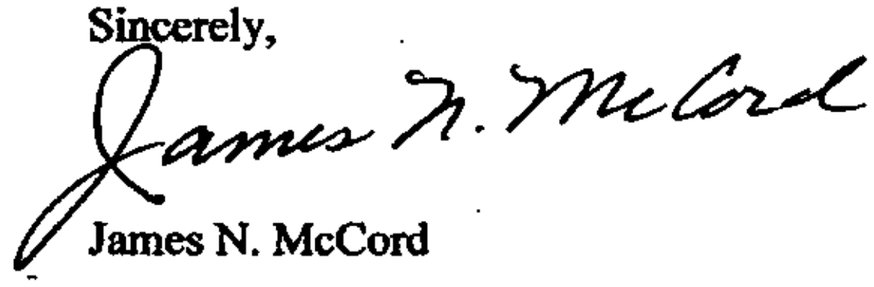
(c) The ordinance establishing the district shall be published within thirty (30) days after its adoption by one (1) insertion in some newspaper of general circulation in the municipality in which the district lies.

Enclosed for your convenience is a form for a letter you may use to give the Mayor notice by first class mail that the Petition has been filed with the City Clerk. Also enclosed for filing in your office is an executed Abstractor's Certificate certifying that the improvement district petition is signed by the owners of all the real property described in the petition. I have drafted and enclose an ordinance which would establish the improvement district and name the commissioners.

Formation of a municipal property owners' improvement district is merely a financing alternative for the cost of subdivision infrastructure. The improvement district issues special assessment bonds, bond proceeds are used to pay for the infrastructure, the district levies a tax on each lot to pay debt service on the bonds, the tax revenues are paid to the bond trustee, and the trustee makes debt service payments to the bondholders. The developer must comply with all City development ordinances. The infrastructure must be constructed to City specifications and is dedicated to the City.

Should there be any questions, please contact me.

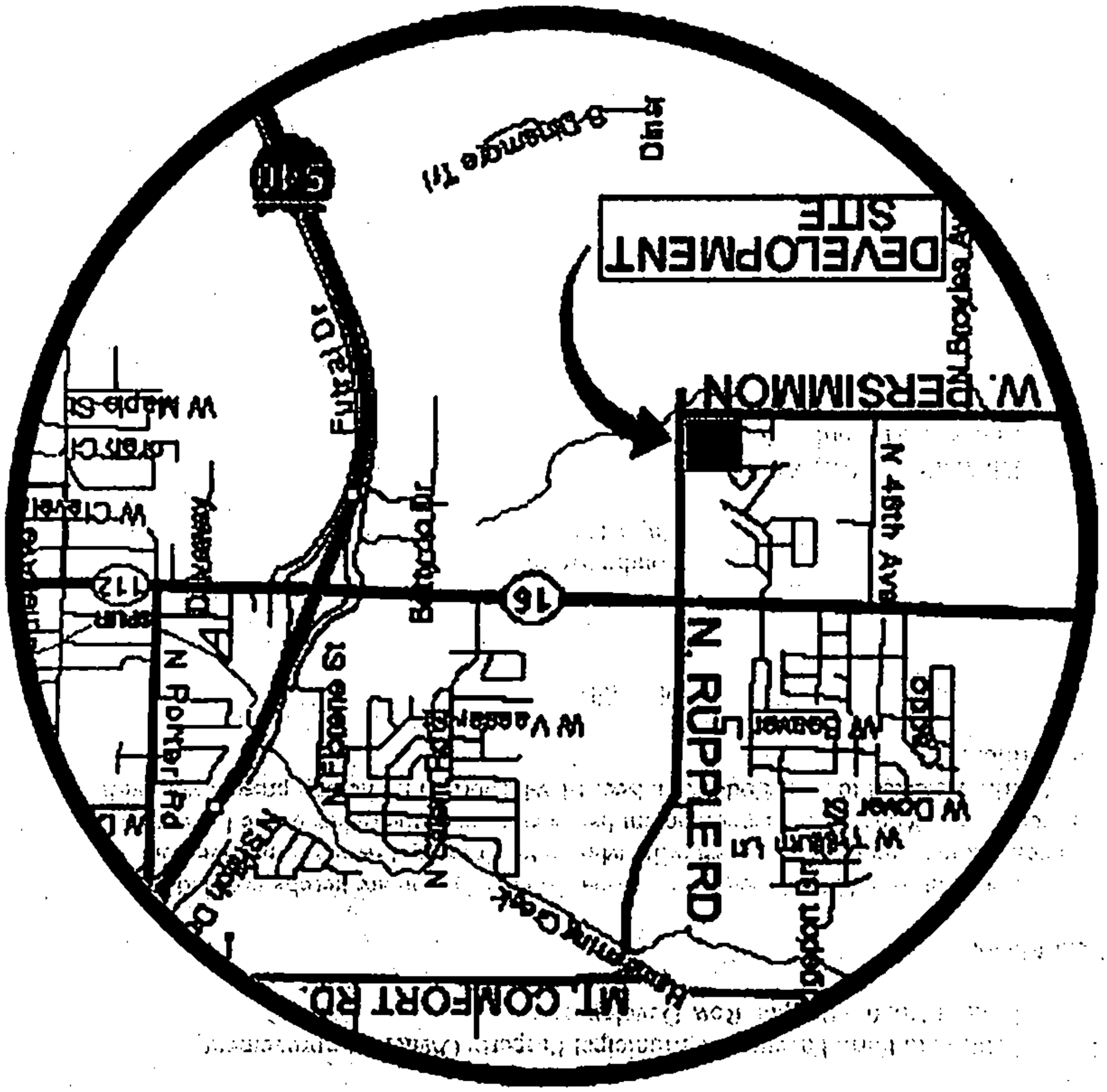
Sincerely,



James N. McCord

JNM:mbm

cc: Honorable Dan Coody, Mayor
Kit Williams, City Attorney
John Nock


DEVELOPMENT SITE
W. PERSIMMON
N. RUPPLE RD
N 49th Ave
Bogley Ave
MT. COMFORT RD.
N Rupple Rd
Eureka Dr
Bogley Dr
W Maple St
W Clover
Lorain Cir
W Dover
W Dover St
W Vassar Dr
N Fairview St
Washington Dr
Eureka Ditch
Dirt
Drainage Ditch
16
112
19

February , 2004

Honorable Dan Coody, Mayor
City Administration Building
113 W. Mountain
Fayetteville, Ar 72701

Re: Petition to Form Fayetteville Municipal Property Owners' Improvement District No. 6 – Rupple Row Development

Dear Mayor:

Pursuant to Ark. Code Ann. Sec. 14-94-105 (e)(3), you are hereby notified that the enclosed Petition to From Fayetteville Municipal Property Owners' Improvement District No. 6 – Rupple Row Development has been filed in the office of the Fayetteville City Clerk. Pursuant to Ark. Code Ann. Sec. 14-94-106(a)(1), I hereby present you with the Petition.

Sincerely,

Sondra Smith
City Clerk

cc: Kit Williams, City Attorney
James N. McCord

ORDINANCE NO. _____

AN ORDINANCE TO ESTABLISH AND LAY OFF FAYETTEVILLE MUNICIPAL PROPERTY OWNERS' IMPROVEMENT DISTRICT NO. 6 – RUPPLE ROW DEVELOPMENT

WHEREAS, a Petition to form Fayetteville Municipal Property Owners' improvement District N. 6 – Rupple Row Development has been filed with the Fayetteville City Clerk; and,

WHEREAS, the City clerk has presented said petition to the Mayor; and,

WHEREAS, Ark. Code Ann. Sec. 14-94-106 (2) provides that the Mayor shall thereupon set a date and time, not later than 15 days after the date of the presentation of the petition to the mayor, for a hearing before the governing body for consideration of the petition; and,

WHEREAS, the Fayetteville City Council has determined from an abstractor's certificate of property ownership that those signing said petition constitute all the owners of the real property to be located in said district; and,

WHEREAS, Ark. Code Ann. Sec. 14-94-106(b)(2) provides that if the governing body determines that all of the owners of the real property to be located in the district have petitioned for the improvements, it shall then be its duty by ordinance to establish and lay off the district as defined in the petition and to appoint the commissioners as named in the petition.

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

SECTION 1: That the real property described in Exhibit "A" attached hereto and made a part hereof is hereby established and laid off as Fayetteville Municipal Property Owners' Improvement District No. 6 – Rupple Row Development for the purpose of constructing or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation of electric and telephone distribution systems, sanitary sewers, streets and highways, including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing within said district.

Section 2: The following three individuals are hereby as commissioners of said improvement district: John Nock, Richard Alexander and Ryan C. Thornton.

Section 3: the name of said improvement district shall be Fayetteville Municipal Property Owners' Improvement District No 6 – Rupple Row Development.

PASSED AND APPROVED this _____ day of _____, 2004.

APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

EXHIBIT "A"

Tract Seven (7) of WHM Land Investments, Inc., a subdivision to the City of Fayetteville, Arkansas, as per plat on file in Plat Book 17 at Page 102 among records in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

NOTICE

YOUR SIGNATURE HEREON SHOWS THAT YOU FAVOR THE ESTABLISHMENT OF AN IMPROVEMENT DISTRICT. IF THE DISTRICT IS FORMED, YOU MAY BE CHARGED FOR THE COST OF THE IMPROVEMENTS.

BEFORE THE CITY COUNCIL OF FAYETTEVILLE, ARKANSAS

PETITION TO FORM FAYETTEVILLE MUNICIPAL PROPERTY OWNERS' IMPROVEMENT DISTRICT NO. 6 – RUPPLE ROW DEVELOPMENT

For their petition to form Fayetteville Municipal Property Owners' Improvement District No. 6 – Rupple Row Development, Nock Investments, L.L.C, John Nock, Richard Alexander and Ryan C. Thornton., state:

1. Petitioners are the record title owners to all of the real property described in Exhibit "A" attached hereto and made a part hereof as reflected by the deed records in the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas. All of said property is located within the corporate limits of the City of Fayetteville, Arkansas.

2. Petitioners desire that the real property described in Exhibit "A" attached hereto and made a part hereof be laid off into a municipal property owners' improvement district pursuant to Ark. Code Ann. Section 14-94-101 et seq. for the purpose of constructing, and maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation of electric

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and telephone distribution systems, sanitary sewers, streets and highways including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing.

3. Petitioners desire that the district shall not cease to exist upon the construction of the improvements, but it shall continue to exist for the purpose of preserving, maintaining, and operating the improvements, replacing equipment, paying salaries to employees, and performing any other functions or services authorized in Ark. Code Ann., Title 14, Chapter 94.

4. Petitioners name the following three (3) individuals to be appointed as commissioners of the District: John Nock, Richard Alexander and Ryan C. Thornton.

5. Petitioners propose that the name of the district be Fayetteville Municipal Property Owners' Improvement District No. 6 – Rupple Row Development.

WHEREFORE, Nock Investments, L.L.C., John Nock, Richard Alexander and Ryan C. Thornton petition the City Council of Fayetteville, Arkansas, to adopt an ordinance establishing and laying off the real property described in Exhibit "A" attached hereto and made a part hereof into Fayetteville Municipal Property Owners' Improvement District No. 6 – Rupple Row Development for the purpose of constructing and maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation of electric and telephone distribution systems, sanitary sewers, streets including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing.

EXHIBIT "A"

Tract Seven (7) of WHM Land Investments, Inc., a subdivision to the City of Fayetteville, Arkansas, as per plat on file in Plat Book 17 at Page 102 among records in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

DATED this 10TH day of February, 2004.

Nock Investments, L.L.C.

By: _____
John Nock
Managing Member

_____
Richard Alexander

_____
Ryan C. Thornton

_____
John Nock

BEFORE THE CITY COUNCIL OF FAYETTEVILLE, ARKANSAS

RE: PETITION TO FORM FAYETTEVILLE MUNICIPAL PROPERTY OWNERS' IMPROVEMENET DISTRICT NO. 6 – RUPPLE ROW DEVELOPMENT

ABSTRACTOR'S CERTICIFATE OF PROPERTY OWNERSHIP

Waco Title hereby certifies that the deed records in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, reflect that Nock Investments, L.L.C., John Nock, Richard Alexander and Ryan C. Thornton are all of the owners of the record title for the real property described in Exhibit "A" to the Petition to Form Fayetteville Municipal Property Owners' Improvement District No. 6 – Rupple Row Development, a copy of which Exhibit "A" is attached hereto and made a part hereof. THIS CERTIFICATE IS LIMITED TO SURFACE OWNERSHIP ONLY.

Dated this 9th day of February, 2004.

Waco Title

By: Helen Bingaman

Printed Name: Helen Bingaman

Title: ~~Abstractor~~ 21 4A

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CITY CLERK'S OFFICE

EXHIBIT "A"

Tract Seven (7) of WHM Land Investments, Inc., a subdivision to the City of Fayetteville, Arkansas, as per plat on file in Plat Book 17 at Page 102 among records in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

BELL COW, INC.
P.O. Box 9741
Fayetteville, AR 72703
(479) 283-3408

Sandra Smith
Fayetteville City Clerk
113 W Mountain
Fayetteville, AR 72701

February 11, 2004

RE: Hwy 62 Re-zoning Appeal

The following is our response to the reasons for denial of our re-zoning request.

We believe the planning commission's decision was in error for the following reasons:

1. The requested density is compatible with the surrounding area.

2. The commissioners were unable to break from the PZD mind set and review our request as a normal re-zoning.

Sincerely,

Craig L. Campbell
President, Bell Cow, Inc.

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BELL COW, INC.
P.O. Box 9741
Fayetteville, AR 72703
(479) 283-3408

February 3rd, 2004

Sandra Smith
Fayetteville City Clerk
113 W Mountain
Fayetteville, AR 72701

RE: Hwy 62 Rezoning Appeal

We respectfully appeal the planning commission's January 26th, 2004 decision to deny our rezoning request for our property located at Hwy 62 and Hanshew Rd.

We are submitting this letter to comply with the 10 day requirement to appeal.

The recorder has yet to compile the minutes from the meeting, so the exact reason for denial is unavailable. Thus, we will submit a second letter contesting the reason for the denial after the recorder compiles the minutes.

Sincerely,

Craig L. Campbell
President, Bell Cow, Inc.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of January 26, 2004

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

PLANNING DIVISION CORRESPONDENCE

TO:	Fayetteville Planning Commission
FROM:	Jeremy Pate, Associate Planner
THRU:	Dawn Warrick, AICP, Zoning & Development Administrator
DATE:	January 21, 2004

RZN 04-01.00: Rezoning (Parnell, pp 595) was submitted by Eric Johnson of Triangle Builders Supply for property located south of Hwy. 62 and west of Hanshew Road. The property is currently zoned R-A, Residential Agricultural, and contains approximately 17.00 acres. The request is to rezone the subject property to RMF-12, Residential Multi-family, 12 units per acre to allow the development of townhouse lots. Planner: Jeremy Pate

RECOMMENDATION:

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

PLANNING COMMISSION ACTION:	**Required**	**YES**	
	○ **Approved**		☒ **Denied** 9-0-0
Date: January 26, 2004			
CITY COUNCIL ACTION:	**Required**	**YES**	
	○ **Approved**		○ **Denied**
Date: February 17, 2004 (1st reading if recommended)			

Comments: _____

BACKGROUND:

History: This request was first submitted for review at the **October 13, 2003** Planning Commission meeting. At that time, the item was tabled to allow the applicant and staff time to review the proposal further. The rezoning request was reviewed a second time by Planning Commission on **November 24, 2003**, at which time a Bill of Assurance was introduced by the applicant limiting the proposed density to 9 dwelling units per acre, providing a fifty-foot wide

access easement north to 6th Street to be dedicated as a city street at the time of development, and providing conceptual plans for the planned townhouse-style development. The applicant withdrew the rezoning request at the second meeting, to pursue the possibility of processing a Planned Zoning District. In both meetings, staff recommended denial based on lack of compatibility with surrounding properties and how this potentially multi-family residential use would fit into a primarily single family neighborhood. The application was withdrawn in order to pursue a Planned Zoning District. A Planned Zoning District would allow staff, adjoining property owners and the Planning Commission the opportunity to review the development proposal along with the rezoning request and how it would fit into the fabric of the existing surrounding land use.

The provision of additional access as the applicant has described in the accompanying Bill of Assurance would benefit any project in this location. Significant improvements to adjacent infrastructure would be necessary regardless of new street proposals. Staff would also need to review the potential for connections of streets within this project to adjacent undeveloped properties which are not currently being considered by the applicant. Because of the unique nature and siting of this property, a Planned Zoning District would allow a more comprehensive approach to a development taking into consideration density, access, natural features, infrastructure and other site constraints.

The applicant has indicated to staff the proposal prepared to process a Planned Zoning District exceeds $50,000, which the applicant is unwilling to pursue. The current rezoning request before the Planning Commission has not changed from that reviewed November 24, 2003, therefore, staff's recommendation for denial remains consistent. In a review of the information provided by the applicant, staff has the same concerns which were voiced in October and November with regard to compatibility with adjoining properties. Staff has and continues to advocate the use of a PZD for development of this site which would enable the applicant to provide a mix of residential development types (single family, two family, townhome, etc.) while addressing the unique features of this site. The proposed density is too inconsistent with the surrounding properties, making this proposed rezoning inappropriate.

Property description: The subject property is located south of Hwy 62W (6th Street), west of the Lowe's PZD which is currently under construction, and south of the Magnolia Crossing subdivision. Surrounding properties are primarily large tracts which are vacant or sparsely developed with single family homes. The 17.00 acre site is heavily wooded, has significant areas of steep slopes and is somewhat remote. Access from Hwy 62W onto Hanshew Rd. to the property is not improved to city standards and would require full street improvements should a development occur on the subject property. Water and sewer would have to be improved and extended to the site to provide utilities.

Proposal: The applicant proposes to develop a subdivision of townhomes on the subject property.

Request: The request is to rezone the subject property from R-A, Residential Agricultural to

RMF-12, Residential multi-family / 12 units per acre.

Note: Staff has discussed various zoning districts with the applicant regarding lot and area regulations as well as density and types of development that could occur within each district. The RT-12 district would allow the same overall density and would restrict the development to single family, duplex and triplex configurations, however the attachment of more than three townhomes could not be achieved with this zoning. An R-PZD could better address the site, density and surroundings and provide more opportunity for transition between a new development and existing surrounding properties. After withdrawing the rezoning request from the November Planning Commission meeting and meeting with an engineering consultant, the applicant met with staff to discuss the financial burden imposed upon the developer with a PZD process, and to inquire about a "conceptual" review of the development proposal to better understand the Planning Commission's concerns. Staff is only able to process a "Conceptual Plat," which yields no guarantees for rezoning or development approvals.

SURROUNDING LAND USE AND ZONING

Direction	Land Use	Zoning
North	Vacant	R-A, Residential Agricultural
South	Single family home – large acreage	R-A, Residential Agricultural
East	Single family homes	RSF-4, Single family residential / 4 units per acre
West	Vacant	R-A, Residential Agricultural

INFRASTRUCTURE:

Access to the subject property is from Hanshew Rd. which is a narrow asphalt lane. This road will have to be improved in order for new development to have appropriate access.

Water is available along Hanshew Rd. (6" line) however in order to serve any development on the subject property, the water system must be looped and connect with the 12" line located adjacent to Hwy 62W north of the site.

Sewer service will have to be extended to serve a development on the subject property. There is a 6" line that runs along Hanshew Rd. on the eastern boundary of the subject property.

LAND USE PLAN: General Plan 2020 designates this site Residential. Rezoning this property to RMF-12 is consistent with the land use plan but is not compatible with surrounding land uses in the area.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use

planning objectives, principles, and policies and with land use and zoning plans.

Finding: **The proposed zoning is not consistent with land use planning objectives. The efficient use of infrastructure and reasonable access to improved roads and utilities (water and sewer) are challenges to this site. While improvements would be required of the developer at the time of development review and approval, the amount of density being proposed is not compatible with the very sparsely populated lands surrounding this site. Additional findings related to specific guiding policies identified in the General Plan are included at the end of this staff report.**

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 not justified or needed at this time. There are existing undeveloped areas closer to the main part of the city. Some property is already zoned for residential development, other properties would require rezoning.**

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: **Traffic generation for the proposed zoning would increase the average trips per day from approximately 80 vehicle trips per day (8 single family homes) to a maximum of 1,195 vehicle trips per day (204 townhomes).** ***With the submitted Bill of Assurance limiting density to 9 DU/acre, traffic generation numbers equal approximately 897 vpd.***

Police – **The police department representative states concerns about the traffic density on the narrow road (Hanshew Rd.) with no shoulders. "Further, these vehicles would have only one outlet from the neighborhood. All of these vehicles would be dumped onto West 6th Street at an intersection without any traffic signals and in a 55 mph zone."** ***Review of the submitted Bill of Assurance providing an access easement to 6th Street alleviates some of the concerns for two means of access for the Police Department, however the access would remain in an unsignalized location within a 55 mph speed zone.***

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 result in an increase in maximum allowable density from the current zoning district of R-A (1 unit per 2 acres) of 8 dwelling units to a maximum of 208 residential units in the requested RMF-**

12 district. ***The submitted Bill of Assurance allows a maximum 153 residential units.***

Police – **This rezoning will not substantially alter the population density thereby undesirably increasing the load on police services.**

Fire – **Response time to the subject property (actual drive time) is 3 minutes 54 seconds (approx. 2 miles) from station #6 on Hollywood Ave. No fire hydrants are located in the area and would be necessary for any new development. The access road is narrow.**

Engineering - **The property currently has access to a 6" water line along Hanshew Road. 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 back to the 12" line along Highway 62 to provide dual feed for the development.**

The site currently has access to a 6" sewer main along Hanshew Road. 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 Highway 62.

Hanshew Road is a paved roadway in this area. However, this roadway does not meet the current design standards for a residential street. This roadway also has a severely deteriorating pavement section. If development occurs on this site, street improvements would be recommended for the full width of Hanshew Road including this property's frontage and offsite to Highway 62.

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: **Development of the subject property under the current zoning district would be consistent with surrounding land uses and zoning districts.**

From Fayetteville's General Plan 2020, Chapter 9 Future Land Use

9.8 Residential Areas

Residential land use represents the largest area designated on the future land use map. Maintaining and enhancing the residential environment of neighborhoods is an important community goal. Existing zoning districts separate housing types by density, housing type, lot size, and frontage requirements and thus promote uniformity of sizes and density. In a policy shift consistent with General Plan 2010 principals, this land use plan establishes a policy for residential areas to be planned as traditional neighborhoods containing a mix of different densities, housing types, and lot sizes. Preserving existing housing in areas currently zoned for commercial or industrial use will also provide residents of traditional neighborhoods with job opportunities nearby and contribute to transportation goals by reducing dependency on car trips.

Residential Areas: *Guiding Policies*

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.

Finding: The proposed rezoning would establish a more intense (dense) development pattern in an area located near the edge of the City which is surrounded by vacant and very sparsely developed property.

9.8.f Site new residential areas accessible to roadways, alternative transportation modes, community amenities, infrastructure, and retail and commercial goods and services.

Finding: The proposed rezoning is located in a remote area without direct access to a main roadway. Immediately adjacent streets are narrow and do not meet current City standards. Infrastructure will have to be improved and extended in order for this site to be able to be developed.

161.11 District RMF-12, Residential Multi-Family – Twelve Units Per Acre

(A) *Purpose.* The RMF-12 Multi-family Residential District is designed to permit and encourage the development of multi-family residences at a moderate density that is appropriate to the area.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 26	Multi-family dwellings

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 11	Manufactured home park
Unit 24	Home occupations
Unit 25	Professional offices
Unit 36	Wireless communications facilities

(C) *Density.*

Units per acre	4 to 12

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Manufactured home park	100 ft.
Lot within a manufactured home park	50 ft.
Single family	60 ft.
Two-family	60 ft.
Three and more	90 ft.
Professional offices	100 ft.

(2) *Lot area minimum.*

Manufactured home park	3 acres
Lot within a manufactured home park	4,200 sq. ft.
Townhouse: •Development •Individual lot	 10,000 sq. ft. 2,500 sq. ft.
Single-family	6,000 sq. ft.
Two-family	7,000 sq. ft.
Three or more	9,000 sq. ft.
Fraternity or Sorority	2 acres
Professional offices	1 acre

(3) Land area per dwelling unit.

Manufactured home	3,000 sq. ft.
Apartments: No bedrooms One bedroom Two or more bedrooms	 1,700 sq. ft. 1,700 sq. ft. 2,000 sq. ft.
Fraternity or Sorority	1,000 sq. ft. per resident

(E) *Setback requirements.*

Front	Side	Rear
25 ft.	8 ft.	25 ft.

Cross reference(s)—Variances, Ch. 156.

(F) *Height regulations.* Any building which exceeds the height of 20 feet shall be set back from any side boundary line an additional distance of one foot for each foot of height in excess of 20 feet.

(G) *Building area.* None.

(Ord. No. 4325, 7-3-01)

161.03 District R-A, Residential-Agricultural

(A) *Purposes.* The regulations of the agricultural district are designed to protect agricultural land until an orderly transition to urban development has been accomplished; prevent wasteful scattering of development in rural areas; obtain economy of public funds in the providing of public improvements and services of orderly growth; conserve the tax base; provide opportunity for affordable housing, increase scenic attractiveness; and conserve open space.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 3	Public protection and utility facilities
Unit 6	Agriculture
Unit 7	Animal husbandry
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 37	Manufactured homes

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 4	Cultural and recreational facilities
Unit 20	Commercial recreation, large sites
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

Units per acre	One-half

(D) *Bulk and area regulations.*

Lot width minimum	200 ft.
Lot Area Minimum:	
Residential:	2 acres
Nonresidential:	2 acres
Lot area per dwelling unit	2 acres

(E) *Setback requirements.*

Front	Side	Rear
35 ft.	20 ft.	35 ft.

(F) *Height requirements.* There shall be no maximum height limits in the A-1 District, provided, however, that any building which exceeds the height of 15 feet shall be setback from any boundary line of any residential district a distance of 1.0 foot for each foot of height in excess of 15 feet. Such setbacks shall be measured from the required setback lines.

(G) *Building area.* None.

(Code 1965, App. A., Art. 5(1); Ord. No. 1747, 6-29-70; Code 1991; §160.030; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99)

Triangle Builders Supply, Inc.
P.O. Box 1585
Fayetteville, AR 72701
(479)442-4774 - (479)442-9368 Fax

December 18, 2003

Planning Administrator
City of Fayetteville
Fayetteville, AR 72701

RE: Re-zoning Hanshew Road

This is our application to re-zone a parcel described in attachment "A" to RMF-12 with an attached bill of assurance limiting the density to 9 units per acre and adding an easement for a fifty foot wide city street across from Camelia Lane..

The following additional items are attached hereto in accordance to the instructions furnished:

1. A check for the applicable fees
2. A legal description of the property to be re-zoned
3. Two sets of typed mailing labels listing the name and address of each adjacent property owner.
4. A plat form the tax assessor showing the adjacent property owners. The Owner's name and the parcel number is shown on the plat.

In response to the questions set forth in Paragraph 5:

a.) Ownership information:

- The property is currently owned by Bell Cow, Inc., 2002 W Meadow Street, Fayetteville, AR 72701.
- Triangle Builders Supply, Inc. has a contract to purchase the property.

b.) Reason for Request:

- Triangle Builders Supply, Inc desires re-zoning of the property to accommodate development of townhouse lots.

c.) Relationship to surrounding properties:

1. Land use of surrounding properties is as follows:
   - North, West, and South, property is currently zoned R-A. This property is largely undeveloped.

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PLANNING DIV.

- East property is currently zoned RSF-4. This property is partially developed as single family residential homes.

2. Signage:

- This re-zoning and development will not affect the signage of the adjacent property.

3. Traffic:

- Traffic will be increased by the number of residents who live in the community.

4. Appearance:

- The appearance should not conflict with surrounding property since there are no adjoining buildings.

d.) Availability of Water and Sewer:

- A 6" sewer line is available along Hanshew Road. A 6" water line is available along Hanshew Road. Utilities will be extended and looped as required.

The following addresses Paragraph 6 requirements:

a.) Land planning objectives:

- The General Plan 2020 calls for residential for this property, which is what we are proposing.

b.) Justification of Re-zoning:

- Affordable residences are in short supply here in Fayetteville. An RMF-12 (with bill of assurance) would allow construction of townhouses, which are an affordable alternative to traditional homes.

c.) Traffic danger and congestion:

- Any development will of course increase traffic for this area, but this residential should not be a large traffic generator. Traffic danger will be reduced by the addition of a full city street, which will be built directly across from Camelia Dr.

d.) Why is development under the current zoning impractical?

- This property is in an area that is rapidly growing, and very close to a major thorough fare (Hwy 62). Thus it would not be well suited for development using large 2 acre lots.

Sincerely,

Eric Johnson

TRIANGLE BUILDERS SUPPLY, INC.
2135 W 6th Street
Post Office Box 1585
Fayetteville, AR 72702-1585
479)442-4774 - 479)442-9368 Fax

December 8, 2003
Sean Tamboo
Nickel-Hill

Re: Highway 62 West land

Dear Sir or Madam:

We hereby request the closing date be extended to April 15 28, 2004. This is 45 days after the City Council should consider the re-zoning request. This assumes all required governmental actions are made at the earliest dates.

We are preparing to re-submit a zoning request to re-zone this property to RMF-12.

Our last request was withdrawn at the suggestion of the Planning Administrator, Dawn Warrick, at the Planning Commission meeting whenr it appeared the commission would not act favorably.

The suggestion was the request be resubmitted as a R-PZD project.

We now have the engineering proposal for R-PZD zoning and the contract price exceeds $50,000.

We are unwilling to spend $50,000 on such a gamble.

I believe we can get Staff support if we provide these things:

1 A Bill of Assurances that limits density to nine units per acre and provides access from 6th Street.

2 A more detailed lot layout.

3 Improved information related to tree preservation and replacement.

4 Prior approval of the Police Department, the Fire Marshall and the Engineering Department.

Sincerely,

Troy Parnell

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PLANNING DIV.

Agreed
Pres
Bell Co, Inc.

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NOV 19 2003
PLANNING DIV.

Triangle Builders Supply , Inc.
P.O. Box 1585
2135 W.6th Street
Fayetteville, AR 72702
479-442-4774
Fax: 479-442-9368

November 19, 2003

Ms. Dawn Warrick, Zoning and Development Administrator
City of Fayetteville
125 W Mountain Street
Fayetteville, Ar 72701

RE: Re-zoning 62 West (Parnell, pp 595)

Dear Dawn:

In an effort to encourage the City Staff to recommend approval of our re-zoning request we are proposing these changes:

1 DENSITY: Limit the RMF-12 density to nine units per acre using the attached bill of assurance.

2 ACCESS: Add a new street connection to 6th Street. This street will be built to City standards and dedicated to the City. The connection to Hanshew Drive will be limited to a gated and locked emergency access drive constructed to meet the requirements of the Fire Marshall and the Police Chief.

3. TREE CANOPY: It is our intent to preserve much of the tree canopy by maintaining a large portion of the property as common area.. However, there are currently very few "significant" trees on the property. The property was reported to have been heavily cut for timber about eight years ago.

4 TRAFFIC: The new street and the reduced density will reduce the traffic impact.

5. DEVELOPMENT PLAN: A preliminary development plan was previously furnished. We realize this is not a required part of the re-zoning process, but the information seems appropriate in this case.

Triangle Builders Supply , Inc.
P.O. Box 1585
2135 W 6th Street
Fayetteville, AR 72702
479-442-4774
Fax: 479-442-9368

Our goal is to create a neighborhood that has the feel of a close-knit community. We believe this "feel" can be achieved with a density of nine units per acre, and with significant "buffering" from the surrounding properties. This would create a residential enclave that will provide a nice, safe, desirable place to live.

We will construct a fence along all boundaries and plant trees and vegetation that will provide a secondary barrier in time. A third barrier of tree growth will also be provided using both existing and new trees.

We will construct a walking trail around the perimeter of the development. This trail will be accessible by all residents, and will provide a common area for the community to interact.

RMF-12 is best suited for this type of development, because it specifically allows for townhouse sized lots.

Sincerely,

Troy Parnell

Attach: Bill of Assurance

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") Triangle Builders Supply, Inc., 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 the Petitioner or Petitioner's heirs, assigns, or successors violate any term of this Bill of Assurance, **substantial irreparable damage justifying injunctive relief** has been done to the citizens and City of Fayetteville, Arkansas. The Petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will **reasonable rely** upon all of the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

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

1. The number of dwelling units upon the property is limited to **nine units per acre**.

2. A fifty foot wide street easement connecting to West 6th Street, approximately in line with Camelia Lane., shall be dedicated to the City of Fayetteville.

3. 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, Troy Parnell, President of Triangle Builders Supply, Inc., as the owner, developer or buyer (Petitioner) **voluntarily offer** all such assurances and sign my name below.

19 Nov 03
Date

T Parnell
Troy Parnell, President

POBox 1585
Address
Fayetteville Ar 72702

Signature

NOTARY OATH

STATE OF ARKANSAS }
COUNTY OF WASHINGTON }

And now on this the 19th day of November, 2003 appeared before me, Troy Parnell, President of Triangle Builders Supply, Inc.,and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the Bill of Assurance and signed his/her name above.

Linda L Parnell
NOTARY PUBLIC

My Commission Expires:
4/28/2005

OFFICIAL SEAL
LINDA L. PARNELL
NOTARY PUBLIC, ARKANSAS
WASHINGTON COUNTY
MY COMM. EXPIRES 4/28/2005

Dawn Warrick

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NOV 07 2003
PLANNING DIV.

Re: Highway 62 & Hanshew Lane Re-zoning

We would like to review our re-zoning request with you.

Attached is a preliminary development plan that we are proposing. Our goal is to create a neighborhood that has the feel of a close-knit community. We believe this "feel" can be achieved with a density of around nine units per acre; and with significant "buffering" from the surrounding properties. This would create a residential enclave that will provide a nice, safe, desirable place to live.

To ensure we achieve this goal, we will do the following things:

1. Construct a city street from West 6th Street to our development. This street will be the primary access to this development. A secondary, gated access to Hanshew Lane for emergency vehicles will be built in compliance to fire codes.

2. Construct a fence along all boundaries. Once the fence is in place, we will plant vegetation that will provide a secondary barrier in time. A third barrier of tree growth will also be provided, by saving existing trees and planting new ones.

3. Construct a walking trail around the perimeter of the development. This trail will be accessible by all residents, and will provide a common area for the community to interact.

Our review of the zoning ordinances leads us to believe that RMF-12 is best suited for this type of development, because it specifically allows for townhouse sized lots. This zoning would let us build at the density we desire of around 9 units per acre, and allow for the preservation of the remaining land as common area and green space.

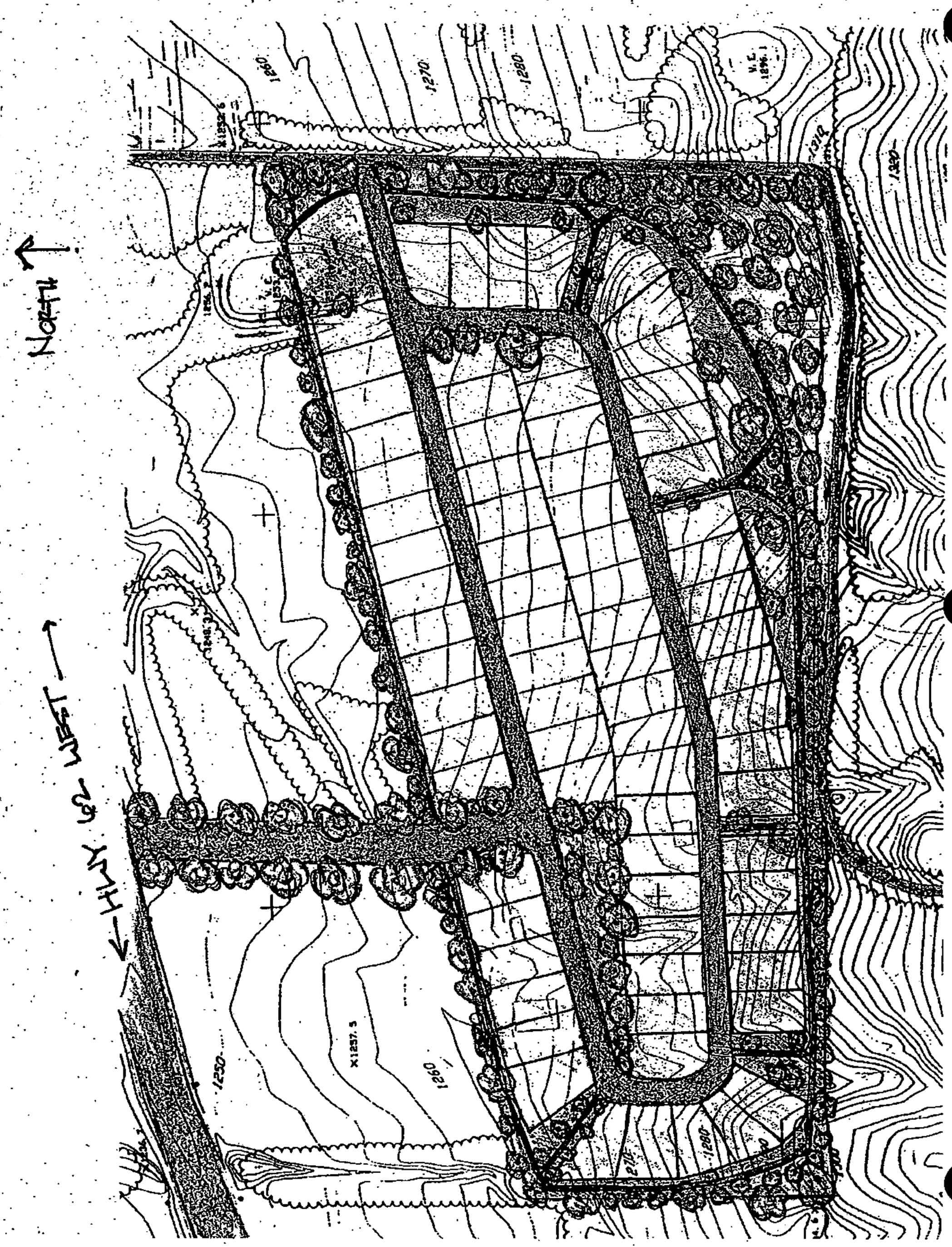
Your comments are certainly welcome, and we would like to work with you further on this. The property has been partially mowed and is more accessible, so we would be happy to provide you with a tour, at your convenience.

Thanks!

Sincerely,

Eric Johnson
Phone: 871-7259
442-4774

Attch:
Preliminary development plan
Aerial photo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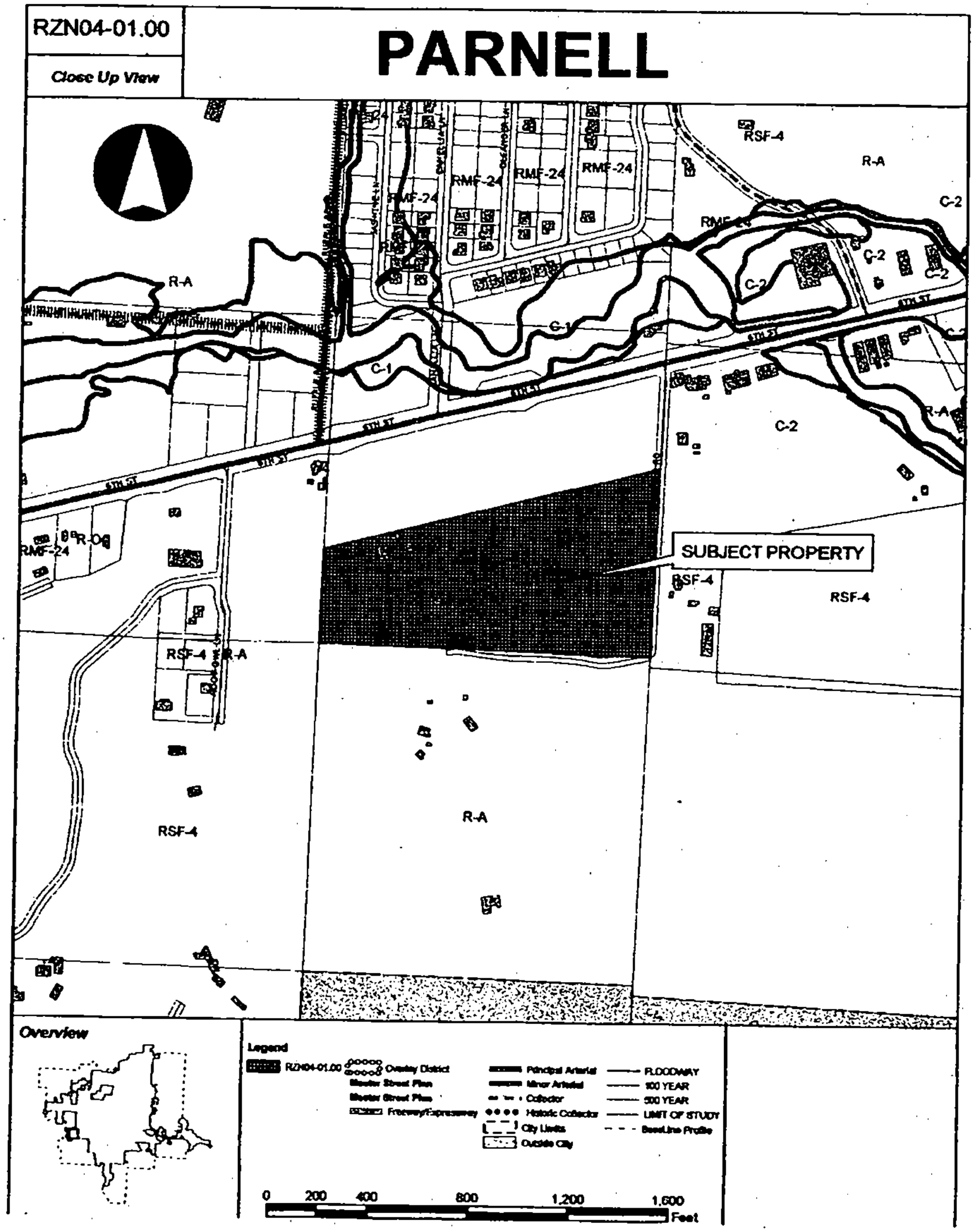
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Close Up View
PARNELL
RSF-4
R-A
C-2
RMF-24
C-1
SUBJECT PROPERTY
Overview
Legend
RZN04-01.00
Overlay District
Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector
City Limits
Outside City
FLOODWAY
100 YEAR
500 YEAR
LIMIT OF STUDY
Baseline Profile
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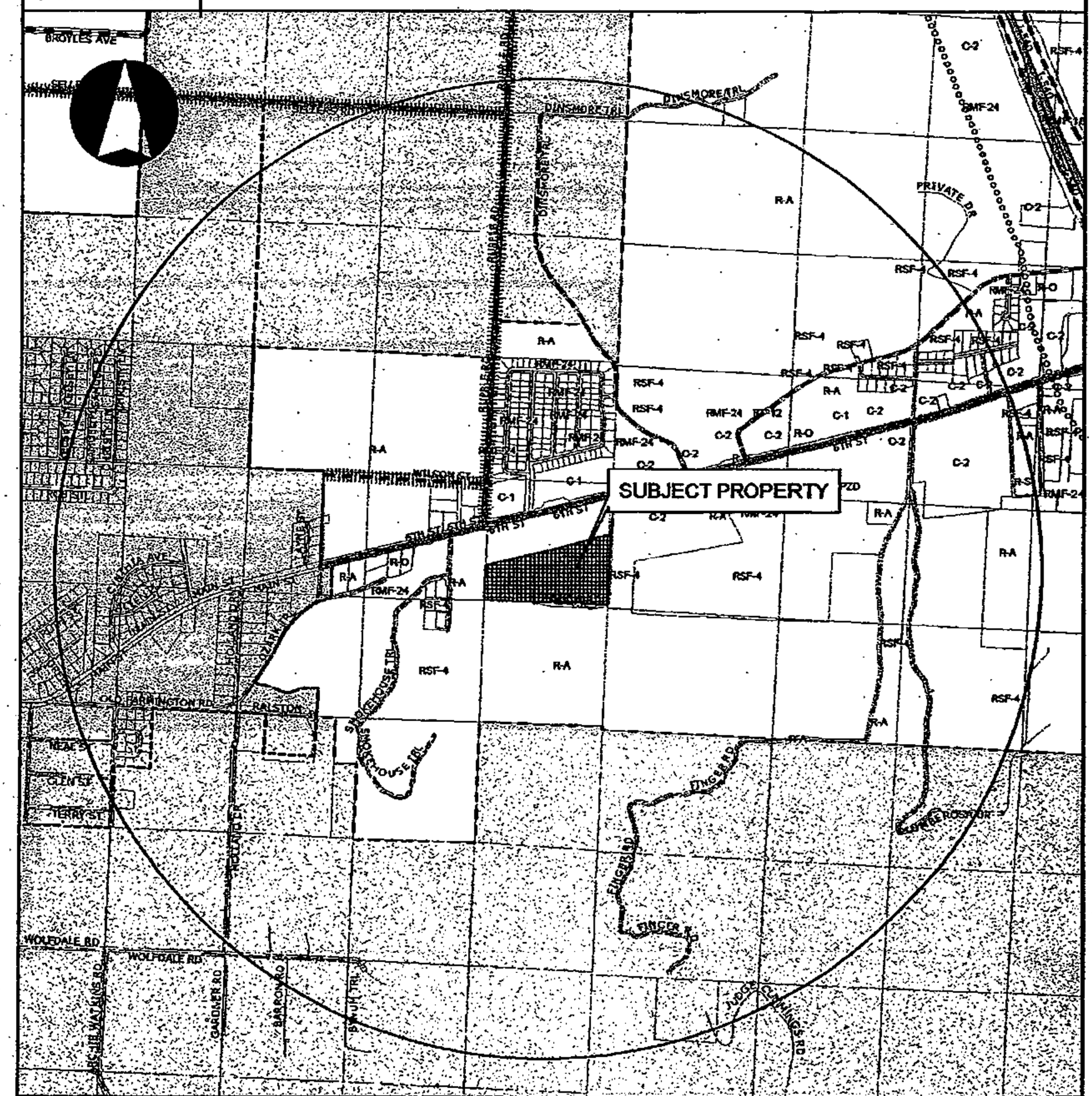
200
400
800
1,200
1,600
Feet

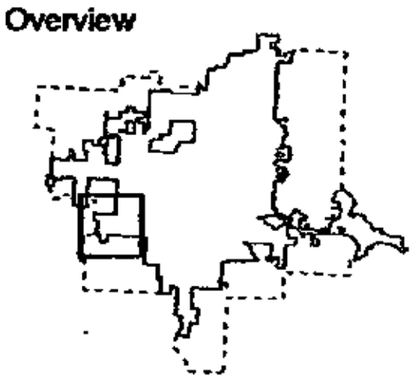
RZN04-01.00

One Mile View

PARNELL



Overview



Legend

Subject Property

RZN04-01.00

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

City Limits

Outside City

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

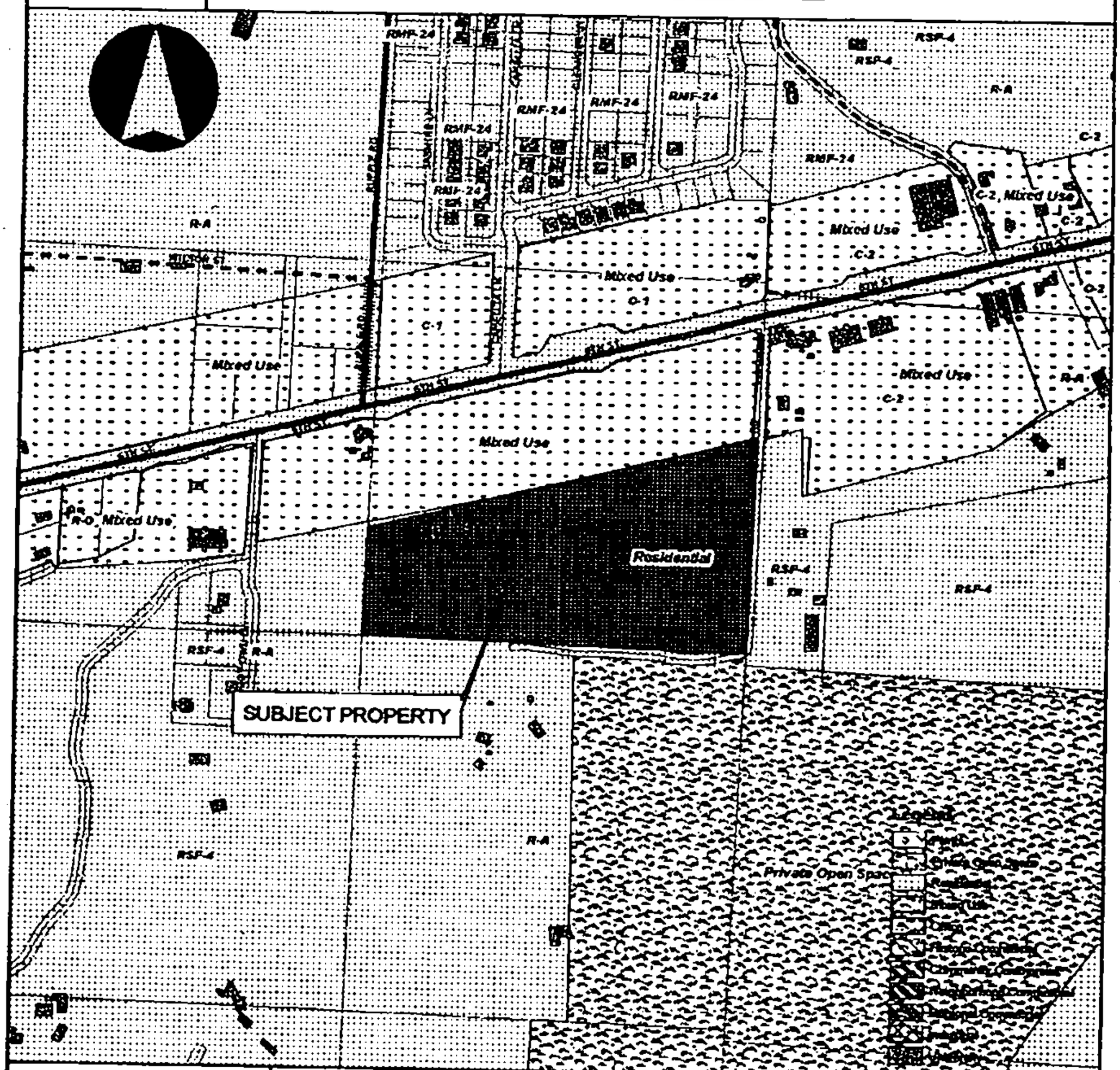
Historic Collector

0 0.1 0.2 0.4 0.6 0.8 Miles

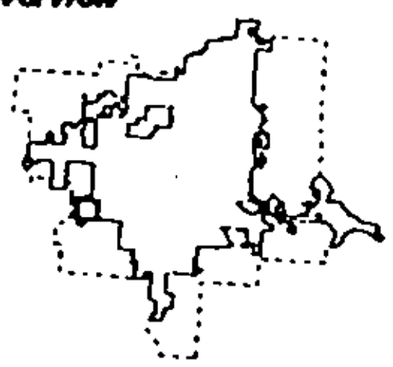
RZN04-01.00

Future Land Use

PARNELL



Overview



Legend

Subject Property

RZN04-01.00

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

City Limits

Outside City

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

Historic Collector

0 200 400 800 1,200 1,600 Feet

From: "VICKI NORVELL" <vnorvell@pgtc.com>
To: <jpate@ci.fayetteville.ar.us>
Date: 1/26/04 4:05PM
Subject: Rezoning Request for 17 acres, Hwy 62 & Hanshew Rd.

Dear Planners,

When this rezoning request first came up, my husband and I had to be out of town. I called and spoke with someone in the planning office at length to object to this rezoning request. I had thought my concerns would be forwarded to the planners at the meeting we were unable to attend. Apparently this did not happen.

After I received the notice for the January 26 meeting, I called Mr. Johnson to let him know my thoughts on the subject. I thought he might appreciate knowing that we were planning to attend the meeting and that our feelings were not favorable. He was very kind and sent us some paperwork explaining the nature of the development that was being proposed. We examined the papers at length when they arrived.

We own 4.5 acres on the east side of Hanshew road with a little over 800 feet of frontage on that road. We bought the property because we valued the privacy, the peaceful atmosphere and the abundant wildlife. To us, this is its greatest asset!!!

The proposed plans apparently call for duplex townhouses situated on 2500 sq. ft. lots. While the plans are nice ones, we feel they would be more appropriate in a more densely populated, more metropolitan area, not in the area being considered here.

We fear traffic problems where the traffic from the development enters Hwy 62. Too many cars entering too much traffic traveling at high rates of speed equals numerous traffic accidents.

The plans call for one main outlet onto Hwy 62 and one emergency outlet on Hanshew Rd. Considering the density of the population which would probably be residing there, this scenerio sounds like a firefighters nightmare. From a safety standpoint, it is simply not adequate access.

There are NO developments of this sort anywhere in the area and it would definately not fit in with the surroundings.

This complex will interfere with the natural beauty of the area and the abundant wildlife that uses this area as part of its habitat.

Some would say this development would increase our property value. I disagree. We presently have no plans to sell. If this development goes in, our property will no longer be the peaceful, private place we bought it for. The wildlife everyone in the area enjoys so much will disappear. My tenant will be very unhappy because these are the reasons she rented the property.

Our son, who stands to inherit our property, is opposed to this development for the same reasons.

The only rezoning we could agree with would be a change to R-1. Hopefully, high-end homes. There are none that close to town at present and if the development was done with adequate lot size and the natural landscape and wildlife habitat in mind, it could provide a wonderful place for families to live.

With all due respect to Mr. Johnson who has been very cordial and helpful, we must oppose this rezoning change.

Sincerely,

Vicki M. Norvell
Bill G. Norvell

From: "Heather Robertson" <heather@eclipsedisplays.com>
To: <jpate@ci.fayetteville.ar.us>
Date: 1/26/04 5:11PM
Subject: 5:30 Meeting on January 26, 2004 (RE: Hwy 62 (Parnell Property)

Being a current resident at 1640 Hanshew Road, I feel compelled to voice my opinion on the recent developments, concerning the Parnell property, that sits west of Hwy. 62. It is my understanding, that the property is being considered for the development of multi-family housing units. In other words this beautiful, innocent, undisturbed, deer and wildlife abundant, piece of land is going to become another one of the many statistics. You know the ones; those beautiful fields and forests that you used to admire in passing, in my case, ever since I was a child. There's so few of them left. I often drive by areas of land, that I used to run and play around. For a moment I'll smile, while I recall the memories of those days and how lucky we were to be growing up in such a beautiful, serene area. Then I'm reminded, by the traffic or the neon sign, that the land I recalled.....is now a fast food joint or another apartment building. It is very sad. Why do we insist on commercializing and materializing every single thing that we can get our hands on?

When my children and I look out our living room window, or walk out our front door, do you know what we see? A beautiful, green, picturesque forest!!! Do you know how many deer that we saw, just in the first two weeks of living there? Sixteen!!!! It's such a great feeling to observe my children, as they truly appreciate the land that so many people take for granted. We value our peace and quiet, and the beautiful scenery around Hanshew Road and we have never been happier! Please don't take that away from us! If you approve of congesting that land with apartments, or duplexes, and traffic, and the like.....That's exactly what you're doing.....taking it away from the people making a life there!!!!!

Please share my opinion at your meeting, I'm sorry that I cannot be there to do it myself!

Sincerely,
Heather Robertson

RZN 04-01.00: Rezoning (Parnell, pp 595) was submitted by Eric Johnson of Triangle Builders Supply for property located south of Hwy. 62 and west of Hanshew Road. The property is currently zoned R-A, Residential Agricultural, and contains approximately 17.00 acres. The request is to rezone the subject property to RMF-12, Residential Multi-family, 12 units per acre to allow the development of townhouse lots.

Hoover: Onto item number five is RZN 04-01.00 for property south of Hwy. 62 and west of Hanshew Road. Jeremy?

Pate: As you may or may not remember, this is the third time we've heard this item in a couple of different forms. The request was first submitted for review at the October 13, 2003 Planning Commission meeting. At that time the item was tabled to allow the applicant and staff time to review the proposal further. It was for the same rezoning from the current zoned R-A, Residential Agricultural to the RMF-12. The second time that the Planning Commission reviewed this request was in November, 2003 at which time a Bill of Assurance was introduced by the applicant. That Bill of Assurance limited the proposed density to nine dwelling units per acre and also provided a 55' access easement north of 6th Street to be dedicated to the city to alleviate some of the concerns that both the Fire Department and Police Department mentioned as far as access to this site for emergency purposes. At that time, the November meeting, the applicant withdrew the rezoning request to pursue the possibility of processing a Planned Zoning District. The Planned Zoning District is something that the staff has spoken to the applicant about as did the Planning Commission, if you will note in your minutes that I've included. The applicant has indicated to staff the proposal prepared to process a Planned Zoning District exceeds the amount that the applicant is willing to pursue at this time. The current rezoning request before the Planning Commission has not changed from that review November 24th, it was simply resubmitted with the same Bill of Assurance. Therefore, staff's recommendation, because it is the same findings remains consistent for denial. I have added a few things to the staff report. We did some traffic generation numbers with the nine units per acre, I included the 12 units per acre, which is what the applicant is requesting. If you will find on page 5.4 from 1,195 vehicle trips per day at 204 town homes on this site limited to 9 dwelling units per acre it would go down to approximately 897 vehicle trips per day. Additionally, the access proposed within access easements would be beneficial to any development on this property regardless of the zoning because Hanshew Road is simply substandard, substandard access, substandard water and sewer connections. There are findings with regard to engineering, fire and police in your reports. Staff's recommendation remains the same for denial for this proposed rezoning for the purposes of compatibility with adjoining properties. Surrounding property is primarily agricultural and single family residential in nature on large lots or vacant. The proposed density would heavily increase the population in this area. I also handed out prior to the meeting two letters

from property owners adjoining this property. One is an owner and one is someone who leases property or rents property in this area, both of which I believe are against this rezoning request. I will take questions if you have them.

Hoover: Thank you. Will the applicant come forward? I guess you might be specific as to what is different from this request than your last one.

Anderson: Yes, my name is Mike Anderson with Engineering Design Associates. Eric Johnson is also who you talked to the last time. As you remember, the rezoning was previously tabled to allow the developer time to explore the Planned Zoning District option. It was determined too great of a financial risk given the current PZD process. Detailed plans and engineering would have to be prepared without some sort of conceptual approval. The PZD process could after great expense lead to a project that is not feasible. Basically, we have come with the same RMF-12 zoning request with the same Bill of Assurances reducing it to nine units per acre. It is the developer's intention to build an affordable townhouse development with homes for individual ownership. There would be a property owner' association to take care of maintenance of all common properties and open space. This type of town home development will present a good alternative to large multi-family developments and a traditional single family lots. All greenspace requirements will be met within the proposed development. If I might approach you I would like to give you some additional information. I am handing out a site analysis that we did of the site. Most everybody is probably familiar with where the site is but the property is located west on 6th Street, Hwy. 62 approximately 500' from the 62 Auto Salvage and 500' south on 6th Street so we are back on 6th Street just a little bit. Across 6th Street is Magnolia Crossing subdivision. The property is bounded on the east and south by Hanshew Road, a deadend street. The site contains approximately 17 acres. The surrounding lands are for the most part undeveloped. This area along 6th Street has remained undeveloped partially because of the stigma of the salvage yard, the night clubs, the lack of utilities and access. The north side of 6th Street is an area mostly within a FEMA regulated floodway and is undevelopable. The area just to the east is undergoing some rapid change and development with the addition of Wal-Mart Supercenter and the Lowe's complex, hotels, and restaurants. All of these new developments are on the same side of 6th Street and within easy walking distance from this proposed development. I think it is about probably 4,000 feet from this site to the Supercenter. We have completed a preliminary site analysis of the property to look at tree canopy coverage and species, soil types and slopes. Approximately 70% of the site is currently under canopy cover. The majority of the canopy is made up of trees less than 6" at breast height. We did note three trees meeting the significant status near the original home site. The majority of the species are typical for what you would expect to find in old field succession,

hackberries, cedars and honey locusts. Most of the trees are tangled up with vines making it seem more densely treed because you cannot see very far into the site during the leaf on. The slopes on the site range from 2% to something over 15%. The slopes are not excessive to development nor are the soil types. Several places in the staff report state that the proposed zoning is consistent with the land use plan. Staff's recommendation for denial seems to be based on compatibility with surrounding properties. The land use plan designates this area as residential. Adjacent property to the north along Sixth Street is designated as mixed use. While it is rue that the highest residential zone adjacent to the property is RSF-4, there is RMF-24 zoned properties on three sides within 1,500' of the property. The property to the east across Hanshew towards the salvage yard is zoned C-2. The remaining properties are zoned R-A. As I noted, this area has remained undeveloped partially because of the stigma of the salvage yard, the night club, the lack of utilities and access. The area that I now occupied by Wal-Mart and Lowe's are very similar to this before development. It is just a matter of time before the remaining areas along 6th Street will be developed. We feel very strongly that this development will make a good buffer between development along the highway corridor and the potential lower density development to the south. Typically, single family next to mixed use is not desirable and most Planners will suggest multi-family residential as a buffer from single family lots. Our requested zone would provide that buffer. The R-A districts are designated to protect agricultural land until an orderly transition to urban development has been accomplished. To prevent wasteful scattering of development in rural areas. This is really not a rural area. Our rezoning request for RMF-12 is accompanied with a Bill of Assurance that would run with the sell of the property limiting the total number of units provided to no more than 9 units per acre. The Bill of Assurance also provides as a condition of development, a proposed street connection from this property through adjacent property to the north to line up with Camellia Lane. Access to the proposed development would be via this new road. Access to Hanshew would be limited to emergency vehicles only. There would be no appreciable increase to traffic danger and congestion. The proposed street connection to 6th Street will not impact residents along Hanshew Road nor Hanshew Road will be impacted by our development. While it is true that the speed limit along this portion of 6th Street is 55 miles per hour today as development occurs along the corridor the speed limit will be reduced, most likely to what it is in front of Lowe's and Wal-Mart. Site visibility along this portion of 6th Street is good. The speed limit is reduced just to the west as you enter Farmington. As with most developments, infrastructure will have to be approved on or adjacent to the property to meet city standards. Water and sewer are available adjacent to the site but may need improving. There is little opportunity for the infrastructure in this area to be improved by city resources since a small percent of the population is affected. The best chance for improvements come from the developer. For all the above reasons, we feel that the

requested nine units per acre is consistent with the land use and compatible with the rapidly growing surrounding area. With that, I would be happy to answer any questions.

Allen: I guess that I didn't understand your answer to Commissioner Hoover's question about what was different about this proposal.

Anderson: It is the same rezoning request, RMF-12.

Shackelford: Let's go ahead and proceed if we may until our chair person has an opportunity to join us. Let's go ahead and ask for public comment at this point and then we will bring it back to the Planning Commission for questions of the applicant and city staff. Is there anybody in the audience that would like to speak regarding RZN 04-01.00? Please come forward.

Beard: Do I need to sign in?

Shackelford: No, just if you would for the record tell us your name.

Beard: My name is Warren Beard, I own 12 acres on the south side of Hanshew and my daughter owns an additional 12 acres on the west side of me so we own 24 acres up there above the area that they are talking about developing. What seems strange to me is the fact that they want to go up there and impact our lives and at the same time they don't want to take the responsibility of making any improvements to our road which would be adjacent to their subdivision. They don't want to assume any of those responsibilities. We don't even have a fire hydrant up there by our house because the water line is so small. We don't have sewer. We don't have anything up there except what we provided for ourselves when we built our home. I don't understand why they want to come in three and rezone this to RMF-12 and put 9 units per acre. The traffic getting out in the morning now is impossible. People, it is just not a good place to put something like this in my opinion. If it was a regular subdivision, R-1, I wouldn't have a problem with it. You are talking about putting a fairly high density subdivision in there with all the units in there and they brought it out themselves, the water line down there is falling apart as we speak. That water line on 6th Street falls apart, they just fixed it again the other night. The water line, I talked with the Water Department about it, there are all kinds of problems out there that are not being addressed by these people. This is going to impact my wife and I and my daughter and her husband who are building a nice home up there. This is the first time we saw this. They didn't even care to show this to us previous to this meeting. That just goes to show you that they don't care about the people that live there, what are we? We've got my home, my daughter's home, I've not another rental home up there and there is another neighbor to the other side of me and then the piece of property to the east side of me has been granted to a wildlife conservatory and there are no plans for her ever

doing anything with it and I think there are approximately 14 acres on the east side of me there. For someone coming in here and not even discussing this with the home owners tells me that they don't have my interest at heart. My wife and I and everybody involved up there understand that yeah, there are problems with the bars and the nightclubs but you know, those things have been there for years. Eventually something will happen to that property just like something happened to the property west of Wal-Mart. Sooner or later we know that something is going to transpire there and we have come to terms to accept that but we just don't feel that this is the right thing and this is the third trip we have made up here to express our concerns. We didn't write a letter, we came up here because we wanted to express our concerns. Your engineers know the problems up there, they have drove up there, they've looked, they know our road is substandard, you can't even drive two cars on it. One person goes in the ditch if you have two people coming down the road. It is all substandard and you are talking about trying to pull a piece of fire equipment or something of that nature off a substandard road in through an emergency entrance, which is the silliest thing I've ever heard because you keep a gate locked there and if you've got a fire or an emergency or something that you are going to unlock the gate and use that substandard road for the emergency equipment. Those are just some of our concerns. Thank you for your time.

Hoover: Thank you. Is there any other member of the audience that would like to address this rezoning? Seeing none, I will bring it back to the Commission.

Allen: It was mentioned at the November 24th meeting that it would be a good idea to meet with the neighbors, I wondered if that took place.

Johnson: Yes Ma'am it has. Warren and I have spoken several times. He has a copy of the plat. This thing that we prepared today, the site analysis, was just finished this afternoon. That is why he hasn't got a copy of that. The two people that replied by mail we have spoken with extensively. They have a copy of all of the information that we have. The last conversation that I had with her she didn't disagree with our idea but she didn't want it going next to her property. She was very cordial. She was delighted with the fact that we approached her with all the information that we had. I sent her a packet of probably five pages of stuff that we developed. She was very happy with that. I encourage you to call her if you think that we haven't worked with the neighbors. Mr. Beard and I have met on the road a couple of times, we spoke. We never had any confrontations. I was a little astounded when he said that we haven't tried to contact them. I have contacted them I believe every time before we have come to a meeting to tell them that we were going to be here and what we were presenting. He has the only information that we had prepared prior to this meeting. We tried to address all of the neighbor's issues. We have been in contact with

everybody that surrounded the property and we have only had these three people complain. One of the properties is rented to the renter and the owner of the property are the two that sent the letters. It is just two property owners and one renter. I hope that answers your question.

Vaught: I have a question on the road, this access easement, you guys are planning on building that road out, is that correct?

Johnson: Yes.

Vaught: It just says access easement to be granted, it didn't say street would be built.

Anderson: It would be a city street.

Vaught: Ok. Right now you guys aren't planning on improvements to Hanshew Road at all?

Anderson: We are not making any statement about that. We are talking about rezoning. When we go with our Preliminary Plat and engineering that would probably be required of us at that time, we are not saying one way or the other at this point in time.

Vaught: Is that something that we could consider at this time if we were to grant this easement? Could we put or direct that direction or is it out of our control to direct improvements?

Warrick: The applicant has offered an access easement to provide another route to access Hwy. 62. That is not something that the staff has required, it is not something that the city has the ability to request or require. What you are asked at this point is whether or not the requested zoning is appropriate in this location. This is a rezoning request, it is not a Planned Zoning District. Therefore, we cannot and will not be looking at development requirements with this proposal.

Vaught: I think that is why we keep having trouble with this. I don't necessarily see this as a bad use for this site. It is just the sensitivity of the area and the blank check we would give you on not being required the things at this time. That is why we keep requesting a PZD out of that. I don't know if you guys understand that process because it is still new.

Hoover: I agree with your comments, I believe that we recommended a PZD because I don't know that I'm necessarily for or against this but I don't have enough information to be for it so I'm not in favor of it.

Ostner: On those same lines it seems procedurally or process wise that in order for me to have enough information in my mind you would be half way down the road on a PZD process. I understand it is expensive but this $50,000 price tag is ready for permits. That is a risk but you don't go draw it up and then just show up cold. There are lots of meetings with professionals where they guide you and they say look, we think you are going down the wrong road, we think this way is going to work better with our Code of Ordinances. That is where the PZD is such a great tool for doing two things at once, the rezoning and the Large Scale Development. I would still be in favor of that process.

Anderson: Might I respond for one second? One, I don't see this much differently than any zoning that would come before the city. You may get into the stance where from now on we don't do traditional zoning, we want everything to be a Planned Zoning district. I think that as a Commission you probably can make those kinds of decisions to rezone a piece of property without a bunch of additional information. The other thing when we investigated the PZD process, from what we understand it is basically kind of all or nothing. We bring total engineering plans to you and we are voted up or down. There is not a stepped approval process where the developer has some sort of assurance that he is moving in the right direction. We may get directed by the staff to do something and we come before the Commission and the Commission may have a whole other take on that. Without some sort of procedure or process in the PZD to allow us some stepped approvals so that we know that we are approved and going down the right line because a normal zoning when we have ordinances for a subdivision in RMF-12, we have ordinances and we know what we have to do. The PZD is very open ended. We don't really know where we are going to end up when we come to the end. A developer I think especially on a small tract like this is pretty hesitant to do that time and expense and really not know if he is hading in the right direction. If we had some kind of stepped process, it probably wouldn't be $50,000 to get to the first step to know that we were headed in the right direction.

Hoover: Let me respond to this. First of all, it is a stepped process. Staff, would you explain? It goes through a series of steps and builds, the other thing I'm curious about, have we turned down any PZD that has come through here?

Warrick: Staff has worked extensively with different Planned Zoning District applicants and upon initial submittal staff has recommended that applicants go back and reconsider certain things basically stating we won't be able to support this particular plan. That happens typically before we get to the Plat Review stage in the process. A Planned Zoning District follows the same review cycle as a Preliminary Plat or Large Scale Development. It is submitted, it is reviewed by staff, it is taken before a Technical Plat Review Committee where it is looked at for utilities and

other various staff comments from divisions, it is then taken to the Subdivision Committee and the Subdivision Committee is reviewing the project for both the recommendation on land use as well as the development proposal itself and then it is forwarded to the full Planning Commission. Once the Planning Commission has made a recommendation on the project if that recommendation is in favor of the project it is forwarded to the City Council for final action. The City Council is required to act on these items because it is a land use decision. It is a combination of development and a zoning.

Hoover: Have we turned down any PZD? I can't think of one that we have denied.

Warrick: There have not been any PZDs denied. There are two pending council approval right now, I think they are on their third readings.

Hoover: Thank you Dawn. The other thing that I would like to comment on is we are not singling you out, this site has problems. That is when we find that a PZD really works well for a site. You have kind of a difficult access, you also have some very steep slopes so all of those factors come into it where we are finding that the PZD answers a lot of those questions that are lingering in the back of our mind and we might be more flexible about than if you go for a straight rezoning. I see the PZD as being a wonderful, flexible tool for the developer whereas you are seeing it as negative.

Anderson: It has been a while back, maybe a month or so, we contacted the staff because we were looking at another project. The question we posed was can we bring a concept to the Planning Commission and we were basically told no that that was not the process. That is what we would want to do if we went that road we would want somehow to get some kind of vote and assurance that we were headed in the right direction. That is all we are saying. Working with staff is one thing. I think that you know that obviously things come from the staff and you guys may disagree. Without the benefit of the Planning Commissioners in some sort of concept and them buying into it I think it is a big chance.

Hoover: Have you followed some of them that have come through?

Anderson: Not real close. We have just seen that a couple of them are going back and forth and have been several months in approval and they may be more complicated than what this would be.

Vaught: I guess if we don't do a PZD basically what we are doing is rezoning this to an RT-12 with a Bill of Assurance and it might be up to the City Attorney to tell us how binding that Bill of Assurance is on future land owners and then you come through with an LSD and we can't agree on offsite improvements and other issues that make it too expensive for you to develop this site, we are stuck with this RT-12 with a Bill of Assurance

on it, RMF-12 with a Bill of Assurance on it, how does the Bill of Assurance work for a site if we rezone?

Williams: A Bill of Assurance can only be offered to us, we can't request one and they have offered one in this case. As you pointed out earlier though they have not offered a street. They offered an easement that would be dedicated as a street but there is nothing in the Bill of Assurance saying that they are going to build the street. Of course a city street is very expensive to build. That is a big weakness I see in that. They have offered to limit it to nine units per acre but if I look at their little drawing and counted out the lots about right there are about 60 or 70 here, not 153 which is 9x17 which is the way I add things up. The other thing that you would look at of course when you are considering zoning, they certainly have the right to request zoning and not go through the PZD. I think that I've sent my memo out to most of you about what you can consider, the 2020 Plan objectives, public opposition that is logical and reasonable, traffic and certainly they don't have a situation right now where traffic has been resolved. They haven't even eluded to the fact whether they own or have the right to buy any easement that would take them directly to 6th Street. There is a very substandard road next to it so that certainly is something for you to consider. Safety and fire protection, again, there are some more problems there. If they want to be considered as a rezoning, which they have every right to then you should look at the compatibility also with the neighbors, the spot zoning sort of situation, is this a different kind of zoning placed in amongst an established other zoning district. Those are all factors you could consider in zoning. They would also need to be considered in a Planned Zoning District. Just because someone has a Planned Zoning District proposal you still need to look at the neighbors. It would not be good for an applicant to spend $50,000 wanting to get a very dense development if in the Planning Commission's consideration and the City Council's consideration that that would be inappropriately too dense zoning in this particular area. Sometimes it is better to do as the petitioner is doing and ask for more of a concept without doing a lot of this engineering work which would be extremely expensive.

Hoover: Would you pass that down? Commissioner Ostner and I don't have that.

Williams: I will get you another copy of it.

Vaught: I guess in my concerns aren't necessarily with the density of this, I think it might be a good project for the site. It is all the other things that go along with it. Things that we can't require right now, things that we would like to see in a Bill of Assurance or we would see in a PD together as far as off site improvements. I don't think necessarily nine units per acre is a bad idea here considering the area and the growth and the buffer between the commercial on Hwy. 62 and the residential that will possibly take place

behind. There are considerable issues as far as off site improvements and other things to go along with it. The rezoning is a piece of that.

Johnson: Right, could those issues be addressed at the Large Scale Development process?

Vaught: They could but right now you are asking us to rezone this to RT-12, RMF-12 without those things so it is just basically you could sell this property to someone else, you could have access easement here and they could have no intention of doing that and of course, we probably wouldn't approve it unless they agreed to build that street so we would have a spot zone to me, RMF-12 land locked by bad roads. I guess I just wanted to see it more with a development plan at the same time so we could understand it better. I think it is a matter of understanding the whole picture.

Johnson: We would definitely address those concerns. We would like to address them in a Large Scale Development process if they need to be addressed in the Bill of Assurance I think we can work that in. The easement I believe runs with the land so no matter how, if we turned around and sold it tomorrow, the easement would still be there if they were to develop the property they would be required to build that road. We will commit to build that road if we can get our project through Large Scale Development.

Vaught: In a Large Scale Development process don't they have to do all the engineering and bring all the same things they would during a PZD before us?

Warrick: This would be a Preliminary Plat if lots are going to be divided out for sale. Yes, preliminary engineering plans are required to be submitted for a Preliminary Plat going through the review process.

Vaught: It would be about the same expense wise as they would if they just went with the PZD.

Warrick: They would be done with the understanding that the use and the density was allowed by right as opposed to a request that has not been granted through a Planned Zoning District. I think that one thing that is somewhat important in this particular case, as Mr. Williams stated, the applicant has the right to request a rezoning. The Planned Zoning District is an option, it is not a requirement and we have talked for three months with this applicant about what they have the opportunity to request. We brought it to the Planning Commission, this is the third time now. They have chosen to request a rezoning. I think it is important that we consider their request and if it is an appropriate land use with appropriate density that the zoning is compatible and it meets the criteria of the General Plan then it should be approved or at least recommended. This is not a decision of the Planning

Commission, it is a Council decision, it is a land use. If it is something that the Planning Commission is not comfortable with, does not feel that it meets those criteria your recommendation could be to deny it and the applicant would have the ability to then appeal that to Council if they chose to do so. The last time that we heard this back in November the Planning Commission encouraged the applicant to pursue a Planned Zoning District and they in good faith did that. They chose to bring this back to you as a request for RMF-12 zoning.

Anthes: I would like to bring the discussion back to the rezoning at hand. My question is this. It appears that this is the same request for rezoning that we saw on October 13th. You stated that you wanted some direction and some sort of stepped approval process. In the minutes of the meeting from October 13th there was a lot of direction given about the fact that this might be too dense of zoning for this area. There are notes from Ms. Warrick that says "but just a zoning of multi-family, 12 units per acre, doesn't ensure that the features of the site can be preserved appropriately and that the amount of density can be handled appropriately through infrastructure. There were just too many uncertainties with that number..." There is a note from Commissioner Shackelford, "I'm not sure is a good fit with your surrounding area." There was considerable other discussion that I believe that the Commission has already given you direction that RMF-12 is something that we think is too dense for this piece of property and yet you are back in front of us with the same request.

Johnson: We added the Bill of Assurance since then and then pursued the R-PZD process at your direction and found that to be too risky for us to proceed with so now we are back here with you. That's the only reason we've returned with this request.

Anthes: I think we still have a RMF-12 zoning sitting in front of us that we have talked about before with being too dense so I guess we need to continue discussing that.

Shackelford: I agree with a lot of what has been said here. Commissioner Vaught talked about whether he had a concern with the density. You made the comment that there were some issues with this property, I agree with that. As I view it, it came in as RMF-12 the first time. You are offering a Bill of Assurance that takes it to 9 units per acre which basically takes 51 units off the table from what you requested last time. I am still struggling with if we are looking strictly at a rezoning, which I believe is the direction that you are asking us to go I am still struggling with the capacity of 153 units on this property. I still think that is an awful dense population given the roads that I drove to go look at this property, the infrastructure that is there and that sort of thing. While I would like to figure out a way to make this work I think that we are kind of in between a rock and a hard place. We are not given the opportunity to look at the details as far as improvement

of infrastructure, traffic, ingress, egress and that sort of thing. We are getting direction from staff that by your request for a rezoning only we have to look at the potential of this dense project being able to be serviced by the infrastructure that is at hand. I don't know that any of us can make that call in good conscious without knowing the details. Typically development pays for infrastructure and I've been a very big advocate of that. I like to see development in areas that need infrastructure improvements because I know that's how they happen. In this situation we are rezoning this property without having any knowledge or ability to have any knowledge of those infrastructure improvements as they go forward. If you walk out there today and look at this piece of property and try to envision 153 units on it it is hard to argue that that is not going to overstress the existing infrastructure that is in place. That is the struggle that I'm having as well as most of us are having in this situation.

Johnson: Right, that is why we added that city street easement which we would build a city street in which would run with the land if it was sold it would pretty much guarantee that there will be a street there. We are also willing to look at improving other means of access but we would like to do that at a Large Scale Development phase instead of here at the rezoning.

Anderson: Those all could be conditions of the Large Scale approval. It is no different than anytime that you have a large Scale Development come before you or a subdivision. You may require offsite improvements as a part of the condition of approval. I don't think it is any different. It is the timing issue of seeing it now or seeing it later. I think you would still have the same opportunities to require those improvements, upgrading of water lines, sewer lines, streets, whatever it was.

Shackelford: It would be a lot easier decision if we had that information. I understand what you are saying. Unfortunately, we can't go back an downzone it if we can't come to terms on the improvements that we think are necessary for Large Scale Development. Once the zoning is in place it is going to run with the land forever and ever amen. It is kind of a unique situation that we are in. It is just a situation that the growth around this property is happening so quickly it is just hard to envision what is going to need to be done to make this compatible, at least for me, and I'm only one opinion of eight here tonight. I was one of the ones that was more vocal and actually, I think I made the last motion to table this to try to figure out a way we could make this work. I still think it is a great piece of property that needs to be developed and I know it will develop at some point and some day. I am just struggling with going out there, looking at the existing infrastructure and envisioning 153 units on that property.

Graves: I agree with what Commissioner Shackelford just said. The issue is if you view this in a vacuum I don't have a problem with the density necessarily considering the surrounding land uses on the one mile map. What

concerns me is that we can't view it in a vacuum. We have to view the impact of how you get in and out of the property. The Bill of Assurance does not make any kind of assurance about what kind of improvements are going to be made. It provides an assurance that there would be an easement but not that there would ever be a street actually built there or that there would be improvements made to the streets that are already there. With those concerns in mind I have a real problem with it as well.

Johnson: Are those things that we could include in the Bill of Assurance?

Williams: Certainly you can offer in the Bill of Assurance actually that you will construct a street to street standards, local street standards or whatever you want to do, use the Master Street Plan definitions. That is not in here as correctly noted by Commissioner Graves and others. Right now it is just an easement. Of course the big expansion normally is the actual construction of the street.

Johnson: So the answer was yes?

Williams: Yes.

Ostner: Since we are weighing in on the issue of whether this should be a Preliminary Plat or not. I do take issue with the density. I understand we can get this map and find very dense things within a quarter mile area but the surrounding land use is either agricultural or single family, RSF-4. RSF-4 is maximum mathematical if you will. On the ground it is rarely built, there are rarely four units per acre in an RSF-4 zoning. RSF-4 is generally built out at two or three units per acre. I think this is a severe jump from that density. The other thing I wanted to talk about is since we are seeing a rezoning pure and simple, we are not talking about a Preliminary Plat. One of the legal reasons to deny a rezoning request is listed as spot zoning and I think this qualifies. Spot zoning by definition is invalid because it amounts to an arbitrary, capricious and unreasonable treatment of a limited area within a particular district. As such, it departs from the comprehensive treatment for privileges not in harmony with the other use classifications in the area and without any apparent circumstances which call for different treatment. I would like to see this develop and I think this could be developed and I think that we have given a lot of opinion on that. I don't think nine units per acre is appropriate for the area.

Hoover: Is there anymore discussion or a motion? I think everyone has weighed in perhaps.

Shackelford: One more. The drawing that was provided on page 5.27 is some sort of estimated possible subdivision layout shows 79 lots on this property.

Johnson: They are duplex lots. These are townhouses that would be connected in a duplex fashion so if you multiply 79x2 that was how many we were looking at putting in there on that plan.

Vaught: I have one more thing as well. You guys provided us with this preliminary drawing which is just you don't have to follow it all but even with it in a PZD process I would have issues because I don't like the idea of cutting off all the other roads for emergency only. There is no access when we look at future use. You are saying you are going to build a large street but then it dead ends. Why wouldn't that connect on the back and deadend behind for future development possibilities. There are just a lot of questions when we are looking at accessibility to the site. Weighing in with the zoning process as well. I agree with what the other Commissioners have said. I don't necessarily think 9 units per acre is too dense, it could be a good buffer if done correctly.

Johnson: That was just a concept drawing we were presenting to show what we could do to buffer the property from the surrounding areas and to show how we would save a significant amount of greenspace and common area. Those lot lines might not lend itself to that. You are correct, that is not how it necessarily would work out in the end but that was just something we were showing for a concept.

Anderson: A requirement for a road connection to the south would be something that could happen at the Large Scale Development or Preliminary Plat. I don't think it is any different when you get to see it.

Johnson: As far as the easement goes, we would build the street there. We should've worded that differently in our Bill of Assurance but if there was a street easement there we would build a street to connect to our development.

Ostner: I appreciate all the agreements and the Bill of Assurance to attempt to get this project hammered out if you will. Part of the reason we enacted a Planned Zoning District ordinance is to relieve our staff of keeping up with these Bills of Assurances. They were getting spread out all over the city and they had a different Bill of Assurance for who knows how many developments and it was their responsibility to enforce it because the drawing did not speak for itself. There was all of this documentation that they were saddled with keeping up with. That is not easy on staff time, that is not easy to develop. The PZD process rolls it all into one. The rules are on the page. The drawing is law. The drawing is what the City Council approves. I would encourage you to take these offerings, these things you all have offered in the Bill of Assurance and put them in a PZD.

Vaught: In the PZD process there is a preliminary approval of sorts as you are working with staff. You are right, it is not stamped by us but they know the codes, they know what works and that is what we are bound by as well so they can direct you in the right direction. I would like to reiterate it, if you listen to their desires and their wants what is going to come before us isn't going to be something that we are going to turn down more than likely. We might have alterations or ideas on it but they are a very good gauge of what the Commission will listen to in that process. You are right, it is not a stamp but it helps us to understand. As Commissioner Shackelford said, if you walk out there today and envision these units on this site with this access it is very hard to see the compatibility.

Anthes: Obviously, a lot of us are struggling with the density on this and we are going to go to a vote. However, there is another option that I want to ask about to a PZD process since that keeps coming up in our discussions. Is it possible for the applicant to bring the rezoning request and a Preliminary Plat together back to back items on our agenda so we can see them together?

Warrick: No. We cannot process a Preliminary Plat for a piece of property that is not zoned for the proposal that they are showing on that plat.

Anthes: Ok, thanks. The surrounding land uses, the conditions to look at including the neighbors comments, and other issues, I just have to bite the bullet here and move to deny RZN 04-01.00.

Hoover: We have a motion to deny by Commissioner Anthes, is there a second?

Ostner: I will second.

Hoover: A second by Commissioner Ostner, is there anymore discussion?

Shackelford: If we vote to deny a rezoning request can the applicant proceed further with a PZD or how would that work if they decided to go a different route?

Williams: They would have at least two options, one is to appeal your denial to City Council. One way or the other the City Council makes the final decision on a rezoning whether you recommend approval or denial. Secondly, they could come back with another rezoning request if it is not identical and of course, a PZD is not identical so they would be able to come back with a PZD.

Shackelford: Or a lower density?

Williams: That is correct, they just couldn't come back with a RMF-12.

Warrick: I would like to say in one of the previous meetings when we heard this item and another rezoning request that had similar outcomes, staff offered to roll the previous application into a PZD. I can't do that again. We have posted in the newspaper six times for this item. I sent staff out to the site three times to post public notice. We have notified adjoining property owners three times and we've drafted four staff reports. We can't roll the same fees into another application. Should the applicant choose to make a new application or make a different request of this particular site it will require a new submittal.

Hoover: Thank you. Just to reiterate, the motion is to deny this RZN 04-01.00. Rence, call the roll please.

Roll Call: Upon the completion of roll all the motion to deny RZN 04-01.00 was approved by a vote of 8-0-0.

Thomas: The motion carries eight to zero.

RZN 03-32.00: Rezoning (Troy Parnell, pp. 595) was submitted by Eric Johnson on behalf of Troy Parnell for property located south of 6th Street on the northwest corner of Hanshew Rd. The property is zoned R-A, residential agriculture and contains approximately 17.37 acres. The request is to rezone the property to RMF-12; Residential multi-family 12 units per acre.

Hoover: Item number one on the agenda is LSD 03-41.00 for the Bank of Fayetteville.

Warrick: Madam Chair, I have a procedural request. We realized that item number twelve was actually an item of old business since it was heard before the Planning Commission on October 13th has been brought back. I would request that we hear that one first just so that it is procedurally addressed as an item of old business coming off the table.

Hoover: Ok, so we are going to review item number twelve right now?

Warrick: Yes Ma'am.

Hoover: Item twelve is RZN 03-32.00 submitted by Troy Parnell for property south of Sixth Street on the northwest corner of Hanshew Road. Dawn?

Warrick: Thank you. The applicant has requested that this item come back before you. As I mentioned, this rezoning request was originally heard by the Planning Commission on October 13th. Minutes of that meeting pertaining to this item are included in your background materials. The request has not changed. However, the applicant did provide on page 12.17 a new letter describing the project on 12.19 is a Bill of Assurance and on the following pages 12.21, 12.22, 12.23 is some conceptual information about the project that he is proposing for this property. Staff has been meeting with Mr. Parnell on and off for the past few weeks trying to determine the best course of action and because the actual request for RMF-12 zoning on this 17.37 acre tract has not changed, staff is of the same recommendation that we were originally which is denial of the request. The reason for that has to do with compatibility with the surrounding properties and an understanding of how this potentially medium density multi-family residential use would fit into this neighborhood which is primarily small single family homes or very large tracts primarily vacant. In reviewing information with Mr. Parnell he understands staff's concerns. I believe that we have made a lot of progress. Staff, as I mentioned, is still recommending denial of this request but I believe that Mr. Parnell has some more information that he would like to discuss with the Commission and further explore his options on this particular site. With that, I think I'm going to just make myself available for questions and let you speak with Mr. Parnell about this particular project.

Hoover: Thank you. Would the applicant come forward please?

Parnell: My name is Troy Parnell, 524 Gray. The proposal for this property is to have a kind of unique development with townhouses relatively densely placed but with a great deal of common area. I had thought from reading the zoning that RMF-12 was the way to go but we had originally discussed RT-12 and that wouldn't work as well. We have met several times with Dawn Warrick and have concluded, I want to be sure that I come to you with something that will be supported by staff. It sounds like that what I need to do is to ask you to table it and come back with a new definition of a PZD so we have hired an engineer. It is somewhat of a unique site in that although it has no trees that are actually defined as ones that would need to stay because it was cut over about 8 years ago it does have young trees that they left and some slope. I would like for you to leave it tabled if you will and we will represent it with something supported by staff. After my meeting with her this morning I think we have alleviated all of our concerns. We are putting a new street off of Sixth Street but they would like to see it more defined. We will have more complete engineering drawings for you so we would like it tabled.

Hoover: Thank you. Staff, do we need to do any action on this or can we leave it?

Warrick: In my discussions with Mr. Parnell we have kind of concluded that bringing this project back as a Planned Zoning District would allow for everyone's needs to be met and for us to get a better understanding of really how this is going to function. This particular request as a flat out rezoning I would say it is probably more appropriately withdrawn because the new request will be a full blown Planned Zoning District and will go through the development review process for the development part of the projects and then through Planning Commission development review and approval and through Council for the land use based on that development plan. My recommendation would be that this rezoning is withdrawn and therefore, no action would be required. I would ask the city attorney if he felt that is appropriate.

Williams: I think probably only the petitioner can withdraw it. We can't withdraw it so it has to be up to the petitioner if he wanted to do that.

Parnell: I was asking to be tabled because in my discussions with Dawn I thought maybe we wouldn't have to pay the fee again.

Warrick: I think that we will work with you on how that is going to be applied for that Planned Zoning District process. There are different fees that go into that but it is above and beyond the rezoning fee itself. We can certainly work with you on that.

Parnell: I suppose then that I will withdraw it. Thank you.

Hoover: Thank you. We appreciate it. I think that a PZD for this project is probably going to be appropriate and we look forward to seeing that. Thank you for withdrawing it.

Planning Commission
October 13, 2003
Page 105

RZN 03-32.00: Rezoning (Troy Parnell, pp. 595) was submitted by Eric Johnson on behalf of Troy Parnell for property located south of 6th Street on the northwest corner of Hanshew Rd. The property is zoned R-A, residential agriculture and contains approximately 17.37 acres. The request is to rezone the property to RMF-12; Residential multi-family 12 units per acre.

Hoover: Item number fourteen, RZN 03-32.00 for property south of Sixth Street on Hanshew Road.

Warrick: Thank you Madam Chair. The subject property is located south of Hwy. 62, Sixth Street, west of the Lowe's PZD, which is currently under construction and the property is also south of the Magnolia Crossing subdivision. Surrounding properties are primarily large acreages which are vacant or sparsely developed with single family homes. The 17.37 acre site is heavily wooded, somewhat remote. Access from Hwy. 62 west onto Hanshew Road to the property is not improved to city standards and would require full street improvements should a development occur on the subject property. Water and sewer would also have to be improved and extended to the site to provide utilities. The applicant proposes to develop a subdivision of townhomes on the subject property. The request is to rezone the subject property from R-A, Residential Agricultural to RMF-12, Residential Multi-family, twelve units per acre to allow the townhomes. With regard to infrastructure, I did mention that Hanshew Road is the access off of Sixth Street. It is a narrow asphalt lane. Improvements, as I mentioned, are necessary for any type of development. Water is available with a 6" line along Hanshew. In order for any development to be served there would need to be a looped system developed and installed to connect with the 12" line which is located adjacent to Hwy. 62 north of the site. Again, sewer service would have to be extended. There is currently a 6" line that runs along Hanshew on the eastern boundary of the subject property. With regard to the land use plan, the General Plan 2020 designates this site as residential. The RMF-12 is consistent with the land use plan because it is a residential designation. However, it is not compatible with surrounding land uses in the area. This is the primary concern of staff. The proposed zoning is not consistent in that the efficient use of infrastructure and reasonable access to improved roads and utilities provide challenges for this particular site. While improvements could be provided at the time of development review and approval, the amount of density that is being proposed is also something that is not compatible with the very sparsely populated lands that surround the site. I did provide in your information some traffic generation counts. Under your finding that is required with a determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion I did run traffic generations. It would result in the increase of the average trips per day from approximately 80 vehicle trips per day, 8 single-family homes on the 17.37 aces to a maximum of 1,219 vehicle

trips per day for a maximum of 208 townhomes, which would be the density allowed for the requested RMF-12 zoning. From the police department, I did receive comments stating that police department representative states concerns about traffic density on a narrow road, Hanshew, with no shoulders. Further, these vehicles would have only one outlet from the neighborhood. All of these vehicles would be dumped onto W. Sixth Street at an intersection without any traffic signals and in a 55 mile per hour zone. That certainly would be something that staff would have to address should a development proposal be brought forward for this site regardless of the zoning. The applicant I believe is going to address that. I've already talked about the increased potential as far as the density. Right now the density for an R-A district allows 8 single-family homes and the proposed 12 units per acre would allow up to 208 units. We've talked about infrastructure. Based on the findings that are included in your report, staff is not recommending in favor of this request. We feel that it is not compatible at this point in time. It is too dense and too far out to be consistent with the adjacent zoning districts and developments that are currently in place in this general area. With that, I will be happy to answer any questions and turn it over to the applicant.

Hoover: Would the applicant come forward?

Johnson: My name is Eric Johnson, I'm here representing my grandfather, Troy Parnell. As you can see, the property we own, or we actually have under contract, is south of Hwy. 62 just west of Hanshew Lane. We have since applying for the rezoning acquired an easement and contract to allow a city street, a public street, that we would dedicate to the City of Fayetteville that would conform to all city standards as a main exit onto Hwy. 62 that would alleviate the problem of having one exit to Hanshew Lane. We would actually only have an exit to Hanshew Lane for emergency purposes only unless you required or would like to see a secondary exit just for traffic purposes. It is our intention to build private development of town homes and duplex configurations on this piece of property with considerable common area and greenspace. These town homes will be sold individually for people looking for a nice and affordable place to live. This type of single family town home development should present a good alternative to the large multi-family projects that have become so unpopular. Since we have no intention to build apartments at this location we would be willing to reduce our zoning request to RT-12 if the Commission feels that this would better suit the development. We also believe that the location of the property is perfect for this type of development because it is very close to area shopping, to the University of Arkansas, to I-540 and to both downtown Fayetteville and downtown Farmington. Allowing this townhome project would create a mixed use area between it and any commercial development that occurs along the highway frontage. As you all know, Lowe's is going in out

there as are quite a few other businesses along that stretch. This mixed use is exactly what the 2020 plan is calling for. As I mentioned, to address the concerns of infrastructure, we are willing to build an extension of Camellia Lane, which is the north and actually goes to a subdivision that is zoned RMF-24. I believe they've only built, I don't know what the exact density is but they've only built a subdivision of single-family homes but it is zoned RMF-24. There is some land to the east approximately 1,000 feet zoned RMF-24 and there is land to the west zoned RMF-24 as well. I have prepared some maps to show you where these zonings are located. With those zonings and in their areas, we think that it is in conformance with the surrounding area. We think that with growth in that area it would definitely bring the quality of development up. They will be far superior in quality to any of the surrounding properties and would become an attractive visual element to those entering and leaving Fayetteville. The higher quality could also raise the value of the surrounding properties by setting a higher standard for development than is currently in place. Currently the adjoining property is developed mostly with single-family houses and mobile homes. We want to emphasize that none of the surrounding neighbors, to my knowledge, have objected. We have contacted personally all of the adjoining residents. Of all the adjoining property owners we have had no objections. That's all I have for now. I do have a few other things just to address the fire and police concerns. As you know, growth in Fayetteville is going to happen. We think that with adding that street and conforming it to public street standards we would be able to address all of the fire and police concerns as far as entry and exit from the development. We would be willing to work with the city and staff to arrange it however it needed to be.

Hoover: Thank you. Is there any member of the audience that would like to address this RZN 03-32.00?

Beard: My name is Warren Beard. We own property adjacent to the proposed zoning change there on the south side of Hanshew. I received a telephone call last night from Mr. Parnell and he asked me if I had any concerns about the proposed development and I didn't have any questions because I didn't have any information. I don't know that you do either. I don't know what these structures are going to look like, I don't know how the subdivision is going to be laid out. I don't have any information so how can I object? There is one mobile home up there that happens to be on my property. My home is not a mobile home. I don't know how the town homes are going to increase the value of my home personally. I think my home where it sits right now on the acreage that it sits is much more valuable to myself than it would be to have town homes. Mr. Parnell called me last night and said they were going to be single dwelling homes, said nothing about townhomes. That's all the information I had from him last night. As a matter of fact, I thought he might be here tonight so we

could address some of those issues personally. However, he is not here. The road is very narrow. That has been R-A for a long time or A-1. It just so happens the property adjacent to ours, this piece of property right here, my daughter and her son are going to build a nice home up here. This will not be subdivided or anything of that nature. To give you an idea of what's taken place here, this right here has been designated as wildlife, it is actually managed by a wildlife corporation. I own this area here, all this area here. My daughter owns this. You can see what we've got up here on this hill. It is pretty much agricultural really.

Beard, J: Hi, I'm Julie Beard. My family has lived up there for over 20 years on that mountain. I have some issues. Not so much about anything being built down there. I know that things are going to happen and growth is a necessary part of life. My issues with it is that whole mountain, if you've never been up there you're missing it. If you go up Finger Road Kessler Mountain is beautiful up there. It is full of natural springs. In the spring time there is so much water coming off that mountain when it rains, if any of you have to drive 6th Street or Hwy. 62 it is a wash down there. We are going to have big erosion problems with all the building. Another problem that I have personally with it, we've got two spring fed ponds on our property. I am concerned about kids from any subdivision or townhouses that close by wandering over and getting into my ponds. How am I going to protect myself from that? Am I going to have to change my property for progress? We don't know how far their townhomes are going to come back onto Hanshew, how much space is going to be left there. The wildlife up there is abundant. We don't have the resources now, the police department doesn't ever patrol up there now. Every year we have people coming up there and hunting. We are in the city limits but they come up there and hunt. This is just going to push them more up on the mountain and we are just going to have a bigger problem up there. It is not a good solution to me it's not. Not with all of the water problems that we've already got. The road is so narrow now. In fact, there are big cavities all the way down that mountain where the water runs every spring. I just don't know how you are going to fix that problem. There's more issues than just that.

Hoover: Thank you. Are there any other members of the public that would like to address this rezoning? Seeing none, I will bring it back to the Commission and staff and the applicant.

Shackelford: A question of staff, when you looked at this project or this proposal as far as density, obviously looking at the one mile view there is RMF-24 zoning on three sides of it. Can you go into a little more depth on how you determined that this specific requested density was not in line with the other uses in the area?

Warrick: On the south side of the property there is Residential Agricultural zoning. On the east side there is Residential Single Family, on the west there is Residential Single Family. North of the property, as was mentioned, the Magnolia Crossing subdivision is zoned Residential Multi Family. It is a single family subdivision with smaller lots. It was developed about the time, just prior to the time that the city adopted a residential small lot zoning district. It was zoned for multi-family use with the restriction of single-family homes so that the developer could create 60' lots instead of the minimum 70' lots which an RSF-4 district would provide. There is some zoning but the land use itself is actually single-family. I was looking more specifically at the property on the south side of 6th Street because that is different in nature than the property on the north side. Other considerations that did go into this recommendation and my consideration on this particular request included the nature of the property. The fact that it is heavily wooded, the fact that it is somewhat remote. It is still very close to 6th Street but it is off the beaten path. It takes a little bit of understanding to get there. You are driving past some existing established residential areas that are much more sparsely developed than what's being proposed with this density. The amount of canopy coverage on this site is very dense. I wouldn't be surprised if it was 80% or 90% or even more percentage wise as far as coverage for the tree canopy. Considering that, and in reflection of Mr. Beard's comments, this is the kind of property that lends itself to a better understanding of how the development is really going to occur and what it is really going to look like. It may be possible for this type of development to work itself into this nitch, into this location, but just a zoning of multi-family, 12 units per acre, doesn't ensure that the features of the site can be preserved appropriately and that the amount of density can be handled appropriately through infrastructure. There were just too many uncertainties with that number as far as 208 units, over 1,200 vehicle trips per day and the impact that that would have on the adjacent infrastructure and on the immediately surrounding properties.

Shackelford: If I could ask two other questions, I'm sure it's in here somewhere but we've been doing this six hours and my brain is a little fried. The property between this property and 6th Street, is it currently zoned C-1?

Warrick: It is zoned Residential Agricultural, it is designated on the Future Land Use map as mixed use but it is currently zoned Agricultural.

Shackelford: So the entire tract is zoned mixed use on the 2020 plan?

Warrick: Only the property north of this is designated mixed use. This subject property is designated residential on the land use plan.

Shackelford: Thank you very much.

Vaught: I have two questions. Does the addition of the new road to eliminate the use of Hanshew affect your decision in that?

Warrick: I don't think for a density of 208 units it would eliminate the use of Hanshew Road. I think that for adequate access we would still be looking at access points for circulation and appropriate access to the site. I think it does improve the situation because it would be desirable to have more than one location for people to come and go from this site.

Vaught: Also the applicant stated that he would be willing to change to RT-12, how would that weigh into the decision if we wanted to go that route?

Warrick: It would provide for some additional understanding of what the configuration of the development would be. The density would be the same. We are still talking about 12 units per acre. RT-12 limits the type of structures to single-family, duplex or triplex.

Vaught: Does it affect lot size, the way it is laid out, greenspace, is all of that affected as well?

Warrick: Setbacks are very similar if not the same. The greenspace and the tree preservation would be the same percentage requirements. Lot size, in the RMF-12 district you can adjoin more than three units. If you wanted a townhome configuration where even if you were creating lots for individual sell of connected structures you could connect more than three. In the RT-12 district, three would be the maximum number of units in one overall structure. You'd have to have a break.

Johnson: If I could just clarify, we are going to sell these townhouses individually. We are going to adjoin them as duplexes but the townhouses are going to be sold individually. The density is not so much our concern. We want to make this a community to provide greenspace, common area. We wouldn't necessarily be using all the 208, whatever the maximum density allowed would be. We went with RT-12 just because there is no middle ground really between RT-12 and RMF-6 and we are not doing apartments so we were trying to stay away from RMF anything.

Shackelford: Staff, if we decline the project they are not allowed to bring it back before us for a 12 month period unless there is significant change. If they approached you with a zoning of RT-12 instead of RMF-12 would staff see that as a significant enough change?

Warrick: The Planning Commission has the ability, as does the City Council, to make a change in the request. If that were what's being contemplated instead of the applicant resubmitting a whole new process that certainly

can be considered by this board and if you choose not to, by the City Council, if the applicant wanted to appeal if that were the route that it went. It wouldn't necessitate a new application if you wanted to consider a different zoning designation. The density is still the same, some conditions really don't change in that. I understand the applicant is proposing a project that doesn't necessarily fit within any of the nice neat little boxes of zoning districts that are defined in our Unified Development Code. What it would lend itself to, in my opinion, is that thing that we've been talking about all night, the Planned Zoning District, because that does define the project and it does allow the neighbors to understand it, it does allow the Planning Commission and the City Council to understand it. It provides a distinct specific zoning district to the project and it allows the flexibility for the greenspace and the configurations that the applicant is talking about. Of course the risk and the responsibility in that situation is on the applicant and I've talked to Mr. Parnell about that and he has chosen to pursue a standard traditional method of rezoning and then follow it up with development should the rezoning be approved. That is certainly his choice. Staff's preference would be the ability to review this as a PZD.

Anthes: Is the PZD a substantial enough change that you wish to see it prior to the 12 month time period?

Warrick: I believe it is because we would be looking at a development proposal that we would be able to work with the applicant on. I feel like that is a change enough to merit bringing it forward earlier.

Shackelford: I'm normally one of the louder voices for growth and development in this city and I really look for ways to get projects done. This project, as it is presented, I'm not sure is a good fit with your surrounding area. I don't know that we've done the work that we need to do getting with the people that live around you and own property around you. I am going to give you the opportunity or would recommend that you consider tabling this motion and taking the opportunity to get with the people who have property around you, maybe doing a little more thought in the development, the zoning, possibly a PZD, get with staff and see what they would support coming forward instead of proceeding with this with a recommended denial from our city staff. That's purely an option, I'm not saying you have to do that. I'm just saying that I'm going to ask that we stop and give you that opportunity.

Johnson: I think that that would be ok.

Vaught: Would we need to table that? If he pulls it, we need to table and not have it pulled?

MOTION:

Shackelford: I will make a motion that we table this pending conversations with adjoining land owners and with city staff regarding additional rezoning requests.

Ostner: I will second.

Hoover: We have a motion to table by Commissioner Shackelford and a second by Commissioner Ostner this RZN 03-32.00, is there anymore discussion?

Allen: Does that pull it back at the next meeting or is that an indefinite sort of thing?

Hoover: Whenever it gets resolved.

Whitaker: If it is an indefinite thing then no discussion is allowed under the rules of order. Indefinite tabling goes directly to a vote.

Hoover: Ok, Renee?

Roll Call: Upon the completion of roll call the motion to table RZN 03-32.00 was approved by a vote of 8-0-0.

Thomas: The motion carries eight to zero.

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 DTW

Date: February 13, 2004

Subject: Request to amend the Bill of Assurance offered for property being developed as the Persimmon Place subdivision

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RECOMMENDATION

Planning Staff recommends approval of a resolution amending the Bill of Assurance originally submitted with a rezoning (approved by ordinance #4411) on September 3, 2002 and later amended by resolution 28-03.

BACKGROUND

The amendment proposes to allow a decorative masonry and wood privacy fence along Persimmon and 46th Street, as opposed to the concrete privacy fence noted in item #7 of the Bill of Assurance. The proposal to amend the Bill of Assurance also amends the approved PPL03-1.00 condition of approval #8, which states "The proposed concrete privacy fence shall be six feet in height" to allow for a "decorative masonry and wood privacy fence six feet in height."

DISCUSSION

In 2002, the applicant offered a Bill of Assurance providing the fence/wall as a compromise to appease concerned neighboring residents. The developer held to the approved Bill of Assurance with the Preliminary Plat proposals for Persimmon Place, indicating a concrete fence on the plat. At this time, the developers of Persimmon Place and the potential developer of a subdivision across 46th Street from the subject property (Crosskeys R-PZD) have met to coordinate fence/wall construction along 46th Street and have submitted the requested amendment.

BUDGET IMPACT

None.

ENTERED 2/13/04

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A SECOND AMENDMENT TO THE BILL OF ASSURANCE SUBMITTED WITH ORDINANCE NO. 4411 AS AMENDED BY RESOLUTION NO. 28-03

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 second amendment to the Bill of Assurance which was submitted with rezoning Ordinance No. 4411 passed and approved by the City Council on September 3, 2002, and further amended by Resolution No. 28-03, passed and approved by the City Council on February 18, 2003. A copy of the revised Bill of Assurance is attached hereto, marked Exhibit "A".

PASSED and **APPROVED** this the 2nd day of March, 2004.

APPROVED:

DRAFT

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

RESOLUTION NO._____

A RESOLUTION APPROVING AMENDMENTS TO THE BILL OF ASSURANCE SUBMITTED FOR THE PERSIMMON PLACE SUBDIVISION WITH ORDINANCE NO. 4411, AND RESOLUTION 28-03 PASSED AND APPROVED BY THE CITY COUNCIL ON SEPTEMBER 3, 2002 AND FEBRUARY 18, 2003.

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

Section 1: **That the City Council of Fayetteville, Arkansas, hereby approves amendments to the Bill of Assurance, which was submitted with rezoning Ordinance No. 4411, passed and approved by the City Council on September 3, 2002 and revised and approved by the City Council on February 18, 2003. A copy of the revised Bill of Assurance, marked Exhibit "A" is attached hereto and made a part hereof.**

PASSED and **APPROVED** this 2nd Day of March, 2004.

APPROVED:

By:_____
DAN COODY, Mayor

DRAFT

ATTEST:

By: _____
Sondra Smith, City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

SC Meeting of February 12, 2004

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

PLANNING DIVISION CORRESPONDENCE

TO:	Subdivision Committee Members
FROM:	Jeremy Pate, Associate Planner
	Matt Casey, Staff Engineer
THRU:	Dawn Warrick, A.I.C.P., Zoning & Development Administrator
DATE:	February 10, 2004

ADM 04-07.00: Administrative Item (Persimmon Place, pp 438) was submitted by Chris Brackett of Jorgensen & Associates on behalf of the developer of Persimmon Place Subdivision. The request is to amend item 7 of the Bill of Assurance to allow a wood and masonry fence.

Findings:

Proposal: The applicant proposes to amend the Bill of Assurance associated with the approved RZN 02-15.00 (Garriott). The amendment proposes to allow a decorative masonry and wood privacy fence along Persimmon and 46th Street, as opposed to the concrete privacy fence noted in item #7 of the Bill of Assurance. The proposal to amend the Bill of Assurance also amends the approved PPL03-1.00 condition of approval #8, which states "The proposed concrete privacy fence shall be six feet in height" to allow for a "decorative masonry and wood privacy fence six feet in height."

Background: The subject concrete fence was not required by the Planning Commission nor the City Council in approvals of the Rezoning request from R-A to RSF-4 (see attached minutes). Rather, the applicant offered the fence as a compromise to appease concerned neighboring residents. The developer held to the approved Bill of Assurance with the Preliminary Plat proposals for Persimmon Place, indicating a concrete fence on the plat. At this time, the developers of Persimmon Place and the potential developer of a subdivision across 46th Street from the subject property (Crosskeys R-PZD) have met to coordinate fence/wall construction along 46th Street and have submitted the requested amendment.

Recommendation: Staff recommends forwarding **ADM 04-07.00** with a recommendation of approval to the full Planning Commission for consideration, with the following condition:

Conditions of Approval:

1. The amendment to the Bill of Assurance shall be restated to include "a minimum of six feet in height."

Subdivision Committee Action: ☐ Approval ☑ Forwarded to P.C.
3-0-0

K:\Reports\2004\SCReports\02-12-04\ADM 04-07.00 (Persimmon Place).doc

Meeting Date: **February 12, 2004**
Comments: _____

The "Conditions of Approval" listed in the report above are accepted in total without exception by the entity requesting approval of this development item.

Signature _____ Date _____

JORGENSEN & ASSOCIATES
CIVIL ENGINEERS • SURVEYORS

124 WEST SUNBRIDGE, SUITE 5 • FAYETTEVILLE, ARKANSAS 72703 • (479) 442-9127 • FAX (479) 582-4807
DAVID L. JORGENSEN, P.E., P.L.S.
CHRISTOPHER B. BRACKETT, P.E.

February 3, 2004

City of Fayetteville
Planning Department
113 W Mountain Street
Fayetteville, AR 72701

Attn: Dawn Warrick
Re: Persimmon Place Bill of Assurances

Please place this revised Bill of Assurances for the Persimmon Place Subdivision on the February 12 Subdivision Committee meeting agenda. We have revised item #7. The original stated "A *concrete* privacy fence shall be installed along Persimmon & 46th street". This has been changed to "A *decorative masonry and wood* privacy fence shall be installed along Persimmon & 46th street".

This change was the result of meetings between the developers of the Persimmon Place Subdivision and the Cross Keys Subdivision. These meetings were requested by the City Planning staff to coordinate the fence construction along 46th street.

Please call concerning any questions you may have.

Thank you.

Sincerely;

Christopher B. Brackett, P.E.

(REVISED) BILL OF ASSURANCE
FOR THE CITY OF FAYETTEVILLE

The buyer / developer of property located at the NW Corner of 46th & Persimon Street more particularly described as approximately 59.60 Acres in part of section 11 and part of section 12 of T16N, R 31W in Washington County Arkansas hereby voluntarily offers this Bill of Assurance and enters into this binding agreement and contract with the City of Fayetteville, Arkansas.

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

Petitioner hereby voluntarily offers assurances that Petitioner and Petitioner's property shall be restricted as follows:

1. The use of Petitioner's property shall be limited to single-family only with 158 building lots maximum. Minimum lot width shall be 80' at the setback line except at curves and cul de sacs.
2. Exterior of homes shall have 80% brick.
3. Minimum house size shall be 1850 SF heated and air-conditioned space.
4. Each house shall have a 2 car garage.
5. All yards shall be sodded.
6. Roof pitch shall be 7" to 12" with architectural shingles.
7. A decorative masonry and wood privacy fence shall be installed along Persimon & 46th street.
8. There shall be 1 entrance onto 46th street and 1 onto Persimon Street and each entrance will be landscaped and steel fence installed similar to the Jewer's property.
9. All improvements shall be made to Persimon & 46th Street as required by the City.
10. Quality of construction of all homes shall be reviewed and approved by an architectural committee.
11. Maintenance of all common space shall be made by a Property Owners Association.
12. All mailboxes shall be decorative brick and identical throughout the project.
13. The developer shall install trees along the north property line extending from 46th Street west 500'. Size shall be 2" and spaced 30' apart where possible. Existing trees in this area will be saved if possible.
14. Protective covenants shall be filed for control of all of the above items.
15. 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 and shall be noted on the Final Plat, which includes some or all of Petitioner's Property.

IN WITNESS WHEREOF, and in agreement with all the terms and conditions stated above, as the owner, developer or buyer (Petitioner) voluntarily offer all such assurances.

_____ _____

_____ _____

Date Date

NOTARY OATH

STATE OF ARKANSAS)
COUNTY OF WASHINGTON)

And now on this __ day of _____, 2003, appeared before me, Carl Walker and after being placed upon his oath swore or affirmed that they agreed with the terms of the Bill Assurance and signed their names above.

My Commission Expires:

Notary Public

ORDINANCE NO. 4411

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 02-15.00 FOR A PARCEL CONTAINING APPROXIMATELY 57.82 ACRES LOCATED NORTH OF PERSIMMON STREET AND WEST OF 46TH STREET, FAYETTEVILLE, ARKANSAS, AS SUBMITTED BY DAVE JORGENSEN OF JORGENSEN & ASSOCIATES ON BEHALF OF THE PROPERTY OWNERS.

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

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

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

Section 2. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above subject to a Bill of Assurance as offered by the applicant.

PASSED and **APPROVED** this 3rd day of September.

APPROVED:

By: Dan Coody
DAN COODY, Mayor

CITY OF FAYETTEVILLE, ARKANSAS

ATTEST:

By: Heather Woodruff
Heather Woodruff, City Clerk

RESOLUTION NO. 28-03

A RESOLUTION APPROVING AMENDMENTS TO THE BILL OF ASSURANCE SUBMITTED WITH ORDINANCE NO. 4411, PASSED AND APPROVED BY THE CITY COUNCIL ON SEPTEMBER 3, 2002

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

Section 1: That the City Council of Fayetteville, Arkansas, hereby approves amendments to the Bill of Assurance, which was submitted with rezoning Ordinance No. 4411, passed and approved by the City Council on September 3, 2002. A copy of the revised Bill of Assurance, marked Exhibit "A" is attached hereto and made a part hereof.

PASSED and **APPROVED** this 18th Day of February, 2003.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Sondra Smith, City Clerk

RECEIVED
FEB 1 8 2002
PLANNING DIV.

(REVISED) BILL OF ASSURANCE
FOR THE CITY OF FAYETTEVILLE

The buyer / developer of property located at the NW Corner of 46th & Persimon Street more particularly described as approximately 59.60 Acres in part of section 11 and part of section 12 of T16N, R 31W in Washington County Arkansas hereby voluntarily offers this Bill of Assurance and enters into this binding agreement and contract with the City of Fayetteville, Arkansas.

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

Petitioner hereby voluntarily offers assurances that Petitioner and Petitioner's property shall be restricted as follows;

1. The use of Petitioner's property shall be limited to single-family only with 158 building lots maximum. Minimum lot width shall be 80' at the setback line except at curves and cul de sacs.
2. Exterior of homes shall have 80% brick.
3. Minimum house size shall be 1850 SF heated and air-conditioned space.
4. Each house shall have a 2 car garage.
5. All yards shall be sodded.
6. Roof pitch shall be 7" to 12" with architectural shingles.
7. A concrete privacy fence shall be installed along Persimon & 46th street.
8. There shall be 1 entrance onto 46th street and 1 onto Persimon Street and each entrance will be landscaped and steel fence installed similar to the Jower's property.
9. All improvements shall be made to Persimon & 46th Street as required by the City.
10. Quality of construction of all houses shall be reviewed and approved by an architectural committee.
11. Maintenance of all common space shall be made by a Property Owners Association.
12. All mailboxes shall be decorative brick and identical throughout the project.
13. The developer shall install trees along the north property line extending from 46th Street west 500'. Size shall be 2" and spaced 30' apart where possible. Existing trees in this area will be saved if possible.
14. Protective covenants shall be filed for control of all of the above items.
15. 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 and shall be noted on the Final Plat, which includes some or all of Petitioner's Property.

IN WITNESS WHEREOF, and in agreement with all the terms and conditions stated above, as the owner, developer or Buyer (Petitioner) voluntarily offer all such assurances.

2/13/03
Date

Date

NOTARY OATH

STATE OF ARKANSAS)
COUNTY OF WASHINGTON)

And now on this 13 day of February, 2003, appeared before me, Carl Walker and after being placed upon his oath swore or affirmed that they agreed with the terms of the Bill Assurance and signed their names above.

My Commission Expires: 12-15-04

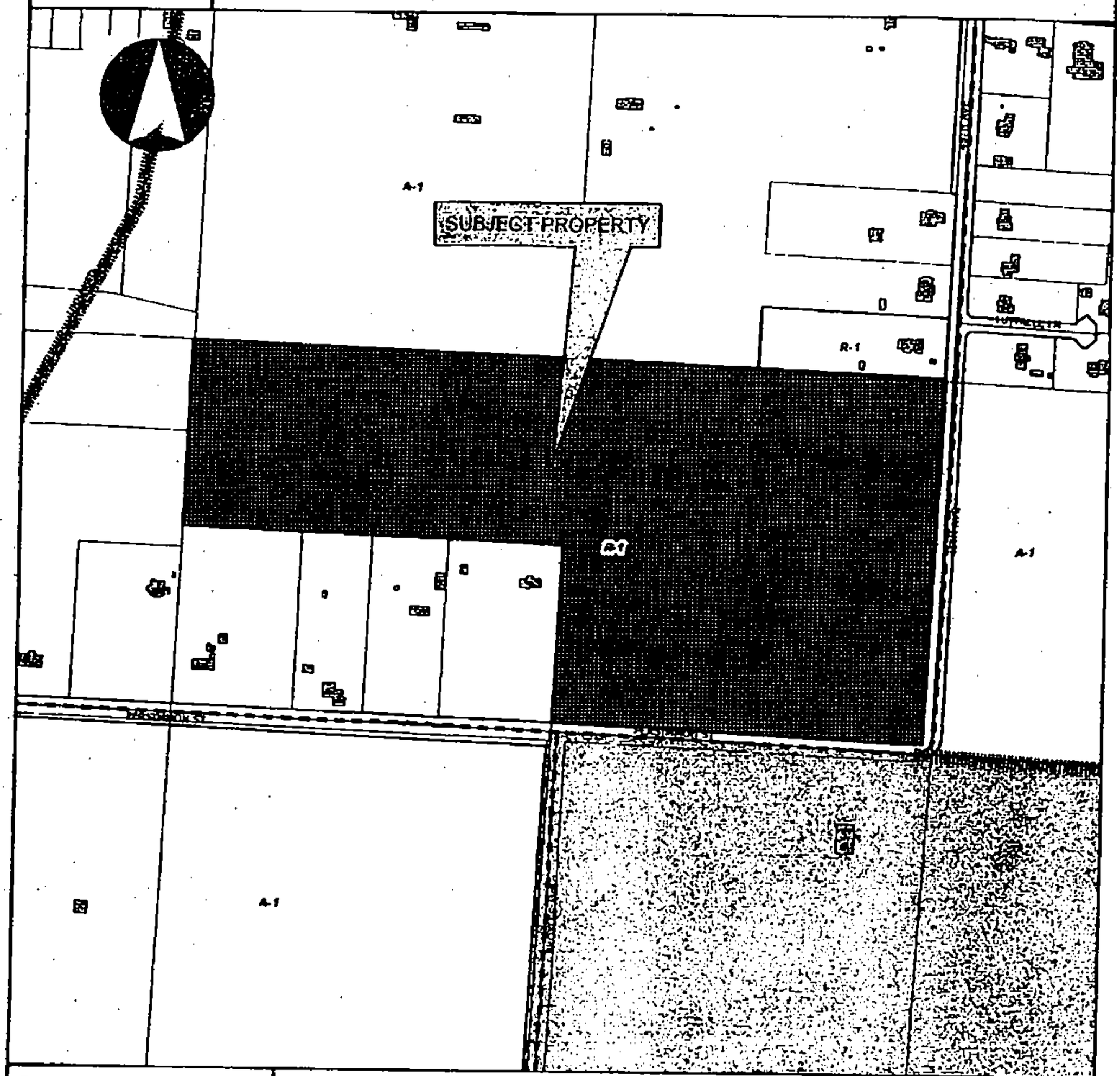
Notary Public

OFFICIAL SEAL
LEIGH ANN WALKER
NOTARY PUBLIC ARKANSAS
BENTON COUNTY
COMMISSION EXP. 12/15/09

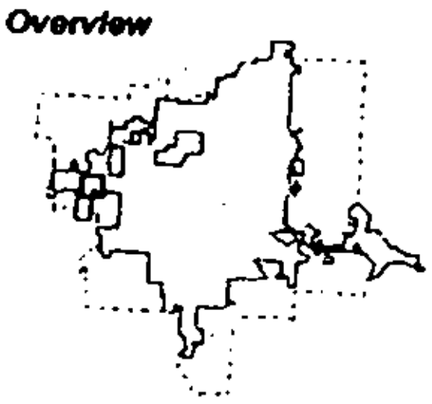
PPL03-1.00

Close Up View

PERSIMMON PLACE



Overview



Legend

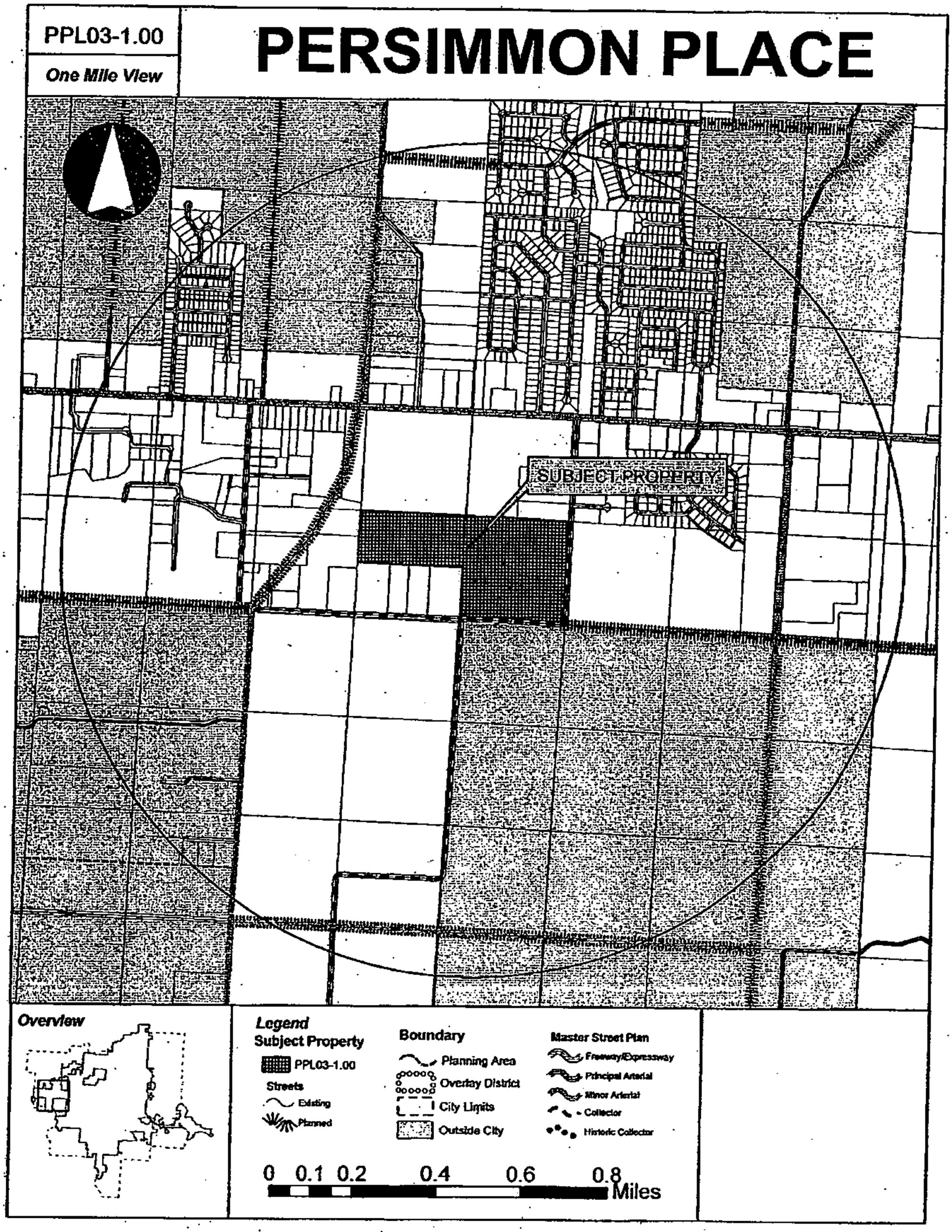
Subject Property
PPL03-1.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

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

0 175 350 700 1,050 1,400 Feet


PPL03-1.00
One Mile View
PERSIMMON PLACE
SUBJECT PROPERTY
Overview
Legend
Subject Property
PPL03-1.00
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

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

x AGENDA REQUEST

For the Fayetteville City Council Meeting of: March 2, 2004

FROM:

Dawn Warrick	Planning	CP&E
Name	Division	Department

ACTION REQUIRED: Resolution approval.

SUMMARY EXPLANATION:

To approve ADM 04-07.00 to consider amending the Bill of Assurance approved with Resolution No. 28-03, changing item number seven, "A concrete privacy fence shall be installed along Persimmon and 46th Street." to "A decorative masonry and wood privacy fence six feet in height shall be installed along Persimmon and 46th Street."

STAFF RECOMMENDATION: Approval.

Dawn I Warrick — Division Head — 2/13/04 Date

City Attorney — 2-17-04 Date

Department Director — Date

Finance & Internal Services Dir. — 2-18-04 Date

Chief Administrative Officer — 2-18-04 Date

Mayor — 2/18/04 Date

Received in Mayor's Office 2-17-04 Date

Cross Reference:

Previous Ord/Res#: _____

Orig. Contract Date: _____

Orig. Contract Number: _____

New Item: Yes No

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

x AGENDA REQUEST

For the Fayetteville City Council Meeting of: March 2, 2004

FROM:

Dawn Warrick	Planning	CP&E
Name	Division	Department

ACTION REQUIRED: Ordinance approval.

SUMMARY EXPLANATION:

R-PZD 04-02.00: Residential Planned Zoning District (Cross Keys, pp 438) was submitted by Chris Brackett of Jorgensen & Associates on behalf of Charles Sloan and Sloan Properties for property located south of Wedington Drive at the corner of N. 46th and Persimmon Street. The property is currently zoned R-A, Residential Agricultural and contains approximately 38.48 acres. The request is to rezone the subject property to a Residential Planned Zoning District allowing for 108 single family dwellings, a density of 3.56 units per acre.

STAFF RECOMMENDATION: Approval.

Dawn J. Warrick — Division Head — 2/13/04 Date

City Attorney — 2/19/04 Date

Department Director — 2-18-04 Date

Finance & Internal Services Dir. — Date

Chief Administrative Officer — 2-19-04 Date

Mayor — 2/19/04 Date

Received in Mayor's Office — Date

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

New Item: Yes No

City Council Meeting of March 02, 2004
Agenda Item Number

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 DTW

Date: February 12, 2004

Subject: Residential Planned Zoning District for Cross Keys (R-PZD 04-02.00)

RECOMMENDATION

Planning Staff recommends approval of an ordinance creating the Residential Planned Zoning District (R-PZD) for Cross Keys. This action will establish a unique zoning district for development of a 38.84 acre tract located south of Wedington Drive at the corner of N. 46th and Persimmon Street. The request is to rezone the subject property to a Residential Planned Zoning District with a total of 108 single family lots.

BACKGROUND

The applicant requests a rezoning and preliminary plat approval for a residential development within an R-PZD zoning district. The proposed use is single-family residential, with 108 lots proposed. A detention pond is to be located off-site to the south, on property also owned by the applicant. Density for the entire site is 2.81 units per acre. The development is currently zoned R-A, Residential Agricultural. The site is located on the northeast corner of the intersection of Persimmon Street and 46th Street. The applicant is proposing a fence along Persimmon Street and 46th Street. Pedestrian access to vacant tract to the east was approved by the Planning Commission. Vehicular access to the project is provided from both 46th Street and Persimmon Street. The development has proposed covenants to ensure that all structures access interior streets and homes will contain a minimum of 2000 square feet. The Parks and Recreation Advisory Board and Planning Commission accepted money in lieu of a land dedication due to the proximity of the Boys and Girls Club to this site.

DISCUSSION

The Planning Commission voted 9-0-0 in favor of this request on Monday, February 09, 2004. Approval of a planned zoning district requires City Council approval as it includes zoning (land use) as well as development approval (preliminary plat). Street improvements shall include the construction of Persimmon Street along the south property line and allowable uses include use units 1, 8, and 24. Planning Commission amended the preliminary plat to eliminate the street connection to the east and provide a 50' non-motorized connection.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING A RESIDENTIAL PLANNED ZONING DISTRICT TITLED (R-PZD 04-02.00) LOCATED SOUTH OF WEDINGTON DRIVE AT THE CORNER OF N. 46TH AND PERSIMMON STREET CONTAINING 38.48 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:

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

From C-2, Thoroughfare Commercial to R-PZD 04-02.00 as shown in Exhibit "A" attached hereto and made a part hereof.

<u>Section 2.</u> 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 February 9, 2004.

<u>Section 3.</u> 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.

<u>Section 4.</u> 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 04-02.00

PART OF THE SE1/4 OF THE SW1/4 OF SECTION 12, T16N, R31W IN WASHINGTON COUNTY, ARKANSAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NE CORNER OF SAID SE1/4, SW1/4 THENCE S02°37'23"W 1.63 FEET TO THE P.O.B., THENCE S02°37'23"W 1320.10 FEET, THENCE N87°02'10"W 1266.36 FEET, THENCE N02°16'32"E 1318.64 FEET, THENCE S87°06'18"E 1274.35 FEET TO THE P.O.B.; CONTAINING 38.48 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.

DRAFT

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of February 09, 2004

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Suzanne Morgan, Associate Planner
Matt Casey, Staff Engineer
THRU: Dawn Warrick, A.I.C.P., Zoning & Development Administrator
DATE: February 3, 2004

R-PZD 04-02.00: Residential Planned Zoning District (Cross Keys, pp 438) was submitted by Chris Brackett of Jorgensen & Associates on behalf of Charles Sloan and Sloan Properties for property located south of Wedington Drive at the corner of N. 46th and Persimmon Street. The property is currently zoned R-A, Residential Agricultural and contains approximately 38.48 acres. The request is to rezone the subject property to a Residential Planned Zoning District and to approve the development of a residential subdivision with 108 single family dwellings proposed. 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 single-family residential, with 108 lots proposed. A detention pond is to be located off-site to the south, on property also owned by the applicant. Density for the entire site is 2.81 units per acre. The development is currently zoned R-A, Residential Agricultural. The site is located on the northeast corner of the intersection of Persimmon Street and 46th Street. The applicant has proposed to erect a fence along these two rights-of-way. The preliminary plat for Persimmon Place Subdivision, located west of 46th St., was approved with a condition that a privacy fence six feet in height be constructed as required in the Bill of Assurance filed when this property was rezoned. This item must be heard at City Council pursuant to the requirements for a PZD.

Surrounding Land Use / Zoning:

Direction	Land Use	Zoning
North	Single family residential	RSF-4, Residential Single-family – 4 units per acre R-A, Residential Agricultural
South	One single-family home	Planning Area
East	Vacant	RSF-4, Residential Single-family – 4 units per acre
West	Vacant (Persimmon Place PPL is under construction) 2.65 units/acre	RSF-4, Residential Single-family – 4 units per acre

Right-of-way being dedicated: 50' for all interior rights-of-way, 70' along Persimmon St., and 50' along 46th St.

Connectivity: Connectivity from this proposed residential subdivision is being provided west to 46th Street, south to Persimmon St., and east to a vacant tract of land for connectivity to future development.

Street Improvements: Construction of Persimmon Street along southern property line and a recommendation from Engineering Division to cost share for the developer to overlay the entire width of 46th Street for the length of the project.

Master Street Plan Streets:

North: Wedington Drive (principal arterial) approximately ½ mile north
South: Persimmon Street (collector) planned for construction with this development
East: 46th Street (local street)
West: 54th Ave. (collector) is approximately ¾ mile west

Tree Preservation:	Existing canopy:	0.13 %
	Preserved canopy:	0.08 %
	Mitigation:	$1,050 payment into the City's Tree Escrow Account prior to final plat approval.

Background: This proposal was heard at Subdivision Committee meeting on December 30, 2003 where it was forwarded to the Planning Commission. On January 12, 2004 the Planning Commission tabled the item back to Subdivision Committee for lack of developer notification. This item was heard again by the Subdivision Committee on January 29, 2004.

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 04-02.00 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. Planning Commission determination of appropriate fence material, if desired, and appropriate timing for installation. The fence shall not encroach upon right-of-way or easement.

5. Planning Commission determination of street improvements. *Staff recommends 14' from the centerline of 46th Street including curb, gutter, and storm sewer,* and construction of Persimmon St. along the south property line.

6. Payment of **$1,050** into the City's Tree Escrow Account prior to final plat approval.

7. Allowed uses in this R-PZD shall be restricted to use unit 8, single family residential, + use units 1+ 24.

8. Covenants to be filed with the final plat to include maintenance of detention, common open space, fences, entry features, and landscape islands. (A draft is included in the report.)

Standard Conditions of Approval:

9. Payment of parks fees in the amount of **$59,940** for 108 single-family units shall be required prior to Final Plat.

10. 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)

11. 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.

12. Sidewalk construction in accordance with current standards to include a six foot sidewalk and ten foot green space along Persimmon Street and a four foot sidewalk with a six foot greenspace along 46th Street and all proposed streets.

13. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.

14. Preliminary Plat shall be valid for one calendar year.

PLANNING COMMISSION ACTION: yes Required
X Approved _____ Denied

Date: February 09, 2004

Ostner/Allen 2 9-0

Comments:

* Motion to Amend the east connection and to approve a non-motorized connection allowing for bicycles, pedestrians, etc. Motion was moved by Bunch and seconded by Shackelford. Motion passed 5-4

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 04-02.00

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 RSF-4 and R-A to the north, and RSF-4 to the east and west. There are single family homes to the north and a preliminary plat has been approved by the Planning Commission for a subdivision of 154 lots on 58.11 acres (2.65 units/acre) to the west of this proposed development. The southern property line boarders the City's Planning Area. The subject property is 38.48 acres with 108 single family lots proposed for a density of 2.81 units per acre.

(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 site has 0.13% canopy cover with 0.08% preserved canopy proposed. The applicant has proposed erecting a fence along Persimmon St. and 46th Street to shield housing to the neighbors to the south and to be compatible with the fence to be placed along the boundaries of the subdivision to the west. The preliminary plat for Persimmon Place to the west was approved with a condition that a fence 6' in height be erected along these rights-of-way.

(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: Connectivity from this proposed residential subdivision is being provided west to 46th Street, south to Persimmon St., and east to a vacant tract of land for connectivity to future development. All rights-of-way within the subdivision shall be dedicated to the City.

(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 lot shall be for single family use and provide the required two off-street parking spaces per 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: The land use meets all the requirements for open space, buffer or green strip provisions of the chapter in the code.

(6) *Sidewalks.* As required by §166.03.

FINDING: Sidewalk construction shall be in accordance with current standards to include a six foot sidewalk and ten foot green space along Persimmon Street and a four foot sidewalk with a six foot greenspace along 46th Street and all proposed streets within the development.

(7) *Street Lights.* As required by §166.03.

FINDING: Street lights are being provided along Persimmon Place and within the development with spacing not to exceed 300 feet.

(8) *Water.* As required by §166.03.

FINDING: Water shall be extended to the subject property.

(9) *Sewer.* As required by §166.03.

FINDING: Sewer shall be extended to serve the subject property.

(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: Rights-of-way shall be dedicated to the City of Fayetteville and constructed to City standards.

(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 site has 0.13% canopy with 0.08% preservation proposed. Mitigation of $1,050 into the City's Tree Escrow Account is required.

(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: Location of property is located on relatively flat land. No view shed has been identified in this area.

(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 Bill of Assurance and Protective Covenants and Restrictions for Cross Keys Subdivision. (See attached)

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 of 108 lots is located on land identified on the General Plan as residential use. The density and use will not negatively impact surrounding properties. The subdivision is near the Boys and Girls Club and will be able to promote community in this area. (See attached comments from Raymond C. Smith regarding these ten criteria.)

(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. 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 R-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 proposed residential planned zoning district allows single-family use which is compatible with surrounding property. The property is currently zoned Residential Agricultural and would allow for residential development at a lower density than that allowable by a majority of the surrounding property. The density proposed will not significantly increase the amount of traffic to cause congestion in the area which is served by a local and collector street.

(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 single-family dwellings are a permitted use under use unit #8.
Also Use Units 1 & 24.

(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 04-02.00 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 of the existing Residential Agricultural area to the proposed development with residential single-family use with a density of 2.81 units per acre is consistent with the General Plan 2020 that identifies this area for residential use. Single-family use is compatible with existing and planned surrounding single-family residential homes and the surrounding zoning.

The proposal is consistent with the following principles of the General Plan 2020 which are:

- ***Creating a sense of place and connectivity within neighborhoods and community.***
  Finding: Connectivity within neighborhoods and community is provided.
- ***Containing and strengthening the emergence of multiple activity centers.***
  Finding: The proposed subdivision is in close proximity to the Boys and Girls Club and by utilizing it may strengthen the community center.

- *Increasing transportation efficiency.*

  Finding: The developer will construct Persimmon Street and improve 46th Street for the length of the property to achieve connectivity and the flow of traffic as shown on the Master Street Plan. There will also be a stub out to vacant property to the east.

The proposal is consistent with the guiding policies for Residential Areas identified in the General Plan 2020 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.j Implement the Master Street Plan and incorporate bike lanes, parkways and landscaped medians to preserve the character of the City and enhance the utilization of alternative modes of transportation.

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.

The following is from The General Plan 2020 regarding Community Character:

9.19.a Protect and enhance Fayetteville's appearance, identity and sense of place.

9.19.d Discourage perimeter walls and guard houses around the perimeter of new residential developments and promote "connectivity" to increase accessibility and provide more livable neighborhoods.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: **The proposed density is consistent with the existing surrounding zoning.**

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 but should not appreciably increase traffic danger or congestion with the surrounding local, collector, and principle arterial streets, and connectivity is provided from the proposed development to these streets. Trip generation calculations indicated that 108 single family detached dwellings will produce 1034 two-way trips per day on average. Wedington Dr. is a principal arterial and can sustain a volume of 20,600 trips per day. Current traffic counts on Wedington Dr, east of 46th St. are 15,000 trips per day according to the AHTD 2002 traffic count.**

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

Finding: **The proposed zoning will increase population density but should not undesirably increase the load on public services, including schools, water and sewer facilities. Using 2000 Census data for Fayetteville that indicates there are 2.21 persons per occupied unit, the estimated population for a single family development with 108 homes is 239 persons. The maximum development allowable for this property with its current zoning designation of R-A zone is 19 units for a population of 42 persons.**

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

   a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

   b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: **N/A**

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
PLANNING DIVISION

TO: Jorgensen and Associates Inc.

COPY: Suzanne Morgan, Associate City Planner

FROM: Craig Carnagey, Sr. Planner (Landscape Administration)

DATE: December 23, 2003

SUBJECT: Cross Key Subdivision

TREE PRESERVATION PLAN

1. A payment of $1,050.00 will be required to be made into the City's Tree Escrow Account before Final Plat Approval.

FAYETTEVILLE

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THE CITY OF FAYETTEVILLE, ARKANSAS

POLICE DEPARTMENT

January 20, 2004

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 04-02.00: Residential Planned Zoning District (Cross Keys, pp 438)** was submitted by Chris Brackett of Jorgensen & Associates on behalf of Charles Sloan and Sloan Properties for property located south of Wedington Drive at the corner of N. 46th and Persimmon Street 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 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.

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

RAYMOND C. SMITH, P.A.
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yetteville, Arkansas 72701-6101

Telephone (479) 521-7011
FAX (479) 443-4333
Toll Free 1-800-282-0168
Email rsmith7011@sbcglobal.net

December 4, 2003

City of Fayetteville Planning Division
125 West Mountain Street
Fayetteville, Arkansas 72701

Re: R-PZD Residential Planning Zoning District Request
Cross Keys Subdivision

Site Location: Northeast corner intersection of Persimmon Street & North 46th Street

Legal Description: The SE¼ of the SW¼ of Section 12, T16N, R31W, in Washington County, Arkansas , and more particularly described as follows: Commencing at the NE corner of said SE¼, SW¼ thence S02°37'23"W 1.63 feet to the P.O.B., thence S02°37'23"W 1320.10 feet, thence N87°02'10"W 1266.36 feet, thence N02°16'32"E 1318.64 feet, thence S87°06'18"E 1274.35 feet to the P.O.B.,; containing 38.48 acres more or less subject to easements and right of ways of record.

The current owner of the above described property, The Hoyet Greenwood Trust A, Jean Greenwood Jowers, Trustee, and Developer, Charles W. Sloan, Charles W. Sloan and Associates, Inc., are now in final negotiations and a sales contract should be signed momentarily, and are proposing a Planning Zoning District (R-PZD) be established for the above described land. The land will be rezoned from A-1 to R-PZD will achieve the overall objectives of a PZD. During subsequent phases of Cross Keys, additional 160 acres now situated in the county will be annexed into the city and become part of the overall development.

The proposed PZD meets the criteria as set out in Sec. 166.06A, Planning Zoning District (PZD), Title XV, Unified Development Code:

(1) Location. The above described property is eligible as it is situated within the City of Fayetteville limits.

(2) Ownership. Landowner is eligible applicant and the development plan will be binding upon all subsequent owners of the land.

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(3) Size. Although the site location contains approximately 38.48 acres, there is no minimum tract size requirement.

The proposed PZD can accomplish one or more of the following goals specified in Sec. 161.25(A) Planned Zoning District, Title XV, Unified Development Code:

(1) Flexibility. Cross Keys Phase I Subdivision will include approximately 109 homes with not greater than 2.85 houses per acre in a variety of styles of houses, each having not less then 2000 sq. ft. of heated space.

(2) Compatibility. Cross Keys is certainly compatible with surrounding land use. Persimmon Place, a subdivision development situated on 46th Street, has a masonry fence surrounding the subdivision. Cross Keys will have the same style masonry fences. Although Persimmon Place has a minimum house size of 1850 sq. ft., Cross Keys will have a minimum of 2000 sq. ft. The Proposed PZD will achieve compatibility between the proposed development and surrounding areas so as to preserve and enhance the overall neighborhood appearance.

(3) Harmony. This area in the western part of Fayetteville is currently being developed as single family residential dwellings and this proposal will meet the purpose and intent of R-PZD and the permitted use as Unit 8, as single family dwellings.

(4) Variety. Approximately 109 houses will be constructed in the PZD. Developer will not sell the lots to a single builder but anticipates as many as twenty different builders will be involved resulting in a variety of housing types and an increase In employment opportunities and services.

(5) No Negative Impact. The Proposed PZD will not have a negative impact on the future growth of the western part of Fayetteville.

(6) Coordination. Proposed PZD and the development of land surrounding the PZD is being coordinated between the various developers. In coordination with John Knox and the development of his subdivision, West Persimmon Street between N. 46th Street to Rupple Road will be developed, constructed and paved to a 24 ft. paved width.

(7) Open Space. The developer will develop adjacent land to include a golf course that will complement the activities already in existence and planned near the Fayetteville Boys and Girls Club.

(8) Natural Features. The preliminary plat of Cross Keys is planned to obtain maximum enhancement and minimal disruption of natural existing features of the land and surrounding areas.

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(9) General Plan. Proposed PZD will take into consideration tree preservation, landscaping, water conservation, preservation of natural site amenities and the protection of watercourses from erosion and siltation. All features shall be combined in such a way as to further the health, safety, amenity and welfare of the community.

Raymond C. Smith
Attorney at Law
Owner Representative

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BILL OF ASSURANCES AND PROTECTIVE COVENANTS AND REWSTRICTIONS FOR "CROSS KEYS", A SUBDIVISION OF THE CITY OF FAYETTEVILLE, ARKANSAS

KNOW ALL BY THESE PRESENTS, Charles W. Sloan and Associates, Inc., hereinafter referred to a "Declarant" as owner, developer and sub divider of all the lots in **CROSS KEYS, Phase I,** a subdivision to the City of Fayetteville, Arkansas, hereinafter referred to as "**CROSS KEYS,**" by execution hereof, enters and declares the following assurances, covenants, and restrictions with respect to the subdivision.

1. OWNERSHIP:

Declarant is the developer of the following described real property being developed as the Cross Keys Subdivision, Phase I, of the City of Fayetteville, County of Washington, State of Arkansas, to-wit:

The Southeast Quarter (SE¼) of the Southwest Quarter (SW¼) Of Section Twelve (12), Township Sixteen (16) North, Range Thirty-one (31) West, containing 40 acres, more or less

2. SINGLE-FAMILY LAND USE:

Lots within Cross Keys Subdivision Phase I are developed as a Planned Zoning District to provide single family lots with approximately 2.8 lots per acre, with a Lot minimum width of Eighty (80) feet, and shall be in compliance with or exceed the regulations for RSF4 zoning as defined and interpreted by the City of Fayetteville, Arkansas, and Courts of competent jurisdiction, and in compliance with the assurances, covenants, restrictions, and conditions set out and contained herein, on the date these covenants and restrictions were executed.

3. BUILDING LIMITATIONS AND REQUIREMENTS:

The subdivision and building codes of the City of Fayetteville, Arkansas, as such presently exist or are hereafter amended, shall be and are hereby made applicable to all lots in Cross Keys Subdivision. All dwellings, other structures and/or improvements shall comply with said ordinances as such exist on the date of such construction. Any conflicts between such ordinances and the provisions of the conditions, covenants and restrictions shall be resolved in favor of the more restrictive provisions. Building,

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architectural, and design specifications shall be in accordance with the codes and regulations of the City of Fayetteville, Arkansas, and specifically those pertaining to development of Land zoned RSF4 (Residential Single Family w/4 units/acre).

Individual homes (Single Family, RSF4:

a. All dwelling structures constructed upon any lot of Cross Keys shall contain a minimum of two thousand (2000) square feet of heated living space.
b. Each dwelling shall have a private garage for not less than two (2) vehicles. All garage interiors must be dry-walled and finished. All garage doors must be of section type, with automatic garage door openers with appropriate child safety features.
c. Each dwelling is required to have a concrete driveway.
d. All homes and/or other structures constructed within Cross Keys must have an architectural asphalt, tile, or wood shingle roof.
e. No roof pitch on any structure shall be less than a 10/12 pitched.
f. All homes must have one hundred percent (100%) brick, stone or stucco on all exterior walls up to the top plate of the 1st floor. Total percentage of brick, stone or stucco on all exterior walls of each house must equal Eighty (80) percent of the wall surface
g. Variance. Any lot owner may petition the Architectural Committee for a variance from the building limitation and requirements. Each application for a variance will be considered individually based on the overall design of the proposed house in relationship to its compatibility with the other homes in Cross Keys Subdivision. Any application for a variance shall include all documentation that supports the quality of the proposed construction that will be equal to or greater than the requirements set forth in these building limitations and requirements.

Compliance with the above referenced ordinances, conditions, and restrictions, and any future revisions and/or additions to said ordinances, conditions, and restrictions, shall be judged, determined by and require prior approval by the Architectural Committee. The Architectural Committee shall view and approve all exterior plans and specifications for all structures prior to construction and be given the power to amend and/or alter any design plans or specifications prior to construction and be given the power to amend and/or alter any design plans or specifications prior to construction and be given the power to amend and/or alter any design plans or specifications prior to approval for construction with Cross Keys. Any alterations or recommendations made by the Architectural Committee must be revised on said plans and be resubmitted to the Architectural Committee for approval prior to construction. Revisions to prior approved architectural are discouraged; however, any revisions made to said exterior plans must be resubmitted again to the Architectural Committee for approval.

In order to be apprised of current requirements, all owners and builders should contact the Architectural Committee prior to commencement of construction. The specifications and requirements for RSF4 zoning designation shall be deemed minimal

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requirements for the architectural and design specifications for Cross Keys. The City of Fayetteville specifications may be supplemented from time to time where not inconsistent with the original plans and architectural intent of Cross Keys.

4. BUIDING LOCATION AND YARD RESTRICTIONS:

No building may be located within twenty-five (25) feet of any lot line which is adjacent to a street, within eight (8) feet of the side lot lines, or within twenty (20) feet (RSF4) If two adjacent lots are purchased for purposes of constructing only one home, the interior side yard line limitations are removed. No lots within the subdivision may be subdivided, except as follows: if owners on both sides of a vacant joining lot elect to purchase said lot, they may subdivide the only one time. This lot split of the joining lot then increases the size of both adjacent lots and for building purposes the interior side lot line limitation would be associated with and measured from the new property line created by the division. If both portions of the split lot were ever recombined for purposes of serving as a building lot, then the original restriction as to set back would apply.

The front yard, the side yards and a minimum of thirty (30) feet of the backyard shall be fully grass sodded within sixty (60) days and ninety (90) days, respectfully, following the date on which the dwelling is eligible for the issuance by the City of Fayetteville of a temporary certificate of occupancy. Any variance must be submitted and approved by the Grounds Committee. All front yards shall be maintained and groomed as required to be consistent with the other homes within the subdivision and to comply with the overall architectural objectives of the Cross Keys Subdivision.

5. BULDERS AND CONTRACTORS:

Prior to commencement of any site work or construction, a lot owner shall submit the name, address, and telephone number of the lot owner; the name, address, and telephone number of the building contractor; a complete set of construction plans include exterior colors and finishes; and a plat plan reflection the location or all improvements, and set back lines, collectively referred to as "Building Packet" to the Architectural Committee for review and approval. Within thirty (30) days after receipt of the Building packet the Architectural Committee shall act upon the request and provide the lot owner approval or disapproval in writing. A building contractor is defined as a general contractor, building contractor, construction contractor or consultant, architect, design builder or the owner, if he/she acts as their own contractor.

If the Building Packet is complete and the Architectural Committee fails to respond to a lot owner within the specified time period, said member may approach the Board of Directors of Cross Keys Property Owners Association and request immediate action be taken to approve or disapprove the owner's submission. The Board of Directors shall have the authority to approve or

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disapprove the submission; however, must act within fifteen (15) working days of receipt of the owner's written request.

If both the Architectural Committee and the Board of Directors fail to act, if no suit to halt the proposed construction is commenced prior to the completion of said construction, and if said construction is in compliance with the ordinances of the City of Fayetteville, Arkansas, written approval form the Architectural Committee shall no longer be required and the completed construction shall be deemed in compliance with the Cross Keys conditions, covenants, and restrictions.

No building materials shall be placed or stored on a lot prior to approval of the Building Packet and the scheduled date on which construction is to commence. Construction sites shall be kept neat and orderly. Construction sites are to be cleaned daily of trash and scrap material. If said requirements are not adhered to, Cross Keys Property Owners Association may hire a cleanup crew to perform the task. Should Cross Keys Property Owners Association incur expense associated with the cleanup of a construction site, said expense shall be deemed a lien upon the lot until paid. Portable toilets must be on all job sites during construction. Upon completion of the building project all remaining materials, trash, dumpsters, toilets, etc. shall be removed from the lot and subdivision within ten (10) days.

6. HOME OCCUPATION:

Home occupations, as defined by the codes of the City of Fayetteville, Arkansas, are prohibited.

7. FENCES:

Fencing of the front yard is prohibited. Fencing of rear and side yards must be of brick, decorative iron, or cedar wood construction. Except for fencing constructed for the purpose of screening by Declarant, no fencing may exceed six (6) feet in height. All fences shall be recessed at least ten (10) feet from the front of the dwelling. No wire or chain link fencing is allowed. Fencing shall not infringe on neighboring lots or the common grounds of Cross Keys. All fencing plans and materials must be submitted to and approved by the Architectural Committee. Unless a dwelling structure is built on a lot, fencing of the lot is prohibited. Lots numbered seven (7) thru thirty-two (32) shall have six (6) ft. high privacy fences constructed of cedar wood on the rear lot line.

8. SIDEWALKS, DRIVEWAYS AND STREETS:

A lot owner may not cut or cause to be cut a street within Cross Keys for any reason. Concrete driveways and street access points are to be constructed and completed by the owner prior to or at completion of the dwelling project. All driveways are to be of concrete base and may have a decorative type finish.

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example: brick lines, brick expansions, aggregate finish pattern concrete, etc. Concrete sidewalks shall be constructed at the expense of the lot owner and shall be completed at the time the driveway is constructed. Sidewalks shall be four (4) feet wide and constructed as designed and shown on the final plat.

Sidewalks shall be made of concrete with a light broom finish, expansion joints are to be cut on eight (8) foot centers. The length of sidewalks will vary with each lot, the sidewalk shall be the full street side width of the lot.

9. UTILITES:

All utilities situated within Cross Keys subdivision shall be underground and overhead service is not permitted.

10. SATELLITE DISHES:

Satellite dishes shall be twenty-four (24) inches or less in diameter and shall not be visible from the street.

11. CABLE TV:

Cable television access shall be supplied to each lot within the development.

12. OUTBUILDINGS AND PORTABLE BUILDINGS:

No portable structures are allowed. Outbuildings may be allowed and constructed for use as storage of outside, lawn and flower garden equipment and supplies provided the structure is similar in design to the home. All plans for such structures must be presented to and approved by the Architectural Committee prior to construction.

13. EASEMENTS:

Easements for installation and maintenance of utilities, drainage facilities and any other such easements are reserved as shown on the recorded plat. Lot owners are discouraged from constructing structures or improvements, or landscaping located within an easement is subject to being damaged, destroyed, or removed by the easement owner without compensation or replacement being provided to the lot owner.

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14. OIL AND MINING OPERATIONS:

No operations associated with the testing for, location, or recovery of, and refining or processing of oil, gas or minerals found upon or underneath Cross Keys shall be permitted or located within Cross Keys.

15. LIVESTOCK, POULTRY AND PETS:

No livestock, poultry, exotic, wild, non-domesticated, or other such animals (except as noted within) shall be kept, raised or sheltered on any residential building lot or common area within Cross Keys. Dogs, cats and other household pets may be kept, provided they are not raised for commercial purposes. The outside living area for approved pets must be maintained and kept clean at all times and screened from public view. All living areas for such pets must be in the rear or side yard. The walking of permitted animals on a leash is allowed, provided and owner/walker picks up any dropping from said animal.

16. PARKING OF VEHICLES:

All vehicles, except recreational vehicles, shall be parked in the garage or driveway of the owner's respective lot. The Subdivision's streets shall not be used as a place to park or store vehicles. The parking or storage of a vehicle on a subdivision street for two (2) consecutive days of any given week shall be deemed a "routinely parked" vehicle. Licensed and non-licensed recreational vehicles, of any type, shall not be routinely parked on the streets of the subdivision or on any lot within the subdivision.

The above restrictions apply to, but shall not be limited to recreational equipment, motor homes, boats, travel trailers, campers, tmasport trailers and the like. Any large trucks, tandem wheel tractors or large commerical vehicles are strictly prohibited within the subdivision except for moving, and delivery purposes and development of a lot and new home construction.

17. INOPERATIVE VEHICLES:

No inoperative or non-licensed vehicle shall be left on any subdivision street or owner's driveway in excess of two (2) days.

18. TEMPORARY STRUCTURES:

No temporary structure shall be used for human habitation. The bu

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and contractors are allowed such structures during the construction phase for storage and construction use only. All such structures must be removed prior to or at completion of the building project.

19. SIGNS AND POSTERS:

No signs or posters are allowed except as noted below:

a. A professionally made sign noting the property is for sale.
b. A professionally made construction sign noting the builder of the improvements, which sign shall be removed once the improvements are completed or occupied.
c. Political, garage sale, and commercial signs or posters are permitted but only for the duration of their intended purpose.
d. Any lot owner may apply for a waiver of a sign or for permission to place a sign on a lot by submission of the sign design, intended duration, a purpose to Cross Keys Applications for waiver shall be submitted prior to placement of a nonpermitted sign.

20. SIGHT DISTANCE AT INTERSECTIONS:

Walls, fencing, shrubs, hedges, trees or other improvements constructed or made near or at the intersections of streets within the Cross Keys shall be located and constructed in compliance with the codes, regulations, and ordinances of the City of Fayetteville.

21. MAILBOXES AND HOUSE NUMBER:

Prior to occupancy of any dwelling structure located on a lot, the lot owner shall construct a mailbox and install a house number which has been approved as to design and site location by the Architectural Committee.

22. STREETLIGHTS:

All streetlights shall be installed by Cross Keys and dedicated to the City of Fayetteville, Arkansas for public use and maintenance by the City.

23. CLOTHESLINES:

Outdoor clotheslines or poles are prohibited.

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24. BASKETBALL GOALS:

The placement of all basketball goals must be approved by the Grounds Committee.

25. TREE REQUIREMENTS:

Each lot owner and shall be responsible for the health of all planted trees on the lot and shall be bound for the maintenance, care and monitoring for each tree planted. Each lot within Cross Keys Subdivision is required to plant and maintain two 2" inch diameter Native American trees in the front yard before the structure is certified for occupancy. If at any time said tree is damaged significantly or dies, it must be replaced within a two-month period. A list of types of trees permitted will be provided by the Grounds Committee. Failure to replant or maintain the tree after notice by the Property Owners Association could result in an assessment and a lien upon the lot for the cost of planting and maintaining the tree. The lot owner agrees a lien which results from a failure to pay any assessment may be foreclosed in the same manner provided by Arkansas Law for the foreclosure of a real estate mortgage.

26. NUISANCES:

No noxious, destructive or offensive activity as defined by City Ordinance and State or Federal laws or regulations shall be carried on or upon any lot or street, nor shall anything be done thereupon which may be or may become an annoyance or nuisance to the Cross Keys community and its homeowners.

27. ENTRYWAY AND MEDIAN MAINTENANCE AND UPKEEP:

Entryways, retention ponds and surrounding areas, public areas and parks, and common areas and improvements are an integral part of Cross Keys and it is in the best interest of Cross Keys that said such entryways, medians, retention ponds and surrounding areas, public areas and parks, and common areas and improvements be maintained at all times.

The cost of the routine upkeep, maintenance and repair and replacement of entryways, medians, retention ponds and surrounding areas, and common areas and improvements shall be shared by each lot owner through annual or special assessments. Any upkeep, maintenance and repair of public area and parks shall be at the discretion of the Board of Directors of Cross Keys Property Owners Association.

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28. SWIMMING POOLS:

Swimming pools must be underground and placed in the back yard and properly fenced.

29. STREETS:

All streets within the Cross Keys development shall be dedicated to the City of Fayetteville, Arkansas for public use and maintenance by the City.

30. HOLDING POND:

The Property Owners Association shall be responsible for the designated holding pond (if any) within the subdivision development and shall publish the rules and regulations applicable to the holding pond.

31. GOVERNING STRUCTURE:

By accepting ownership of property within Cross Keys, each owner accepts membership within the Cross Keys Property Owners Association, an Arkansas non-profit corporation formed to promote the collective and individual property and civic interests of all owners of Cross Keys property and to own, operate and maintain any area which is now or which in the future may be designated common property and at its discretion publicly owned property such as the park area so long as the development and maintenance of park and publicly owned areas are in compliance with City codes and regulations.

By accepting ownership of property within Cross Keys, each owner acknowledges, said property is now or will be subject to periodic assessments to be established and used for the construction development, improvement, repair and replacement of the entryways, retention ponds and surrounding areas, and common areas and improvements by the Board of Directors of the Cross Keys Property Owners Association and agrees if said assessments are not timely and fully paid said assessment and all costs, including legal fees, associated with the cost of collection of same shall be deemed a lien on the property so assessed.

The owner(s) of each lot in Cross Keys shall be entitled to one (1) vote on any proposition or action placed before the membership of the Cross Keys Property Owners Association for a vote. If more than one person or entity owns a single lot, the owners must collectively agree upon their single vote before casting same. If one or more entities own more than one lot, the owner(s) are entitled to

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one (1) vote per lot owned.

32. ARCHITECTURAL COMMITTEE:

The Architectural Committee is established to insure, within its limited ability, that all dwellings and/or other exterior structures within Cross Keys are compatible with the other dwelling and structures constructed or to be constructed within Cross Keys.

The Architectural Committee for all new construction shall consist of three (3) builders, appointed by the Cross Keys Developer and owning lots in Cross Keys Subdivision. At such time when each of the three builders has sold all owned lot and homes in Cross Keys that position on the Architectural Committee will then be appointed by the Cross Keys Property Owners Association.

The Architectural Committee shall be appointed and shall serve at the discretion of the Board of Directors of the Cross Keys Property Owners Association. The Architectural Committee shall have no less than one (1) member and shall have no more that three (3) members who shall own or be representative of the owners of property within Cross Keys.

33. GROUNDS COMMITTEE:

The Grounds Committee is established to insure the streets, sidewalks, common areas and improvements located thereupon, unimproved lots and the front and side yards of improved lots, are maintained, groomed and kept in good order. The Grounds Committee shall note any problems with mailboxes, entryways, retention ponds and areas surrounding same, public areas and parks, common areas and improvements within the Cross Keys development. Any problems or violations noted by the committee shall be written up and reported for repair or correction to the proper parties. If the needed repair or violation is directed to a lot/home owner, said owner has fifteen (15) days in which to correct the problem. If the owner fails to take measures to correct the problem, the Grounds Committee may report the violation or problem to the Board of Directors of Cross Keys Property Owners Association for further action and follow-up.

The Grounds Committee shall be appointed and serve at the discretion of the Board of Directors of the Cross Keys Property Owners Association. The Grounds Committee shall consist of no less that one (1) member and shall have no more that three (3) members, who will be owners or representatives of owners of property within Cross Keys.

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34. VIOLATIONS:

Any and all violations against a lot/homeowner(s) may result in a levy against the owner and the property by the Board of Directors of Cross Keys Property Owners Association. All violations should be considered of the utmost importance and be addressed and responded to in a timely manner.

Correction of the item in violation should began, as soon as possible. If the property owner believes the violation is wrong or incorrect, the properfty owner should contact the issuing party of the violation as soon as possible.

35. ASSESSMENTS:

Lots owned by Charles W. Sloan and Associates, Inc. shall not be assessed an annual assessment fee as long as the lot remains an undeveloped lot. Once title of a lot is transferred from Charles W. Sloan and Associates, Inc. there will be due and annual assessment of two hundred and fifty dollars ($250.00) which assessment shall be for a full calendar year. Assessments will be due January 1st of each year. For any lot purchased in mid-year, the lot owner at closing shall be assessed and pay the annual assessment prorated for the remainder of that year. Assessments shall be collected by and paid to the Cross Keys Property Owners Association. Assessments shall be used for the repair, maintenance, upkeep, and replacement of the entryways, retention ponds and surrounding areas, common areas and improvements, public areas and parks, golf course and to pay the costs associated with the operations of the Cross Keys Property Owners Association, including costs and fees paid to lawyers and accountants. By a two thirds (2/3) vote of the Board of Directors of Cross Keys Property Owners Association or a majority vote of the owners of lots in Cross Keys Property Owners Association the assessment may be periodically increased or decreased. By acceptance of ownership of a lot within Cross Keys, a lot owner is agreeing to pay current and future assessments and is agreeing assessments shall be deemed a lien against the lot. The lot owner agrees a lien which results from a failure to pay an assessment may be foreclosed in the same manner provided by Arkansas Law for the foreclosure of a real estate mortgage. Each lot owner agrees to pay Cross Keys Property Owners Association costs and legal fees associated with the collection of delinquent assessments of foreclosure of liens.

36. DURATION OF COVENANTS AND RESTRICITIONNS:

These restrictions and covenants are hereby declared to be covenants running with the lots and shall be fully binding upon all persons acquiring property in said subdivision whether by decent, devise, purchase or otherwise and

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any person by the acceptance of title to any lot in this subdivision shall hereby agree and covenant to abide by and fully perform the foregoing restrictions and covenants.

These covenants are to run with the land and shall be binding for a period of twenty-five (25) years. Said covenants and restrictions may be extended for successive five (5) year terms if approved by a majority of the lot owners.

37. BINDING EFFECTS AND AMENDMENTS OF COVENANTS:

All natural persons or other legal entities who shall acquire any lot within the Cross Keys subdivision shall be deemed to agree, accept, conform to and observe the restrictions, covenants and stipulations contained herein, and the By-Laws of Cross Keys Property Owners Association and accepts membership in the Cross Key Property Owners Association.

Any amendment of these covenants and restrictions requires an approval by a vote of seventy-five percent (75%) of the lot/home owners of all phases within Cross Keys.

No changes in the covenants and restrictions shall be valid unless the amended covenants and restrictions are properly recorded in the recorder's office of Washington County, Arkansas. No amendment shall be allowed which would be in violation of RSF4 zoning in affect at the time of the amendment.

38. SEVERABILITY:

Invalidation of any restriction or portion of a restriction set forth herein, or any part thereof, by an order, judgment, or decree of any court, or otherwise, shall not invalidate or affect any of the other restrictions, or any part thereof, as set forth herein, but they shall remain in full force and effect.

Executed on this 3rd day of Dec 2003.

Charles W. Sloan & Associates, Inc.
Owner and Developer

By: _____
Charles W. Sloan
President

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ACKNOWLEDGEMENT

State of Arkansas)
)ss.
County of Washington)

On this the 3d day of December, 2003, before me, a Notary Public, the undersigned officer, personally appeared Charles W. Sloan, President of Charles W. Sloan and Associates, Inc., known to me to be the person whose name is subscribed to the within instrument and acknowledged that he had executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires
8-18-2009

"OFFICIAL SEAL"
Raymond C. Smith
Notary Public, State of Arkansas
County of Washington
My Commission Exp. 08/18/2009

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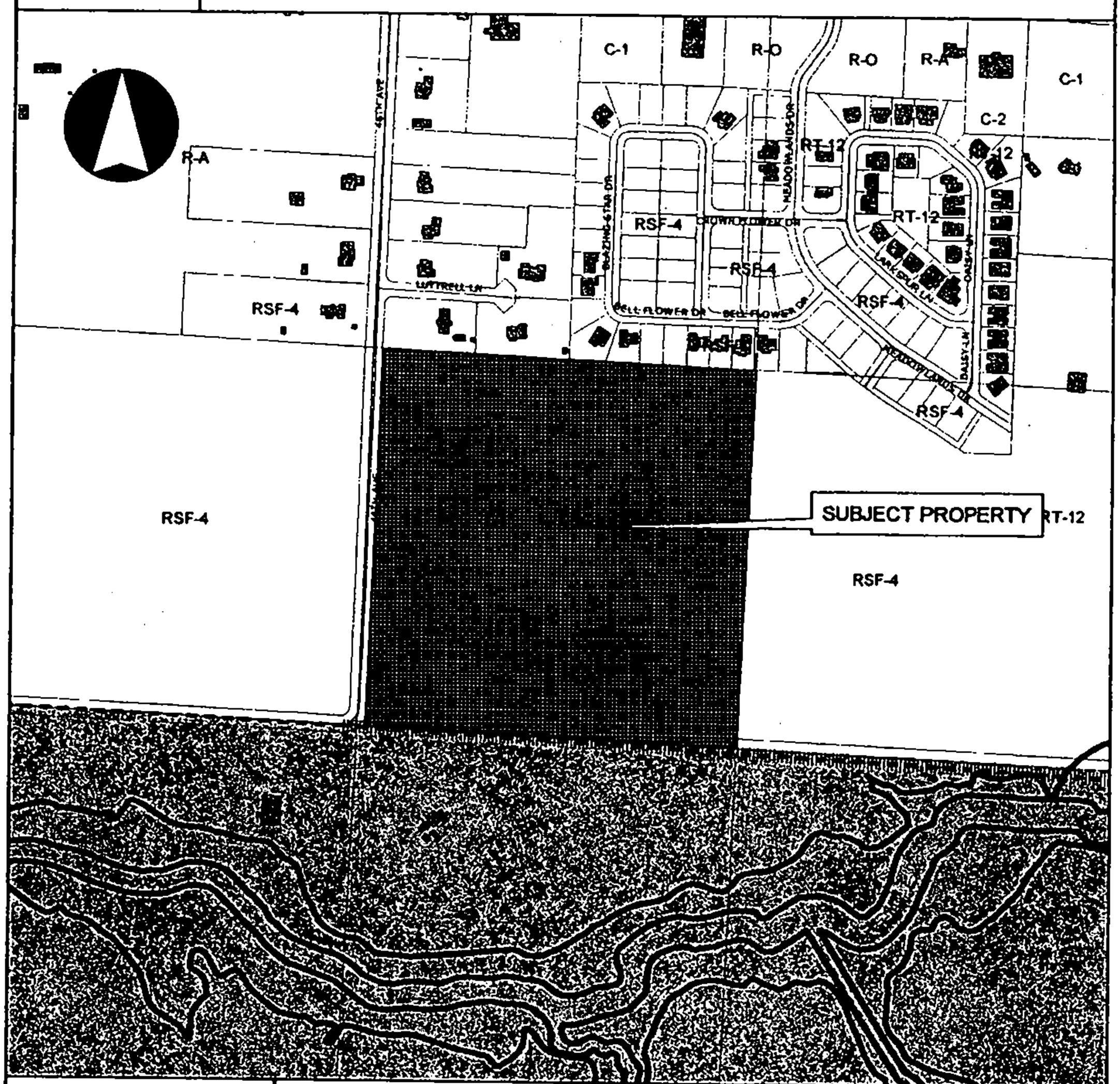
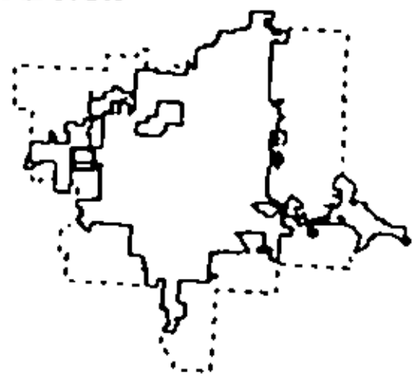
Close Up View

CROSS KEYS



Overview



Legend

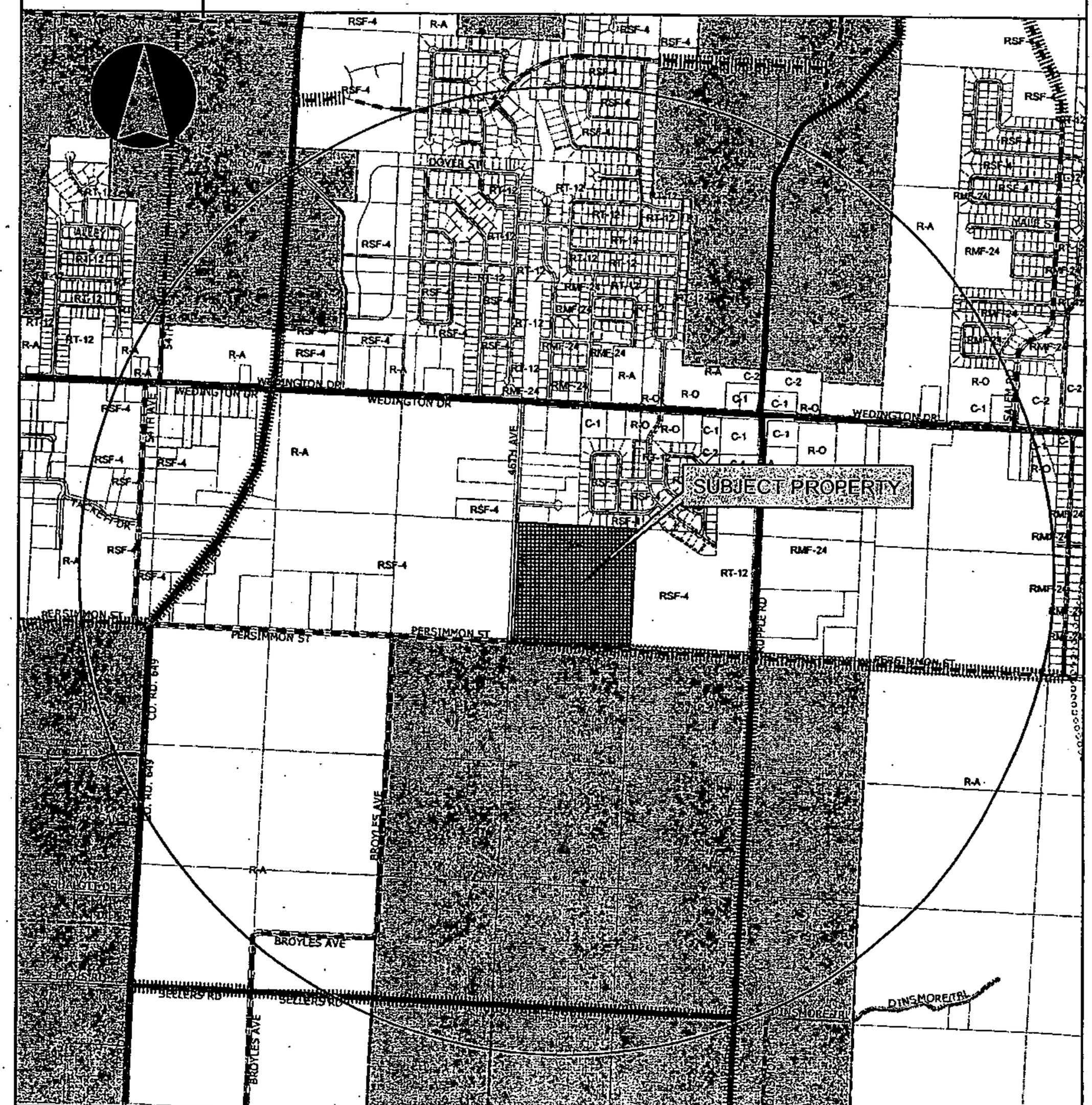
R-PZD04-02.00
Overlay District
Master Street Plan
Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector
City Limits
Outside City
FLOODWAY
100 YEAR
500 YEAR
LIMIT OF STUDY
Baseline Profile

0 200 400 800 1,200 1,600 Feet

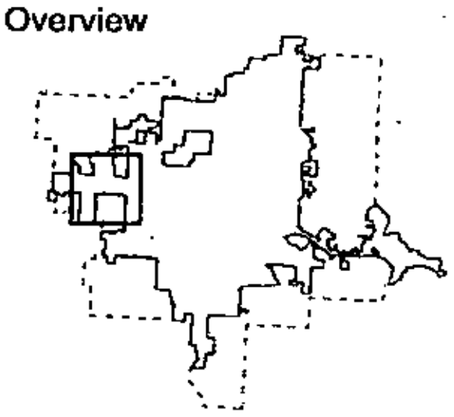
R-PZD04-02.00

One Mile View

CROSS KEYS



Overview



Legend

Subject Property
- R-PZD04-02.00

Streets
- Existing
- Planned

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

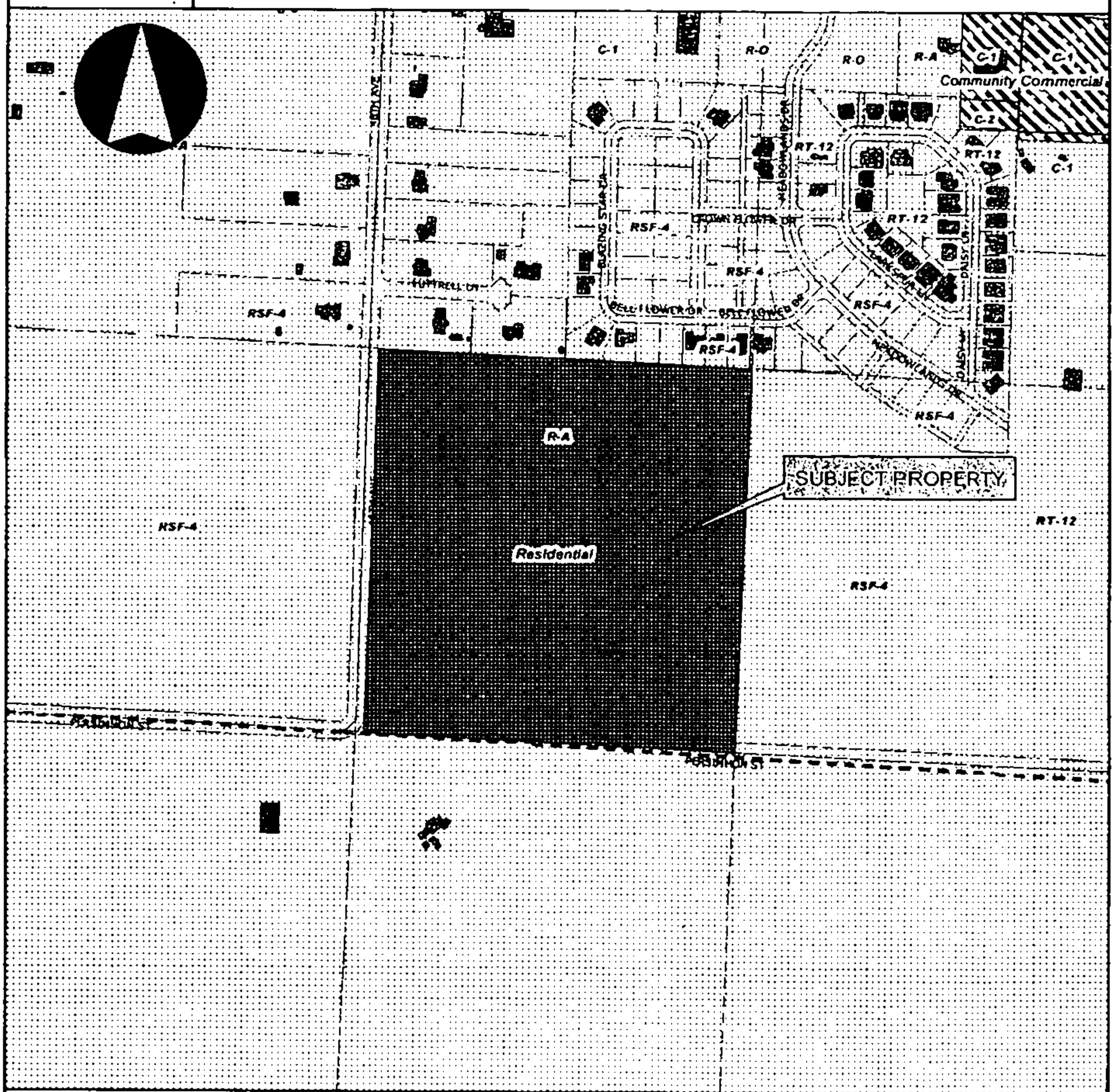
Master Street Plan
- Freeway/Expressway
- Principal Arterial
- Minor Arterial
- Collector
- Historic Collector

0 0.1 0.2 0.4 0.6 0.8 Miles

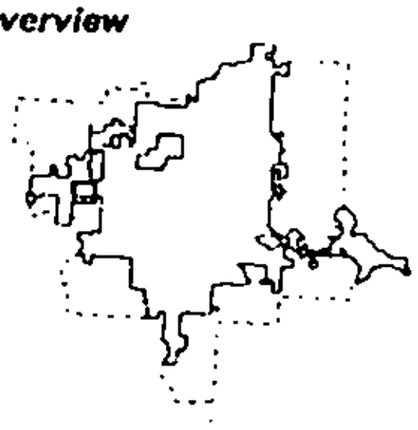
R-PZD04-02.00

Future Land Use

CROSS KEYS



Overview



Legend

Subject Property

R-PZD04-02.00

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

City Limits

Outside City

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

Historic Collector

0 200 400 800 1,200 1,600 Feet

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

Date: February 12, 2004

Subject: Residential Planned Zoning District for Hickory Park (R-PZD 04-05.00)

RECOMMENDATION

Planning Staff recommends approval of an ordinance creating the Residential Planned Zoning District (R-PZD) for Hickory Park. This action will establish a unique zoning district for development of a 4.429 acre tract located west of Crossover Rd and north of 2730 E. Township Street (St. John's Lutheran Church). The request is to rezone the subject property to a Residential Planned Zoning District with a total of 14 single family lots.

BACKGROUND

The applicant requests a rezoning and preliminary plat approval for a residential development within an R-PZD zoning district. The proposed use is single-family residential (use unit 8), with 14 units on approximately 4.429 acres. Density for the entire site is 3.16 units per acre. The site is located north of Township St. and east of Crossover Rd. Currently the property is zoned P-1, Institutional and identified as residential on the General Plan 2020. This site is currently vacant. Surrounding areas are zoned RSF-4, R-A, and P-1 and contain single family homes with St. John's Lutheran Church located to the south.

The proposed subdivision will access Crossover Rd and generate approximately 134 vehicle trips per day. Internal streets are a combination of public and private drives with the primary street being a 350 foot long cul-de-sac. Shared drives and build-to lines will be utilized within this development. A POA will be established to maintain private drives and entry features.

DISCUSSION

The Planning Commission voted 9-0-0 in favor of this request on Monday, February 09, 2004. The Planning Commission modifed conditions to eliminate the build-to lines on lots 4, 7 and 8.

Planning Commission recommends that the City research a cost share of sidewalk construction along the esat propery line of the lot south of this development.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING A RESIDENTIAL PLANNED ZONING DISTRICT TITLED (R-PZD 04-05.00) LOCATED NORTH OF 2730 E. TOWNSHIP STREET, CONTAINING 4.429 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 P-1 Institutional, to R-PZD 04-05.00 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 February 9, 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

DRAFT

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"
R-PZD 04-05.00

A PART OF THE SW ¼ OF THE SW ¼ OF SECTION 31, T-17-N, R-29-W DESCRIBED AS BEGINNING AT A POINT WHICH IS N01°25'41"E 504.20 FEET FROM THE SW CORNER OF SAID SECTION 31, SAID POINT OF BEGINNING BEING A SET IRON PIN; THENCE ALONG THE EAST BOUNDARY OF CEDARWOOD ADDITION, N01°25'41"E 281.03 FEET TO A SET IRON PIN; THENCE ALONG THE SOUTH BOUNDARY OF GLENWOOD ADDITION, N74°07'53"E 514.84 FEET TO A FOUND IRON PIN; THENCE ALONG THE WEST RIGHT OF WAY OF ARKANSAS STATE HIGHWAY NO. 265, S02°28'36"W 531.81 FEET TO A SET IRON PIN; THENCE LEAVING SAID HIGHWAY, N88°51'16"W 130.63 FEET; THENCE N50°21'20"W 160.64 FEET; THENCE N88°51'14"W 224.99 FEET TO THE POINT OF BEGINNING, CONTAINING 4.4291 ACRES, MORE OR LESS, FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of February 09, 2004

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

PLANNING DIVISION CORRESPONDENCE

TO:	Fayetteville Planning Commission
FROM:	Suzanne Morgan, Associate Planner
	Matt Casey, Staff Engineer
THRU:	Dawn Warrick, A.I.C.P., Zoning & Development Administrator
DATE:	February 4, 2004

R-PZD 04-05.00: Residential Planned Zoning District (Hickory Park, pp 294) was submitted by Millholland Company on behalf of St. John's Lutheran Church of Fayetteville for property located at 2730 E. Township Street. The property is zoned P-1, Institutional, and contains approximately 4.429 acres. The request is to rezone the subject property to a Residential Planned Zoning District and to approve the development of 14 residential lots. Planner: Suzanne Morgan

Findings: The applicant requests a rezoning and preliminary plat approval for a residential development within an R-PZD zoning district. This item must be heard at City Council pursuant to the requirements for a PZD. The proposed use is single-family residential, with 14 units on approximately 4.429 acres. Density for the entire site is 3.16 units per acre. The site is located north of Township St. and east of Crossover Rd. Currently the property is zoned P-1, Institutional and identified as residential on the General Plan 2020. This site is currently vacant.

The proposed subdivision will have one access to Crossover Rd. Forty feet of right-of-way will be dedicated from the entrance of the subdivision to the landscaped island roundabout. The two extending drives are proposed as private drives to be the responsibility of the developer or a neighborhood property owners association. The subdivision is proposed to have a 6' solid privacy and retaining wall surrounding the east property along Crossover, a 13' wide landscaped island at the entry way of the subdivision, and a landscaped island with a mail kiosk at the terminus of the right-of-way.

Surrounding Land Use / Zoning:

Direction	Land Use	Zoning
North	Single family res. – Glenwood Addition (2.47 units/acre)	RSF-4, Residential Single-family – 4 units per acre
South	St. John's Lutheran Church	P-1, Institutional
East	Single family residential	R-A, Residential Agricultural
West	Single family res. – Cedarwood Addition (3.17 units/acre)	RSF-4, Residential Single-family – 4 units per acre

Right-of-way being dedicated: 40' for interior right-of-way, and 55' from centerline of Crossover Rd.

Trip Generation Calculations: 14 single family detached dwellings will produce 134 two-way trips per day. Crossover Rd is a principal arterial and can sustain a volume of 20,600 trips per day. Current traffic counts on Crossover and Township are 16,000 trips per day according to the AHTD 2002 traffic count.

Adjacent Master Street Plan Streets: Crossover Rd. (principal arterial)

Tree Preservation: A report from the Landscape Administrator is included in the staff report.

Existing canopy:	100 %
Required canopy:	25 %
Preserved canopy:	26.82 %

Public Comment: Staff has received several calls regarding neighborhood concerns with drainage, traffic, tree preservation, and safety issues in regard to the round-about.

Background: The applicant submitted this proposal on January 15, 2004. It was presented to the Subdivision Committee on January 29, 2004 and forwarded it to the Planning Commission. Discussion included shared drives, maintenance of the underground detention pond, tree preservation, and the landscape island at the entrance of the subdivision.

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 04-05.00 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. Property line adjustment shall be filed prior to final plat approval.

5. Revised covenants to include maintenance requirements as found in section 166.06 of the UDC and revisions to the lots with shared drives to reflect the approved plat shall be filed with the final plat.

6. Use shall be restricted to use unit 8 only.

Standard Conditions of Approval:

7. 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)

8. 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.

9. Payment of parks fees in the amount of **$7,770** for 14 single-family lots shall be required prior to Final Plat.

10. Street lights shall be installed along all street rights-of-way spaced a maximum distance of 300' apart.

11. Sidewalk construction in accordance with current standards to include a six foot sidewalk and nine foot green space along Crossover Rd. and a four foot sidewalk with four feet of greenspace along all proposed streets.

12. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.

13. Preliminary Plat shall be valid for one calendar year.

PLANNING COMMISSION ACTION: __yes__ **Required**
__X__ **Approved** _____ **Denied**

Date: **February 09, 2004**

Shackelford/Vaught w/ recommendation that the City research a cost share of a sidewalk construction along the east property line of the church (south of the proposed development). 9-0

Comments:
Additional Condition: Eliminate build-to lines on lots 4, 7, + 8

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

Put the private roads + shared drives in an access easement for the FPL

Public Comment from Mr. Bob Siegfoos, Mr. Dan McCarty, Mr. Doug Hemingway, and Mr. Robert ___

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 RSF-4 to the north and west. To the north is Glenwood Addition, approved in 1988 with a density of 2.47 units per acre. Cedarwood Addition, platted in 1981, is west of the site with a density of 3.17 units per acre. St. John's Lutheran Church is located to the south and zoned P-1, Institutional. Land to the east of the site is zoned R-A, Residential Agricultural, with single-family dwellings. The subject property currently zoned P-1 Institutional and has consists of 4.429 acres with 14 single-family lots proposed for an overall density of 3.16 units per acre.

(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 site has 100% canopy coverage with 26.82% preserved canopy proposed. The applicant has proposed erecting a 6 foot stone wall along Crossover Road to be used as a screen between the road and the housing. Man-made screening along Crossover Rd is consistent with the other residential subdivisions along Crossover Road.

(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: Connectivity from this proposed residential subdivision is being provided east to Crossover Road. Forty feet of right-of-way dedication is proposed within the subdivision from Crossover Rd. to the roundabout, at which point two private drives extend to the east and west to provide access to the lots.

Shared drives will be utilized between lots 1 and 2, 6 and 7, 11 and 12, and 13 and 14 to decrease the number of curb cuts. Pedestrian access is provided with a four foot sidewalk and four foot greenspace along all private and public streets within the subdivision. A six foot sidewalk with nine feet of greenspace is proposed along Crossover Rd. for the length of the property. The developer also proposes a landscape island at the entrance of the subdivision and a landscaped roundabout with a mail kiosk at the terminus of the right-of-way within the subdivision.

Access is provided from Crossover Rd. with a 14' drive isle into the subdivision and a 20' exit drive isle which will provide sufficient width for right and left turning lanes and access for fire vehicles in accordance with the International Fire Code requirements.

(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 lot shall be for single family use and provide the required two off-street parking spaces per 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: The land use meets all the requirements for open space, buffer or green strip provisions of the chapter in the code.

(6) *Sidewalks.* As required by §166.03.

FINDING: Sidewalk construction shall be in accordance with current standards to include a six foot sidewalk located at the edge of the right-of-way along Crossover Rd. with a nine foot green space and a four foot sidewalk with a four foot greenspace along all proposed streets within the development.

(7) *Street Lights.* As required by §166.03.

FINDING: Street lights shall be provided along Crossover Rd. and within the development with spacing not to exceed 300 feet.

(8) *Water.* As required by §166.03.

FINDING: Water shall be extended to serve the subject property.

(9) *Sewer.* As required by §166.03.

FINDING: Sewer shall be extended to serve the subject property.

(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 two private street extensions along Mockernut Crossing which extend both east and west from the terminus the along Shagbark Bend right-of-way. The western extension is approximately 80' in length and the eastern extension is approximately 105' in length. Both are 40' in width with 24' of pavement. The maximum number of units which could use each would be five. All public rights-of-way shall be dedicated to the City of Fayetteville and constructed to City standards.

The applicant has submitted covenants that allocate the responsibility of maintaining the private drives to the POA. The covenants shall be modified to include the information in section 166.06 D (10) (b) regarding private streets within a residential PZD.

To reduce the number of curb cuts, the covenants required private drives for lots 11 and 12, 13 and 14, and 7 and 8. These shared drives differ from what is shown on the plat and the covenants shall be modified to reflect the approved plat.

(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 site has 100% canopy with 26.82% preservation proposed. Mitigation is not required. Please see the attached report from the Landscape Administrator.

(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: No view shed has been identified in this area.

(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 Protective Covenants and Restrictions for Hickory Park. (See attached)

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 of 14 lots is located on land identified for residential use on the General Plan 2020. The density and use is similar to adjacent subdivisions and will not negatively impact surrounding properties. The proposal is unique in that there are build-to lines and specific building types and materials called for in the covenants. Shared drives will be utilized and garages will be rear/side entry.

The proposal meets the following Residential Guiding Policies in the General Plan 2020:
9.8.a Utilize principles of traditional residential urban design to create compatible, livable, and accessible neighborhoods.
9.8.f Site new residential areas accessible to roadways, alternative transportation modes, community amenities, infrastructure, and retail and commercial goods and services.

(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. 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 R-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 proposed residential planned zoning district allows single-family use which is compatible with surrounding property. The property is currently zoned Institutional (P-1) and would allow for City-wide uses by right and cultural and recreational facilities. The density proposed will not significantly increase the amount of traffic to cause congestion in the area served by a principal arterial (Crossover Rd/Hwy 265) and a collector (Township) to the south.

(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 single-family dwellings are a permitted use under use unit 8.

(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 04-05.00 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 of the existing Institutional (P-1) area to the proposed development with residential single-family use with a density of 3.16 units per acre is consistent with the General Plan 2020 that identifies this area for residential use. Single-family use is compatible with existing and planned surrounding single-family residential homes and the surrounding zoning.**

The proposal is consistent with the following principles of the General Plan 2020 which are:

- *Increasing transportation efficiency.*
  Finding: The developer will dedicate additional right-of-way along Crossover Rd. to comply with the Master Street Plan and construct a sidewalk along Crossover Rd for the entire length of the property as well as along the interior streets.

The proposal is consistent with the guiding policies for Residential Areas identified in the General Plan 2020 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.j Implement the Master Street Plan and incorporate bike lanes, parkways and landscaped medians to preserve the character of the City and enhance the utilization of alternative modes of transportation.

9.8.i Establish performance zoning design standards to mitigate adverse impacts of contrasting land uses with residential land uses.

The following is from The General Plan 2020 regarding Community Character:

9.19.a Protect and enhance Fayetteville's appearance, identity and sense of place.

9.19.d Discourage perimeter walls and guard houses around the perimeter of new residential developments and promote "connectivity" to increase accessibility and provide more livable neighborhoods.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: **The proposed density is consistent with the existing surrounding zoning.**

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 but should not appreciably increase traffic danger or congestion with the surrounding collector and principle arterial streets.**

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: **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.**

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

   a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: **N/A**

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: 479-444-3469

TO: Suzanne Morgan, Associate Planner

FROM: Rebecca Ohman, Park Planner

DATE: January 27, 2004

SUBJECT: Parks & Recreation Plat Review Comments

****

Meeting Date: January 29, 2004
Item: R-PZD 04-5.00 Hickory Park, pp 294
Park District: NW
Zoned: RPZD
Billing Name & Address:

	Land Dedication Requirement	***Money in Lieu***
Single Family	_____@ .024 acre per unit = _____ acres	14 @ $555 per unit = $7,770
Multi Family	_____@ .017 acre per unit = _____ acres	_____@ $393 per unit = $_____
Mobile Home	_____@ .024 acre per unit = _____ acres	_____@ $555 per unit = $_____
Lot Split		_____@ $555 per unit = $_____

COMMENTS:

- PRAB recommended accepting money-in-lieu of land on December 1, 2004. Parks fees are due in the amount of $7,770 for 14 Single Family lots.
- Fees are due before issuance of final plat.
- Please list the owner/developer and contact information.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

SC Meeting of January 29, 2004

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8264

TREE PRESERVATION and PROTECTION REPORT

To: Milholland Company

From: Craig Carnagey, Landscape Administrator

Copy: Suzanne Morgan, Associate Planner

Date: January 27, 2004

Re: Hickory Park R-PZD

ITEM #:

BACKGROUND:

Requirements Submitted:

✓	Initial Review with the Landscape Administrator
✓	Site Analysis Map Submitted
✓	Site Analysis Written Report Submitted
✓	Complete Tree Preservation Plan Submitted

Canopy Measurements:

Total Site Area	
acres	4.429
square feet	192,932
Existing Tree Canopy	
acres	4.429
square feet	192,932
percent of site area	100%
Existing Tree Canopy Preserved	
acres	1.187
square feet	51,745
percent of total site area	26.82%
Percent Minimum Canopy Required	**25%**

FINDINGS:

The desirability of preserving a tree or group of trees by reason of age, location, size or species. The general accounting of existing tree groups on this site finds a mix of deciduous hardwoods ranging in age from young to mature with significant species of Post Oaks, Black Oaks, and Shagbark Hickories. The health of most individual species is considered fair to good. The even

distribution across the site or desirable trees for preservation creates a constraint upon any development of this site. Any form of construction activity here will necessitate the removal of some desirable groups of trees for preservation.

Whether the design incorporates the required Tree Preservation Priorities.
Due to the slope, this site is considered to be entirely covered in high priority canopy. An attempt was made by the developer to limit the impacts of the proposed street, and to avoid significant trees. However, the proposed density of this site will require a significant amount of existing canopy removal.

The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.
The degree of potential tree canopy loss on this site is significant. The removal of trees to build the street infrastructure and accommodate utility easements will result in a 34% loss of cover. With the building of homes, another 39% will potentially be removed. The removal of 73% of a sloped site with significant trees evenly dispersed across the site could result in extensive environmental degradation throughout this site.

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.
This site has remained relatively undisturbed for the past half century while development occurred on all sides. The neighborhood has become accustomed to this site as a natural area that provides a buffer from the traffic found along Hwy. 265. The removal of tree canopy will impact this, and other natural values of the area.

Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.
A recommendation to reduce the overall width of the street right of way to reduce the impact of construction on trees has been incorporated into the design by this developer.

Whether the size or shape of the lot reduces the flexibility of the design.
Given the amount of density the developer is proposing, the opportunity to cluster lots on this site is reduced by its limited size.

The general health and condition of the tree or group of trees, or the presence of any disease, injury or hazard.
The majority of trees and groups of trees on this site were found to be in fair to good condition.

The placement of utilities, structures, and use of the property, in relation to the tree or group of trees.
Utility easements are shown to be placed in the rear of lots 1-11, eliminating the potential to maintain a canopied buffer between adjacent properties and future homes. A sewer easement between lots 5 & 4, 7 and 8 will unnecessarily require the removal of significant trees. The street termination at the east end of 'Mockernut Crossing' will eliminate two significant trees. Several significant trees will be removed (including a 23" dbh Shagbark Hickory) along the proposed street 'Shagbark Bend'.

The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.
Some trees will need to be removed in order to provide both sewer and other public utilities.

Whether roads and utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.
The trajectory of the proposed street 'Shagbark Bend' cuts downward (perpendicular) across the existing slope, while the other street does run parallel with the slope. Several significant trees are proposed for removal to accommodate the building of both streets.

Construction requirements for On-Site and Off-Site Alternatives.
Minimum impact to all remaining canopy within the building setback should be required in order to avoid the further degradation of natural resources.

The effects of proposed On-Site Mitigation or Off-Site Alternatives.
No mitigation has been proposed by this developer.

The effect other chapters of the UDO, and departmental regulations have on the development design.
This is a Planned Zoning District which has as a purpose to provide the developer with a degree of flexibility in how this site is designed. Another purpose with regard to tree preservation is to minimize disruption of existing natural features.

The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations:
Not applicable.

The impact a substantial modification or rejection of the application would have on the Applicant
The applicant has stated that the requested density is the only feasible option for development to occur on this site.

Mitigation Method Approved:
No mitigation plan has been submitted, nor is one required.

Recommendation:

1. Reduce the overall density in order to provide a cluster development that will not so severely impact the existing tree canopy.
2. Route proposed streets in a way that best avoids loss of significant groups of trees, and works with existing topography.
3. All homes built should strive to minimize the impacts to trees, and preserve as much canopy as possible. Submittal of a covenant running with the title of each lot that incorporates language to achieve this is recommended.

Conditions of Approval:

1. The removal of utility easements along the rear of lots 1-6, and 8-11 in order to preserve a canopied buffer for adjacent properties be indicated.
2. The proposed sewer easement be routed to avoid a greater number of significant trees.

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: 479-444-3469

TO: Suzanne Morgan, Associate Planner

FROM: Rebecca Ohman, Park Planner

DATE: January 27, 2004

SUBJECT: Parks & Recreation Plat Review Comments

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Meeting Date: January 29, 2004
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COMMENTS:

- PRAB recommended accepting money-in-lieu of land on December 1, 2004. Parks fees are due in the amount of $7,770 for 14 Single Family lots.
- Fees are due before issuance of final plat.
- Please list the owner/developer and contact information.

FAYETTEVILLE

RECEIVED
FEB 0 3 2004
PLANNING DIV.

THE CITY OF FAYETTEVILLE, ARKANSAS

POLICE DEPARTMENT

February 3, 2004

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 04-05.00: Residential Planned Zoning District (Hickory Park, pp 294)** submitted by Millholland Company on behalf of St. John's Lutheran Church of Fayetteville for property located at 2730 E. Township Street 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 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.

Sincerely,

Lieutenant William Brown
Fayetteville Police Department

FAYETTEVILLE POLICE DEPARTMENT
P.O. BOX 1968
FAYETTEVILLE, ARKANSAS 72702-1968

(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 2-3-2004

REZONING ✓ ANNEXATION _____
R PZD HICKORY PARK
REZONING # 04-05.00 OWNER ST JOHNS EPISCOPAL
ANNEXATON# _____ OWNER _____
LOCATION OF
PROPERTY _____

NEAREST FIRE STATION AND
LOCATION FIRE STATION #5 833 CROSSOVER

RESPONSE TIME FROM FIRE STATION # 5 TO
LOCATION OF
PROPERTY 2 MINUTES 15 SECONDS.
TRAVEL MILES FROM FIRE STATION # 5 TO LOCATION OF
PROPERTY 1.5.
COMMENTS ON FIRE DEPT.
ACCESS/ROADWAYS _____

EXISTING FIRE HYDRANTS? IF SO
LOCATION _____

WATER SUPPLY WITH HYDRANTS
NEEDED? Hydrants & Access would be needed.

ADDITIONAL
COMMENTS _____

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

Milholland Company
Engineering & Surveying
Melvin L. Milholland, PE, PLS

REGISTRATIONS:
PE: AR, MO
PLS: AR

January 2, 2004

Project No. E-687

FAYETTEVILLE
125 West Mountain Street
Fayetteville, Arkansas 72701

ATTN: Planning and Engineering Division
RE: Hickory Park - Subdivision

Dear City Staff (Dawn Warrick and Matt Casey):

The accompanying application and supporting data is for your review and approval of the referenced project, a 14-lot residential subdivision.

The property is a tract containing approximately 4.43 acres being purchased from St. John's Lutheran Church.

The project site is currently zoned P-1, Institutional.

This application request is for a Planned Zoned District in keeping with the general surrounding area of single-family residences (RSF-4, Four Units per Acre). Also this application request includes a property line adjustment (application inclosed).

There is an existing 4" sanitary sewer service line to the church that will be relocated to the proposed new sanitary sewer system. Dave Jurgens of the City's Water and Sewer Maintenance Division has been contacted and supplied with a preliminary plat to review the requested City service connections for his comments.

The owner/developer proposing the project is Tracy Hoskins. Mr. Hoskins intends to develop a subdivision community having an identity of old world flavor, stability and quality, a feeling of intimacy. In accomplishing this desired results, building set back adjustments are requested as well an a narrower street right-of-way. A 28' roadway surface is maintained with sidewalks on both sides of the roadway.

The preservation of site's tree canopy is an important aspect of achieving the intended results. The site has been preliminarily reviewed with the landscape administrator, Craig. Craig is in support of a narrower road right-of-way to assist in the preservation and protection of as much of the tree canopy as possible.

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JAN 2 2004
PLANNING DIV.

205 West Center Street; Fayetteville, Arkansas 72701; Phone: (479) 443-4724; Fax: (479) 443-4707; E-mail: MCOeng@swbell.net

Milholland Company
Engineering & Surveying
Melvin L. Milholland, PE, PLS

REGISTRATIONS:
PE: AR, MO
PLS: AR

The lot lines have been placed for the preservation of as many significant trees as possible, and for the construction of most of the homes facing to the project center with limited front yard, access to the community square. The front lot line adjustment is requested to assist in the placement of homes closer to the sidewalk, the center square, assisting to preserve and buffer the development from the surrounding existing homes who also desire the buffer and as much of the existing tree canopy to remain as possible. Grading on the lots in minimized.

Your comments and assistance in achieving the intended goals set for the development of this fashionable community subdivision is greatly appreciated.

Respectfully submitted,
Milholland Company

Thomas M. Jefcoat, ASLA
Projects Manger

cc: Tracy Hoskins

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JAN 0 2 2004
PLANNING DIV.

205 West Center Street; Fayetteville, Arkansas 72701; Phone: (479) 443-4724; Fax: (479) 443-4707; E-mail: MCOengr@swbell.net

PROTECTIVE COVENANTS AND RESTRICTIONS FOR HICKORY PARK FAYETTEVILLE, ARKANSAS

Tracy K Hoskins (Developer) does hereby establish and create the following Protective Covenants, Restrictions and Architectural Control, which shall apply to all lots as shown on the recorded plat of the Hickory Park, found in Plat Book ____, page ____.

BE IT KNOWN BY THESE PRESENTS, that whereas XXXXXXXXX, trustee of the XXXXXXXXXXX U/T/D DateXXXXXXXXXXX, as owner and developer, do hereby enter the following covenants and restrictions:

DEFINITIONS

1. **"Property"** shall mean all the real property and improvements that are subject to these Covenants and Restrictions.

2. **"Owner"** shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title in any Lot which is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

3. **"Lot" and "Lots"** shall mean and refer to any parcel of land shown upon any recorded Plat of the Property upon which there has been or may be constructed a single-family residence.

PROPERTY AND LOT RESTRICTIONS

1. **GENERAL LIMITATIONS**: The subdivision and building codes of the City of Fayetteville, Arkansas, as they presently exist or are hereinafter amended, shall be and are hereby made applicable to the Property. All dwellings, buildings, fences, walls, structures, storage buildings, swimming pools, and improvements of every kind shall comply with said ordinances as they exist on the date of their construction. Any conflict between City ordinances and the provisions of these Protective Covenants shall be resolved in favor of the more restrictive provision. Building, architectural, and design specifications shall be in accordance with the regulations set forth in the Fayetteville Zoning Ordinance designated R-PZD (Residential).

2. **SINGLE-FAMILY RESIDENTIAL LAND USE AND BUILDING, TYPE:** Lots shall only be used for single-family residential purposes. "Single Family" means one or more persons occupying a single dwelling, provided that unless all such persons are related by blood, marriage or adoption, no such family shall contain over three persons. No structure shall be erected on any Lot which exceeds three stories in height. No prefabricated, manufactured, mobile or modular housing shall be placed on any lot.

3. **MINIMUM SQUARE FOOTAGE**: All dwellings shall be a minimum of 2,200 square feet of heated floor space (excluding garage). If the residence is multi-storied, the first floor shall be a minimum of 1,600 square feet of heated floor space (excluding

garage).

4. **GARAGES:** Each dwelling shall have a garage for a minimum of two (2) cars with dimensions of not less than twenty-two (22) feet by twenty-two (22) feet. No carports will be allowed. No garage openings may face a public or private street. All garages must rear or side entry. Under special conditions, this covenant may be modified by the HPAC (Hickory Park Architectural Committee). All garages, whenever possible should be located to the rear of the structure.

5. **YARD SPACE RESTRICTIONS AND BUILDING LOCATION:** The most forward point on the front of the house, inclusive of porches, shall be at the property's front building setback line. Under special conditions, this covenant may be modified by the HPAC.

6. **ROOFS:** All structures constructed on the Property must use tile, wood shake or 40-year composition architectural shingles, and must have a minimum of an 8/12 pitch. Secondary roofs, such as shed or veranda types may be a minimum of 4/12 pitch with the prior approval of the HPAC.

7. **EXTERIORS:** The exterior of all structures must be at least 80% brick or stone. All chimneys shall be brick, stone, or authentic stucco. No vinyl, metal, concrete board or EIFS (synthetic stucco or "DRYVIT"), will be permitted. Though vinyl windows are permitted, the HPAC encourages the use of wood type windows.

8. **ARCHITECTURAL CONTROL:** No ranch, contemporary, modern, a-frame, log, or gambrel style structures will be permitted. Hickory Park is considered to be a traditional neighborhood with an emphasis on **EUROPEAN, ARCHITECTURALLY DESIGN HOMES.**

All floor plans, elevations, specifications, plot plan showing the orientation of any structure, driveway and sidewalks, and proposed materials must be submitted and approved by Tracy Hoskins representative, Hickory Park Architectural Committee, prior to starting construction. The HPAC will have 10 business days to approve the project or require modifications. The HPAC again will have 10 business days to respond each time documents are submitted.

9. **YARDS / LANDSCAPING:** All yards shall be fully sodded in front and in back within sixty (60) days of a certificate of occupancy being issued by the City of Fayetteville. All dwellings shall be landscaped with a landscaping package that is appropriate for the design of the dwelling.

10. **LOT MAINTENANCE:** All Lots shall be kept in a sanitary and attractive condition, and the Owner or occupant shall keep all weeds and grass thereon cut and

neatly maintained and shall in no event use any Lot for storage of material or equipment except for normal residential purposes (except for during construction of residences or other structures.) Construction sites shall be kept neat, safe, and clear of debris at all times. Construction materials should be kept to the rear of the lot, obstructed from view, whenever possible. No burning of garbage, trash, or refuse is allowed (Except for during construction of residences or other structures and with the approval of the Fayetteville Fire Department).

11. **SIGHT DISTANCE AT INTERSECTIONS:** No fence, wall, hedge, or shrub which obstructs sight lines at intersections in the subdivision shall be permitted.

12. **HOME OCCUPATIONS, OFFENSIVE USES OR COMMERCIAL USES:** Home occupations, as defined and set forth in the ordinances of the City of Fayetteville, shall be prohibited. Further, no activity which may become an annoyance or nuisance to the neighborhood or which shall in any way unreasonably interfere with the quiet enjoyment of any Owner of a Lot or which degrades property values or distracts from the aesthetic beauty of the property shall be conducted thereon. No repair work, dismantling, or assembling of any motor vehicle or boat shall be done on any Lot unless in a fully enclosed garage or other structure, not in view from adjoining Lots or the street, and if only for noncommercial purposes. Further, no part of any Lot shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such nonresidential purpose. No childcare businesses to be allowed if more than four (4) unrelated children are involved. This area is for residential purposes only.

13. **STORAGE OF AUTOMOBILES, BOATS, TRAILERS, OTHER VEHICLES AND EQUIPMENT:** No automobiles, boats, trailers, motor homes, campers, recreational vehicles, motorcycles, buses, inoperative vehicles of any kind, cap rigs off trucks, or boat rigging shall be parked or stored permanently or semi-permanently on any public street right-of-way, yard area, or on driveways. Permanent or semi-permanent storage of such vehicles or items must be completely screened from public view either within the garage or behind a solid fence. For the purposes of these Protective Covenants, the phrase "semi-permanent" shall be defined as remaining on or about the same Lot without movement for forty-eight or more consecutive hours. No eighteen wheel vehicles or any other vehicle requiring a commercial driver's license may be parked on any public street or any portion of any Lot except to deliver merchandise or materials to residents or construction sites.

14. **VISUAL SCREENING:** All clotheslines, equipment, garbage cans, woodpiles, refuse containers, storage piles, and household projects such as equipment repair shall be screened by fencing, so as to conceal them from view of neighboring Lots or streets. All rubbish, trash, and garbage shall be kept in sanitary refuse containers with tightly fitting lids and shall be regularly removed from the Lots and not allowed to accumulate thereon.

15. **TEMPORARY STRUCTURES:** No trailer, tent, shack, garage, barn, recreational

vehicle, mobile home, or other outbuilding shall be placed, constructed, erected or allowed to remain on a Lot if it is being used for human habitation either temporarily or permanently.

16. STORAGE BUILDINGS: No detached outbuildings may be constructed without prior written consent of the HPAC. If consent is granted, detached storage buildings may only be placed to the rear of the house, no closer to side lot line than the sides of the house and be a minimum of twenty (20) feet from the rear yard line, and must be enclosed inside privacy fence. All storage buildings shall use same roof and wall materials as used on the house.

17. **FENCES:** Fencing of front yard is prohibited. No fence shall be erected that is closer to the street than is the garage side door. If no garage side door, no closer to the front than the rear of the house. No fence shall be erected on adjoining side street that is closer to the street than the building set backline, which will be 25 feet from the curb, whichever is greater. No chain link fencing shall be permitted. All wood privacy fences shall have the good side turned toward the outside of the lot. That is, the framework that supports the fence is to be facing inward toward the backyard. No privacy fencing shall exceed 6 feet in height. Any fencing, walls, or landscape walls located between the street and structure must be constructed of brick or stone (complementary of the structure), and must be approved by the HPAC

18. **SATELLITE DISHES:** All satellite dishes limited to eighteen inches in diameter shall be placed to the rear of the residence, no closer to side yard than the rear of the house and must be enclosed in privacy fence. Basketball goals are restricted to back yards only.

19. **HEATING AND COOLING DEVICES:** No structure on any Lot shall be permitted to have a heating or cooling device located in a window or any other opening which can be viewed from the street or adjoining Lots (this restriction does not apply during the construction of the structure).

20. **LIVESTOCK AND POULTRY:** No animals, livestock, or poultry of any kind shall be raised or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept or maintained for any commercial purposes.

21. **EASEMENTS SIDEWALKS AND DRIVES:** Easements for installation and maintenance of utilities shared driveway entries, and drainage facilities are reserved as shown on the recorded Plat. No incinerator structures, buildings, fencing, or similar improvements shall be built or maintained within the area of the any easements. Owners are hereby put on notice that any structures, driveways, sidewalks, or plant material in the easements are subject to removal at the expense of the Owner(s) of the Lot on which the structure, driveways, sidewalks, or plant material is located. In effort to minimize curb cuts, common drive entries will be shared by lots numbered seven and eight; eleven and twelve; thirteen and fourteen. Shared drive entries are also

encouraged on all other lots. Each individual lot owner shall construct a four foot wide sidewalk, four feet from the back of curb. Sidewalks shall be of a light broom finish with expansion joints eight feet on center. Driveways shall be of decorative type and have brick pockets, patterned concrete, etc.

22. **MAILBOXES:** No mailboxes will be installed upon any property. A mail kiosk is provided for each property owner, located at the center roundabout.

23. **NO LIABILITY**: Tracy Hoskins, the Developer, the HPAC, nor any other Owner shall be liable for damages to anyone submitting plans and specifications for approval, or to any Owner of a Lot affected by these Protective Covenants by reason of a mistake in judgment, negligence, or disapproval or failure to approve or disapprove any such plans and specifications and no approval or required modification of plans and specifications submitted shall be considered a warranty of any nature whatsoever pertaining to the suitability of such plans and specifications. Every person who submits plans and specifications for approval agrees that no action or suit for damage will be brought against Tracy Hoskins or the HPAC, its members, or any Owner(s).

24. **DURATION OF COVENANTS:** These Protective Covenants shall run with the land for a minimum period of thirty (30) years, and shall be automatically extended for successive periods of five (5) years without further action unless terminated by a Vote of a majority of the Owners of Lots in the Property. Each lot owner will have one vote for each lot owned. The developer shall have three votes for each lot owned.

25. **SEVERABILITY:** Invalidation of any restriction set forth herein, or any part thereof, by an order, judgment, or decree of any court, otherwise, shall not invalidate or affect any of the covenants and restrictions, or any part thereof, set forth herein, but they shall remain in full force and effect.

26. **BINDING EFFECT AND AMENDMENT OF COVENANTS:** All Owners shall be deemed to have agreed and covenanted with the Owners of all other Lots within the Property, and with their heirs, successors, and assigns to conform to, and observe the restrictions, covenants, and stipulations contained herein.

27. **HICKORY PARK PROPERTY OWNERS ASSOCIATION:** The Hickory Park POA is responsible for the upkeep, maintenance, and repair of drainage easements, private streets, landscape islands and walls, and any common areas or green spaces. Each lot owner will be assessed and annual fee of $___.__, due and payable by January 10th of each year. The Developer shall be the director/overseer of the POA until such time, that by majority vote of the property owners, another is appointed. Again, each lot owner will have one vote for each lot owned. The developer shall have three votes for each lot owned.

IN WITNESS WHEREOF this instrument has been executed this _____ day of

_____, _____.

_____

Ownwe/Developer

ACKNOWLEDGEMENT

STATE OF ARKANSAS)
) SS.
COUNTY OF WASHINGTON)

On this day, before me personally appeared XXXXXXXX, to me personally known, who acknowledge that she is the trustee of her respective trust, and that she, as such trustee, being authorized so to do, has executed the foregoing instrument for the purposes therein contained.

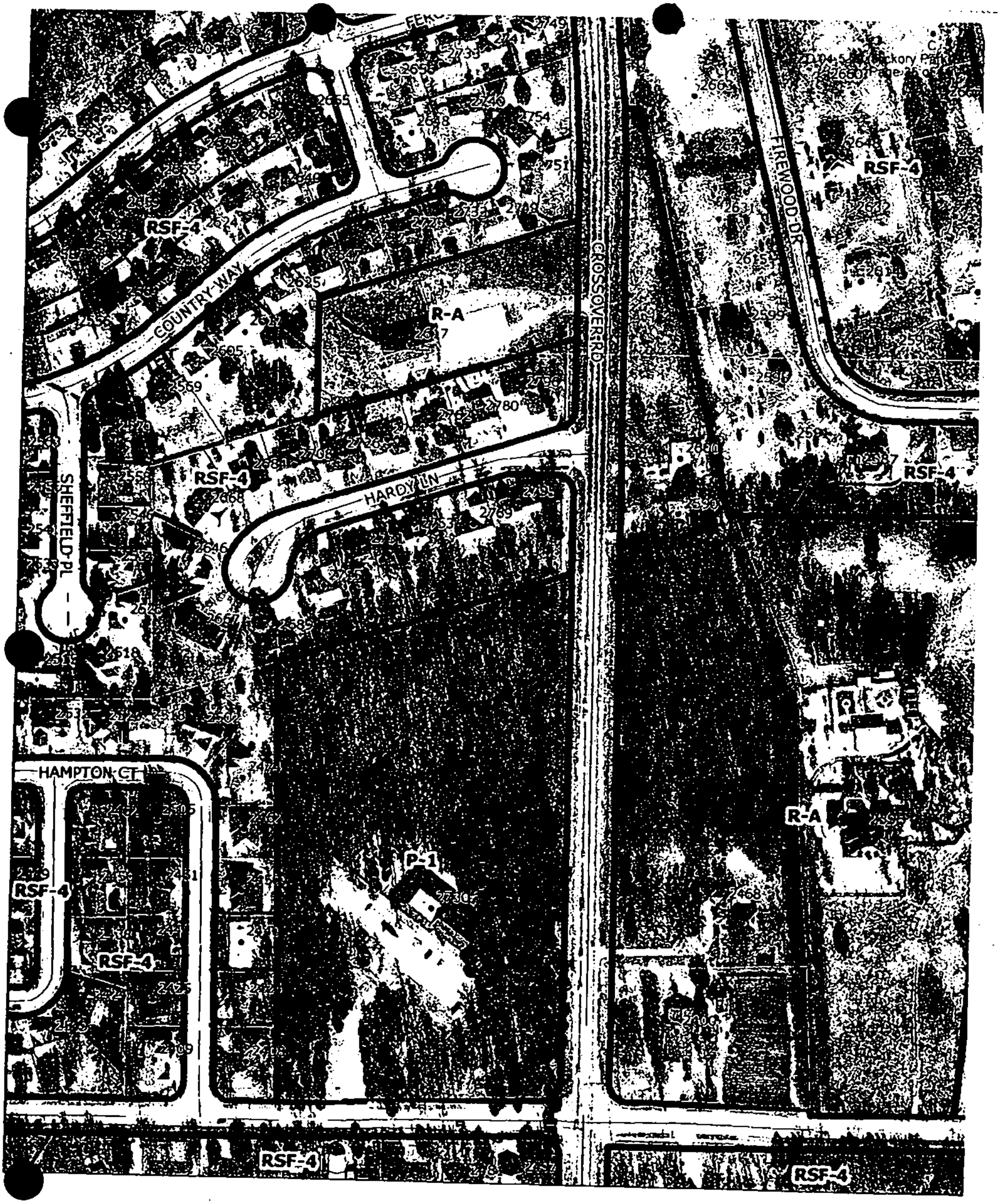
Witness my hand and seal this ____ day of _____, _____.

_____

Notary Public

My Commission Expires:

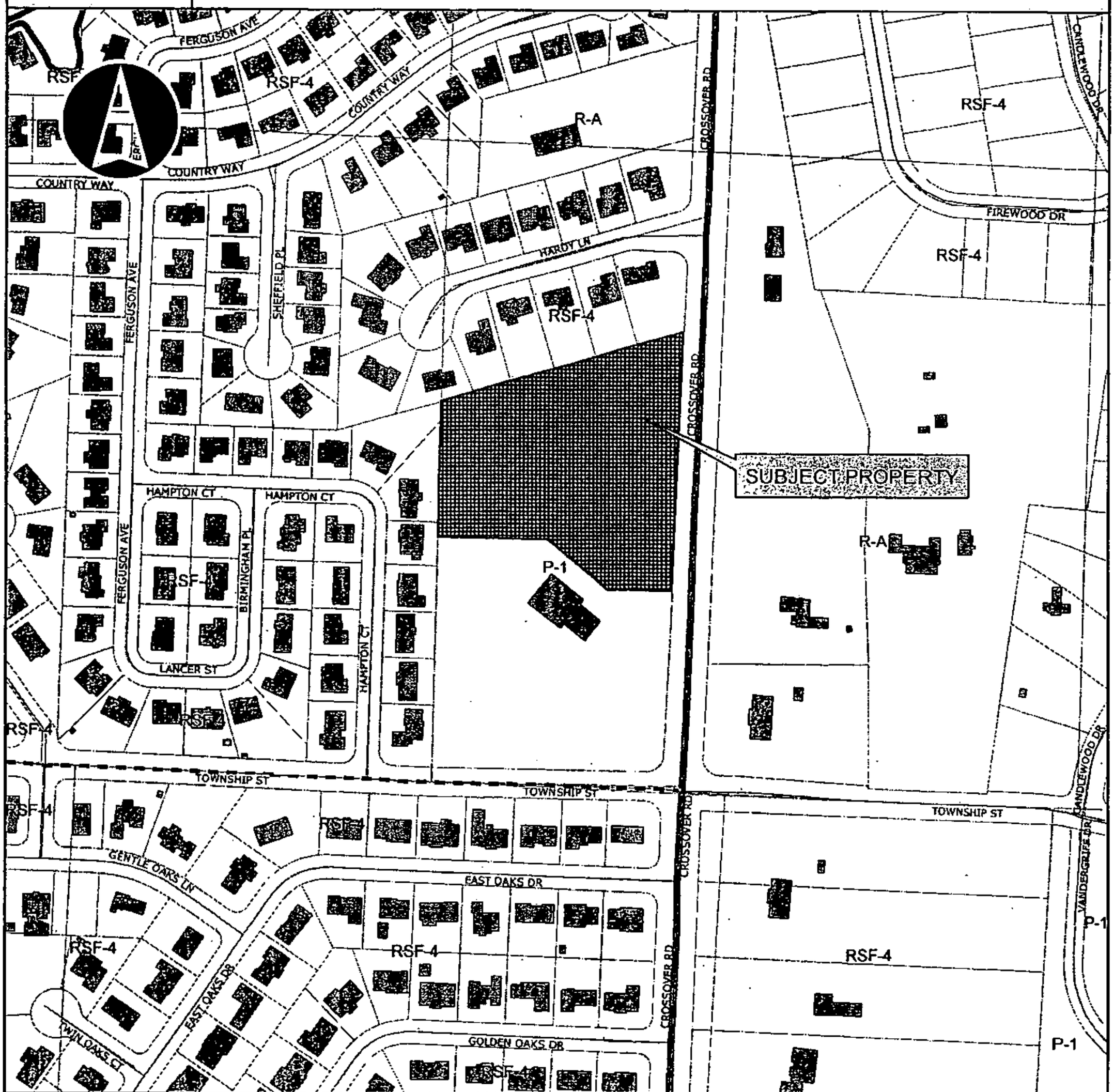
_____


COUNTRY WAY
CROSSOVER RD
FIREWOOD DR
HARDY LN
SHEFFIELD PL
HAMPTON CT
RSF-4
R-A
P-1

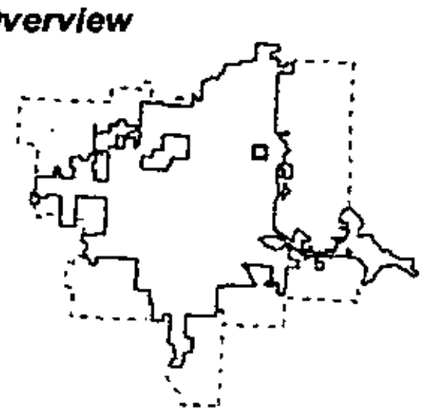
RPZD04-05.00

HICKORY PARK

Close Up View



Overview



Legend

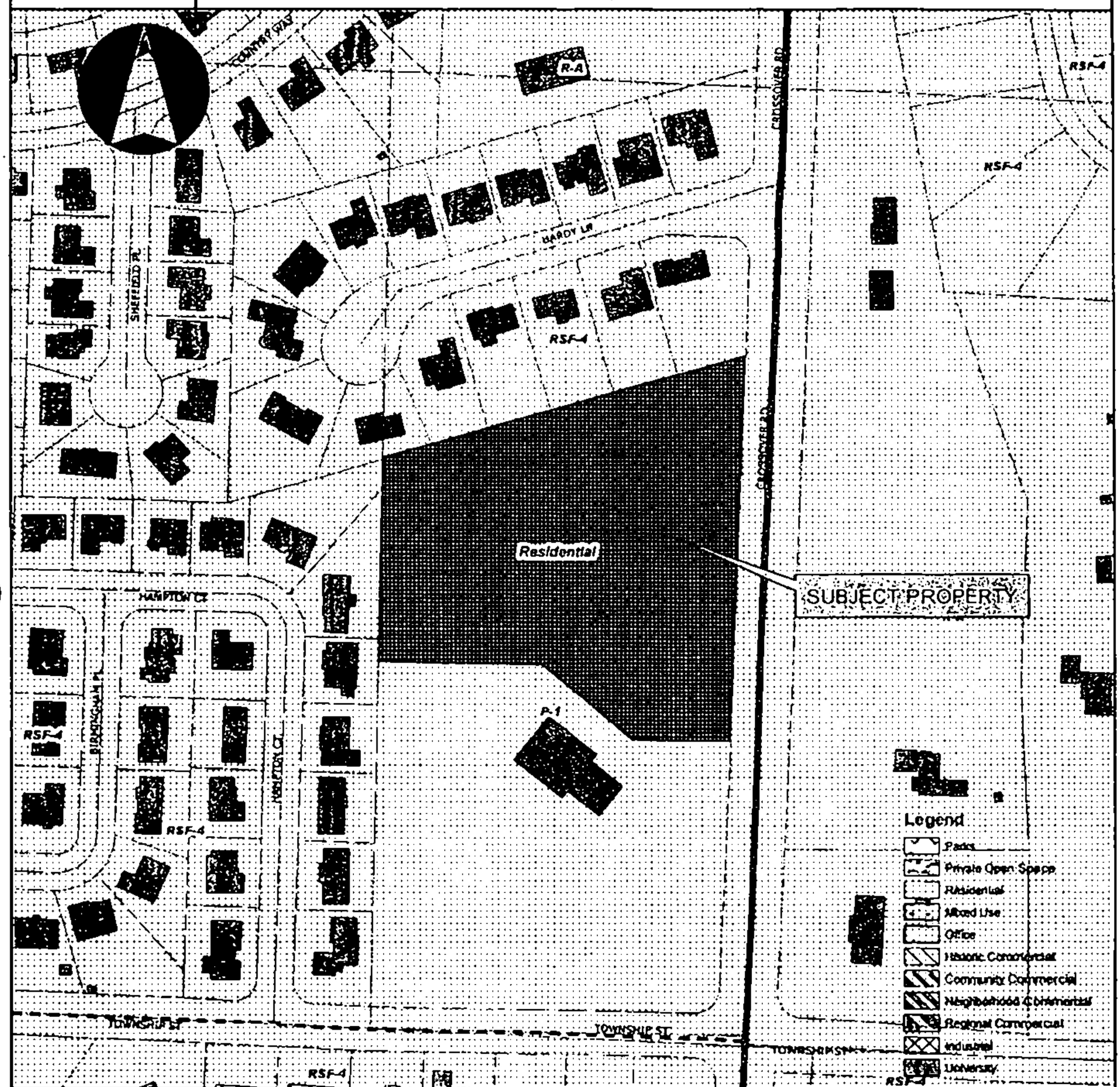
- RPZD04-05.00
- Overlay District
- Master Street Plan
- Master Street Plan
- Freeway/Expressway
- Principal Arterial
- Minor Arterial
- Collector
- Historic Collector
- City Limits
- Outside City
- FLOODWAY
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- BaseLine Profile

0 125 250 500 750 1,000 Feet

R-PZD04-05.00

HICKORY PARK

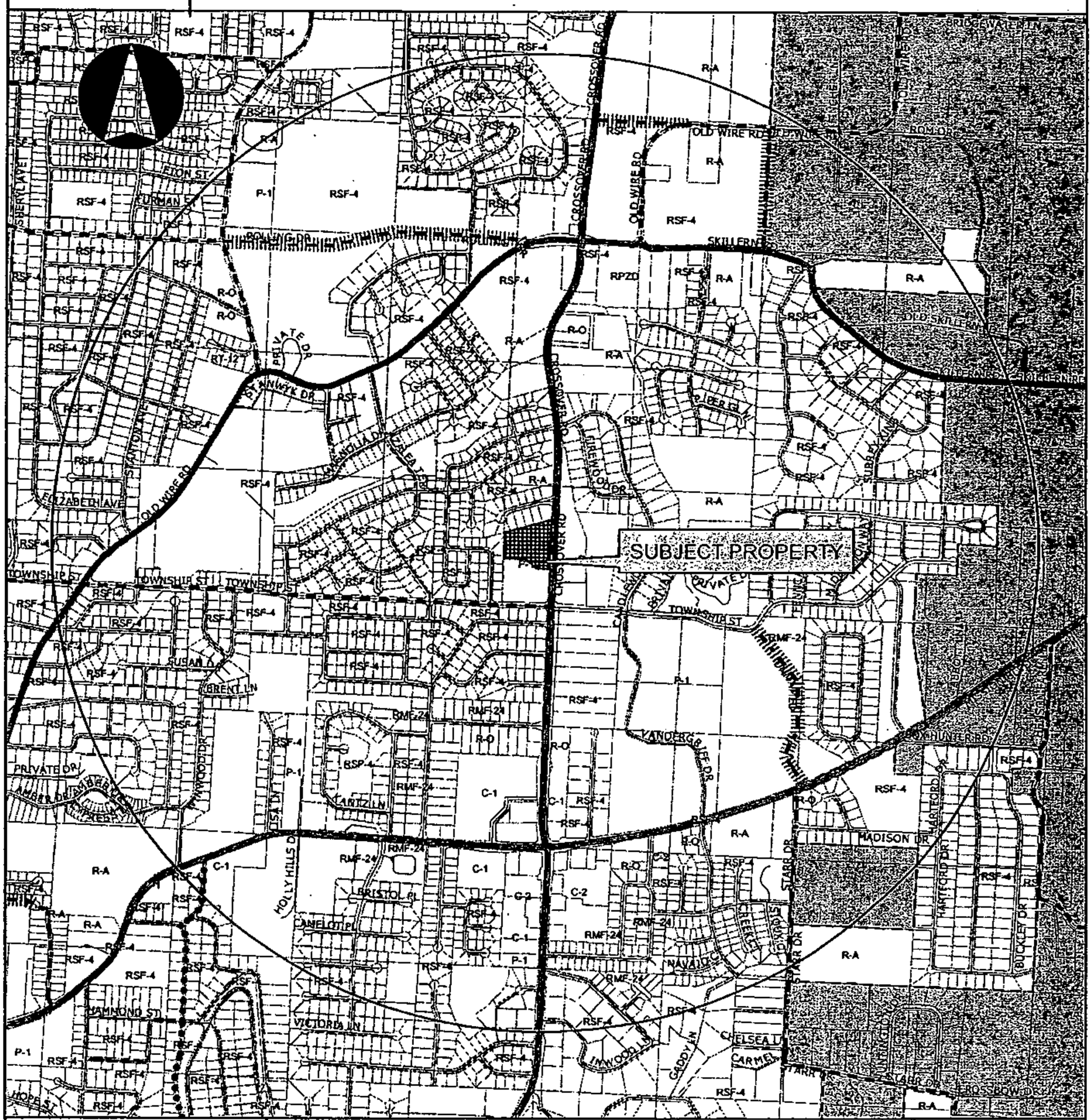
Future Land Use



RPZD04-05.00

One Mile View

HICKORY PARK



Overview

Legend

Subject Property
RPZD04-05.00

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

Milholland Engineering & Surveying
205 West Center Street
Fayetteville, Arkansas 72701
Phone: (479) 443-4724 Fax: (479) 443-4707
E-mail: MCOengr@swbell.net

LETTER OF TRANSMITTAL

Date: February 12, 2004	Job No: E-687
Attention: Planning Department	
Re: Hickory Park	

To: City Of Fayetteville
125 W. Mountain St.
Fayetteville, Ar. 72701

WE ARE SENDING YOU _X_ Attached ____ Under separate cover Via _____ the following items:

____ Shop Drawings ____ Prints ____ Plans ____ Samples ____ Specifications

____ Copy of Letter ____ Change Order ____ _____

COPIES	DATE	NO.	DESCRIPTION
15	2-12-04	E-687	Preliminary Plat (11X17)
15	2-12-04	E-687	Tree Preservation Plan (11X17)

THESE ARE TRANSMITTED as checked below:

_X_ For approval ____ Approved as submitted ____ Resubmit _____ copies for approval

____ For your use ____ Approved as noted ____ Submit _____ copies for distribution

____ As requested ____ Returned for corrections ____ Return _____ corrected prints

____ For review & comment ____ _____

____ For Bids Due _____, 200__ ____ Prints Returned after Loan to us

REMARKS

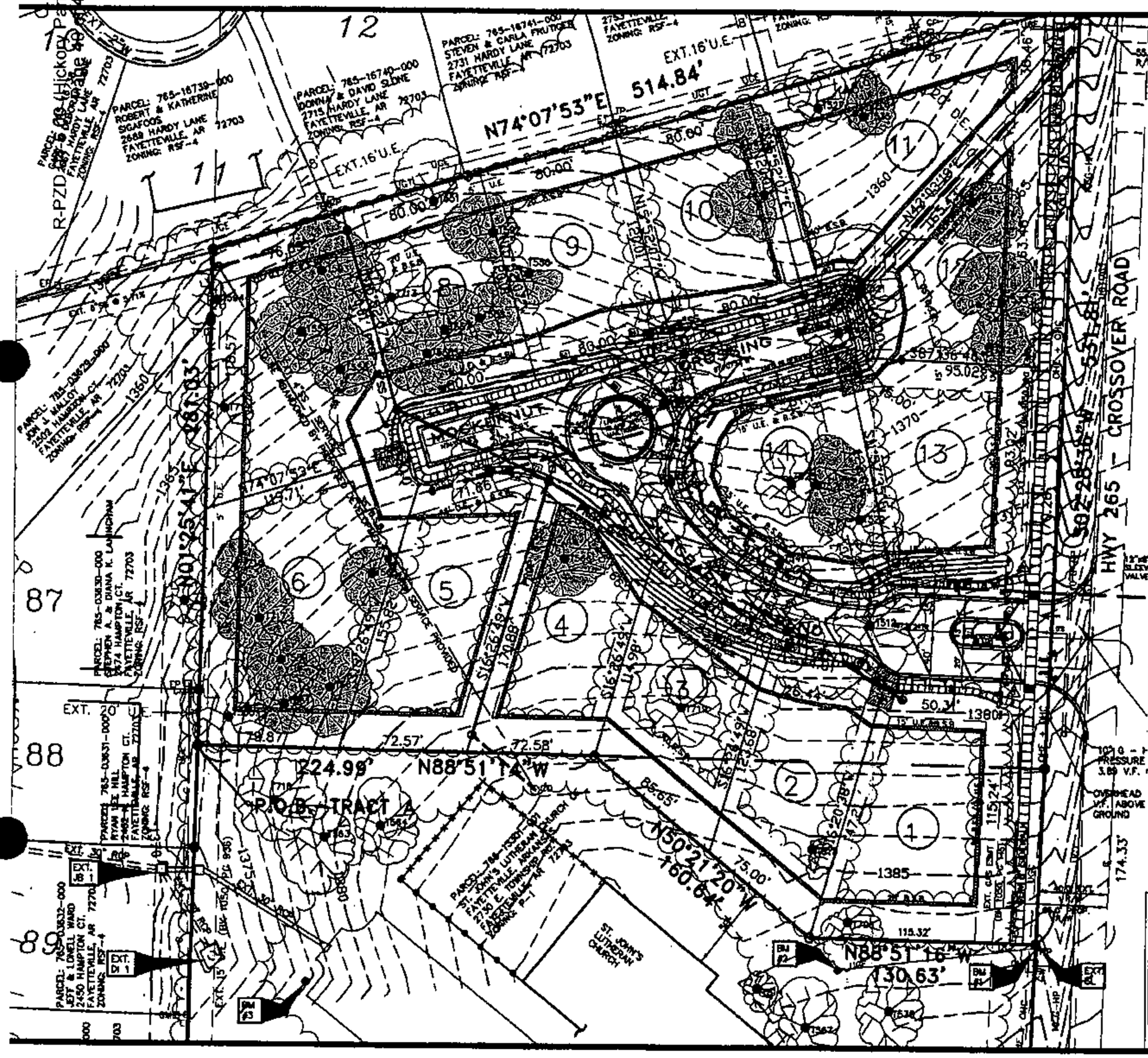
For City Counsel.

Please call if you have any questions 443-4724.

COPY TO: File

SIGNED: Mellott Kemp for
Melvin L. Milholland, Owner/PE/PLS

If enclosures are not as noted, kindly notify us at once



TAG No.	TRUNK DIA.	DESCRIPTION	AVG. CANOPY RAD.	GENERAL HEALTH	ACTION
512	28"	POST OAK	27'	FAIR	REMOVE - IN STREET
513	22"	POST OAK	24'	FAIR/POOR	REMOVE - IN STREET BACKSLOPE
521	24"	POST OAK	24'	FAIR	REMOVE - IN STREET BACKSLOPE
522	18"	POST OAK	18'	GOOD	PRESERVE
525	20"	POST OAK	18'	FAIR/GOOD	IN BUILDING ENVELOPE - NOT COUNTED
526	21"	POST OAK	24'	FAIR/GOOD	IN BUILDING ENVELOPE - NOT COUNTED
527	18"	POST OAK	18'	GOOD	REMOVE - IN UTILITY EASEMENT
528	18"	POST OAK	18'	POOR/FAIR	PRESERVE
529	27"	POST OAK	18'	POOR	SALVAGE - CANOPY OVER U.E.
532	36"	POST OAK	24'	POOR	REMOVE - IN STREET BACKSLOPE
533	33"	POST OAK	33'	FAIR	SALVAGE - CANOPY OVER U.E.
534	18"	POST OAK	22'	FAIR	PRESERVE
535	18"	POST OAK	15'	FAIR	SALVAGE - CANOPY OVER U.E.
536	18"	POST OAK	22'	FAIR	OFFSITE
540	21"	POST OAK	18'	FAIR	REMOVE - IN STREET
541	19"	POST OAK	20'	FAIR	REMOVE - IN STREET BACKSLOPE
542	22"	POST OAK	24'	FAIR	REMOVE - IN STREET
543	20"	POST OAK	22'	POOR	REMOVE - IN STREET
544	24"	POST OAK	21'	POOR	REMOVE - IN STREET
545	18"	POST OAK	18'	FAIR/GOOD	SALVAGE - CANOPY OVER U.E.
548	19"	POST OAK	18'	GOOD	PRESERVE
550	19"	POST OAK	14'	POOR	PRESERVE
551	18"	POST OAK	18'	POOR	REMOVE - IN UTILITY EASEMENT
554	21"	POST OAK	22'	FAIR	IN BUILDING ENVELOPE - NOT COUNTED
555	20"	POST OAK	18'	FAIR	IN BUILDING ENVELOPE - NOT COUNTED
556	24"	POST OAK	23'	FAIR/POOR	PRESERVE
557	20"	POST OAK	17'	FAIR/POOR	IN BUILDING ENVELOPE - NOT COUNTED
558	18"	POST OAK	18'	FAIR/POOR	IN BUILDING ENVELOPE - NOT COUNTED
559	23"	POST OAK	22'	FAIR	PRESERVE
560	21"	POST OAK	22'	FAIR	REMOVE - IN UTILITY EASEMENT
561	18"	POST OAK	17'	FAIR	SALVAGE - CANOPY OVER U.E.
562	18"	POST OAK	24'	FAIR	SALVAGE - CANOPY OVER U.E.
563	20"	POST OAK	23'	GOOD	OFFSITE
564	20"	POST OAK	18'	FAIR/POOR	OFFSITE
565	17"	POST OAK	18'	GOOD	SALVAGE - IN UTILITY EASEMENT
580	23"	POST OAK	22'	FAIR	PRESERVE
581	22"	POST OAK	24'	POOR	OFFSITE
582	20"	POST OAK	18'	FAIR/GOOD	PRESERVE
583	20"	POST OAK	27'	FAIR	PRESERVE
584	18"	POST OAK	13'	FAIR	REMOVE - IN UTILITY EASEMENT
615	33"	BIRAG HICKORY	24'	FAIR	REMOVE - IN STREET BACKSLOPE
708	18"	BLACK OAK	11'	GOOD	REMOVE - IN UTILITY EASEMENT
712	22"	POST OAK	23'	GOOD	REMOVE - IN STREET
713	23"	BLACK HICKORY	22'	FAIR	PRESERVE
714	28"	BLACK HICKORY	24'	POOR	REMOVE - IN UTILITY EASEMENT
715	23"	BLACK OAK	20'	FAIR/GOOD	REMOVE - IN STREET BACKSLOPE
716	18"	BLACK OAK	12'	POOR	SALVAGE - CANOPY OVER U.E.
717	23"	BLACK OAK	23'	FAIR	SALVAGE - CANOPY OVER U.E.
718	18"	BLACK OAK	24'	FAIR/POOR	OFFSITE
719	24"	BLACK OAK	20'	FAIR	IN BUILDING ENVELOPE - NOT COUNTED
814	8"	DOGWOOD	11'	GOOD	OFFSITE
816	8"	DOGWOOD	11'	FAIR	PRESERVE

NOTES:

1. ONLY "SIGNIFICANT" TREES AS DESIGNATED BY THE FAYETTEVILLE LANDSCAPE ORDINANCE ARE LISTED, AND OTHER TREE(s) AS REQUESTED BY THE LANDSCAPE ADMINISTRATOR (SPECIFICALLY #615).

2. REMOVAL OF ANY SIGNIFICANT TREES LOCATED WITHIN BUILDING SETBACK MUST BE APPROVED BY THE HICKORY PARK ARCHITECTURAL REVIEW COMMITTEE.

LEGEND

- SS — SANITARY SEWER LINE
- W — WATER LINE
- EXISTING CONTOUR
- PROPOSED GRADING
- 6' SOLID PRIVACY AND RETAINING WALL
- EXISTING TREE
- TREE PROTECTION FENCING
- SIGNIFICANT TREES LOCATED WITHIN BUILDING SETBACK
- AREA OF SIGNIFICANT TREE PRESERVATION AND EXISTING TREE PROTECTION

mco Milholland Company

PROFESSIONAL ENGINEERS

SURVEYING SPECIALISTS

HICKORY PARK

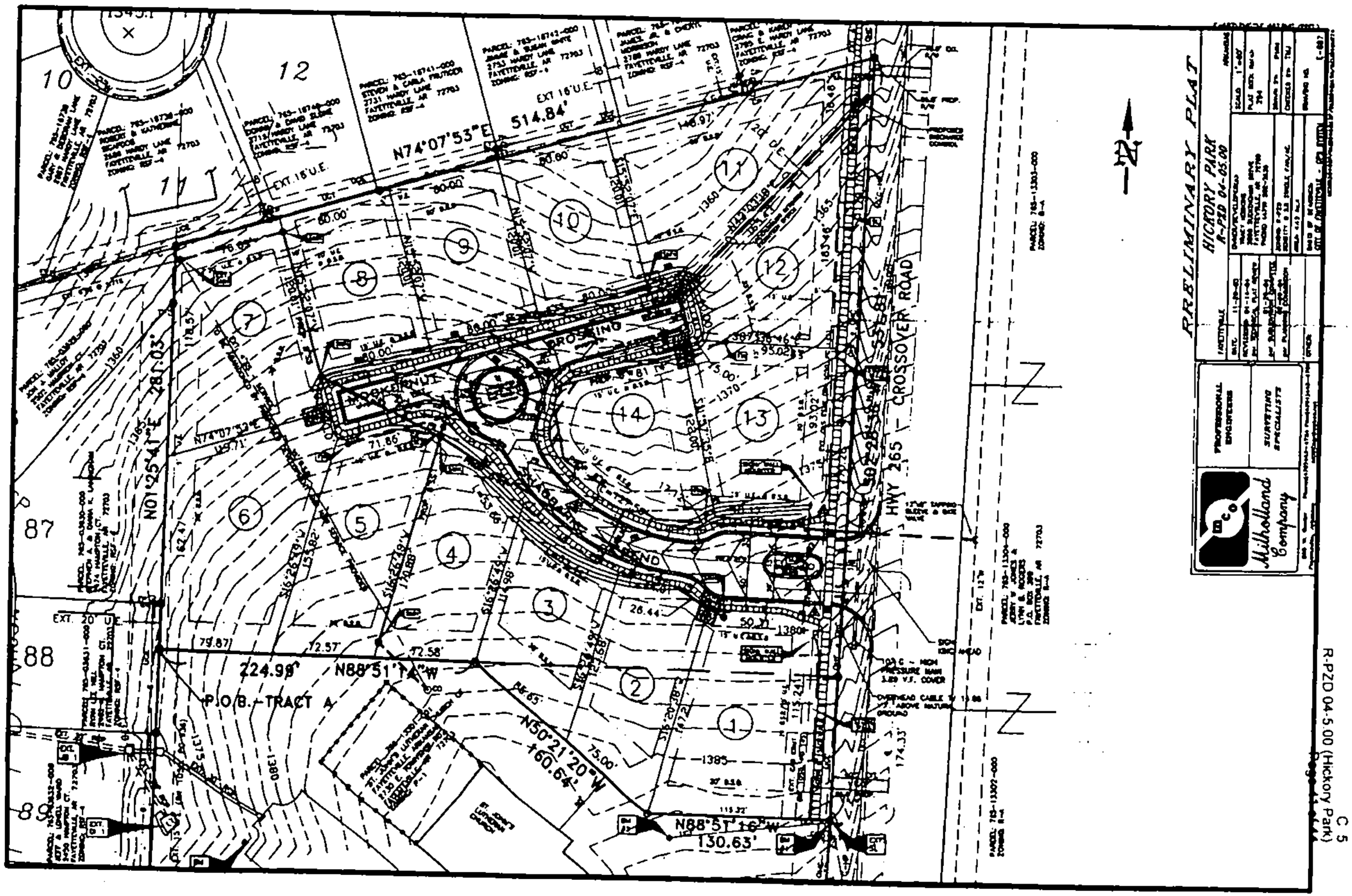
FAYETTEVILLE R-PZD 04-05.00 ARKANSAS

OWNER/DEVELOPER(s):
TRACY HOSKINS
3589 BUCKINGHAM DRIVE
FAYETTEVILLE, AR 72703
PHONE: (479) 582-3636

ZONING: R-PZD
DENSITY: 3.2 SINGLE FAM/AC.
AREA: 4.43 Ac.±

BASIS OF BEARINGS:
CITY OF FAYETTEVILLE - GPS SYSTEM

SCALE: 1"=60'
PLAT BOOK No(s): 294
DRAWN BY: PMM
DATE: 02-09-04
DRAWING NO. E-687


PRELIMINARY PLAT
HICKORY PARK
R-PZD 04-65.00
Milholland Company
PROFESSIONAL ENGINEERS
SURVEYING SPECIALISTS
N74°07'53"E
514.84'
N01°25'41"E
781.03'
224.99'
N88°51'16"W
P.O.B. - TRACT A
N50°21'20"W
160.64'
N88°51'16"W
130.63'
HICKORY NUT
PROSPERITY
HWY 265 - CROSSOVER ROAD
EXT. 16' U.E.
EXT. 20' U.E.
10
11
12
87
88
89

TRACT A DESCRIPTION:

A PART OF THE SW 1/4 OF THE SW 1/4 OF SECTION 31, T-17-N, R-29-W DESCRIBED AS BEGINNING AT A POINT WHICH IS N01°25'41"E 504.20 FEET FROM THE SW CORNER OF SAID SECTION 31, SAID POINT OF BEGINNING BEING A SET IRON PIN; THENCE ALONG THE EAST BOUNDARY OF CEDARWOOD ADDITION, N01°25'41"E 281.03 FEET TO A SET IRON PIN; THENCE ALONG THE SOUTH BOUNDARY OF GLENWOOD ADDITION, N74°07'53"E 514.84 FEET TO A FOUND IRON PIN; THENCE ALONG THE WEST RIGHT-OF-WAY OF ARKANSAS STATE HIGHWAY NO. 265, S02°28'36"W 531.81 FEET TO A SET IRON PIN; THENCE LEAVING SAID HIGHWAY, N88°51'16"W 130.63 FEET; THENCE N50°21'20"W 160.64 FEET; THENCE N88°51'14"W 224.99 FEET TO THE POINT OF BEGINNING, CONTAINING 4.4291 ACRES, MORE OR LESS, FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS.

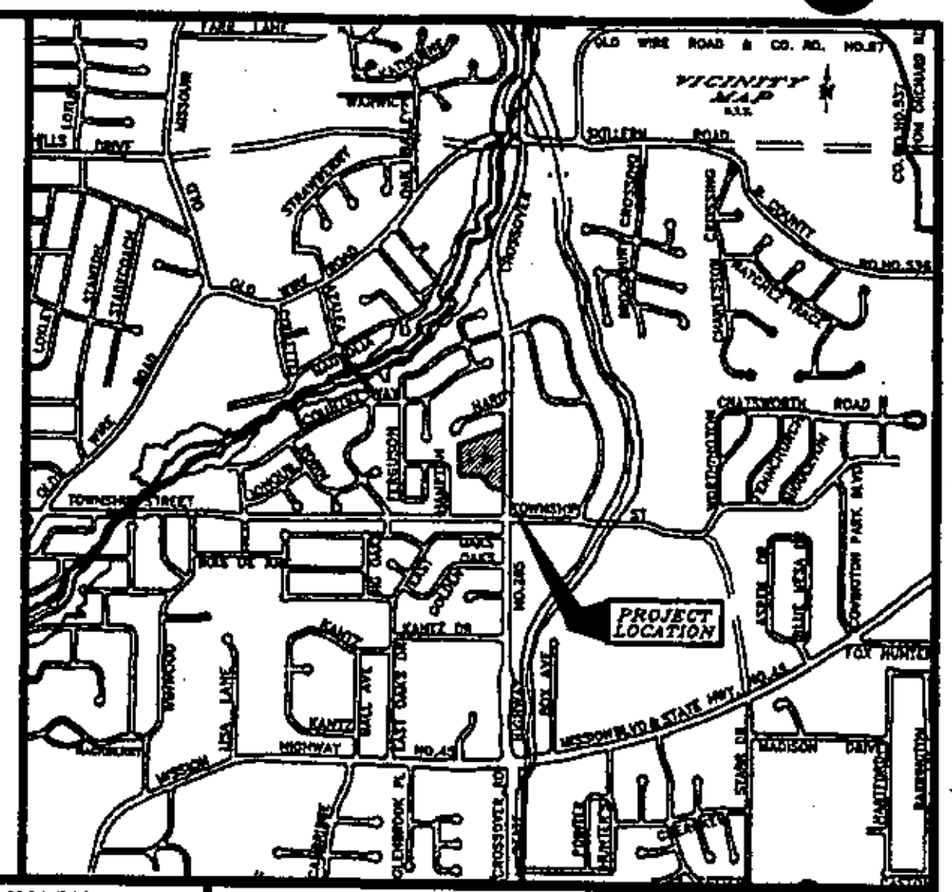
GENERAL NOTES:

1. ACCORDING TO FLOOD INSURANCE RATE MAP, EFFECTIVE DATE JULY 21, 1999, MAP NUMBER 05143C0103D, SAID PROPERTY IS NOT IN THE 100-YEAR FLOOD AREA.

2. IN ACCORDANCE WITH CITY ORDINANCE SEC. 166.13 ALL UTILITIES SHALL BE PLACED UNDERGROUND. EXCEPTIONS – EXISTING POWER LINES OF 12kv OR ABOVE.

3. LOT ACCESS FROM INTERIOR STREETS ONLY.

4. FRONT BUILDING SETBACKS ARE BUILD-TO LINES EXCEPT FOR LOTS 4, 7, AND 8 FOR TREE PRESERVATION; AND LOTS 13 AND 14 AS APPROVED BY THE HICKORY PARK ARCHITECTURAL REVIEW COMMITTEE.



LEGEND

- STATE MONUMENT
- CONCRETE MONUMENT
- FOUND IRON PIN
- SET IRON PIN
- FIRE HYDRANT
- SANITARY SEWER MANHOLE
- STREET LIGHT
- SANITARY SEWER CLEAN OUT
- BUILDING SETBACK LINE (FRONT SETBACK IS A BUILD TO LINE)
- UTILITY EASEMENT LINE
- DRAINAGE EASEMENT LINE
- SS — SANITARY SEWER LINE
- W — WATER LINE
- GAS LINE
- UNDERGROUND ELECTRIC
- UNDERGROUND CABLE TV
- UNDERGROUND TELEPHONE
- EXISTING CONTOUR
- PROPOSED GRADING
- CURB & GUTTER
- SIDEWALK
- 6' SOLID PRIVACY AND RETAINING WALL

CENTERLINE CURVE DATA

C1: R = 150.00', T = 108.29', L = 187.59', Δ = 71-39-17

CURVE DATA

A: R = 30.00', T = 30.00', L = 47.12', Δ = 89-59-59

B: R = 30.00', T = 30.00', L = 47.12', Δ = 90-00-01

C: R = 30.00', T = 10.01', L = 19.32', Δ = 36-53-28

D: R = 30.00', T = 16.32', L = 29.89', Δ = 57-05-28

BENCHMARKS

BM #1
COTTON SPINDLE IN POWER POLE
ELEVATION @ 1389.04
NORTHING=648270.20
EASTING=685599.39

BM #2
CHISLED 'X' AT NE CORNER TRANSFORMER PAD
ELEVATION @ 1388.30

BM #3
FIRE HYDRANT TOP NUT
ELEVATION @ 1381.80
NORTHING=648184.79
EASTING=685181.15

USE
UNIT No. 8
SINGLE-FAMILY DWELLINGS

TREE DATA

	AREA	
EXISTING CANOPY =	192,932	100%
REQUIRED PRESERVATION =	48,233	25%
CANOPY PRESERVED =	126,795	65.72%
CANOPY REMOVED =	66,136	34.28%
CANOPY WITHIN BUILDING SETBACK =	75,050	38.90%
FINAL CANOPY PRESERVATION =	51,745	26.82%

LOT INFORMATION CHART

LOT No.	S.F. AREA	BUILDING SETBACKS FRONT	REAR	SIDE
1	14,029.12	15'	20'	8'
2	9,632.32	15'	20'	8'
3	9,105.66	15'	20'	8'
4	10,213.97	15'	20'	8'
5	11,708.21	15'	20'	8'
6	15,278.71	50'	20'	8'
7	13,709.32	35'	20'	8'
8	9,669.84	15'	20'	8'
9	9,600.79	15'	20'	8'
10	9,600.59	15'	20'	8'
11	14,655.26	40'	20'	8'
12	10,599.96	35'	20'	8'
13	11,408.17	15'	20'	8'
14	10,370.08	15'	20'	8'

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

x AGENDA REQUEST

For the Fayetteville City Council Meeting of: March 2, 2004

FROM:

Dawn Warrick	Planning	CP&E
Name	Division	Department

ACTION REQUIRED: Ordinance approval.

SUMMARY EXPLANATION:

R-PZD 04-05.00: Residential Planned Zoning District (Hickory Park, pp 294) was submitted by Millholland Company on behalf of St. John's Lutheran Church of Fayetteville for property located north of 2730 E. Township Street. The property is zoned P-1, Institutional, and contains approximately 4.429 acres. The request is to rezone the subject property to a Residential Planned Zoning District allowing 14 single family dwelling units, a density of 3.16 units per acre.

STAFF RECOMMENDATION: Approval.

Division Head — 2/13/04 Date

(correct signature)
City Attorney — 2/17/04 Date

Department Director — 2-13-04 Date

Finance & Internal Services Dir. — 2-18-04 Date

Chief Administrative Officer — 2-18-04 Date

Mayor — Date

Received in Mayor's Office — 2/17/04 Date PH

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

New Item: Yes No

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

From: Chris Bosch, Fire Chief CB

Date: February 27, 2004

Subject: Approval of a Resolution awarding the construction contract between the City of Fayetteville and _____ for construction of Fire Station 7, located on Rupple Road south of Wedington Drive.

RECOMMENDATION

Staff recommends approval of this resolution, which will enable us to issue a notice to proceed to the above listed contractor and begin construction of Fire Station 7.

BACKGROUND

As you know, over the past year the Fire Department has worked diligently to identify and purchase a parcel of property on the west side of I-540 for the construction of Fire Station 7. The Fire Department identified the need for this facility several years ago and began budgeting for this project through the annual CIP Budgeting process.

DISCUSSION

With the accelerated level of residential and commercial growth currently underway on the west side of the community, it is imperative construction of this facility begin as soon as possible. Fire Station 7 will assist the Department in reducing the overall response time across the City and will help the organization to enhance the level of service currently provided throughout the community.

The Fire Department, with the assistance of the Building Services Division and the continued support of the Mayor, has designed a facility that allows for the immediate allocation of resources and also provides an opportunity for future growth without the need to expand the proposed building as future growth takes place. We have also worked to remain both environmentally and fiscally conscious and have taken every step possible to meet the needs created by both of these concerns.

CONCLUSION

In closing I believe this project will be beneficial, not only to the Fire Department but also to the Citizens overall. This project will help the community to maintain the reputation of being a "Safe Community" which is reflected in the current Guiding Principles as identified by the Mayor and Council during the 2003 Strategic Planning Session.

Page Holder

ENTERED 3/13/04 TCK

STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
X CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council Meeting of: **March 2, 2004**

FROM:

Chris Bosch, Fire Chief	Fire Administration	Fire
Name	Division	Department

ACTION REQUIRED: Approval of a Resolution awarding the construction contract between the City of Fayetteville and _____ for construction of Fire Station 7, located on Rupple Road south of Wedington Drive.

COST TO CITY:

	$ 1,337,280.00	Fire Improvements
Cost of this request	Category/Project Budget	Program Category / Project Name
4470.9470.5804.00	$ 231,200.00	Fire Station 7
Account Number	Funds Used to Date	Program / Project Category Name
01015	$ 1,106,080.00	Sales Tax Capital
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item ___ Budget Adjustment Attached

Budget Manager _____ Date _____

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager _____ Date _____ Internal Auditor _____ Date _____

City Attorney _____ Date _____ Purchasing Manager _____ Date _____

STAFF RECOMMENDATION: R.

Division Head _____ Date _____

Department Director [signature] Date 2/13/04

Finance & Internal Services Dir. _____ Date _____

Chief Administrative Officer _____ Date _____

Received in Mayor's Office _____ Date _____

Cross Reference:

Previous Ord/Res#: _____

Orig. Contract Date: _____

Orig. Contract Number: _____

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

STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
X CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council Meeting of: March 2, 2004

FROM:

Greg Boettcher	Water/Sewer/Meter	Water and Wastwater
Name	Division	Department

ACTION REQUIRED: Resolution approving award of the Water and Sewer Operations Center construction contract to Marioni Construction, Inc. of Fayetteville, Arkansas in the amount of $3,403,199.00. Action includes the acceptance of the deductive bid alternates No. 1 and No. 2 plus the removal of the allowance for subgrade undercut. The proposed project budget includes $225,159.00 for contingent needs. A budget adjustment to transfer $128,235.00 from the Water and Wastewater fund balance is also requested to fully fund the project budget.

COST TO CITY: A net financial authorization of $3,628,358.00.

$3,628,358.00	$3,610,441.00	Water and Sewer Operations Center
Cost of this request	Category/Project Budget	Program Category / Project Name
5400.5600.5804.00	$110,318.00	Water and Wastewater Improvements
Account Number	Funds Used to Date	Program / Project Category Name
98076	$3,500,123.00	Water and Sewer
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item X Budget Adjustment Attached

Budget Manager — Date: 2-19-04

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager — Date
Internal Auditor — Date
City Attorney — Date: 2/19/04
Purchasing Manager — Date

STAFF RECOMMENDATION:

Division Head — Date
Department Director — Date: 2-17-04
Finance & Internal Services Dir. — Date: 2-19-04
Chief Administrative Officer — Date: 2-19-04
Mayor — Date: 2/19/04

Received in Mayor's Office — Date

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

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

Staff Review Form - Page 2

Description _____ Meeting Date March 2, 2004

Comments: Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Manager

ADA Coordinator

Internal Auditor

Grants Coordinator

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Hugh Earnest, Chief Administrative Officer

From: Greg Boettcher, Water/Wastewater Director

Date: February 18, 2004

Subject: Resolution approving a contract with Marinoni Construction, Inc. for Water and Wastewater Operations Center at Industrial Drive

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RECOMMENDATION

Fayetteville City Administration recommends approval of an authorization totalling $3,628,358.00, said amount including a contract with Marinoni Construction, Inc. of Fayetteville, Arkansas in the amount of $3,403,199.00 with $225,159.00 for contingent needs as detailed in the March 2004 project budget.

BACKGROUND

On April 23, 2003 the Fayetteville City Council approved a $237,490.00 contract with Cromwell Architects Engineers, Inc. for architectural services related to the design and construction of a new Fayetteville Water and Wastewater Operations Center. This approval included a 9.5% contingency of $22,510.00 bringing the total funding to $260,000.00. As of this date, the services have not utilized any of the contingency funds, the work underrunning predicted reimbursable expenses by $17,000.00. Through the bidding phase of this project the professional services component of this project is below the approved contract amount; the consultant also meeting the contract's schedule requirements.

This design relates to a new operations center on approximately 61 acres, said land being located at the end of Industrial Drive in the South Industrial Park. The architect submitted this development plan under a large scale development review process, securing approval from the Planning Division on November 13, 2003. Final costruction drawings, contract documents and specifications were furnished to the City of Fayetteville on January 5, 2004 in conformance with the schedule in the architectural services agreement. The project has been released for competitive sealed construction bids with a bid opening date of February 10, 2004.

DISCUSSION

The City of Fayetteville received six bids for the construction of the Water and Wastewater Operations Center, a copy of the architect's bid tabulation being attached hereto. Review of the bids, bidder qualifications, bid alternatives and bid prices, has been performed by Cromwell Architects Engineers Inc, with the firm providing a formal contract award recommedation, a copy of which is attached hereto.

It is recommended that the contract be awarded to Marioni Construction, Inc. of Fayetteville, Arkansas in the amount of $3,403,199.00. The time for completion of the work is 365 calendar days after the Notice to proceed with liquidated damages set at $176.00 per day.

BUDGET IMPACT

The $3,628,358.00 fiancial commitment for the new Water and Wastewater Operations Center is has been reconciled with the 2003 preliminary cost predictions of $3 million, the difference in cost being attributed to refinement of the building program to meet actual needs, unforseen costs associated with subsurface conditions, fire sprinkler requirements and current pricing factors. The recommended budget for this project requires a budget adjustment of $128,235.00 from the water and wastewater fund balance. The water and wastwater department budgets for 2004 include separate allowances for office furnishing costs, warehouse shelving and other related expenses to render the building fully functional.

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department: Water & Wastewater Division: Water & Sewer Maintenance Program: Capital Water Mains	Date Requested	Adjustment Number
2004		3/2/2004	

Project or Item Requested:
$128,235 is requested in the Water & Wastewater Operations Center.

Project or Item Deleted:
None. $128,235 from the Water & Sewer Use of Fund Balance account.

Justification of this Increase:
The increased funded is needed for the construction contract with Marinoni Construction, Inc.

Justification of this Decrease:
There is sufficient funding available to comply with City policy.

Increase Budget (Decrease Revenue)

Account Name	Account Number				Amount	Project Number	
Building costs	5400	5600	5804	00	128,235	98076	1

Decrease Budget (Increase Revenue)

Account Name	Account Number				Amount	Project Number	
Use of fund balance	5400	0940	4999	99	128,235		

Approval Signatures

	Date
Requested By	
Budget Manager	2-19-04
Department Director	2-17-04
Finance & Internal Services Director	2-19-04
Mayor	

Budget Office Use Only

Type: A B C D E

	Initial	Date
Date of Approval		
Posted to General Ledger		
Posted to Project Accounting		
Entered in Category Log		

WATER AND WASTEWATER OPERATIONS CENTER

Proposed Project Budget
March 2004

COST CATEGORY		REQUESTED FUNDS
Low Base Bid	$3,498,999.00	
Deductive Alt. No. 1	(10,200.00)	
Deductive Alt. No. 2	(46,000.00)	
Undercut Allowance	(39,600.00)	
Base Contract Award Value		**$3,403,199.00**
Construction Contingency (5%)		**170,159.00**
Telecommunications Wiring and Devices		**25,000.00**
Demolition of Abandoned Structures		**30,000.00**
TOTAL PROJECT CONSTRUCTION BUDGET		**$3,628,358.00**

TOTAL PROJECT COSTS	**$3,628,358.00**
2004 BUDGETED FUNDS	**$3,500,123.00**
BUDGET ADJUSTMENT	**$ 128,235.00***

***BUDGET ADJUSTMENT TO TRANSFER FUNDS FROM WATER/SEWER FUND'S ACCOUNT BALANCE (RETAINED EARNINGS)**

BID TABULATION
City of Fayetteville
Water and Sewer Operations Center
Fayetteville, AR

Bid Opening: 2:00pm 10-February 2004
Location: City Hall, Room 326, Fayetteville, AR

Architect Engineer Proj. No: 2003-035

CROMWELL ARCHITECTS ENGINEERS
7 North Block Avenue
Fayetteville, Arkansas 72701

Certified by: Thad Kelly A.I.A.
Date: 12 Feb 2004

	Marinoni Construction	EWI Constructors	Cordova Constructors	Crossland Construction	Bravco Enterprises	Oakridge Builders	Lilch Bossler	Goodwin & Goodwin
Contractor License No	0033500404	0022980404		0019621104	0029640404	0006960904	0065810404	
			NO BID					NO BID
A. Base Proposal	3,498,999.00	3,772,300.00		3,645,000.00	4,065,000.00	3,815,000.00	3,660,000.00	
Standard for OSHA trench safety	250.00	1,800.00		1,500.00	1,000.00	500.00	3,000.00	
Alternate Proposals								
Alt. No. 1 Complete Fire Alarm System	10,200.00	14,800.00		13,000.00	15,000.00	16,300.00	11,000.00	
Alt. No. 2 Pipe Rack	46,000.00	28,300.00		42,000.00	40,000.00	1[illegible] 500.00	44,000.00	
Unit Prices:								
1. Undercutting:								
a. Below finished subgrade	13.00	10.50		10.90	11.50	10.45	13.20	
b. Below bottom of footing elevations	20.00	10.50		15.00	25.00	50.00	18.00	
2. Undercutting Allowance:								
a. Undercut below fin. Subgrade 3,000 CY at the unit price above	39,000.00	31,500.00		10.90	11.50	31,350.00	39,600.00	
b. Undercut below bottom of footings 30 CY at unit price above	600.00	315.00		15.00	25.00	1,500.00	540.00	
Addenda 1, 2	1 & 2	1 & 2		1 & 2	1 & 2	1 & 2	1 & 2	
Subcontractors:								
A. Mechanical Work - HVACR	Johnson	Johnson		NABCO	Amer. Air	Johnson	NABCO	
License number	0004651004	0004651004		0025860404	012660304	0004651004	0025860404	
B. Mechanical Work - Plumbing	Johnson	Johnson		NABCO	Multi	Johnson	NABCO	
License number	0004651004	0004651004		0025860404	0025810304	0004651004	0025860404	
C. Electrical Work	Marrs	Marrs		Broadway	Marrs	Marrs	Broadway	
License number	014390204	014390204		0144130305	014390204	014390204	0144130305	
D. Roofing Work	Marinoni	EWI		Crossland	Advance	Oakridge	Whitshire	
License number	0033500404	0022980404		0019621104	0141440804	0006960904	00850404	
Bid Security	5% Bid Bond	5% Bid Bond		5% Bid Bond	5% Bid Bond	5% Bid Bond	5% Bid Bond	

RESOLUTION NO. _____

A RESOLUTION TO APPROVE THE CONSTRUCTION CONTRACT FOR THE NEW WATER AND SEWER OPERATIONS CENTER WITH MARINONI CONSTRUCTION, INC. IN THE AMOUNT OF $3,403,199.00, PLUS A CONTINGENCY OF $225,159.00 AND A BUDGET ADJUSTMENT OF $128,235.00

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 a construction contract for the low bidder, Marinoni Construction, Inc. to build the new Water and Sewer Operations Center in the amount of $3,403,199.00, plus a contingency amount of $225,159.00.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment of $128,235.00 as required for this project.

PASSED and **APPROVED** this the 2nd day of March, 2004.

APPROVED:

By: _____ DRAF
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council Meeting of: March 2, 2004

FROM:

Terry Gulley	Transportation	Operations
Name	Division	Department

ACTION REQUIRED: An ordinance to approve a bid waiver for the purchase of asphalt and aggregate materials and to approve a bulk purchase contract with McClinton-Anchor.

COST TO CITY:

$800,000.00	$ 1,050,000.00	In-House Pavement Improvements
$100,000.00	$ 135,785.00	Materials and Supplies
Cost of this request	Category/Project Budget	Program Category / Project Name
4470.9470.5809.00	$ 228,729.00	Cap Improv Const Fund Exp
2100.4120.5215.00	$ 8,020.00	Street Maintenance
Account Number	Funds Used to Date	Program / Project Category Name
02052	$ 821,271.00	Sales Tax Capital
N/A	$ 127,765.00	Street
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: [X] Budgeted Item ____ Budget Adjustment Attached

Budget Manager — Date: 2-10-04

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager — Date: 2/12/04
Internal Auditor — Date: 2/12/04
City Attorney — Date: 2/13/04
Purchasing Manager — Date: 2/17/04

STAFF RECOMMENDATION:

Division Head — Date: 2-11-04
Department Director — Date: 2-18-04
Finance & Internal Services Dir. — Date: 2-19-04
Chief Administrative Officer — Date: 2-19-04
Mayor — Date:

Received in Mayor's Office — Date: 2/17/04

Cross Reference:

Previous Ord/Res#: ____

Orig. Contract Date: ____

Orig. Contract Number: ____

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

ENTERED 2-11-04

Staff Review Form - Page 2

Description Approval of bid waiver for asphalt & mtls. Meeting Date March 2, 2004

Comments: Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Manager

ADA Coordinator

Internal Auditor

Grants Coordinator

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE FORMAL COMPETITIVE BIDDING REQUIREMENTS FOR THE PURCHASE OF ASPHALT AND AGGREGATE MATERIALS THROUGH A BULK PURCHASE CONTRACT WITH APAC-ARKANSAS/ MCCLINTON ANCHOR IN AN AMOUNT NOT TO EXCEED NINE HUNDRED THOUSAND DOLLARS ($900,000.00).

WHEREAS, the City of Fayetteville has an ongoing need to purchase asphalt and aggregate materials for In-House Street Improvements; and

WHEREAS, significant savings of taxpayer dollars can be achieved because of APAC-Arkansas/McClinton Anchor's close proximity to the City's Street projects; and,

WHEREAS, previous attempts to acquire bids for asphalt and aggregate materials have not resulted in the receipt of any comparable bids; 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 finds that there exists an exceptional situation where competitive bidding is not feasible or practical, and waives the formal competitive bidding requirements for the purchase of asphalt and aggregate materials through a bulk purchase contract with APAC-Arkansas/McClinton Anchor in an amount not to exceed Nine Hundred Thousand Dollars ($900,000.00).

PASSED AND APPROVED this 2nd day of March 2004.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

DRAFT

City Council Agenda Item

Preprint agenda date and item number inserted by city clerk

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Terry Gulley, Transportation Manager

Date: February 11, 2004

Subject: An ordinance to approve a bid waiver for the purchase of asphalt and aggregate materials and to approve a bulk purchase contract with McClinton-Anchor.

Recommendation: Transportation Division staff recommends an ordinance to approve a bid waiver for the purchase of asphalt and aggregate materials and to approve a bulk purchase contract with McClinton-Anchor in the amount of nine hundred thousand dollars ($900,000).

Background: The purchase of asphalt and aggregate materials is necessary for In-House Street Improvements. The goal is to overlay a minimum of 150,000 square yards of asphalt each year as outlined in the annual 2004 Budget & Work Program.

Discussion: Due to McClinton-Anchor's close proximity to construction projects and a history of not receiving any other bids or bids that are comparable, it is the Transportation Division's recommendation that a bid waiver be granted for this year's construction materials.

Budget Impact: Budgets for the acquisition of these materials are in the Sales Tax Capital Improvements and Street funds. Street maintenance costs will also be reduced on each street overlaid.

Attached: McClinton-Anchor 2004 Product Price Lists

APAC-Arkansas

McClinton Anchor

CITY OF FAYETTEVILLE PRODUCT PRICE LIST - F.O.B. PLANT

FOR YEAR 2004

******Prices Are Subject To Change******

Material Description	Material Code	WEST FORK	SHARPS	HINDSVILLE	AVOCA
Type 2 Surface (LS) 93' AHTD	44040	NO BID	$25.00	NO-BID	NO-BID
Type 2 Surface (LS) 96' AHTD	44042	$25.50	$24.25	$25.50	$25.75
Type 3 Surface (LS) 93' AHTD	45420	NO BID	$25.00	NO-BID	$26.75
Type 3 Surface (LS) 96' AHTD	45042	$25.75	$24.50	$25.75	$26.25
Premix- MC250 - 96' AHTD	46581	$29.00	$29.00	NO-BID	$29.00
Type 1 Surface (SS) 93' AHTD	43421	NO-BID	$26.00	NO-BID	$27.75
Type 2 Surface (SS) 93' AHTD	44421	NO-BID	$26.00	NO-BID	$27.50
Type 2 Surface (SS) 96' AHTD	44043	$26.75	$26.25	NO-BID	$27.75
Type 3 Surface (SS) 96' AHTD	45043	NO-BID	$26.00	NO-BID	$28.75
Type 1 Binder 93' AHTD	41420	NO-BID	$21.50	NO-BID	$23.50
Type 2 Binder 93' AHTD	42420	NO-BID	$21.50	NO-BID	$23.75
Type 2 Binder 96' AHTD	42041	NO-BID	$21.75	NO-BID	NO-BID
Base (Black Base) 93' AHTD	40420	NO-BID	$22.00	NO-BID	$22.75
Superpave Surface-(PG64-22)		NO-BID	$27.75	$28.50	$30.75
Superpave Binder-(PG64-22)		NO-BID	$23.75	$23.00	NO-BID
Superpave Base-(PG64-22)		NO-BID	$21.50	$21.50	NO-BID
(Non-Spec) Type 3 Commercial Mix	65041	$24.50	$23.50	$24.25	$25.50

PLEASE NOTE:

1.) PRICES ABOVE ARE QUOTED FOB PLANT EXCLUDING APPLICABLE TAXES.

3.) Please call the numbers listed below for material orders and haul rates:

Sharps	Aggregate - (479) 756-8866 or Asphalt (479) 756-2881
Hindsville	Aggregate or Asphalt - (479) 789-2230 or (479) 756-2232
Avoca	Aggregate-(479)636-1010 or Asphalt (479)636-8329
West Fork	Asphalt-(479)839-8514

6.) Sales tax at each location:

APAC-Arkansas
McClinton Anchor
CITY OF FAYETTEVILLE PRODUCT PRICE LIST - F.O.B. PLANT

FOR YEAR 2004

Material Description	Material Code	WEST FORK	Material Code	SHARPS	Material Code	HINDSVILLE
AG Lime	90107	$6.50	-	-	90108	$4.50
Coarse Lime	90507		-	-	90508	$3.75
Fill Material	-	-	90905	$1.50	90908	$1.50
* Class 7 Base	91505	$6.85	91505	$5.20	91508	$5.20
* Misc. Base	91708	$5.65	91705	$4.95	91708	$4.00
Crusher Run (Small, non-spec base)	-	-	91905	$6.60	-	-
1 1/4" Conc. Aggregate	-	-	-	-	94308	$7.00
1" Conc. Rock	-	-	-	-	94508	$7.00
3/4" Conc. Rock	-	-	-	-	94908	$7.25
B-Stone	-	-	95505	$5.60	95508	$5.60
Rip Rap	-	-	95705	$10.60	95708	$10.60
Shot Rock	-	-	95905	$4.85	95908	$4.85
CL 1 Seal Chips	-	-	-	-	96308	$8.60
5/8" Chips (LS)	-	-	-	-	93608	$7.85
CL 2 Seal Chips	-	-	-	-	96508	$9.35
1/2" Chips (LS)	-	-	92305	$8.35	92308	$8.35
CL 4 Seal Chips	-	-	-	-	96908	$11.35
Waste Material	-	-	97105	$4.35	97108	$4.35
Abrasives (LS) Grit	-	-	-	-	97308	$5.60
Block Chat	-	-	-	-	97708	$7.35
1 1/2" Filter Rock	-	-	8305a	$6.60	8308a	$6.60
1 1/8" Filter Rock	-	-	2105a	$6.60	2108a	$6.60

PLEASE NOTE:

1.) PRICES ABOVE ARE QUOTED FOB PLANT EXCLUDING APPLICABLE TAXES.
2.) PLEASE SEE AGGREGATE ORDERING NOTES ON BACK PAGE.
3.) Class 7 Base for West Fork is hauled in from Sharps.
4.) Misc. Base for West Fork is hauled in from Hindsville.
 * Subject To Availability
5.) Please call the numbers listed below for material orders and haul rates:

West Fork 'Aggregate - (479) 443-2331 or Asphalt (479) 839-8514
Sharps 'Aggregate - (479) 756-8866 or Asphalt (479) 756-2881
Hindsville 'Aggregate - (479) 789-2230 or Asphalt (479) 756-2232

6.) Sales tax at each location:
 West Fork - 6.625%
 Sharps - 6.125%
 Hindsville - 6.625%

THANK YOU FOR YOUR BUSINESS!!!

City Of Fayetteville

(Not a Purchase Order)

Requisition No.:	Date: 2/11/2004
P.O Number:	Expected Delivery Date:
Mail Yes:__ No:____	
Taxable Yes:__ No:____	Quotes Attached Yes:____ No:____
Divison Head Approval:	

Vendor #: 7470 | Vendor Name: McCLINTON ANCHOR

Address:

Fob Point: FAYETTEVILLE, AR

City: | State: | Zip Code: | Ship to code: 104

Requester: JOHN NELSON | Requester's Employee #: 1003 | Extension: 492

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	ASPHALT & AGGREGATE MTLS FOR STREET MAINT	1	LT	25,000.00	$25,000.00	2100.4120.5215.00			
2	ASPHALT & AGGREGATE MTLS FOR STREET IMPROVS	1	LT	100,000.00	$100,000.00	4470.9470.5809.00	02052-1		
3					$0.00				
4	PER BID WAIVER				$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:	$125,000.00
Tax:	
Total:	$125,000.00

Approvals:

Mayor: _____ Department Director: _____ Purchasing Manager: _____

Finance & Internal Services Director: _____ Budget Manager: _____ IT Manager: _____

Dispatch Manager: _____ Utilities Manager: _____ Other: _____

Revised 6/4/2003

Tentative

[redacted] Agenda
City Council Meeting
March 2, 2004

A meeting of the Fayetteville City Council will be held on March 2, 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 February 17, 2004 meeting minutes.

2. ##

B. OLD BUSINESS:

1. **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.
   This resolution was tabled at the January 20, 2004 City Council meeting until the March 2, 2004 City Council meeting.

2. **Waste Hauler Contracts:** A resolution authorizing the Mayor to execute contracts with Waste Management of Arkansas, Ozark Sanitation, and Roll-Off Services, Inc. to collect and transport specific types of solid waste within the city limits of Fayetteville.
   This resolution was tabled at the February 17, 2004 City Council meeting until the March 2, 2004 City Council meeting.

C. NEW BUSINESS:

1. **Improvement District No. 6 – Rupple Row Development:**

2. **Planning Commission Appeal – RZN 04-01.00 (Parnell):**

Gary Dennis No

3. ~~**Rates for the Purchase of Compost and Mulch:** A resolution to set rates for the purchase of the City's compost and mulch.~~

4. **ADM 04-07.00 Bill of Assurance Amendment:** X

5. **R-PZD 04-02:00 (Cross Keys):**

6. **R-PZD 04-05.00 (Hickory Park):** X

Sent back to Planning ~~(7) VAC 04-01.00 (Michael Campbell)~~

8. Construction Contract for Fire Station 7:

Contract – does not need to go to Council per Steve ~~(9) Fire Department Wellness Program Bid Waiver.~~

10. Water and Wastewater Operations Center – Marinoni Contract:

Consent 11. 2004 Bulk Construction Material Purchase:

12. McClinton-Anchor Purchase Bid Waiver:

Consent 13. Terracon ~~Consultants~~ Contract:

Consent 14. Cruzen Equipment Change Order # 1 Self Serve Fueling:

D. INFORMATIONAL:

Council Tour: March 1, 2004

1058.78 Material)

70.00 Dues

28.00 recording fees

327.94 off Machine

office Dep. 195.84

Jan Copier 857.10

PC 5.84

Add: Easement Vacation Campbell

Tentative Agenda
City Council Meeting
March 2, 2004

A meeting of the Fayetteville City Council will be held on March 2, 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 February 17, 2004 meeting minutes.

2. **2004 Bulk Construction Material Purchase:** A resolution awarding bids for and approving the purchase of bulk materials and services utilized by various divisions of the City of Fayetteville in the amount of ($195,000.00)

3. **Terracon Contract:** A resolution authorizing Parks and Recreation to contract with Terracon Consultants Inc. to perform the Cummings C & L Landfill Site Characterization Study.

4. **Cruzen Equipment Change Order # 1 Self Serve Fueling:** A resolution approving Change Order #1 to the construction contract with Cruzen Equipment Company, Inc. in the amount of $18,135.50 to include an 87 octane Mogas pump at the Aviation Fuel Self-Serve Facility at the Fayetteville Municipal Airport; approving a project contingency in the amount of $1,814.00 and approving a budget adjustment in the amount of $19,950.00 for same.

B. OLD BUSINESS:

1. **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.
   This resolution was tabled at the January 20, 2004 City Council meeting until the March 2, 2004 City Council meeting.

2. **Waste Hauler Contracts:** A resolution authorizing the Mayor to execute contracts with Waste Management of Arkansas, Ozark Sanitation, and Roll-Off Services, Inc. to collect and transport specific types of solid waste within the city limits of Fayetteville.
   This resolution was tabled at the February 17, 2004 City Council meeting until the March 2, 2004 City Council meeting.

Cost for 1 mile of Asphalt – City Cost vs. Outside firm Cost.)

C. NEW BUSINESS:

1. **Improvement District No. 6 – Rupple Row Development:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 6 – Rupple Row Development.

Need ordinance

2. **Planning Commission Appeal – RZN 04-01.00 (Parnell):** An appeal filed by Bell Cow, Inc. regarding Planning Commission denial of RZN 04-01.00 as submitted by Eric Johnson of Triangle Builders Supply.

3. **ADM 04-07.00 Bill of Assurance Amendment:** A resolution to approve a second amendment to the Bill of Assurance submitted with Ordinance No. 4411 as amended by Resolution No. 28-03.

4. **R-PZD 04-02.00 (Cross Keys):** An ordinance establishing a Residential Planned Zoning District titled (R-PZD 04-02.00) located south of Wedington Drive at the corner of N. 46th and Persimmon Street containing 38.48 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. **R-PZD 04-05.00 (Hickory Park):** An ordinance establishing a Residential Planned Zoning District titled (R-PZD 04-5.00) located north of 2730 E. Township Street, containing 4.429 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.

Waiver - Bid Opening Fire Station

6. **Construction Contract for Fire Station 7:** A resolution to approve a construction contract with _____ in the amount of _____ for the construction of Fire Station No. 7.

7. **Water and Wastewater Operations Center – Marinoni Contract:** A resolution to approve the construction contract for the new Water and Sewer Operations Center with Marinoni Construction, Inc. in the amount of $3,403,199.00, plus a contingency of $225,159.00 and a budget adjustment of $128,235.00

8. **McClinton-Anchor Purchase Bid Waiver:** An ordinance waiving the formal competitive bidding requirements for the purchase of asphalt and aggregate materials through a bulk purchase contract with APAC-Arkansas/McClinton Anchor in an amount not to exceed $900,000.00

Planning Commission Minutes on Planning Items

D. INFORMATIONAL:

Council Tour: March 1, 2004

#4 Response Time - Fire Dept

Council wants Planning Commission agenda package

Final Agenda
City Council Meeting
March 2, 2004

A meeting of the Fayetteville City Council will be held on March 2, 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 February 17, 2004 meeting minutes.

2. **2004 Bulk Construction Material Purchase:** A resolution awarding bids for and approving the purchase of bulk materials and services utilized by various divisions of the City of Fayetteville in the amount of ($195,000.00).

3. **Terracon Contract:** A resolution authorizing Parks and Recreation to contract with Terracon Consultants Inc. to perform the Cummings C & L Landfill Site Characterization Study.

4. **Cruzen Equipment Change Order # 1 Self Serve Fueling:** A resolution approving Change Order #1 to the construction contract with Cruzen Equipment Company, Inc. in the amount of $18,135.50 to include an 87 octane Mogas pump at the Aviation Fuel Self-Serve Facility at the Fayetteville Municipal Airport; approving a project contingency in the amount of $1,814.00 and approving a budget adjustment in the amount of $19,950.00 for same.

B. OLD BUSINESS:

1. **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.
   This resolution was tabled at the January 20, 2004 City Council meeting until the March 2, 2004 City Council meeting.

2. **Waste Hauler Contracts:** A resolution authorizing the Mayor to execute contracts with Waste Management of Arkansas, Ozark Sanitation, and Roll-Off Services, Inc. to collect and transport specific types of solid waste within the city limits of Fayetteville.
   This resolution was tabled at the February 17, 2004 City Council meeting until the March 2, 2004 City Council meeting.

C. NEW BUSINESS:

1. **Improvement District No. 6 – Rupple Row Development:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 6 – Rupple Row Development.

2. **Planning Commission Appeal – RZN 04-01.00 (Parnell):** An appeal filed by Bell Cow, Inc. regarding Planning Commission denial of RZN 04-01.00 as submitted by Eric Johnson of Triangle Builders Supply.

3. **ADM 04-07.00 Bill of Assurance Amendment:** A resolution to approve a second amendment to the Bill of Assurance submitted with Ordinance No. 4411 as amended by Resolution No. 28-03.

4. **R-PZD 04-02.00 (Cross Keys):** An ordinance establishing a Residential Planned Zoning District titled (R-PZD 04-02.00) located south of Wedington Drive at the corner of N. 46th and Persimmon Street containing 38.48 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. **R-PZD 04-05.00 (Hickory Park):** An ordinance establishing a Residential Planned Zoning District titled (R-PZD 04-5.00) located north of 2730 E. Township Street, containing 4.429 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.

6. **Construction Contract for Fire Station 7:** A resolution to approve a construction contract with _____ in the amount of _____ for the construction of Fire Station No. 7.
   Bids will be opened on this at 3:00 PM on Thursday, February 26, 2004.

7. **Water and Wastewater Operations Center – Marinoni Contract:** A resolution to approve the construction contract for the new Water and Sewer Operations Center with Marinoni Construction, Inc. in the amount of $3,403,199.00, plus a contingency of $225,159.00 and a budget adjustment of $128,235.00.

8. **McClinton-Anchor Purchase Bid Waiver:** An ordinance waiving the formal competitive bidding requirements for the purchase of asphalt and aggregate materials through a bulk purchase contract with APAC-Arkansas/McClinton Anchor in an amount not to exceed $900,000.00.

9. **VAC 04-01.00 (Michael Campbell):** An Ordinance approving VAC 04-01.00 to vacate and abandon a portion of the water and sewer easement located at 4843 Lavendon Place as described on the attached map and legal description.

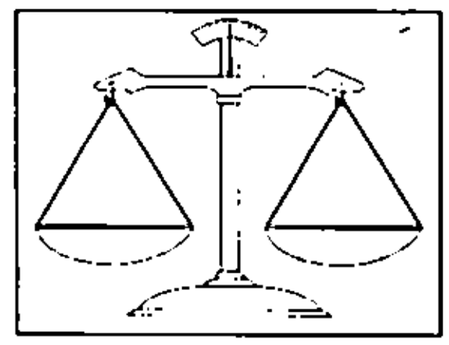
D. INFORMATIONAL:

Council Tour: March 1, 2004
The Council will tour Wilson Springs and have invited the Sierra Club to join the tour.

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: **March 3, 2004**

RE: **Passed Resolutions and Ordinances from City Council meeting of March 2, 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. **2004 Bulk Construction Material Purchase:** Resolution awarding bids for and approving purchase of bulk materials and services utilized by various divisions of the City in amount of $195,000.00;

2. **Terracon Contract:** Resolution approving professional services contract w/Terracon Consultants, Inc. in amount not to exceed $49,000.00 to perform Cummings Property Site Characterization Study;

3. **Cruzen Equipment Change Order #1 Self Serve Fueling**: Resolution approving Change Order #1 to construction contract w/Cruzen Equipment Co., inc. in amount of $18,135.50 to include an 87 octane Mogas pump at the aviation fuel self-serve facility at Fayetteville Municipal Airport; approving project contingency in amount of $1,814.00 and approving budget adjustment in amount of $19,950.00 for same;

4. **Waste Hauler Contracts:** Resolution authorizing Mayor to execute contracts with any Waste Hauler doing business in Fayetteville in form of Attached Exhibit A;

5. **Improvement District No. 6 – Rupple Row Development:** Ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District NO. 6 – Rupple Row Development;

6. **ADM 04-07.00 Bill of Assurance Amendment:** Resolution approving second amendment to Bill of Assurance submitted with Ordinance No. 4411 as amended by Resolution No. 28-03;

7. **Waster & Wastewater Operations Center – Marinoni Contract:** Resolution approving construction contract for new water & sewer operations center w/Marinoni Construction, Inc. in amount of $3,403,199.00 plus contingency fee of $225,159.00 and budget adjustment of $128,235.00;

8. **VAC 04-01.00 (Michael Campbell):** Ordinance approving VAC 04-01.00 to vacate and abandon a portion of water and sewer easement located at 4843 Lavendon Place as described on attached map and legal description.