Final Agenda
Special City Council Meeting
July 29, 2004

A Special meeting of the Fayetteville City Council will be held on July 29, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Old Business:

Highway 71 East Square Redevelopment District #1: An ordinance forming the Highway 71 East Square Redevelopment District Number One pursuant to Amendment 78 of the Arkansas Constitution and authorizing the preparation of a project plan. ***This ordinance was tabled at the July 20, 2004 City Council meeting to the July 29, 2004 City Council meeting.***

THIS ITEM WAS LEFT ON THE FIRST READING.

Meeting adjourned at 7:30 p.m.

City Council Meeting July 29, 2004

Meeting Adjourned 7:30 pm.

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

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

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FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

July 12, 2004

Dear Property Owner:

Notice of Public Hearing

The City of Fayetteville staff has been working hard to facilitate the redevelopment of the abandoned Mountain Inn in Fayetteville's downtown area.

The developers, along with city officials, several attorneys and investment bankers have been focusing on the creation of a Tax Increment Financing District (TIF) over the past several months. The TIF re-development option was made available recently by a constitutional amendment and accompanying state legislation. It has also received prominent mention in the recently completed Downtown Master Plan as one of the principal options to be considered in downtown redevelopment. For their part, the developers have been successful in securing new market tax credits along with support for financing from private sources. Success in securing alternative financing sources has certainly been encouraging, however the difficultly in redeveloping the site of the Mountain Inn demands that all avenues for funding assistance be explored. A TIF district is certainly one of those options.

As we open this discussion, it is important to note that a TIF **does not** call for new taxation or an increase in the tax rate. Rather, it simply applies the incremental increase due to added value or inflation to a project or projects that will be accepted and approved by the Fayetteville City Council. That step, namely the discussion and possible approval of the project plan, will occur only after the creation of the District itself.

All parties are now ready to proceed in requesting the Fayetteville City Council to establish a District of sufficient size to be able to secure an Incremental assessment that can assist in this crucially important downtown redevelopment. The first step in this process will be the preliminary introduction of the ordinance that would create the district on July 20th to be followed by a Public Hearing now scheduled at **6:30 P.M. on July 27th** for all concerned parties to thoroughly discuss the creation of the district.

You have been identified as a property owner in the proposed district and we are taking this opportunity to inform you of the dates of these important discussions. We have placed on the city web site a map of the proposed district along with copies of the relevant state statutes. We will also have available in the City Planning Office hard copies of the proposed district and the applicable state laws.

Please do not hesitate to contact any one of the individuals listed with any questions or concerns that you may have as we all begin discussions on this exciting and challenging project.

Hugh Earnest 575-8330 Tim Conklin 575-8265

Sincerely,

Hugh Earnest

Hugh Earnest
CAO

113 WEST MOUNTAIN 72701 479-521-7700
FAX 479-575-8257

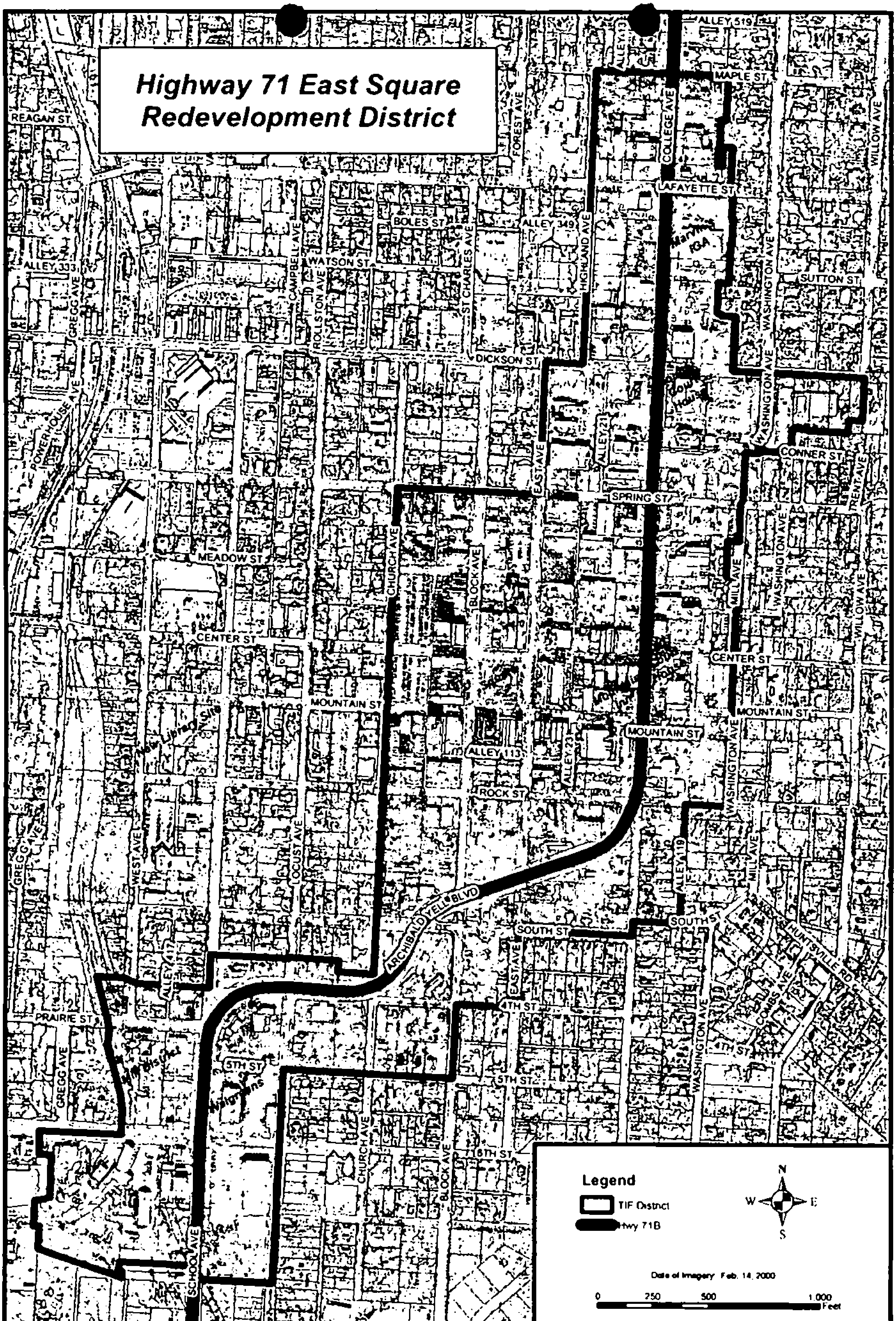
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that, pursuant to Arkansas Code Annotated §14-168-305, a public hearing will be conducted on July 27, 2004 at 6:30 p.m. in the City Administration Building, Room 326, 113 W. Mountain, Fayetteville, Arkansas, and that at said hearing all interested parties will be afforded a reasonable opportunity to express their views on the proposed creation and the proposed boundaries of a redevelopment district in the downtown area.

This Public hearing is to provide opportunity for the public to express views on the proposed creation of a redevelopment district and it's proposed boundaries.

All interested parties may appear and be heard at the public hearing. A copy of the proposed boundaries and other pertinent data is open and available for inspection in the Office of City Planning *(575-8267)*, 125 West Mountain Street, Fayetteville, Arkansas. All interested parties are invited to review the information.

Interpreters or TDD for hearing impaired are available for all public meetings. 72 hour notice is required.. For further information or to request an interpreter, please call 575-8330.


Highway 71 East Square
Redevelopment District
REAGAN ST
ALLEY 333
GREGG AVE
POWERHOUSE AVE
CAMPBELL AVE
WATSON ST
ROLLSTON AVE
BOLES ST
ST CHARLES AVE
ALLEY 349
FOREST AVE
HIGHLAND AVE
COLLEGE AVE
ALLEY 519
MAPLE ST
LAFAYETTE ST
SUTTON ST
WASHINGTON AVE
WILLOW AVE
DICKSON ST
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CONNER ST
SPRING ST
TRENT AVE
MEADOW ST
CHURCH AVE
BLOCK AVE
MILL AVE
CENTER ST
MOUNTAIN ST
ALLEY 113
ALLEY 23
ROCK ST
WEST AVE
LOCUST AVE
ARCHIBALD YELL BLVD
ALLEY 19
SOUTH ST
ALLEY 417
PRAIRIE ST
4TH ST
5TH ST
6TH ST
SCHOOL AVE
COMBS AVE
HUNTSVILLE RD
New Library Site
Walgreens
IGA
Legend
TIF District
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Date of Imagery: Feb. 14, 2000
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JULY 7, 2004

C.20
Hwy. 71 East
Square Redevelop.
District #1

ORDINANCE NO. ______

AN ORDINANCE FORMING THE HIGHWAY 71 EAST SQUARE REDEVELOPMENT DISTRICT NUMBER ONE PURSUANT TO AMENDMENT 78 OF THE ARKANSAS CONSTITUTION AND AUTHORIZING THE PREPARATION OF A PROJECT PLAN

WHEREAS, the City Council after 15 day published notice has held a public hearing at which all interested parties were given the opportunity to express their views on the proposed creation of the Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas and its proposed boundaries; and

WHEREAS, prior to publication, a copy of said notice was sent by first-class mail to the chief executive officer of all local governmental and taxing entities having the power to levy taxes on property located within the proposed Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas, and to the school board of any school district which includes property located within the proposed Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas; and

WHEREAS, the City Council has designated the boundaries of the proposed Highway 71 East Square Redevelopment District Number One, of Fayetteville, Arkansas.

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 establishes the boundaries of the Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas as set forth on the map attached hereto as Exhibit "A" and incorporated herein.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby names the District the following name for identification purposes: Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby creates the Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas as of September 20, 2004.

Section 4: That the City Council hereby finds that the real property within the Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas, will be benefited by the redevelopment project by eliminating or preventing the development or spread of blighted, deteriorated, or deteriorating areas, or discouraging the loss of commerce, or employment, or increasing employment, or any combination thereof.

Section 5: That the City Council of the City of Fayetteville, Arkansas hereby creates a separate and special fund into which shall be deposited all tax increment revenues, and all other revenues designated by the City for the benefit of the Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas. All project costs shall be paid from this fund. This fund shall be known as the Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas.

Section 6: That the City Council of the City of Fayetteville, Arkansas hereby authorizes the preparation of a Redevelopment Project.

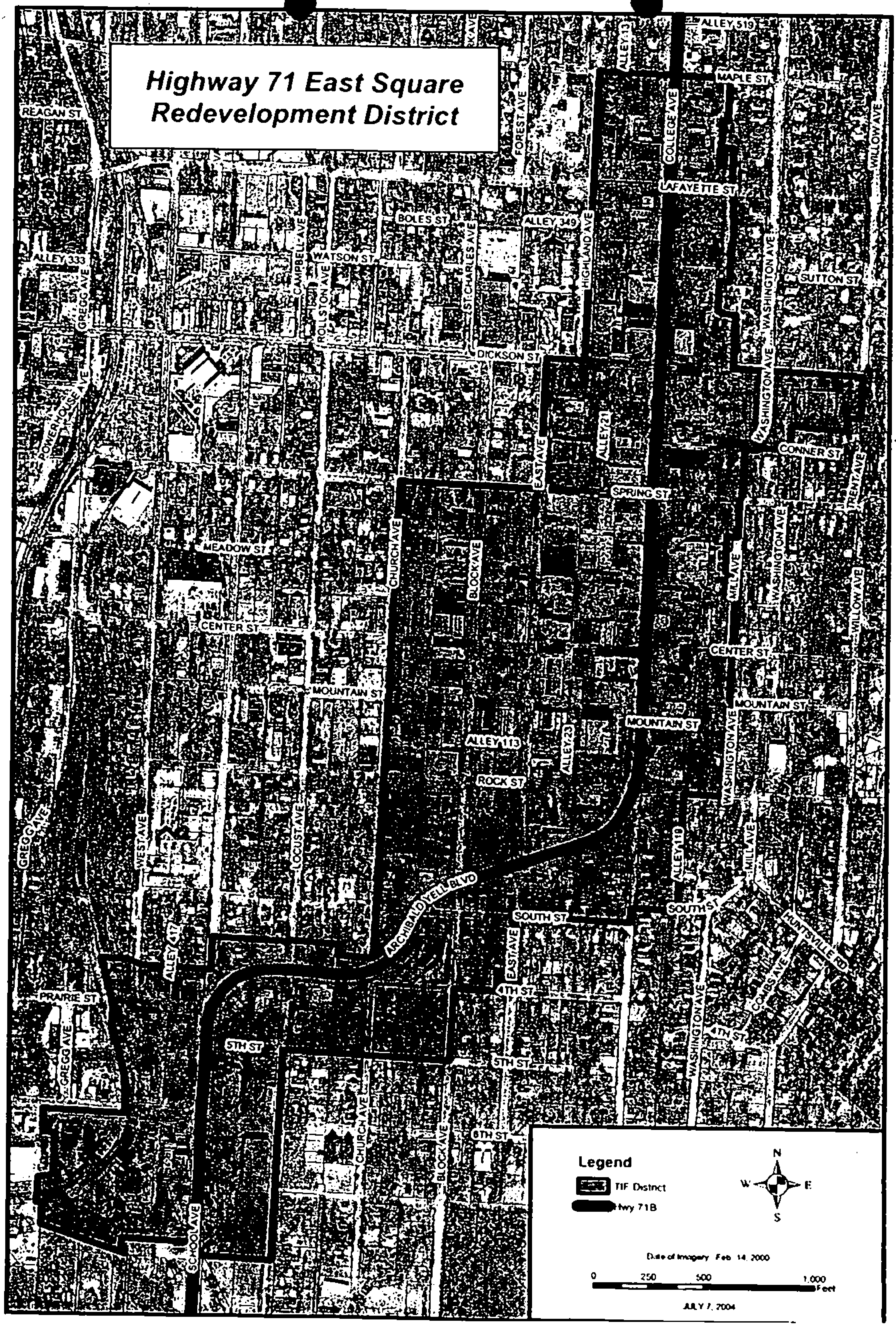
PASSED and **APPROVED** this 3rd day of August, 2004.

APPROVED:

By: ______________________________
DAN COODY, Mayor

ATTEST:

By: ______________________________
SONDRA SMITH, City Clerk



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Legend
TIF District
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Feet
JULY 7, 2004

FAYETTEVILLE

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July 12, 2004

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Sincerely,

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

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody**, Mayor
City Council
Hugh Earnest, Chief Administrative Officer
Steve Davis, Finance & Internal Services Director
Tim Conklin, Community Planning & Engineering Svs. Director

FROM: **Kit Williams**, City Attorney

DATE: **May 11, 2004**

RE: **Amendment 78 City and County Redevelopment**
A.C.A. §14-168-301 to 322 Community Redevelopment Generally

The citizens of Arkansas passed Amendment 78 to the Arkansas Constitution in November 2000. Amendment 78, **City and County Government Redevelopment**, had been submitted to the voters by the State Legislature. It empowered cities and counties to form redevelopment districts and issue bonds for "redevelopment projects."

> " '(R)edevelopment project' means an undertaking for eliminating, or preventing the development or spread of, slums or blighted, deteriorated, or deteriorating areas, for discouraging the loss of commerce, industry, or employment, or for increasing employment, or any combination thereof, as may be defined by the General Assembly."

The last phrase in the definition gives the legislature very broad authority to further define "redevelopment project."

The bonds for "redevelopment projects" could be financed by whatever increase occurs in the property taxes as a result of increases in property values within the district. The schools, county, library, etc. would continue receiving the same amount of tax money before the establishment of the district, but would see no increase during the life of this district. The amount above the level of property taxes paid when the district was formed could be pledged and used to pay off bonds used to finance improvements to eliminate or prevent blighted or deteriorated areas.

The legislature was given power in Amendment 78 to "provide for implementation of this section by law."

In the 2003 legislative session, the General Assembly repealed the existing Arkansas Community Redevelopment Financing Act and enacted the Community Redevelopment Act (A.C.A. §14-168-301 et. seq.) to implement Amendment 78's provisions. This act covers 15 pages in the Arkansas Code with extensive definitions, explanations of powers, requirements for creating districts and project plans, and how to divide property taxes and finance bonds. I will attempt to give you an overview of this law (which is so new that there are no Court decisions clarifying or explaining its meaning).

TIF {Tax Increment Financing A.C.A. §14-168-305 (e)} can be used to finance improvements for a "redevelopment project" within a "redevelopment district." A.C.A. §14-168-301 (12) and (13). As explained earlier, the increase in property tax revenues after the redevelopment district was formed could be pledged to pay tax increment bonds which would help finance redevelopment projects. The entities receiving property taxes (schools, county, library, etc.) would not see declining revenues from this redevelopment district, but also would see no increase.

CREATING A REDEVELOPMENT DISTRICT

The City Council may upon its own initiative or upon request of affected property owners or the Fayetteville Planning Commission designate boundaries of a proposed redevelopment district. A public hearing is required after proper newspaper publication, fifteen days before such hearing. The City must also send letters to the County Judge, Public School Superintendent and School Board, Library Director and Library Board, Fire and Police Pension Boards and any other taxing entity that could be affected by tax incremental financing informing them of the possible redevelopment district formation and their right to be heard.

DETERMINING THE BORDERS
OF A REDEVELOPMENT DISTRICT

The major issue in such public hearing would likely be the proper boundaries for the redevelopment district. The wider the district, the more property and buildings will be affected – more revenue to the redevelopment district, less money to the schools and county.

But how large can or should a redevelopment district be? The City Council must answer the "should" part of this question. I will only discuss the legal implications (or the "can" part).

A "redevelopment district" must be a contiguous geographic area in which a "redevelopment project" is undertaken. A.C.A. §14-168-301. The City Council must make a finding:

> "that the real property within the redevelopment district will be benefited by eliminating or preventing the development or spread of slums or blighted, deteriorated, or deteriorating areas, or discouraging the loss of commerce, industry, or employment, or increasing employment, or any combination thereof." A.C.A. §14-168-305 (c) (4).

Therefore, if the Mountain Inn renovation, redevelopment, or removal and replacement is the primary "redevelopment project" goal, the City Council would need to provide factual reasons to support the required statutory finding that removing or rehabilitating this blighted structure **will benefit** every property within the designated "redevelopment district."

I do not think that anyone could argue that all the buildings between Center Street and Mountain Street from College Avenue to the alley behind the Bank of America would not be benefited from the redevelopment of the Mountain Inn. They are **all** at some risk from fire damage as long as the Mountain Inn remains in its blighted condition. From a legal point of view, I believe that the immediate neighboring structures across Center Street up to the Continuing Education Center are close enough to be legally benefited from the rehabilitation of the Mountain Inn.

I also believe that buildings across College Avenue from the old County Courthouse maybe all the way to Rock Street could benefit from the removal or rehabilitation of the Mountain Inn which is very visible from all these buildings along College Avenue.

Once you get beyond this area, there may be legal questions about whether more distant property would actually be benefited from the rehabilitation of the Mountain Inn. The Old Ozark Theater building and 70 N. College are probably close enough, but government buildings (Sheriff's Office and Jail) are buffers for northern expansion of the district along College Avenue. Similarly, it could be difficult to justify northern expansion on the west side of College past Meadow Street and especially past Spring Street.

Extending the district on the west side of College Avenue South past the Federal Building, may be problematic since the massive Federal Court building and grounds may be determined to block most effects of the redevelopment of the currently blighted Mountain Inn.

The finding of the City Council based upon statements and facts presented at the public hearing should be entitled to deference by a Court if we are sued by taxing entities or citizens unhappy with the size, location or purpose of the redevelopment district. However, my advice is to make certain that **all** property within your adopted districts border clearly "will be benefited" by the project.

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

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

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody**, Mayor
City Council
Hugh Earnest, Chief Administrative Officer
Steve Davis, Finance & Internal Services Director
Tim Conklin, Community Planning & Engineering Svs. Director

FROM: **Kit Williams**, City Attorney

DATE: **May 21, 2004**

RE: **East Square Redevelopment Project**

The proposed East Square Redevelopment Project to assist in the replacement of the blighted Mountain Inn and Courts Building with a large, upscale hotel and convention center (with some commercial and 18 condos thrown in) would greatly enhance the immediate surrounding downtown area. It seems like this is the precise type of project envisioned by the voters and legislators when passing Amendment 78 and A.C.A. §14-168-301 et. seq. (The Act).

We do need to look very carefully at the statutory definitions and powers granted in the Community Redevelopment Chapter of Title 14, Local Government (The Act) to ensure the City has **legal** power to accomplish whatever redevelopment project you might wish to attempt. My memo of May 11th discussed a "redevelopment district" and how the City Council could determine the proper borders of such district (property that would be **benefited** by the project). This memo will examine how Tax Incremental Financing (TIF) money be used in a "redevelopment project."

Normally tax dollars such as Tax Increment Financing may only be used to finance **public** works or improvements. There is much language in the Act about using TIF for public works: "construction of public works and improvements", "public facilities, public housing", "construction of public facilities", "other public improvements" and "any capital improvements of a public nature." However, the broad definition of "redevelopment project" in A.C.A. §14-168-301· and Amendment 78 appears to grant even more leeway for TIF revenue.

Under the "Powers" section (A.C.A. §14-168-304) the city can "Construct capital improvements to be leased or sold to private entities in connection with the goals of the redevelopment project." Included within the definition of "Project costs" are: "(i) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, **new buildings**, structures and fixtures, the demolition, alteration, remodeling, repair, or reconstruction of existing buildings ...."

"Project costs" specifically include "real property assembly costs" a "redevelopment project may include ...(t)he acquisition of land and improvements, if any within the redevelopment district and clearance of the land so acquired ...." A.C.A. §14-168-301 (13).

This tax increment financing could certainly be used for any necessary **demolition** because the statutory definition of "redevelopment project" also includes the language:

> "together with such site improvements necessary for preparation of any sites and making any land or improvements required in the project area available, by sale or by lease, ... for **development, redevelopment or rehabilitation by private enterprise for commercial** or industrial uses ...." (emphasis added).

Thus demolition and removal of debris would appear very appropriate expenditures of tax incremental funds as part of a land preparation for construction of a replacement building by private enterprise. However, I could find no absolutely specific and clear reference in the definition authorizing TIF financing for the **construction of privately owned buildings**. The definition speaks of "construction of capital improvements ... designed to alleviate deteriorating conditions or a blighted area or designed to increase or enhance the development of commerce ...." But does this mean tax dollars can supplement the construction costs of building a new privately owned building? I believe that answer may be "yes" for further reasons stated later. However, I would be more comfortable legally is the TIF money was only used for acquisition and clearing expenses or public improvements. Using TIF money to demolish and clear the site rather than to help build a privately owned commercial structure not only is much more traditional and accepted urban renewal, it also avoids issues of obtaining taxpayer benefits for taxpayer revenue that would be inherent if taxes were invested in construction of private property.

The very broad definition and authority given by the people through Amendment No. 78 to the legislature to define "redevelopment project" was seemingly extended to the City Council by the very last clause in the statutory definition:

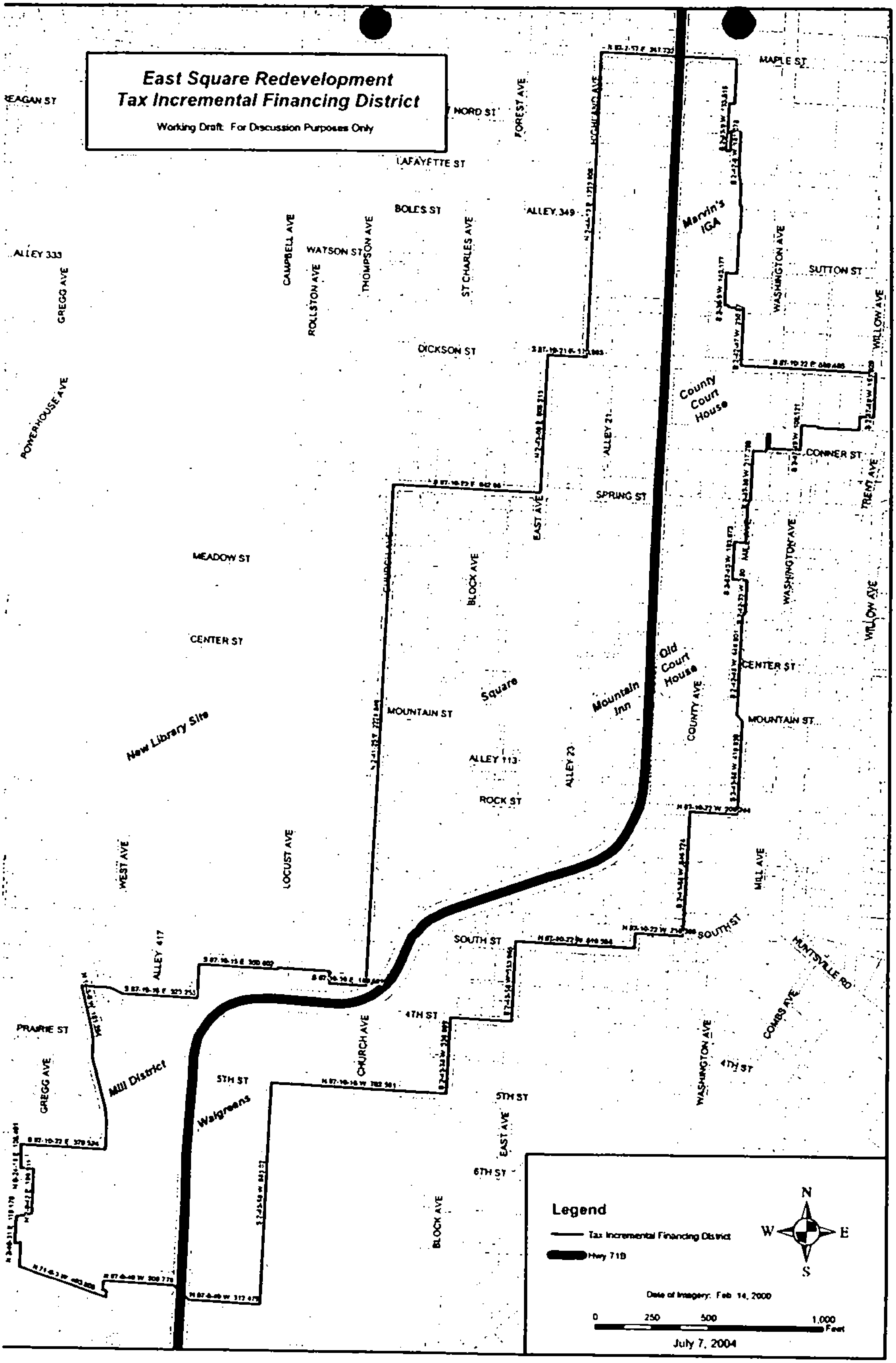
> "(E) Any other projects the local governing body deems appropriate to carry out the purposes of this subchapter."

The General Assembly listed seven (7) purposes when they passed this act."

> "(b) The General Assembly declares the purpose of this act to be as follows: (1) To create a viable procedure by which a local government may finance redevelopment projects that improve the community; (2) To create a more stable and adequate source of funds for local governments to construct improvements and finance rehabilitation of distressed and blighted areas; and (3) To benefit the people of this state, for the increase of their commerce, welfare, and prosperity, and for the improvement of their living conditions; (4) To provide new employment opportunities; (5) To prevent, arrest, and alleviate blight and decay in communities; (6) To increase the supply of housing available at low rentals; and (7) To improve the tax base and to improve the general economy of the State of Arkansas by providing additional and alternative means for local governments to finance public facilities and residential, commercial, and industrial development and revitalization, all to the public benefit and good, in the manner provided in this act."

This last clause in the definition and the lengthy and broad purposes in the Act's preamble seem to give the City Council great leeway in determining what a worthy "redevelopment project" is. The legislature also stated: "it is the intent of the General Assembly that it (the Act) is to be broadly construed to effect its purpose." A.C.A. §14-168-302.

Thus, it seems that the proposed East Square Redevelopment meets the statutory definitions for eligibility for tax incremental financing. Now it is your policy decision about the advisability of going forward or not.



East Square Redevelopment
Tax Incremental Financing District
Working Draft. For Discussion Purposes Only
REAGAN ST
NORD ST
FOREST AVE
HIGHLAND AVE
MAPLE ST
LAFAYETTE ST
BOLES ST
ALLEY 349
Marvin's IGA
ALLEY 333
CAMPBELL AVE
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KIT WILLIAMS, CITY ATTORNEY
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DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

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

FROM: **Kit Williams,** City Attorney

DATE: **July 29, 2004**

RE: **Redevelopment District and TIF bonds**

GENERAL FACT SHEET

1. "(T)he real property within the redevelopment district (must) be benefited by eliminating (blight) …." A.C.A. §14-168-305 (c)(4).

2. "The boundaries of a redevelopment district may be modified from time to time by ordinance of the local government." A.C.A. §14-168-305 (f).

3. "Upon creation of the redevelopment district, (the City Council) shall cause the preparation of a project plan …." A.C.A. §14-168-306 (a).

4. The City Council "shall hold a public hearing at which interested parties are allowed a reasonable opportunity to express their views on the proposed project plan." A.C.A. §14-168-306 (e).

5. The project plan's "approval shall be by ordinance which contains a finding that the plan is economically feasible." A.C.A. §14-168-306 (f).

6. "The local governing body may adopt by ordinance an amendment to a project plan." A.C.A. §14-168-307 (a).

TIF BONDS

A. "Every bond issued ... shall recite on its face that it is a special obligation bond payable solely from the tax increment and other revenues pledged for its repayment." A.C.A. §14-168-314 (c).

B. "To increase the security and marketability of redevelopment bonds or notes, the local government may:

> (1) Create a lien for the bondholders upon any public improvements or public works financed by the bonds; or
>
> (2) Make such covenants and do any and all such actions ... which tend to make the bonds or notes more marketable ...." A.C.A. §14-168-318.

C. TIF Bonds would initially be debts supported only by incremental millage tax payments from the County Collector. The City Council could grant liens (mortgages) on infrastructure improvements and could even pledge "other revenues" to make the TIF bonds more marketable. That would seem to run counter to the attractiveness of tax incremental financing by tying up city general revenue and could lead to legal problems in this developing area of a brand new law.

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WHEREAS, prior to publication, a copy of said notice was sent by first-class mail to the chief executive officer of all local governmental and taxing entities having the power to levy taxes on property located within the proposed Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas, and to the school board of any school district which includes property located within the proposed Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas; and

WHEREAS, the City Council has designated the boundaries of the proposed Highway 71 East Square Redevelopment District Number One, of Fayetteville, Arkansas.

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 establishes the boundaries of the Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas as set forth on the map attached hereto as Exhibit "A" and incorporated herein.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby names the District the following name for identification purposes: Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby creates the Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas as of September 20, 2004.

Section 4: That the City Council hereby finds that the real property within the Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas, will be benefited by the redevelopment project by eliminating or preventing the development or spread of blighted, deteriorated, or deteriorating areas, or discouraging the loss of commerce, or employment, or increasing employment, or any combination thereof.

Section 5: That the City Council of the City of Fayetteville, Arkansas hereby creates a separate and special fund into which shall be deposited all tax increment revenues, and all other revenues designated by the City for the benefit of the Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas. All project costs shall be paid from this fund. This fund shall be known as the Highway 71 East Square Redevelopment District Number One of Fayetteville, Arkansas.

Section 6: That the City Council of the City of Fayetteville, Arkansas hereby authorizes the preparation of a Redevelopment Project.

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

APPROVED:

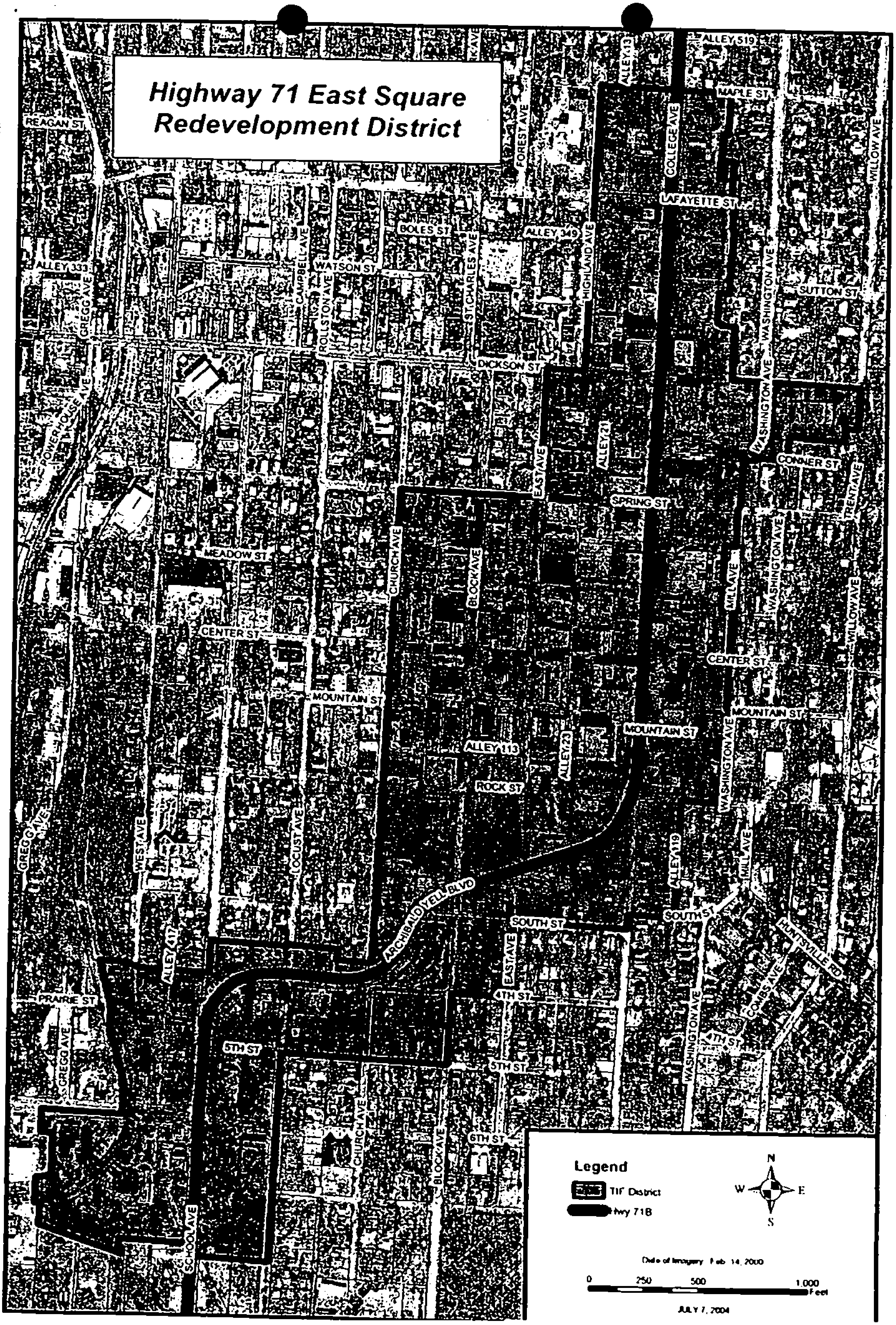
By: ______________________________

DAN COODY, Mayor

ATTEST:

By: ______________________________

SONDRA SMITH, City Clerk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LOCUST AVE
ALLEY 118
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FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

July 12, 2004

Dear Property Owner:

Notice of Public Hearing

The City of Fayetteville staff has been working hard to facilitate the redevelopment of the abandoned Mountain Inn in Fayetteville's downtown area.

The developers, along with city officials, several attorneys and investment bankers have been focusing on the creation of a Tax Increment Financing District (TIF) over the past several months. The TIF re-development option was made available recently by a constitutional amendment and accompanying state legislation. It has also received prominent mention in the recently completed Downtown Master Plan as one of the principal options to be considered in downtown redevelopment. For their part, the developers have been successful in securing new market tax credits along with support for financing from private sources. Success in securing alternative financing sources has certainly been encouraging, however the difficultly in redeveloping the site of the Mountain Inn demands that all avenues for funding assistance be explored. A TIF district is certainly one of those options.

As we open this discussion, it is important to note that a TIF **does not** call for new taxation or an increase in the tax rate. Rather, it simply applies the incremental increase due to added value or inflation to a project or projects that will be accepted and approved by the Fayetteville City Council. That step, namely the discussion and possible approval of the project plan, will occur only after the creation of the District itself.

All parties are now ready to proceed in requesting the Fayetteville City Council to establish a District of sufficient size to be able to secure an Incremental assessment that can assist in this crucially important downtown redevelopment. The first step in this process will be the preliminary introduction of the ordinance that would create the district on July 20th to be followed by a Public Hearing now scheduled at **6:30 P.M. on July 27th** for all concerned parties to thoroughly discuss the creation of the district.

You have been identified as a property owner in the proposed district and we are taking this opportunity to inform you of the dates of these important discussions. We have placed on the city web site a map of the proposed district along with copies of the relevant state statutes. We will also have available in the City Planning Office hard copies of the proposed district and the applicable state laws.

Please do not hesitate to contact any one of the individuals listed with any questions or concerns that you may have as we all begin discussions on this exciting and challenging project.

Hugh Earnest 575-8330

Tim Conklin 575-8265

Sincerely,

Hugh Earnest

Hugh Earnest
CAO

113 WEST MOUNTAIN 72701 479-521-7700
FAX 479-575-8257

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody**, Mayor
City Council
Hugh Earnest, Chief Administrative Officer
Steve Davis, Finance & Internal Services Director
Tim Conklin, Community Planning & Engineering Svs. Director

FROM: **Kit Williams**, City Attorney

DATE: **May 11, 2004**

RE: **Amendment 78 City and County Redevelopment**
A.C.A. §14-168-301 to 322 Community Redevelopment Generally

The citizens of Arkansas passed Amendment 78 to the Arkansas Constitution in November 2000. Amendment 78, **City and County Government Redevelopment**, had been submitted to the voters by the State Legislature. It empowered cities and counties to form redevelopment districts and issue bonds for "redevelopment projects."

> " '(R)edevelopment project' means an undertaking for eliminating, or preventing the development or spread of, slums or blighted, deteriorated, or deteriorating areas, for discouraging the loss of commerce, industry, or employment, or for increasing employment, or any combination thereof, as may be defined by the General Assembly."

The last phrase in the definition gives the legislature very broad authority to further define "redevelopment project."

The bonds for "redevelopment projects" could be financed by whatever increase occurs in the property taxes as a result of increases in property values

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that, pursuant to Arkansas Code Annotated §14-168-305, a public hearing will be conducted on July 27, 2004 at 6:30 p.m. in the City Administration Building, Room 326, 113 W. Mountain, Fayetteville, Arkansas, and that at said hearing all interested parties will be afforded a reasonable opportunity to express their views on the proposed creation and the proposed boundaries of a redevelopment district in the downtown area.

This Public hearing is to provide opportunity for the public to express views on the proposed creation of a redevelopment district and it's proposed boundaries.

All interested parties may appear and be heard at the public hearing. A copy of the proposed boundaries and other pertinent data is open and available for inspection in the Office of City Planning *(575-8267)*, 125 West Mountain Street, Fayetteville, Arkansas. All interested parties are invited to review the information.

Interpreters or TDD for hearing impaired are available for all public meetings. 72 hour notice is required. For further information or to request an interpreter, please call 575-8330.

within the district. The schools, county, library, etc. would continue receiving the same amount of tax money before the establishment of the district, but would see no increase during the life of this district. The amount above the level of property taxes paid when the district was formed could be pledged and used to pay off bonds used to finance improvements to eliminate or prevent blighted or deteriorated areas.

The legislature was given power in Amendment 78 to "provide for implementation of this section by law."

In the 2003 legislative session, the General Assembly repealed the existing Arkansas Community Redevelopment Financing Act and enacted the Community Redevelopment Act (A.C.A. §14-168-301 et. seq.) to implement Amendment 78's provisions. This act covers 15 pages in the Arkansas Code with extensive definitions, explanations of powers, requirements for creating districts and project plans, and how to divide property taxes and finance bonds. I will attempt to give you an overview of this law (which is so new that there are no Court decisions clarifying or explaining its meaning).

TIF {Tax Increment Financing A.C.A. §14-168-305 (e)} can be used to finance improvements for a "redevelopment project" within a "redevelopment district." A.C.A. §14-168-301 (12) and (13). As explained earlier, the increase in property tax revenues after the redevelopment district was formed could be pledged to pay tax increment bonds which would help finance redevelopment projects. The entities receiving property taxes (schools, county, library, etc.) would not see declining revenues from this redevelopment district, but also would see no increase.

CREATING A REDEVELOPMENT DISTRICT

The City Council may upon its own initiative or upon request of affected property owners or the Fayetteville Planning Commission designate boundaries of a proposed redevelopment district. A public hearing is required after proper newspaper publication, fifteen days before such hearing. The City must also send letters to the County Judge, Public School Superintendent and School Board, Library Director and Library Board, Fire and Police Pension Boards and any other taxing entity that could be affected by tax incremental financing informing them of the possible redevelopment district formation and their right to be heard.

DETERMINING THE BORDERS OF A REDEVELOPMENT DISTRICT

The major issue in such public hearing would likely be the proper boundaries for the redevelopment district. The wider the district, the more property and buildings will be affected – more revenue to the redevelopment district, less money to the schools and county.

But how large can or should a redevelopment district be? The City Council must answer the "should" part of this question. I will only discuss the legal implications (or the "can" part).

A "redevelopment district" must be a contiguous geographic area in which a "redevelopment project" is undertaken. A.C.A. §14-168-301. The City Council must make a finding:

> "that the real property within the redevelopment district will be benefited by eliminating or preventing the development or spread of slums or blighted, deteriorated, or deteriorating areas, or discouraging the loss of commerce, industry, or employment, or increasing employment, or any combination thereof." A.C.A. §14-168-305 (c) (4).

Therefore, if the Mountain Inn renovation, redevelopment, or removal and replacement is the primary "redevelopment project" goal, the City Council would need to provide factual reasons to support the required statutory finding that removing or rehabilitating this blighted structure **will benefit** every property within the designated "redevelopment district."

I do not think that anyone could argue that all the buildings between Center Street and Mountain Street from College Avenue to the alley behind the Bank of America would not be benefited from the redevelopment of the Mountain Inn. They are **all** at some risk from fire damage as long as the Mountain Inn remains in its blighted condition. From a legal point of view, I believe that the immediate neighboring structures across Center Street up to the Continuing Education Center are close enough to be legally benefited from the rehabilitation of the Mountain Inn.

I also believe that buildings across College Avenue from the old County Courthouse maybe all the way to Rock Street could benefit from the removal or rehabilitation of the Mountain Inn which is very visible from all these buildings along College Avenue.

Once you get beyond this area, there may be legal questions about whether more distant property would actually be benefited from the rehabilitation of the Mountain Inn. The Old Ozark Theater building and 70 N. College are probably close enough, but government buildings (Sheriff's Office and Jail) are buffers for northern expansion of the district along College Avenue. Similarly, it could be difficult to justify northern expansion on the west side of College past Meadow Street and especially past Spring Street.

Extending the district on the west side of College Avenue South past the Federal Building, may be problematic since the massive Federal Court building and grounds may be determined to block most effects of the redevelopment of the currently blighted Mountain Inn.

The finding of the City Council based upon statements and facts presented at the public hearing should be entitled to deference by a Court if we are sued by taxing entities or citizens unhappy with the size, location or purpose of the redevelopment district. However, my advice is to make certain that all property within your adopted districts border clearly "will be benefited" by the project.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody**, Mayor
City Council
Hugh Earnest, Chief Administrative Officer
Steve Davis, Finance & Internal Services Director
Tim Conklin, Community Planning & Engineering Svs. Director

FROM: **Kit Williams**, City Attorney

DATE: **May 21, 2004**

RE: **East Square Redevelopment Project**

The proposed East Square Redevelopment Project to assist in the replacement of the blighted Mountain Inn and Courts Building with a large, upscale hotel and convention center (with some commercial and 18 condos thrown in) would greatly enhance the immediate surrounding downtown area. It seems like this is the precise type of project envisioned by the voters and legislators when passing Amendment 78 and A.C.A. §14-168-301 et. seq. (The Act).

We do need to look very carefully at the statutory definitions and powers granted in the Community Redevelopment Chapter of Title 14, Local Government (The Act) to ensure the City has **legal** power to accomplish whatever redevelopment project you might wish to attempt. My memo of May 11th discussed a "redevelopment district" and how the City Council could determine the proper borders of such district (property that would be **benefited** by the project). This memo will examine how Tax Incremental Financing (TIF) money be used in a "redevelopment project."

Normally tax dollars such as Tax Increment Financing may only be used to finance **public** works or improvements. There is much language in the Act about using TIF for public works: "construction of public works and improvements", "public facilities, public housing", "construction of public facilities", "other public improvements" and "any capital improvements of a public nature." However, the broad definition of "redevelopment project" in A.C.A. §14-168-301 and Amendment 78 appears to grant even more leeway for TIF revenue.

Under the "Powers" section (A.C.A. §14-168-304) the city can "Construct capital improvements to be leased or sold to private entities in connection with the goals of the redevelopment project." Included within the definition of "Project costs" are: "(i) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, **new buildings**, structures and fixtures, the demolition, alteration, remodeling, repair, or reconstruction of existing buildings ...."

"Project costs" specifically include "real property assembly costs" a "redevelopment project may include ...(t)he acquisition of land and improvements, if any within the redevelopment district and clearance of the land so acquired ...." A.C.A. §14-168-301 (13).

This tax increment financing could certainly be used for any necessary **demolition** because the statutory definition of "redevelopment project" also includes the language:

> "together with such site improvements necessary
> for preparation of any sites and making any land or
> improvements required in the project area available,
> by sale or by lease, ... for **development, redevelopment**
> **or rehabilitation by private enterprise for commercial**
> or industrial uses ...." (emphasis added).

Thus demolition and removal of debris would appear very appropriate expenditures of tax incremental funds as part of a land preparation for construction of a replacement building by private enterprise. However, I could find no absolutely specific and clear reference in the definition authorizing TIF financing for the **construction of privately owned buildings**. The definition speaks of "construction of capital improvements ... designed to alleviate deteriorating conditions or a blighted area or designed to increase or enhance the development of commerce ...." But does this mean tax dollars can supplement the construction costs of building a new privately owned building? I believe that answer may be "yes" for further reasons stated later. However, I would be more comfortable legally is the TIF money was only used for acquisition and clearing expenses or public improvements. Using TIF money to demolish and clear the site rather than to help build a privately owned commercial structure not only is much more traditional and accepted urban renewal, it also avoids issues of obtaining taxpayer benefits for taxpayer revenue that would be inherent if taxes were invested in construction of private property.

The very broad definition and authority given by the people through Amendment No. 78 to the legislature to define "redevelopment project" was seemingly extended to the City Council by the very last clause in the statutory definition:

> "(E) Any other projects the local governing body deems appropriate to carry out the purposes of this subchapter."

The General Assembly listed seven (7) purposes when they passed this act."

> "(b) The General Assembly declares the purpose of this act to be as follows: (1) To create a viable procedure by which a local government may finance redevelopment projects that improve the community; (2) To create a more stable and adequate source of funds for local governments to construct improvements and finance rehabilitation of distressed and blighted areas; and (3) To benefit the people of this state, for the increase of their commerce, welfare, and prosperity, and for the improvement of their living conditions; (4) To provide new employment opportunities; (5) To prevent, arrest, and alleviate blight and decay in communities; (6) To increase the supply of housing available at low rentals; and (7) To improve the tax base and to improve the general economy of the State of Arkansas by providing additional and alternative means for local governments to finance public facilities and residential, commercial, and industrial development and revitalization, all to the public benefit and good, in the manner provided in this act."

This last clause in the definition and the lengthy and broad purposes in the Act's preamble seem to give the City Council great leeway in determining what a worthy "redevelopment project" is. The legislature also stated: "it is the intent of the General Assembly that it (the Act) is to be broadly construed to effect its purpose." A.C.A. §14-168-302.

Thus, it seems that the proposed East Square Redevelopment meets the statutory definitions for eligibility for tax incremental financing. Now it is your policy decision about the advisability of going forward or not.

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

LEGAL DEPARTMENT

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

FROM: **Kit Williams**, City Attorney

DATE: **July 29, 2004**

RE: **Redevelopment District and TIF bonds**

GENERAL FACT SHEET

1. "(T)he real property within the redevelopment district (must) be benefited by eliminating (blight) …." A.C.A. §14-168-305 (c)(4).

2. "The boundaries of a redevelopment district may be modified from time to time by ordinance of the local government." A.C.A. §14-168-305 (f).

3. "Upon creation of the redevelopment district, (the City Council) shall cause the preparation of a project plan …." A.C.A. §14-168-306 (a).

4. The City Council "shall hold a public hearing at which interested parties are allowed a reasonable opportunity to express their views on the proposed project plan." A.C.A. §14-168-306 (e).

5. The project plan's "approval shall be by ordinance which contains a finding that the plan is economically feasible." A.C.A. §14-168-306 (f).

6. "The local governing body may adopt by ordinance an amendment to a project plan." A.C.A. §14-168-307 (a).

TIF Bonds

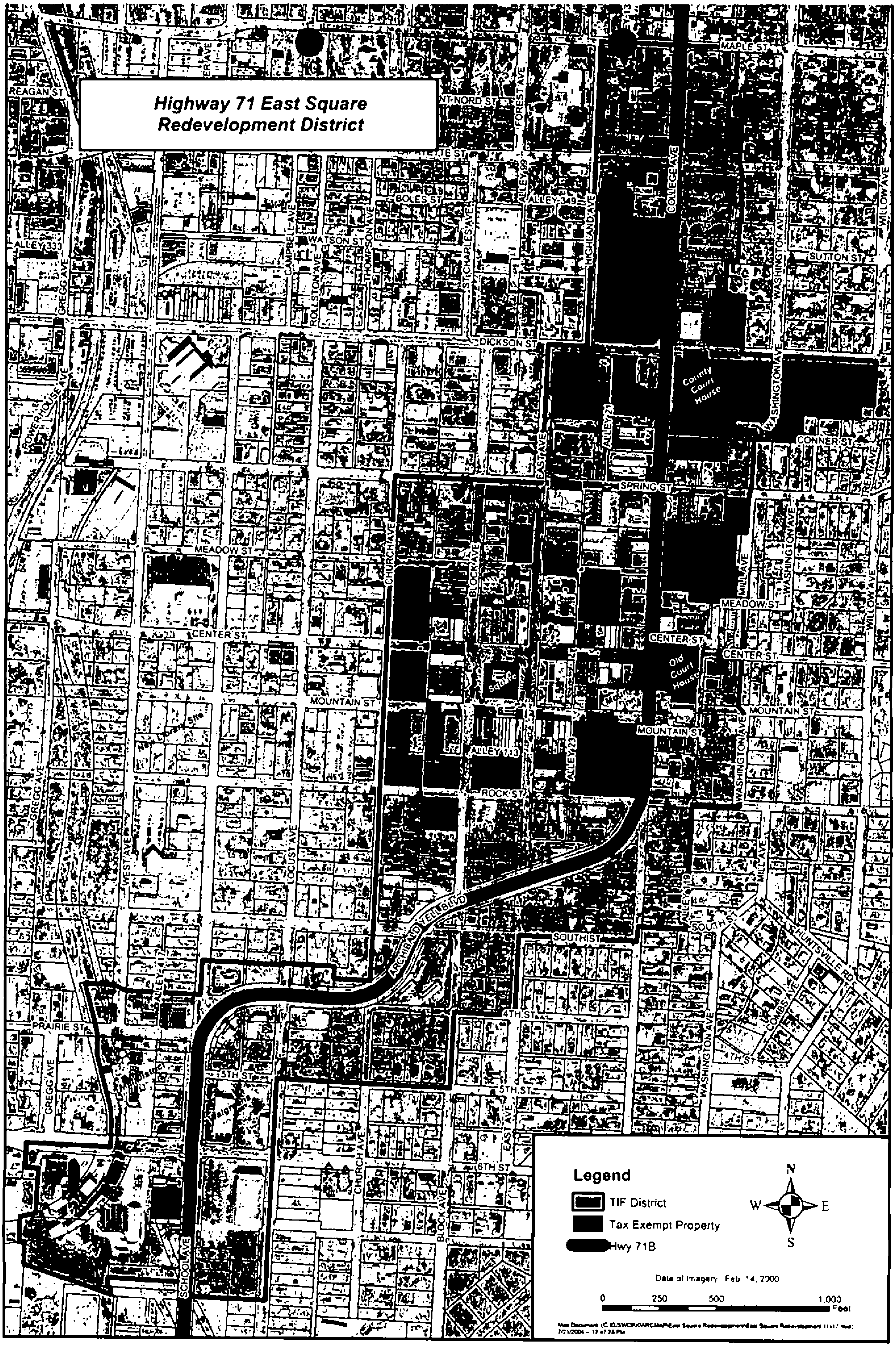
A. "Every bond issued ... shall recite on its face that it is a special obligation bond payable solely from the tax increment and other revenues pledged for its repayment." A.C.A. §14-168-314 (c).

B. "To increase the security and marketability of redevelopment bonds or notes, the local government may:

(1) Create a lien for the bondholders upon any public improvements or public works financed by the bonds; or

(2) Make such covenants and do any and all such actions ... which tend to make the bonds or notes more marketable ...." A.C.A. §14-168-318.

C. TIF Bonds would initially be debts supported only by incremental millage tax payments from the County Collector. The City Council could grant liens (mortgages) on infrastructure improvements and could even pledge "other revenues" to make the TIF bonds more marketable. That would seem to run counter to the attractiveness of tax incremental financing by tying up city general revenue and could lead to legal problems in this developing area of a brand new law.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Legend
TIF District
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PRAIRIE ST
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6TH ST
SCHOOL AVE

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody**, Mayor
City Council
Hugh Earnest, Chief Administrative Officer

CC: **Honorable Gordon Wilbourn**

FROM: **Kit Williams**, City Attorney

DATE: **June 24, 2004**

RE: **TIF District Establishment**

Gordon Wilbourn and I have discussed general legal issues surrounding establishing a redevelopment district and financing improvements, acquisitions and demolitions within such district using TIF (Tax Incremental Financing) bonds. I have provided a couple of detailed legal memos to you on this subject.

We can do nothing further until the City Council or Administration presents a concrete development district/plan for analysis and consideration. This is a new law so legal analysis will always be somewhat limited, especially if concepts involving complicated property concepts such as future interests in land are involved. We will wait for any proposal that might be provided.

Left on 1st Reading 7/29/04
mov. to 7/29 Sp. CC Mtg

NORTHWEST ARKANSAS EDITION
Arkansas Democrat Gazette

AFFIDAVIT OF PUBLICATION

I, Diane Williams, do solemnly swear that I am Legal Clerk of the Arkansas Democrat-Gazette/Northwest Arkansas Times newspaper, printed and published in Lowell, Arkansas, and that from my own personal knowledge and reference to the files of said publication, that advertisement of:

Final Agenda, 7/29 was inserted in the regular editions on July 26, 2004.

PO# 04-380

** Publication Charge: $ 42.93

Subscribed and sworn to before me this

26 day of July, 2004.

Sean-Michael Argo
Notary Public

My Commission Expires: 07/25/2013

RECEIVED
JUL 28 2004
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

** Please do not pay from Affidavit.
An invoice will be sent.

Official Seal
SEAN-MICHAEL ARGO
Notary Public-Arkansas
WASHINGTON COUNTY
My Commission Expires 07-25-2013

Final Agenda
Special City Council Meeting
July 29, 2004

Fayetteville
ARKANSAS

A Special meeting of the Fayetteville City Council will be held on July 29, 2004 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Old Business:

Highway 71 East Square Redevelopment District #1: An ordinance forming the Highway 71 East Square Redevelopment District Number One pursuant to Amendment 78 of the Arkansas Constitution and authorizing the preparation of a project plan. This ordinance was tabled at the July 20, 2004 City Council meeting to the July 29, 2004 City Council meeting.

212 NORTH EAST AVENUE • P.O. BOX 1607 • FAYETTEVILLE, ARKANSAS 72702 • (501) 442-1700